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FEDERAL REGISTER

Vol. 78 Tuesday,

No. 251 December 31, 2013

Book 1 of 2 Books

Pages 79567–80224

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

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Contents

Federal Register

Vol. 78, No. 251

Tuesday, December 31, 2013

Agency for Toxic Substances and Disease Registry
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 79696–79697

Agriculture Department
See Animal and Plant Health Inspection Service
See Food and Nutrition Service
See Forest Service

Animal and Plant Health Inspection Service
RULES
Importation of Avocados from Continental Spain, 79568–79573
Importation of Fresh Apricots from Continental Spain, 79573–79579
PROPOSED RULES
Importation of Fresh Blueberry Fruit from Morocco into the Continental United States, 79634–79636
Importation of Plants for Planting, 79636–79637
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Approval of Laboratories for Conducting Aquatic Animal Tests for Export Health Certificates, 79656–79657
Environmental Assessments; Availability, etc.:
Issuance of a Permit for Distribution and Sale of an Infectious Hematopoietic Necrosis Virus Vaccine, DNA, 79657
Environmental Impact Statements; Availability, etc.:
Animal Carcass Management, 79658
Pest Risk and Environmental Assessments; Availability, etc.:
Okanagan Specialty Fruits, Inc.; Determination of Nonregulated Status of Apples Genetically Engineered to Resist Browning, 79658–79659
Program Standards:
Chronic Wasting Disease Herd Certification Program and Interstate Movement of Farmed or Captive Deer, Elk, and Moose, 79659–79660
Requests for Information:
Enhancing Agricultural Coexistence; Extension of Comment Period, 79660

Bureau of Consumer Financial Protection
RULES
Integrated Mortgage Disclosures:
Real Estate Settlement Procedures Act, Regulation X; Truth in Lending Act, Regulation Z, 79730–80365

Centers for Disease Control and Prevention
NOTICES
Statements of Organization, Functions, and Delegations of Authority, 79697–79699

Commerce Department
See Foreign-Trade Zones Board
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration

Defense Acquisition Regulations System
RULES
Defense Federal Acquisition Regulation Supplements:
Trade Agreements Thresholds, 79620–79621

Defense Department
See Defense Acquisition Regulations System
RULES
Federal Acquisition Regulations:
Federal Acquisition Circular 2005–72; Introduction, 80368–80369
Federal Acquisition Circular 2005–72; Small Entity Compliance Guide, 80381–80382
Prioritizing Sources of Supplies and Services for Use by the Government, 80376–80379
Service Contracts Reporting, 80369–80376
Terms of Service and Open-Ended Indemnification and Unenforceability of Unauthorized Obligations, 80382–80384
Trade Agreements Thresholds, 80379–80381
NOTICES
Guidance to Federal Financial Assistance Recipients:
Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 79675–79685

Education Department
RULES
Migrant Education Program Consortium Incentive Grant Program; Final Requirements, 79613–79615

Energy Department
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission
RULES
Energy Conservation Program:
Alternative Efficiency Determination Methods, Basic Model Definition, and Compliance for Commercial HVAC, Refrigeration, and WH Equipment, 79579–79599
PROPOSED RULES
Energy Conservation Program for Consumer Products:
Landmark Legal Foundation; Petition for Reconsideration, 79643–79649
Proposed Determination of Hearth Products as a Covered Consumer Product, 79638–79643
Energy Conservation Program:
Proposed Determination of Set-Top Boxes and Network Equipment as a Covered Consumer Product, 79649–79650
Test Procedure for Set-top Boxes, 79637–79638

Energy Efficiency and Renewable Energy Office
NOTICES
Commercial Refrigerator, Freezer and Refrigerator-Freezer Test Procedure Waivers:
Hussmann, 79685–79687

Environmental Protection Agency
RULES
Final Authorization of State Hazardous Waste Management Program Revisions:
Vermont, 79615–79619

PROPOSED RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Washington; Miscellaneous Revisions, 79652–79654
Authorization of State Hazardous Waste Management Program Revisions:
Vermont, 79654–79655
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
SunWise Program, 79691–79692
Clean Water Act:
Contractor Access To Confidential Business Information, 79692–79693
Meetings:
National Environmental Justice Advisory Council; Public Teleconference, 79693–79694

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness Directives:
Various Aircraft Equipped with Wing Lift Struts; Correction, 79599–79600

Federal Communications Commission
NOTICES
Meetings:
Advisory Committee for the 2015 World Radiocommunication Conference, 79694

Federal Energy Regulatory Commission
NOTICES
Applications:
Texas Eastern Transmission, LP, 79687–79688
Complaints:
Newmont Nevada Energy Investment LLC v. Sierra Pacific Power Co., 79688
Environmental Assessments; Availability, etc.:
Paiute Pipeline Co.; Planned 2015 Elko Area Expansion Project, 79688–79690
Filings:
California Independent System Operator Corp., 79690–79691
Requests under Blanket Authorizations:
Trunkline Gas Co., LLC, 79691

Food and Drug Administration
NOTICES
Meetings:
Cellular, Tissue, and Gene Therapies Advisory Committee, 79699–79700
Requests for Nominations:
Food Advisory Committee, 79700–79701
Requests for Scientific Data and Information:
Tentative Determination Regarding Partially Hydrogenated Oils, 79701

Food and Nutrition Service
RULES
Food Distribution Program on Indian Reservations:
Income Deductions and Resource Eligibility; Approval of Information Collection Request, 79567
National School Lunch Program and School Breakfast Program:
Nutrition Standards for All Foods Sold in Schools as Required by the Healthy, Hunger-Free Kids Act, etc., 79567
Supplemental Nutrition Assistance Program:
Trafficking Controls and Fraud Investigations, 79567
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Child Nutrition Database, 79660–79661

Foreign Assets Control Office
NOTICES
Blocking or Unblocking of Persons and Properties, 79726–79727

Foreign-Trade Zones Board
NOTICES
Subzone Status; Approvals:
VF Jeanswear, Hackleburg, AL, 79662

Forest Service
NOTICES
Meetings:
Gallatin County Resource Advisory Committee, 79661

General Services Administration
RULES
Federal Acquisition Regulations:
Federal Acquisition Circular 2005–72; Introduction, 80368–80369
Federal Acquisition Circular 2005–72; Small Entity Compliance Guide, 80381–80382
Prioritizing Sources of Supplies and Services for Use by the Government, 80376–80379
Service Contracts Reporting, 80369–80376
Terms of Service and Open-Ended Indemnification and Unenforceability of Unauthorized Obligations, 80382–80384
Trade Agreements Thresholds, 80379–80381
NOTICES
Privacy Act; Systems of Records, 79694–79696

Health and Human Services Department
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
RULES
Patient Protection and Affordable Care Act; Program Integrity:
Exchange, Premium Stabilization Programs, and Market Standards; Amendments to the Notice of Benefit and Payment Parameters for 2014; Correction, 79619–79620

Health Resources and Services Administration
NOTICES
National Vaccine Injury Compensation Program; Petitions, 79701–79703

Industry and Security Bureau
RULES
Removal of Person from the Entity List Based on a Removal Request, 79600–79602

Interior Department
See Land Management Bureau
NOTICES
Environmental Assessments; Availability, etc.:
Olmsted Hydroelectric Power Plant Replacement Project, 79707
Wasatch County Water Efficiency Project, Proposed Increase in Operation, Maintenance and Replacement Activities, 79706–79707

Internal Revenue Service
RULES
Definitions and Reporting Requirements for Shareholders of Passive Foreign Investment Companies:
Insurance Income of a Controlled Foreign Corporation for Taxable Years Beginning After December 31, 1986, 79602–79613
PROPOSED RULES
Definitions and Reporting Requirements for Shareholders of Passive Foreign Investment Companies, 79650–79652
Taxation of U.S. Persons that Are Shareholders of Section 1291 Funds, 79652
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 79727–79728

International Trade Administration
NOTICES
Antidumping and Countervailing Duty Administrative Reviews; Results, Extensions, Amendments, etc.:
Certain Circular Welded Non-Alloy Steel Pipe from Mexico, 79664–79665
Stainless Steel Plate in Coils from Belgium, 79662–79664
Welded Carbon Steel Standard Pipe and Tube Products from Turkey, 79665–79667
Changed Circumstances Reviews:
Stainless Steel Sheet and Strip in Coils from Japan, 79667–79670
Determinations:
Steel Threaded Rod from Thailand, 79670–79672

International Trade Commission
NOTICES
Complaints:
Certain Soft-Edged Trampolines and Components Thereof, 79708–79709

Land Management Bureau
NOTICES
Meetings:
Boise District Resource Advisory Council, 79708
Gateway West Project Subcommittee of the Boise District Resource Advisory Council, 79707–79708

National Aeronautics and Space Administration
RULES
Federal Acquisition Regulations:
Federal Acquisition Circular 2005–72; Introduction, 80368–80369
Federal Acquisition Circular 2005–72; Small Entity Compliance Guide, 80381–80382
Prioritizing Sources of Supplies and Services for Use by the Government, 80376–80379
Service Contracts Reporting, 80369–80376
Terms of Service and Open-Ended Indemnification and Unenforceability of Unauthorized Obligations, 80382–80384
Trade Agreements Thresholds, 80379–80381

National Institutes of Health
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application Process for Clinical Research Training and Medical Education at the Clinical Center and its Impact on Course and Training Program Enrollment and Effectiveness, 79703
Meetings:
Center for Scientific Review, 79705–79706
National Institute of Allergy and Infectious Diseases, 79703–79705
National Institute of Diabetes and Digestive and Kidney Diseases, 79706
National Institute on Aging, 79706

National Oceanic and Atmospheric Administration
RULES
Endangered and Threatened Species:
Designation of a Nonessential Experimental Population of Central Valley Spring-run Chinook Salmon below Friant Dam in the San Joaquin River, CA, 79622–79633
NOTICES
Meetings:
Gulf of Mexico Fishery Management Council, 79674
New England Fishery Management Council, 79672–79673
South Atlantic Fishery Management Council, 79673–79674
Permits:
Endangered and Threatened Species; Take of Anadromous Fish, 79674–79675
Takes of Marine Mammals Incidental to Specified Activities:
Seismic Survey in Cook Inlet, AK, 80386–80413

Nuclear Regulatory Commission
NOTICES
Post-Shutdown Decommissioning Activities:
Duke Energy Florida, Inc., Crystal River Unit 3 Nuclear Generating Plant, 79709–79710

Postal Regulatory Commission
NOTICES
New Postal Products, 79710–79711

Presidential Documents
PROCLAMATIONS
Trade:
African Growth and Opportunity Act; Beneficiary Country Designations and Modifications (Proc. 9072), 80415–80446
EXECUTIVE ORDERS
Government Agencies and Employees:
Rates of Pay; Adjustments (EO 13655), 80451–80462
ADMINISTRATIVE ORDERS
Taiwan; Proposed Agreement for Cooperation With U.S. on Peaceful Uses of Nuclear Energy (Presidential Determination)
No. 2014–06 of December 20, 2013, 80447–80449

Securities and Exchange Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 79711–79715
Self-Regulatory Organizations; Proposed Rule Changes:
Financial Industry Regulatory Authority, Inc., 79716–79718

International Securities Exchange, LLC, 79721–79723
NYSE Arca, Inc., 79721
NYSE MKT LLC, 79720–79721
Topaz Exchange, LLC, 79718–79720

Social Security Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 79723–79726

Surface Transportation Board
NOTICES
Abandonment Exemptions:
Norfolk Southern Railway Co., Gaston County, NC, 79726

Toxic Substances and Disease Registry Agency
See Agency for Toxic Substances and Disease Registry

Transportation Department
See Federal Aviation Administration
See Surface Transportation Board

Treasury Department
See Foreign Assets Control Office
See Internal Revenue Service

Separate Parts In This Issue

Part II
Bureau of Consumer Financial Protection, 79730–80365

Part III
Defense Department, 80368–80384
General Services Administration, 80368–80384
National Aeronautics and Space Administration, 80368–80384

Part IV
Commerce Department, National Oceanic and Atmospheric Administration, 80386–80413

Part V
Presidential Documents, 80415–80446

Part VI
Presidential Documents, 80447–80449, 80451–80462

Reader Aids

Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:
9072 80417

Executive Orders:
13641 (superseded by 13655) 80451
13655 80451

Administrative Orders:
Presidential Determinations:
No. 2014–06 of December 20, 2013 80449

7 CFR
210 79567
220 79567
253 79567
271 79567
274 79567
319 (2 documents) 79568, 79573

Proposed Rules:
319 (2 documents) 79634, 79636
340 79636

10 CFR
429 79579
431 79579

Proposed Rules:
429 79637
430 (4 documents) 79637, 79638, 79643, 79649

12 CFR
1024 79280
1026 79280

14 CFR
39 79599

15 CFR
744 79600

26 CFR
1 79602

Proposed Rules:
1 (2 documents) 79650, 79652

34 CFR
Ch. II 79613

40 CFR
271 79615

Proposed Rules:
52 79652
271 79654

45 CFR
155 79619

48 CFR
Ch. 1 (2 documents) 80368, 80381
1 80369
4 80369
7 80376
8 (2 documents) 80369, 80376
9 80376
12 80382
13 80382
17 80369
22 80379
25 80379
32 80382
37 80369
43 80382
52 (4 documents) 80369, 80376, 80379, 80382
225 79620
252 79620

50 CFR
223 79622

Rules and Regulations

Federal Register

Vol. 78, No. 251

Tuesday, December 31, 2013

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.

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210 and 220

[FNS–2011–0019]

RIN 0584–AE09

National School Lunch Program and School Breakfast Program: Nutrition Standards for All Foods Sold in Schools as Required by the Healthy, Hunger-Free Kids Act of 2010; Approval of Information Collection Request

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim final rule; notice of approval of Information Collection Request (ICR).

SUMMARY: The interim rule entitled National School Lunch Program and School Breakfast Program: Nutrition Standards for All Foods Sold in Schools as required by the Healthy, Hunger-Free Kids Act of 2010 was published on June 28, 2013. The ICR for this rule approved the creation of a new information collection, which has been assigned the OMB Control Number 0584–0576. The Office of Management and Budget cleared the associated ICR on August 14, 2013. This document announces the approval of the ICR.

DATES: The ICR associated with the interim final rule published in the **Federal Register** on June 28, 2013, at 78 FR 39068, was approved by OMB on August 14, 2013, under OMB Control Number 0584–0576.

FOR FURTHER INFORMATION CONTACT: Lynn Rodgers-Kuperman, Chief, Program Analysis and Monitoring Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302, (703) 305–2590, OR *Lynn.Rodgers@fns.usda.gov.*

Dated: December 24, 2013.

Yvette S. Jackson,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 2013–31350 Filed 12–30–13; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 253

[FNS–2011–0036]

RIN 0584–AE05

Food Distribution Program on Indian Reservations: Income Deductions and Resource Eligibility; Approval of Information Collection Request

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule; notice of approval of Information Collection Request (ICR).

SUMMARY: The final rule entitled Food Distribution Program on Indian Reservations: Income Deductions and Resource Eligibility was published on August 27, 2013. The Office of Management and Budget cleared the associated information collection requirements (ICR) on September 26, 2013. This document announces approval of the ICR.

DATES: The ICR associated with the final rule published in the **Federal Register** on August 27, 2013, at 78 FR 52827, was approved by OMB on September 26, 2013, under OMB Control Number 0584–0293.

FOR FURTHER INFORMATION CONTACT: Dana Rasmussen, Chief, Policy Branch, Food Distribution Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 506, Alexandria, Virginia 22302, (703) 305–2662, OR *Dana.Rasmussen@fns.usda.gov.*

Dated: December 24, 2013.

Yvette S. Jackson,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 2013–31351 Filed 12–30–13; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271 and 274

RIN 0584–AE26

Supplemental Nutrition Assistance Program: Trafficking Controls and Fraud Investigations

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule, Interim final rule; notice of approval of Information Collection Request (ICR).

SUMMARY: The rule entitled Supplemental Nutrition Assistance Program: Trafficking Controls and Fraud Investigations was published on August 21, 2013. The ICR for this rule approved the creation of a new information collection, which has been assigned the OMB Control Number 0584–0587. The Office of Management and Budget cleared the associated ICR on September 23, 2013. This document announces the approval of the ICR.

DATES: The ICR associated with the rule published in the **Federal Register** on August 21, 2013, at 78 FR 51649, was approved by OMB on September 23, 2013, under OMB Control Number 0584–0587.

FOR FURTHER INFORMATION CONTACT: Jane Duffield, Chief, State Administration Branch, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 605–4385.

Dated: December 24, 2013.

Yvette S. Jackson,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 2013–31354 Filed 12–30–13; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2012–0002]

RIN 0579–AD63

Importation of Avocados From Continental Spain

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the fruits and vegetables regulations to allow the importation of avocados from continental Spain (excluding the Balearic Islands and Canary Islands) into the United States. As a condition of entry, avocados from Spain will have to be produced in accordance with a systems approach that includes registration of production locations and packinghouses, pest monitoring, sanitary practices, chemical and biological controls, and phytosanitary treatment. The fruit will have to be imported in commercial consignments, with each consignment identified throughout its movement from place of production to the port of entry in the United States. Consignments will have to be accompanied by a phytosanitary certificate issued by the national plant protection organization of Spain certifying that the fruit is free from all quarantine pests and has been produced in accordance with the systems approach. Consignments of avocados other than the Hass variety would also have to be treated for the Mediterranean fruit fly either prior to moving to the United States or upon arrival prior to release. This action will allow for the importation of avocados from continental Spain while continuing to protect against the introduction of plant pests into the United States.

DATES: *Effective Date:* January 30, 2014.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith C. Jones, Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 156, Riverdale, MD 20737–1231; (301) 851–2018.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart–Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–63, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

On January 30, 2013, the Animal and Plant Health Inspection Service (APHIS) published in the **Federal Register** (78 FR 6222–6227, Docket No. APHIS–2012–0002), a proposal [1] to amend the fruits and vegetables regulations to allow the importation of avocados from continental Spain (excluding the Balearic Islands and Canary Islands) into the United States subject to a systems approach and treatment. We proposed to allow the importation of avocados from continental Spain only if they were produced in accordance with a systems approach jointly agreed upon in a bilateral workplan between APHIS and the national plant protection organization (NPPO) of Spain. The systems approach addresses one pest of quarantine significance present in continental Spain that could be introduced into the United States through the importation of avocados. That pest is *Ceratitis capitata* (Wiedemann), the Mediterranean fruit fly.

The proposed systems approach included the following requirements:

- Registration, monitoring, and oversight of places of production;
- Grove sanitation;
- Harvesting requirements for safeguarding and identification of the fruit;
- Packinghouse requirements for safeguarding and identification of the fruit;
- Inspection by the NPPO of Spain for *C. capitata;* and
- Cold treatment for avocado varieties other than Hass.

Additionally, we proposed that all avocados from Spain must be accompanied by a phytosanitary certificate issued by the NPPO of Spain. The phytosanitary certificate accompanying Hass variety avocados would have to contain an additional declaration stating that the avocados were grown in an approved place of production and the consignment has been inspected and found free of *C. capitata.* The phytosanitary certificate accompanying non-Hass avocados would have to contain an additional declaration stating that the avocados were grown in an approved place of production and the consignment has been inspected and found free of *C. capitata,* and, if treated prior to export, that the consignment has been treated for *C. capitata* in accordance with 7 CFR part 305. We proposed to add these requirements to the regulations in a new § 319.56–58 titled *Avocados from continental Spain.*[2]

We solicited comments concerning our proposal for 60 days ending April 1, 2013. We reopened and extended the deadline for comments until June 13, 2013, in a document published in the **Federal Register** on May 29, 2013 (78 FR 32183–32184, Docket No. APHIS–2012–0002). We received 20 comments by that date. They were from the European Union (EU), a State department of agriculture, an organization representing State plant regulatory agencies, domestic avocado growers, and private citizens. They are discussed below by topic.

One commenter stated that the proposed rule identifies the NPPO of Spain as the body responsible for conducting and supervising inspections, monitoring, trapping, surveying, etc., in the systems approach. However, there are other bodies and stakeholders involved, such as the Spanish Autonomous Communities (the first-level political and administrative divisions in Spain), auditing companies, integrated pest management associations, and field technicians and advisors, as defined by Directive 2009/128/EC of the European Parliament and of the Council of October 21, 2009, establishing a framework for EU action to achieve the sustainable use of pesticides. The commenter stated that responsibilities of each partner should be specified in future workplans under the rules.

Under APHIS programs, the NPPO certifies that it is taking responsibility to ensure that these other involved parties act under NPPO direction and perform the actions required by the regulations and workplan. Whether the NPPO achieves this through other parties whose roles are described in EC Directives or other means is an internal matter not subject to our regulations. If the NPPO desires, workplans for the avocado program can include information about which entities will perform which required actions, but in the event of failure to perform any required action APHIS will hold only the NPPO responsible for correcting the problems. We note that the cited EC Directive addresses only pesticide use and integrated pest management, rather than systems approaches for the growth

[1] To view the proposed rule, supporting documents, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0002.*

[2] In this final rule, the provisions of the systems approach are added as § 319.56–64. We discuss the comments in terms of provisions of proposed § 319.56–58 so that the reader can follow along with the proposal.

and certification of crops for export, and even within that scope the Directive emphasizes in many places the responsibility of competent authorities in the Member State to ensure required actions are taken.

One comment addressed the requirement proposed in § 319.56–58(b)(1) that ''[t]he NPPO of Spain must visit and inspect registered places of production monthly, starting at least 2 months before harvest and continuing until the end of the shipping season, to verify that the growers are complying'' with proposed requirements. The commenter stated that the harvest period is approximately February 1 through May 1, which would mean six inspections from December to May. The commenter stated that six inspection visits are unnecessary and not cost-effective, and suggested instead that the NPPO visit production sites once at the beginning of the export season, once during harvest, and at any other times the NPPO finds necessary to verify compliance. The commenter noted that throughout harvest the NPPO, the Autonomous Communities, and the auditing companies employed by them would control, evaluate, and validate field notebooks maintained by growers and inspection reports from field technicians or advisors.

APHIS is making two changes in response to this comment. It is essential that the NPPO effectively monitor compliance before and during harvest to identify and prevent pest risks. However, effective inspection does not necessarily require six visits each year, and depending on the personnel authorized by the NPPO to conduct various compliance monitoring activities, it may not be necessary that NPPO employees visit each production site each month. While it is important that the production site be inspected prior to harvest, both to look for early signs of pests that may not be as visible later and to familiarize the inspector with the production area, upon further consideration we believe a reasonable standard is that a pre-harvest inspection occur at least 1 month prior to harvest rather than the proposed 2 months. Therefore, we are changing the proposed standard to read ''starting at least 1 month before harvest.'' We also note that the term ''before harvest'' refers to the harvest as conducted at each production site, not to the harvest season in general. This could result in fewer inspections in some cases. For example, if a production site begins its harvest on February 15 and ends it April 15, its inspections could be scheduled on January, February, March, and April 10 (or various other dates), for a total of four inspections. We also note that, as discussed above, production site inspections are the responsibility of the NPPO and must be done under NPPO direction to verify the conditions and actions required by the regulations and workplan.

While the responsibility for inspections remains with the NPPO, the identity of the personnel authorized to conduct inspection-related activities may be determined by the NPPO and specified in the workplan. We understand that in some cases the NPPO may authorize personnel who are not NPPO employees, such as employees of an Autonomous Community or an auditing company, to perform duties related to inspection. If so, these personnel must be accountable to the NPPO. To make this clear, in this final rule we are changing the relevant sentence in proposed § 319.56–58(b)(1) to read ''The NPPO of Spain, or an authorized person designated in the workplan, must visit and inspect. . . .''

One commenter noted that proposed § 319.56–58(e)(1) would require a registered packinghouse to pack no fruit for other markets during a period when it packs avocados produced in accordance with the proposed rule's systems approach. The commenter suggested that packinghouses should be allowed to pack fruit for other markets during the same period under conditions to prevent commingling, i.e., that (1) the packing lines in packinghouses be cleared prior to packing avocados for the United States; and (2) fruit destined to the United States must always be identified and stored separately from fruit destined to other markets. The commenter stated that this is similar to measures for the program to export sweet oranges, clementines, and other mandarins from Spain to the United States.

After careful consideration, we have decided to change the rule in response to this comment, according to the following reasoning. Consider the following scenario for avocados produced in accordance with the proposed rule (regulated avocados). There are two areas of pest risk associated with the packinghouse. There is a very minor risk that *C. capitata* could enter the packinghouse associated with other articles destined for other markets, move to regulated avocados, and lay eggs in the regulated avocados. This is very unlikely because normal packinghouse operations make such movement of pests between lots exceedingly rare. There is a slightly larger risk that articles destined for other markets could become accidentally mixed with regulated avocados and shipped to the United States. If the other articles were better hosts than regulated avocados, e.g., untreated non-Hass avocado varieties or even fruits other than avocados, such admixture could result in *C. capitata* larvae being shipped to the United States. We believe both of these areas of risk can be controlled using the type of methods suggested by the commenter. Maintaining the identity of regulated avocados at the packinghouse and ensuring separation between them and other articles are the key concerns. The proposed rule, in § 319.56–58(d), states that regulated avocados must ''remain identifiable when the fruit leaves the grove, at the packinghouse, and throughout the export process.''

This identity requirement will aid achieving separation in the packinghouse. To fully achieve effective separation, we are changing proposed § 319.56–58(e)(1) to read as follows: ''During the time registered packinghouses are in use for packing avocados for export to the United States in accordance with the requirements of this section, packing lines must be cleared of all other articles and plant debris prior to packing such avocados, and such avocados must be stored in a room separate from any other fruits, plant articles, and other potential *C. capitata* hosts while the avocados are at the packinghouse.''

Another commenter stated that the proposal indicates ''Packinghouses should not pack avocados for other countries while packing for the United States.'' The commenter stated that this language needs to be more directive and inclusive, such as: ''During the time the packinghouse is in use for exporting avocados to the United States, the packinghouse may only receive fruit from registered, approved places of production.''

The sentence containing the word ''should'' that was quoted by the commenter appears in the risk management document (RMD) that was prepared prior to the proposed rule and made available with it. The RMD was an evaluative and advisory document that was used during decisionmaking for the proposed rule. The corresponding language in § 319.56–58(e) of the proposed rule was mandatory, and read ''packinghouses may only accept avocados that are from registered places of production.'' However, as discussed with regard to the comment above, we have changed the standard in this final rule for the circumstances under which other articles may be allowed in a packinghouse at the same time as regulated avocados.

The same commenter stated that, while the proposed rule calls for registered orchards to practice field sanitation and pest control measures, there is no requirement for trapping to monitor for *C. capitata* in avocado production blocks.

That is correct, and we are not making any change in response to this comment. A specific trapping requirement is not necessary because the foundation of the proposal is not freedom of the grove areas from *C. capitata,* but rather the 2010 APHIS finding that intact Hass avocados with the stem attached are not a host to *C. capitata* and our requirement for treatment of other avocado varieties that are better hosts. We note that while trapping is not needed and therefore is not required by the proposed rule, it is necessary and required for export of articles that are better *C. capitata* hosts, e.g., citrus, and that to the best of our knowledge the regions that will be exporting Hass avocados also export citrus. In those regions, the autonomous communities conduct annual surveys for *C. capitata* and perform mass trapping and surveillance trapping under the Mediterranean fruit fly management program established by the Government of Spain (see, e.g., ''Real Decreto 461/2004, de 18 de marzo, por el que se establece el Programa nacional de control de la mosca mediterránea de la fruta'' at *http://www.lexureditorial.com/boe/0404/05823.htm*).

One commenter stated that allowing avocado imports instead of supporting the domestic avocado industry is short-sighted and counter-productive, and noted that domestic growers have recently been challenged by both natural factors (such as cold, wind, heat, fire, and lack of water) as well as market conditions. Several other commenters objected in general terms to the economic effects of importing avocados rather than relying on domestic production.

We are not making any change in response to this comment. The Plant Protection Act (7 U.S.C. 7701 *et seq.*), the authorizing statute for APHIS' plant-health-related activities, authorizes the Secretary of Agriculture to prohibit or restrict the importation of any plant product if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction of a plant pest or noxious weed into the United States. We have determined that the measures in the systems approach we proposed, amended as described earlier, are sufficient to prevent the introduction of any plant pests. The factors cited by the commenters are not within our decisionmaking authority under the Act.

We have analyzed the economic effects of this rule as required by Executive Order 12866 and the Regulatory Flexibility Act, both in the proposed rule and in the section below. Part of this analysis concluded that it is likely that at least a portion of the projected avocado imports from Spain would displace imports from other foreign sources rather than domestic sources when fresh avocado supplies are low and demand is high. The analysis also concluded that the projected volume of avocado imports from Spain, a few hundred metric tons, is well under half of 1 percent of domestic production and would therefore have minor economic effects.

The Florida Department of Agriculture and Consumer Services commented on the requirement in proposed § 319.56–58(a)(5) that avocados other than Hass variety from continental Spain must be treated for *C. capitata.* We proposed to require cold treatment in accordance with the regulations in 7 CFR 305.6, which allows treatment to occur prior to export to the United States, or upon arrival prior to release. The commenter stated that allowing untreated product into Florida for treatment would greatly increase the possibility of introducing *C. capitata* and is a major departure from long-standing plant protection protocols. It also stated that the required treatments should not preclude an additional high level of inspection at the port of entry to ensure procedures are in place to confirm the treatments were applied properly.

We are not making any change to the rule in response to this comment. The rule will not authorize treatment of any avocados in Florida. We expect post-arrival cold treatment will be infrequent since the industry norm is cold treatment prior to departure or in transit. Further, the regulations will continue to prohibit cold treatment after arrival in Florida. The current regulations on cold treatment, 7 CFR 305.6, allow the establishment of cold treatment facilities for imported articles in certain specific areas of the United States as follows. Facilities may be located on the mainland United States either in the area that is north of 39° latitude and east of 104° longitude, or under special conditions at one of the following ports: The maritime ports of Wilmington, NC; Seattle, WA; Corpus Christi, TX; and Gulfport, MS; Seattle-Tacoma International Airport, Seattle, WA; and Hartsfield-Atlanta International Airport, Atlanta, GA. In a recent proposed rule (78 FR 27864–27866; Docket No. APHIS–2012–0089, published May 13, 2013), we proposed adding MidAmerica St. Louis Airport, Mascoutah, IL, to this list.

The ability of these facilities to conduct cold treatments without spreading and establishing fruit fly populations has been documented several times, most recently in a treatment evaluation document prepared for the proposed rule mentioned above, and in an earlier APHIS study ''Characterizing and mitigating relative risk associated with the movement of tropical fruit fly host material into the United States for cold treatment at certain ports.'' Both of these documents have been added to the administrative record for this rule, available at *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0002.*

With regard to the commenter's second point about inspection levels at the port of entry, APHIS inspection will serve as a check on the effectiveness of the systems approach. We do not plan to inspect at a higher level than our usual level, unless evidence indicates that there may be a problem with the implementation of the systems approach. We have found the NPPO of Spain to have the necessary resources and capacity to implement the systems approach, but will continually monitor the program's effectiveness through activities both in Spain and through inspections upon arrival.

This commenter also asked what corrective measures will be taken to prevent a reoccurrence if inspectors find live larvae during inspection, and what penalties will apply in such cases.

Proposed § 319.56–58(f) stated that if any *C. capitata* are detected in the required postharvest inspection in Spain, the place of production where the infested avocados were grown will immediately be suspended from the export program until an investigation has been conducted by APHIS and the NPPO of Spain and appropriate mitigations have been implemented. If any *C. capitata* are detected through inspection at arrival, APHIS will refuse entry to the shipment unless an inspector finds it can be treated to destroy the pests, and APHIS may also order the place of production where the infested avocados were grown to be immediately suspended from the export program pending an investigation.

Another commenter stated that we should not apply the proposed § 319.56–58(f) requirement to non-Hass variety avocados. Under that requirement, if any *C. capitata* are detected in the required postharvest inspection in Spain of non-Hass avocados, the place of production where

the infested avocados were grown will immediately be suspended from the export program until an investigation has been conducted by APHIS and the NPPO of Spain and appropriate mitigations have been implemented. The commenter noted that this means that if a single larva of *C. capitata* is found, the entire consignment of non-Hass avocados would be rejected. However, a certain percentage of infestation should be accepted for non-Hass varieties because they will be subjected to a cold treatment. The commenter stated that this is the case in other bilateral workplans between the United States and Spain, e.g., the preclearance operational workplan for the export of sweet oranges, clementines, and other mandarins from Spain.

We are not making any change based on this comment. Given the serious threat *C. capitata* poses, we believe that it is reasonable to have no tolerance level for *C. capitata* infestation, and to stop accepting shipments from a production site pending investigation when a single larvae is found during inspection. Furthermore, neither the operational plan nor the regulations for shipment of sweet oranges, clementines, and mandarins has such a tolerance. The regulations in this area are even stricter, in consideration of the better host status of such citrus. The relevant section for clementines, § 319.56–34(f), states ''If inspectors find a single live Mediterranean fruit fly in any stage of development during an inspection, the entire consignment of clementines will be rejected. If a live Mediterranean fruit fly in any stage of development is found in any two lots of fruit from the same orchard during the same shipping season, that orchard will be removed from the export program for the remainder of that shipping season.''

One commenter suggested a biometric sample size of 200 fruits for the post-harvest inspection of *C. capitata.* The commenter calculated that sample size using the standard in International Standards for Phytosanitary Measures (ISPM) No. 31, ''Methodologies for sampling of consignments'' (IPPC, 2009 [3]). The commenter stated that calculating sample size for 95 percent confidence level, at a 2 percent level of detection, according to a 75 percent efficacy value where the lot size is large and sufficiently mixed, yields 199 or 200 fruits by the binomial or Poisson distribution, respectively.

We do not disagree with the commenter's methodology, but as stated in the proposed rule, the actual sampling rate with be worked out by technical experts in APHIS in consultation with their counterparts in the NPPO of Spain. The sample size will then be specified in the workplan required by proposed § 319.56–58(a). Specifying the sample size in the workplan rather than the regulations will give us the flexibility to raise or lower the fruit sampling rate when conditions indicate a higher or lower risk of *C. capitata* infestation.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is set forth below.

In response to a request by the NPPO of Spain that APHIS authorize market access for commercial shipments of fresh avocados into the United States, APHIS is allowing the importation of such shipments if Spain produces the avocados in accordance with a systems approach intended to prevent the introduction of quarantine pests.

In 2009, the United States was the world's third largest avocado producer, after Mexico and Chile; the United States accounted for about 7 percent of global production, while Mexico and Chile accounted for 32 percent and 9 percent, respectively. Commercial production of avocado occurs in three States. California accounts for about 90 percent of U.S. production, followed by Florida with about 9 percent, and Hawaii with less than 1 percent. In 2010, U.S. utilized production of avocado totaled about 135,500 metric tons (MT), only one-half of the 271,000 MT produced in 2009, and indicative of the significant variability in yield from year to year.

In the last decade, U.S. per capita consumption of avocado has risen significantly, from 1 kilogram in 2000 to 1.86 kilograms in 2010, representing an annual growth rate of about 6.4 percent. Although the United States is a major producer of avocado, it is also the largest import market (since 2002) and has been a net importer since the late 1980s. During this time, the gap between U.S. imports and U.S. exports has widened substantially. The average annual value of U.S. avocado imports, 2008–2010, was nearly $622 million, compared to average annual exports valued at less than $16 million.

Spanish avocado producers expect to export to the United States about 260 MT of fresh avocado annually, an amount equivalent to 0.15 percent of U.S. production, 0.07 percent of U.S. net imports (imports minus exports), and 0.05 percent of U.S. supply (production plus net imports), based on 2008–2010 average annual U.S. production and trade quantities.

Entities that may be directly affected by the rule are U.S. importers and producers of avocado. Avocado importers are classified in the North American Industry Classification System (NAICS) under Fresh Fruit and Vegetable Merchant Wholesalers (NAICS 424480). Avocado producers are classified under Other Noncitrus Fruit Farming (NAICS 111339). The Small Business Administration (SBA) has established guidelines for determining which establishments are to be considered small. A firm primarily engaged in fresh fruit and vegetable wholesaling is considered small if it employs not more than 100 persons. A firm primarily engaged in noncitrus fruit farming is considered small if it has annual sales of not more than $750,000.

In 2007, nearly 95 percent of fruit and vegetable wholesale establishments (4,207 of 4,437 businesses) that operated the entire year were small by the SBA's small-entity threshold of not more than 100 employees. That same year, nearly 93 percent of farms that sold fruits, tree nuts, or berries (104,424 of 112,690 operations) had annual sales of less than $500,000, well below the SBA's small-entity threshold of $750,000. The subset of these farms that comprise the industry Other Noncitrus Fruit Farming numbered 23,641, and can be assumed to be also primarily composed of small entities. Of these Other Noncitrus Fruit Farming establishments, there were 8,245 avocado farms in 2007, also presumed to be principally small operations.

While most entities that may be affected by the rule are small, any effects should be insignificant because of the small quantity of avocado expected to be imported from continental Spain.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has

[3] To view this and other ISPMs on the Internet, go to *http://www.ippc.int/IPP/En/default.jsp* and click on the ''Adopted ISPMs'' link under the ''Standards (ISPMs)'' heading.

determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule allows avocados to be imported into the United States from continental Spain. State and local laws and regulations regarding avocados imported under this rule will be preempted while the fruit is in foreign commerce. Fresh avocados are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the information collection or recordkeeping requirements included in this final rule, which were filed under 0579–0400, have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, if approval is denied, we will publish a document in the **Federal Register** providing notice of what action we plan to take.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the EGovernment Act 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. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319–FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. A new § 319.56–64 is added to read as follows:

§ 319.56–64 Avocados from continental Spain.

Fresh avocados (*Persea americana* P. Mill.) may be imported into the United States from continental Spain (excluding the Balearic Islands and Canary Islands) only under the conditions described in this section. These conditions are designed to prevent the introduction of the quarantine pest *Ceratitis capitata* (Wiedemann), the Mediterranean fruit fly.

(a) *General requirements.* (1) The national plant protection organization (NPPO) of Spain must provide a workplan to APHIS that details the activities that the NPPO of Spain will, subject to APHIS' approval of the workplan, carry out to meet the requirements of this section. The NPPO of Spain must also establish a trust fund in accordance with § 319.56–6.

(2) The avocados must be grown at places of production in continental Spain that are registered with the NPPO of Spain and that meet the requirements of this section.

(3) The avocados must be packed for export to the United States in packinghouses that are registered with the NPPO of Spain and that meet the requirements of this section.

(4) Avocados from Spain may be imported in commercial consignments only.

(5) Avocados other than Hass variety from continental Spain must be treated for *C. capitata* in accordance with part 305 of this chapter.

(b) *Monitoring and oversight.* (1) The NPPO of Spain, or an authorized person designated in the workplan, must visit and inspect registered places of production monthly, starting at least 1 month before harvest and continuing until the end of the shipping season, to verify that the growers are complying with the requirements of paragraph (c) of this section and follow pest control guidelines, when necessary, to reduce quarantine pest populations.

(2) In addition to conducting fruit inspections at the packinghouses, the NPPO of Spain must monitor packinghouse operations to verify that the packinghouses are complying with the requirements of paragraph (e) of this section.

(3) If the NPPO of Spain finds that a place of production or packinghouse is not complying with the requirements of this section, no fruit from the place of production or packinghouse will be eligible for export to the United States until APHIS and the NPPO of Spain conduct an investigation and appropriate remedial actions have been implemented.

(4) The NPPO of Spain must retain all forms and documents related to export program activities in groves and packinghouses for at least 1 year and, as requested, provide them to APHIS for review.

(c) *Grove sanitation.* Avocado fruit that has fallen from the trees must be removed from each place of production at least once every 7 days, starting 2 months before harvest and continuing to the end of harvest. Fallen avocado fruit may not be included in field containers of fruit brought to the packinghouse to be packed for export.

(d) *Harvesting requirements.* Harvested avocados must be placed in field cartons or containers that are marked with the official registration number of the place of production. The place of production where the avocados were grown must remain identifiable when the fruit leaves the grove, at the packinghouse, and throughout the export process. The fruit must be moved to a registered packinghouse within 3 hours of harvest or must be protected from fruit fly infestation until moved. The fruit must be safeguarded by an insect-proof screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing.

(e) *Packinghouse requirements.* (1) During the time registered packinghouses are in use for packing avocados for export to the United States in accordance with the requirements of this section, packing lines must be cleared of all other articles and plant debris prior to packing such avocados, and such avocados must be stored in a room separate from any other fruits, plant articles, and other potential *C. capitata* hosts while the avocados are at the packinghouse.

(2) Avocados must be packed within 24 hours of harvest in an insect-exclusionary packinghouse. All openings to the outside of the packinghouse must be covered by screening with openings of not more than 1.6 mm or by some other barrier that prevents pests from entering. The packinghouse must have double doors at the entrance to the facility and at the interior entrance to the area where the avocados are packed.

(3) Before packing, all avocados must be cleaned of all plant debris.

(4) Boxes or cartons in which avocados are packed must be labeled with a lot number that provides information to identify the orchard

where grown and the packinghouse where packed. The labeling must be large enough to clearly display the required information and must be located on the outside of the boxes to facilitate inspection.

(5) Avocados must be packed in insect-proof packaging, or covered with insect-proof mesh or a plastic tarpaulin, for transport to the United States. These safeguards must remain intact until arrival in the United States.

(6) Shipping documents accompanying consignments of avocados from continental Spain that are exported to the United States must include the official registration number of the place of production at which the avocados were grown and must identify the packing shed or sheds in which the fruit was processed and packed. This identification must be maintained until the fruit is released for entry into the United States.

(f) *NPPO of Spain inspection.* Following any post-harvest processing, inspectors from the NPPO of Spain must inspect a biometric sample of fruit at a rate determined by APHIS. Inspectors must visually inspect the fruit and cut a portion of the fruit to inspect for *C. capitata.* If any *C. capitata* are detected in this inspection, the place of production where the infested avocados were grown will immediately be suspended from the export program until an investigation has been conducted by APHIS and the NPPO of Spain and appropriate mitigations have been implemented.

(g) *Phytosanitary certificate.* Each consignment of avocados imported from Spain into the United States must be accompanied by a phytosanitary certificate issued by the NPPO of Spain.

(1) The phytosanitary certificate accompanying Hass variety avocados must contain an additional declaration stating that the avocados are Hass variety and were grown in an approved place of production and the consignment has been inspected and found free of *C. capitata.*

(2) The phytosanitary certificate accompanying non-Hass avocados must contain an additional declaration stating that the avocados were grown in an approved place of production and the consignment has been inspected and found free of *C. capitata.* If the consignment has been subjected to treatment for *C. capitata* prior to export in accordance with 7 CFR part 305, the additional declaration must also state this.

(Approved by the Office of Management and Budget under control number 0579–0400)

Done in Washington, DC, this 23rd day of December 2013.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–31190 Filed 12–30–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2011–0132]

RIN 0579–AD62

Importation of Fresh Apricots From Continental Spain

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the fruits and vegetables regulations to allow the importation into the United States of fresh apricots from continental Spain (excluding the Balearic Islands and Canary Islands). As a condition of entry, fresh apricots from continental Spain will have to be produced in accordance with a systems approach that includes registration of production locations and packinghouses, pest monitoring, sanitary practices, chemical and biological controls, and phytosanitary treatment. The fruit will have to be imported in commercial consignments, with each consignment identified throughout its movement from place of production to port of entry in the United States. Consignments will have to be accompanied by a phytosanitary certificate issued by the national plant protection organization of Spain certifying that the fruit is free from all quarantine pests and has been produced in accordance with the systems approach. This action will allow for the importation of fresh apricots from continental Spain while continuing to protect against the introduction of plant pests into the United States.

DATES: *Effective Date:* January 30, 2014.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith C. Jones, Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 156, Riverdale, MD 20737–1231; (301) 851–2018.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart–Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–62, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests within the United States.

On January 30, 2013, we published in the **Federal Register** (78 FR 6227–6232, Docket No. APHIS–2011–0132) a proposal [1] to amend the regulations concerning the importation of fruits and vegetables to allow the importation of fresh apricots (*Prunus armeniaca* L.) [2] from continental Spain (excluding the Balearic Islands and Canary Islands) into the United States. We proposed to allow the importation of fresh apricots from continental Spain only if they were produced in accordance with a systems approach jointly agreed upon in a bilateral workplan between the Animal and Plant Health Inspection Service (APHIS) and the national plant protection organization (NPPO) of Spain. The systems approach addresses four quarantine pests that the pest risk analysis (PRA) determined could follow the pathway of consignments of fresh apricots imported from continental Spain into the United States:

- The Mediterranean fruit fly (Medfly), *Ceratitis capitata* Wiedemann,
- The plum fruit moth, *Cydia funebrana* (Treitschke),
- Leaf scorch, *Apiognomonia erythrostoma* (Pers.), a fungus, and
- Brown rot, *Monilinia fructigena* Honey, a fungus.

The proposed systems approach included the following requirements: Registration of production locations and packinghouses; pest monitoring and control, including trapping for *C. funebrana* and *C. capitata* to demonstrate areas of low prevalence; grove sanitation; chemical controls; inspection by the NPPO of Spain for quarantine pests; and phytosanitary treatment in accordance with 7 CFR part 305 and the Plant Protection and Quarantine (PPQ) Treatment Manual.[3] We also proposed that fruit would have to be imported in commercial consignments, with each consignment identified throughout its movement from place of production to port of entry in the United States, and that consignments would have to be

[1] To view the proposed rule, supporting documents, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0132.*

[2] Although we included *Prunus armeniaca* Marshall as the scientific name for apricot in the proposed rule and risk assessment, both that name and *Prunus armeniaca* L. refer to the same species.

[3] *http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/treatment.pdf.*

accompanied by a phytosanitary certificate issued by the NPPO of Spain stating that the fruit is free from all pests of quarantine concern and has been produced in accordance with the systems approach.

We solicited comments concerning our proposal for 60 days ending April 1, 2013. We reopened and extended the deadline for comments until June 13, 2013, in a document published in the **Federal Register** on May 29, 2013 (78 FR 32184, Docket No. APHIS–2011–0132). We received four comments by that date. They were from a foreign government, a State department of agriculture, an organization representing State plant regulatory agencies, and a university professor. They are discussed below by topic.

General Comments

One commenter stated that we should not allow the import of apricots from Spain that have been sprayed with pesticides, unless methods can be devised to ensure that such fruit will not be toxic to consumers.

The U. S. Environmental Protection Agency (EPA) is responsible for registering pesticides for use in the United States. EPA also has the responsibility to establish limits, or tolerances, for pesticide residues in both raw agricultural commodities and processed foods; these tolerances apply to both imported and domestically grown foods. EPA-established tolerances are commodity specific and represent the maximum amount of pesticide residue that may legally remain in food. In the absence of a tolerance, any level of pesticide residue is prohibited. The U. S. Food and Drug Administration is responsible for enforcing EPA pesticide residue tolerances and for determining whether an imported food violates the Federal Food, Drug, and Cosmetic Act.

The proposed rule identifies the NPPO of Spain as the body responsible for conducting and supervising inspections, monitoring, trapping, surveying, and other activities required in the systems approach.

A commenter acknowledged that the NPPO of Spain is responsible for these activities but noted that there are other bodies and stakeholders involved, such as the Spanish Autonomous Communities (the first-level political and administrative divisions in Spain), auditing companies, integrated pest management associations, and field technicians and advisors. Their roles are defined by Directive 2009/128/EC of the European Parliament and of the Council of 21 October 2009, which established a framework for European Union (EU) action to achieve the sustainable use of pesticides. The commenter stated that the responsibilities of each partner should be specified in future workplans under the proposed rules.

In all APHIS fruit and vegetable importation programs, the NPPO certifies that it is taking responsibility to ensure that these other involved parties act under NPPO direction and perform the actions required by the regulations and workplan. Moreover, the NPPO is the official participant in the International Plant Protection Convention, which establishes the reciprocal obligations that trading countries have to each other. Whether the NPPO fulfills its duties through other parties whose roles are described in European Community (EC) directives or through other means is an internal matter not subject to our regulations. If the NPPO of Spain desires, workplans for the apricot program can include information about which entities will perform which required actions, but in the event of failure to perform any required action APHIS will hold only the NPPO responsible for correcting the problems. We note that the cited EC directive addresses only pesticide use and integrated pest management, rather than systems approaches for the growth and certification of crops for export, and even within that scope the directive emphasizes in many places the responsibility of competent authorities in the Member State to ensure required actions are taken.

One commenter recommended that the bilateral workplan track closely with the pest mitigation measures specified by APHIS in the systems approach.

That will be the case. The bilateral workplan is based on the regulations but specifies the pest mitigation measures of the systems approach in greater detail.

We stated in the preamble to the proposed rule that, as a condition of entry, apricots from Spain would have to be produced in accordance with a limited harvest period and treated with surface disinfectant.

One commenter noted that neither of these mitigation measures appears in the proposed regulatory language for the systems approach and asked that we remove these measures.

The commenter is correct. These mitigation measures are not intended to be part of the systems approach and are not included in this final rule.

Monitoring and Oversight

We proposed in § 319.56–58(c) [4] the requirement that the NPPO of Spain would have to visit and inspect places of production monthly, starting 2 months (60 days) before harvest and continuing until the end of the shipping season to verify that growers are complying with the proposed requirements.

One commenter stated that, given the ripening period of apricot is approximately May 1 through July 15, official inspections would have to be conducted from March to August, which under the proposed regulations would require six inspections. The commenter stated that six inspections are unnecessary and not cost-effective and suggested instead that the NPPO visit production sites once at the beginning of the export season, once during harvest, and at any other times the NPPO finds necessary to verify compliance. The commenter stated that throughout harvest the NPPO, the Autonomous Communities, and the auditing companies employed by them would control, evaluate, and validate field notebooks maintained by growers and inspection reports from field technicians or advisors. The commenter added that the NPPO of Spain would ensure that APHIS requirements are being fulfilled by the involved parties.

APHIS is making two changes in response to this comment. It is essential that the NPPO effectively monitor compliance before and during harvest to identify and prevent pest risks. However, effective inspection does not necessarily require six visits each year, and depending on the personnel authorized by the NPPO to conduct various compliance monitoring activities, it may not be necessary that NPPO employees visit each production site each month. While it is important that the production site be inspected prior to harvest, both to look for early signs of pests that may not be as visible later and to familiarize the inspector with the production area, upon further consideration we believe a reasonable standard is that a pre-harvest inspection occur at least 1 month prior to harvest rather than the proposed 2 months. Therefore, we are changing the proposed standard to read ''starting at least 1 month before harvest.'' We note also that the term ''before harvest'' refers to the harvest as conducted at each place of production, not to the harvest season in general, which in some cases could result in fewer inspections being necessary.

As noted above, production site inspections are the responsibility of the NPPO and must be done under NPPO

[4] The provisions of the systems approach will be added to the regulations as § 319.56–63. In this final rule, we discuss the comments in terms of provisions of proposed § 319.56–58 so that the reader can follow along with the proposal.

direction to verify the conditions and actions required by the regulations and workplan. However, we acknowledge that the identity of the personnel authorized to conduct inspection-related activities may be determined by the NPPO and specified in the workplan, and that in some cases the NPPO may authorize other personnel, such as employees of an Autonomous Community or an auditing company, to perform duties related to inspection. If so, these personnel must be accountable to the NPPO. Therefore, in this final rule we are changing the relevant sentence in § 319.56–58(c)(1) to read ''The NPPO of Spain, or an authorized person designated in the workplan, must visit and inspect. . . .''

We proposed to require in § 319.56–58(c)(1) that any personnel conducting trapping and pest surveys in accordance with the systems approach be hired, trained, and supervised by the NPPO of Spain.

The same commenter noted that, while under EU regulations the NPPO of Spain is responsible for ensuring that such personnel are appropriately trained, such personnel are not necessarily hired or trained by the NPPO of Spain. The commenter asked that we delete the words ''hired'' and ''trained'' from this requirement.

As we noted above, we understand that in some cases the NPPO may authorize other personnel not hired or trained by the NPPO, such as employees of an Autonomous Community or an auditing company, to perform duties related to inspection under the supervision of the NPPO. However, we agree that they do not necessarily have to be hired or trained by the NPPO. Therefore, we are deleting the words ''hired'' and ''trained'' from the proposed requirement in § 319.56–58(c)(1) and replacing those words with the term ''accredited'' to indicate they have been determined by the NPPO to be qualified to perform the assigned duties.

Two commenters stated that procedures should be in place to confirm that approved treatments are applied properly to fresh apricot fruit imported from continental Spain.

Under the bilateral workplan, APHIS will confirm that treatments of fresh apricot fruit are properly applied under supervision of the NPPO of Spain in accordance with the cold treatment regulations in § 305.6 and the PPQ Treatment Manual. Furthermore, under § 319.56–58(c)(4), the NPPO of Spain will be required to retain all forms and documentation related to export program activities, including approved treatments, in places of production and packinghouses for at least 1 year and, upon request, provide them to APHIS for review.

Mitigations for A. erythrostoma

One commenter noted that the PRA identifies the fungus *A. erythrostoma* as a pest that could follow the pathway of consignments of fresh apricots imported from Spain to the United States. The commenter stated, however, that scientific literature [5] identifies *A. erythrostoma* as being only a pest of cherry in Spain, and consequently the mitigation measures we proposed for *A. erythrostoma* in fresh apricot are not supported by the literature.

We reviewed the documents cited by the commenter to support that *A. erythrostoma* does not occur on apricot in Spain. None of the documents rules out *A. erythrostoma* as being a potential pest risk to apricot in Spain, and one of the documents (Santiago, 2008) acknowledged that apricots are in fact a host of the pathogen. Moreover, *A. erythrostoma* has been reported as an apricot pest in Italy, Bulgaria, and Austria, and is listed as an apricot pest in the 2004 European and Mediterranean Plant Protection Organization standard ''Good Plant Protection Practices for Stone Fruits.''

If a plant pest of quarantine concern is reported on a commodity in a particular country, APHIS considers it to be an import risk for all potential hosts of that pest in that country, unless there are mitigations in place to prevent its spread. No pest-free or low-prevalence areas for *A. erythrostoma* have been established in Spain, leading to the risk that apricot production could be affected by the pathogen if the proposed mitigations are not applied. Therefore, we are making no changes with regards to the mitigations we proposed to require for A. *erythrostoma.*

Mitigations for C. funebrana

We proposed to require in § 319.56–58(f) that the NPPO of Spain use one of two mitigation options to address the risk potential posed by *C. funebrana,* the plum fruit moth, which we determined in the PRA to be one of the pests that could follow the pathway of apricot from Spain. Under the first mitigation option in § 319.56–58(f)(1), apricots would have to originate from an area designated as free of *C. funebrana* in accordance with § 319.56–5. Under the second option in § 319.56–58(f)(2), apricots would have to originate from an area that has been demonstrated to have a low prevalence of *C. funebrana.* The NPPO of Spain would be required to visit and visually inspect registered places of production during the growing season and harvest period for signs of *C. funebrana* to demonstrate that the places of production have a low prevalence of *C. funebrana* and to verify that the growers are complying with the mitigation measures required as part of the systems approach.

One commenter stated that, while the PRA identifies *C. funebrana* as a quarantine pest that could follow the pathway, its prevalence in apricots is much lower than that of the oriental fruit moth, *C. molesta,* and outbreaks of *C. funebrana* only take place occasionally in apricot orchards located near plum orchards. The commenter recommended that mitigation measures for *C. funebrana* such as pheromone trapping and monitoring should only be required for those apricot orchards located in the vicinity of plum orchards.

We have no evidence to suggest that outbreaks of *C. funebrana* only occur in apricot orchards that are located near plum orchards. At any rate, it would not be practical to find every apricot orchard located near a plum orchard and determine specific boundaries within which mitigations for *C. funebrana* would be required.

As part of the mitigations for establishing an area of low pest prevalence for *C. funebrana,* we proposed to require in § 319.56–58(f)(2) that the NPPO of Spain sample and visually inspect a quantity of fruit specified in the workplan. Specific inspection requirements would be included in the bilateral workplan and adjusted as necessary to ensure that inspection is effective. We would initially require samples of 20 fruits per tree from 50 trees within every 4 hectares to be visually inspected by the NPPO of Spain every 7 days during the growing season. During the harvest period, samples of 40 fruits per tree from 50 trees within every 4 hectares would have to be visually inspected by the NPPO of Spain every 7 days until harvest is completed. If more than 1 percent of the fruits sampled in a week are damaged or found to have any life stage of *C. funebrana,* remedial measures would have to be implemented.

[5] Pérez JA, Garcia T, Arias A, Martínez de Velasco D. 1989. *Lucha contra el hongo del cerezo Gnomonia erythrostoma (Pers.) Auersw. I. Eficacia de materias activas. Boletín Sanidad Vegetal y Plagas* 4: 315–321. Sánchez OL, Garcia MT. 2007. *Gnomonia. Apiognomonia erythrostoma. Fichas técnicas de Sanidad Vegetal. Ficha 10. Junta de Extremadura. Consejería de Agricultura y Desarrollo Rural. Dirección General de Explotaciones Agrarias.* Santiago R. 2008. *Apiognomonia erythrostoma (Pers.) Höhnel. La ''Gnomonia'' del cerezo. Ficha 20. Laboratorio de Diagnostico del Servicio de Sanidad Vegetal. Junta de Extremadura.*

The same commenter opposed the requirement to increase the sampling size during the harvest period, stating that the symptoms of *C. funebrana* are more visible in the latter part of the growing season, thereby making infested fruit easier to detect. As support, the commenter cited APHIS pest response guidelines [6] stating that *C. funebrana* larvae feed internally, resulting in internal symptoms only. Citing another study,[7] the commenter added that infested fruits may ripen faster than uninfested fruits, allowing them to be readily detectable. The commenter concluded that the biology of *C. funebrana* does not support increasing the sample size during harvest period from 1,000 to 2,000 fruits per 4 hectares each week and recommended that the sample size of 20 fruits per tree from 50 trees within every 4 hectares should remain invariable through the petal fall phase to the harvest period.

We are making no changes based on the comment. Contrary to the commenter's point, the APHIS pest response guidelines the commenter cited actually state that symptoms of infestation are readily visible on fruit early in the growing season. During the harvest season, the sample size must remain higher in order to minimize the risk of larvae being imported to the United States in infested fruit.

The same commenter stated that we did not specify in the proposed regulatory text a minimum amount of sampled fruit in relation to the area of the place of production and suggested that in accordance with current standards of integrated production we amend § 319.56–58(f)(2) to set a minimum of 50 trees per place of production.

The minimum amount of sampled fruit in relation to the area of the place of production will be worked out by APHIS in consultation with the NPPO of Spain. The sample amount will then be specified in the workplan required in § 319.56–58(a)(1). Specifying the sample size in the workplan rather than in the regulations will give us the flexibility to change the size to meet changing conditions.

Finally, the commenter stated that fruit is the primary sample unit and therefore the term ''growing season'' should be restricted to a more specific period such as ''fruit setting'' or ''after petal fall.''

Our use of the term ''growing season'' is compatible with the specific period suggested by the commenter, i.e., from fruit set through the end of harvest season.

Mitigations for C. capitata

We proposed to require in § 319.56–58(g)(1) that trapping for *C. capitata,* a fruit fly, be conducted in the places of production to demonstrate that those places have a low prevalence of *C. capitata.* If the prevalence rises above levels specified in the bilateral workplan, remedial measures approved jointly by APHIS and the NPPO of Spain would have to be implemented. We also proposed to require in § 319.56–58(g)(2) that all apricots for export from continental Spain to the United States be treated for *C. capitata* in accordance with 7 CFR part 305.

Referring to the trapping requirements we proposed for *C. capitata,* one commenter stated that the threshold of 0.5 flies per trap per day would not allow growers to meet the technical guidelines of integrated production and would have a negative impact on the environmental sustainability of the growing region. The commenter stated that in accordance with current technical standards of integrated production used in the Autonomous Communities of Spain, 2 flies per trap per day is a more accurate intervention threshold for *C. capitata.*

We are making no changes in response to the comment. *C. capitata* is a serious quarantine pest that is not present in the United States, but is endemic to Spain. Accordingly, we require a high level of protection against the introduction of *C. capitata.* The threshold of 0.5 flies per trap per day is appropriate given apricot's host status to *C. capitata* and is consistent with other import programs, such as the one for Spanish clementines.

We stated in the proposed rule that two phytosanitary mitigation measures for *C. capitata* would be required because high larval populations in fruit can overwhelm the effectiveness of cold treatment. We noted that the trapping and field mitigation measures together would maintain populations of *C. capitata* at acceptably low prevalence levels and ensure that cold treatment is effective.

One commenter asked to define what we mean by ''high larval populations.'' The commenter stated that such language does not provide additional information or quantitative scientifically supported data and that it would be necessary to state whether those populations are related to a percentage of fruit infestation.

What APHIS determines to be high larval populations varies with the fruit in question and the prevalence of *C. capitata* in a particular area. Generally, high larval populations are those that pose a substantial risk of overwhelming pest mitigations that are in place. For example, in 2001 high populations of *C. capitata* larvae were detected in imported Spanish clementines that had undergone cold treatment, some of which were alive upon arrival in the United States.

One commenter recommended that all treatments of fresh apricot fruit from continental Spain should be applied prior to importation into the United States.

Pest mitigation measures, including treatments approved by APHIS and the NPPO of Spain, are applied to the fruit prior to its importation to the United States. The phytosanitary certificate issued by the NPPO of Spain will also have to confirm that each consignment of apricot fruit has undergone cold treatment for *C. capitata.*

Post-Harvest Procedures and Packinghouse Requirements

In proposed § 319.56–58(i), we included the requirement that, during the time the packinghouse is used to pack and export apricot fruit to the United States, the packinghouse must only accept fruit from places of production registered and approved by the NPPO of Spain. We proposed to require the packinghouse to pack no fruit for other markets during the time it packs apricots produced in accordance with the proposed rule's systems approach.

One commenter suggested that we allow packinghouses to pack fruit for other markets during the same period, but under conditions that would prevent commingling of the fruit. The conditions they provided were (1) the packing lines in packinghouses be cleared prior to packing apricots for the United States, and (2) fruit destined for the United States must always be identified and stored separately from fruit destined for other markets. The commenter added that similar measures are already included in preclearance work plans for the export of sweet oranges, clementines, and other mandarins to the United States.

After careful consideration, we have decided to change the rule in response to this comment, according to the following reasoning. Consider the following scenario for apricots produced in accordance with the proposed rule. There are two areas of pest risk

[6] USDA, APHIS, PPQ. 2011. New Pest Response Guidelines: Plum Fruit Moth (*Cydia funebrana.* Washington, DC: *http://www.aphis.usda.gov/import_export/plants/manuals/online_manuals.shtml.*

[7] Vernon, JDR. 1971. *Observations on the biology and control of the plum fruit moth. Plant Pathology* 20(3): 106–110.

associated with the packinghouse. There is a small risk that *C. capitata* could enter the packinghouse associated with other articles destined for other markets, move to regulated apricots, and lay eggs in those apricots. However, this is unlikely because normal packinghouse operations make such movement of pests between lots exceedingly rare. There is a slightly larger risk that articles destined for other markets could become accidentally mixed with regulated apricots and shipped to the United States. Such mixing of articles could result in *C. capitata* larvae being shipped to the United States. We believe both of these areas of risk can be controlled using the methods suggested by the commenter. Maintaining the identity of regulated apricots at the packinghouse and ensuring separation between them and other articles are the key concerns. The proposed rule, in § 319.56–58(a)(4), states that regulated apricots must ''remain identifiable when the fruit leaves the grove, at the packinghouse, and throughout the export process.''

This identity requirement will aid achieving separation in the packinghouse. To fully achieve effective separation, we are changing the packinghouse requirement in § 319.56–58(i) to read as follows: ''During the time registered packinghouses are in use for packing apricots for export to the United States in accordance with the requirements of this section, packing lines must be cleared of all other articles and plant debris prior to packing such apricots, and such apricots must be stored in a room separate from any other fruits or plant articles while the apricots are at the packinghouse.''

Phytosanitary Inspection and Certificate

Two commenters stated that risk mitigation measures should include an additional high level of inspection by APHIS at the U.S. port of entry.

The risk mitigations we are adding to the regulations for the importation of fresh apricots from continental Spain include two points of inspection, one in continental Spain and one at the U.S. port of entry. Under § 319.56–58(j)(1), a biometric sample of apricots, jointly agreed upon by APHIS and the NPPO of Spain, will be required to be inspected in Spain by the NPPO following post-harvest processing. The sample will have to be visually inspected for the quarantine pests *A. erythrostoma, C. funebrana,* and *M. fructigena,* and a portion of the fruit cut open to inspect for the internal pest *C. capitata.* If any of these quarantine pests are found, the entire consignment of apricots will be prohibited from import into the United States. In addition, each lot of apricot fruit from continental Spain will have to be presented for inspection at the U.S. port of entry with an accompanying shipping document indicating the place of production and the packinghouse in which the fruit was processed. Each consignment of apricot fruit will have to be accompanied by a phytosanitary certificate issued by the NPPO of Spain stating that the fruit has been treated for *C. capitata* in accordance with 7 CFR part 305 and includes an additional declaration stating that the fruit in the consignment was inspected and found free from *A. erythrostoma,* C. *capitata,* C. *funebrana,* and *M. fructigena.*

One commenter stated that we should not suspend exports from the places of production if any *C. capitata* are detected in the required postharvest inspection of apricots in Spain. The commenter stated that a certain percentage of infestation should be accepted for apricots because they will be subjected to a cold treatment, which is the case in other operational workplans between Spain and the United States for the export of sweet oranges, clementines, and other mandarins. The commenter also stated that the phytosanitary certificate should not be required to state that the consignment is free of *C. capitata.*

We are making no changes based on this comment. Given the serious threat *C. capitata* poses, we believe that it is reasonable to have no tolerance level for *C. capitata* infestation and to stop accepting shipments from a place of production pending investigation when a single larva is found during inspection. Furthermore, neither the operational workplan nor the regulations for importation of sweet oranges, clementines, and mandarins from Spain have such tolerances. We note that the relevant requirement in our regulations for the importation of clementines from Spain, § 319.56–34(f), states that ''If inspectors find a single live Mediterranean fruit fly in any stage of development during an inspection, the entire consignment of clementines will be rejected. If a live Mediterranean fruit fly in any stage of development is found in any two lots of fruit from the same orchard during the same shipping season, that orchard will be removed from the export program for the remainder of that shipping season.''

The same commenter suggested a biometric sample size of 200 fruits for the post-harvest inspection of *C. capitata.* The commenter calculated that sample size using the standard in the International Standards For Phytosanitary Measures No. 31, ''Methodologies for sampling of consignments'' (International Plant Protection Convention, 2009).[8] The commenter stated that calculating the sample size for a 95 percent confidence level at a 2 percent level of detection, according to a 75 percent efficacy value where the lot size is large and sufficiently mixed, yields 199 or 200 fruits by the binomial or Poisson distribution, respectively.

We do not disagree with the commenter's methodology, but as we stated in the proposed rule, the actual sampling rate will be worked out by technical experts in APHIS in consultation with the NPPO of Spain. The sample size will then be specified in the workplan required in § 319.56–58(a)(1). Specifying the sample size in the workplan rather than in the regulations will give us the flexibility to raise or lower the fruit sampling rate when conditions indicate a higher or lower risk of *C. capitata* infestation.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

This rule will amend the regulations to allow the importation into the United States of fresh apricots from continental Spain, subject to a systems approach.

The economic analysis examines impacts for U.S. small entities of a rule that would allow fresh apricot imports from continental Spain. Spain is expected to export at most 10 standard shipping containers of fresh apricot per year to the United States. Each container can hold approximately 18 metric tons (MT), thus fresh apricot imports from Spain may total as much as 180 MT annually. This amount is equivalent to about 1 percent of current U.S. consumption. With U.S. fresh apricot exports four times the quantity

[8] *https://www.ippc.int/file_uploaded/1229532867492_ISPM31_2008_E.pdf.*

imported, and the amount expected to be imported from Spain very small in comparison to current U.S. consumption, any market effects of such a relatively small change in supply would be minor.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule allows fresh apricots to be imported into the United States from continental Spain. State and local laws and regulations regarding fresh apricots imported under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the information collection or recordkeeping requirements included in this final rule, which were filed under 0579–0402, have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, if approval is denied, we will publish a document in the **Federal Register** providing notice of what action we plan to take.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act 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. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319–FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. A new § 319.56–63 is added to read as follows:

§ 319.56–63 Fresh apricots from continental Spain.

Fresh apricots (*Prunus armeniaca* L.) may be imported into the United States from continental Spain (excluding the Balearic Islands and Canary Islands) only under the conditions described in this section. These conditions are designed to prevent the introduction of the following quarantine pests: *Apiognomonia erythrostoma* (Pers.), a brown rot fungus; *Ceratitis capitata* Wiedemann, the Mediterranean fruit fly; *Cydia funebrana* (Treitschke), the plum fruit moth; and *Monilinia fructigena* Honey, the leaf scorch fungus.

(a) *General requirements.* (1) The national plant protection organization (NPPO) of Spain must provide a bilateral workplan to APHIS that details the activities that the NPPO of Spain will, subject to APHIS' approval of the workplan, carry out to meet the requirements of this section. APHIS will be directly involved with the NPPO of Spain in monitoring and auditing implementation of the systems approach. The NPPO of Spain must also enter into a trust fund agreement with APHIS in accordance with § 319.56–6.

(2) All places of production and packinghouses that participate in the export program must be registered with the NPPO of Spain.

(3) The fruit must be grown at places of production that meet the requirements of this section.

(4) The fruit must be packed for export to the United States in a packinghouse that meets the requirements of paragraph (i) of this section. The place of production where the apricots were grown must remain identifiable when the fruit leaves the grove, at the packinghouse, and throughout the export process. Safeguarding in accordance with paragraph (h) of this section must be maintained at all times during the movement of the apricot fruit to the United States and must be intact upon arrival of the apricot fruit in the United States.

(b) *Commercial consignments.* Apricots from continental Spain may be imported to the United States in commercial consignments only.

(c) *Monitoring and oversight.* (1) The NPPO of Spain, or an authorized person designated in the workplan, must visit and inspect places of production starting at least 1 month (30 days) before harvest and continuing until the end of the shipping season to verify that growers are complying with the requirements of this section and to follow pest control guidelines, when necessary, to reduce quarantine pest populations. The NPPO of Spain must certify that exporting places of production have fruit fly and moth trapping programs and follow control guidelines, when necessary, to reduce regulated pest populations. Any personnel conducting trapping and pest surveys must be accredited and supervised by the NPPO of Spain. APHIS may monitor the places of production if necessary.

(2) In addition to conducting fruit inspections at the packinghouses, the NPPO of Spain must monitor packinghouse operations to verify that the packinghouses are complying with the requirements of this section.

(3) If the NPPO of Spain finds that a place of production or packinghouse is not complying with the requirements of this section, no fruit from the place of production or packinghouse will be eligible for export to the United States until APHIS and the NPPO of Spain conduct an investigation and implement appropriate remedial actions.

(4) The NPPO of Spain must retain all forms and documents related to export program activities in places of production and packinghouses for at least 1 year and, as requested, provide them to APHIS for review.

(d) *Grove sanitation.* Fruit that has fallen from the trees at each place of production must be removed and destroyed weekly.

(e) *Fungi.* During the growing season, the NPPO of Spain must conduct inspections at intervals specified in the workplan in the place of production for signs of *A. erythrostoma* and *M. fructigena* until harvest is completed. Infected leaves must be removed from places of production to reduce the inoculum potential. Upon detection of these fungal diseases, the NPPO of Spain must notify APHIS, which may prohibit the importation into the United States of apricots from the production site for the season.

(f) *C. funebrana.* The NPPO of Spain must use one of the following two mitigation measures to address the risk potential posed by *C. funebrana.*

(1) *Pest-free area.* Under this mitigation measure, apricots must

originate from an area designated as free of *C. funebrana* in accordance with § 319.56–5.

(2) *Area of low pest prevalence and pest management.* Under this mitigation measure, the NPPO of Spain must visit and visually inspect registered places of production during the growing season and harvest period for signs of *C. funebrana* to demonstrate that the places of production have a low prevalence of *C. funebrana* and to verify that the growers are complying with the requirements of this paragraph. The NPPO of Spain must also sample and visually inspect a quantity of fruit specified in the workplan. Trapping must also be conducted in the places of production to demonstrate that the places of production have a low prevalence of *C. funebrana.* If the prevalence of any life stage of *C. funebrana* rises above levels specified in the bilateral workplan, remedial measures approved jointly by APHIS and the NPPO of Spain must be implemented. The NPPO of Spain must keep records of the placement of traps, trap visits, trap counts, and treatments for each registered place of production and make the records available to APHIS upon request.

(g) *C. capitata.* (1) Trapping must be conducted in the places of production to demonstrate that those places of production have a low prevalence of *C. capitata.* Specific trapping requirements are included in the bilateral workplan. If the prevalence rises above levels specified in the bilateral workplan, remedial measures approved jointly by APHIS and the NPPO of Spain must be implemented. The NPPO of Spain must keep records of the placement of traps, trap visits, trap counts, and treatments for each registered place of production and make the records available to APHIS upon request.

(2) All apricots for export from continental Spain to the United States must be treated for *C. capitata* in accordance with part 305 of this chapter.

(h) *Post-harvest procedures.* The apricots must be safeguarded by a pest-proof screen, plastic tarpaulin, or by some other pest-proof barrier while in transit to the packinghouse and while awaiting packing. They must be packed within 24 hours of harvest into pest-proof cartons or containers or covered with pest-proof mesh or a plastic tarpaulin for transport to the United States. These safeguards must remain intact until arrival of the consignment in the United States.

(i) *Packinghouse requirements.* Packing of apricots for export to the United States must be conducted within a packinghouse registered and approved by the NPPO of Spain. Packinghouses in which apricots are packed for export to the United States must be able to exclude quarantine pests. All openings to the outside of the packinghouse must be covered by screening with openings of not more than 1.6 mm or by some other barrier that prevents pests from entering. The packinghouse must have double self-closing doors at the entrance to the facility and at the interior entrance to the area where the apricots are to be packed. During the time registered packinghouses are in use for packing apricots for export to the United States in accordance with the requirements of this section, packing lines must be cleared of all other articles and plant debris prior to packing such apricots, and such apricots must be stored in a room separate from any other fruits or plant articles while the apricots are at the packinghouse.

(j) *Phytosanitary inspection.* (1) A biometric sample of apricot fruit jointly agreed upon by APHIS and the NPPO of Spain must be inspected in Spain by the NPPO of Spain following post-harvest processing. The sample must be visually inspected for the quarantine pests *A. erythrostoma, C. funebrana,* and *M. fructigena.* A portion of the fruit must be cut open and inspected for *C. capitata.* If any of these quarantine pests are found, the entire consignment of apricot fruit will be prohibited from importation into the United States.

(2) Fruit presented for inspection at a U.S. port of entry must be identified in the shipping documents accompanying each lot of fruit that specify the place of production in which the fruit was produced and the packinghouse in which the fruit was processed. This identification must be maintained until the fruit is released for entry into the United States.

(k) *Phytosanitary certificate.* Each consignment of apricot fruit must be accompanied by a phytosanitary certificate issued by the NPPO of Spain that states that the fruit has been treated for *C. capitata* in accordance with 7 CFR part 305 and includes an additional declaration that the fruit in the consignment was inspected and found free from *A. erythrostoma, C. capitata, C. funebrana,* and *M. fructigena.*

(Approved by the Office of Management and Budget under control number 0579–0402)

Done in Washington, DC, this 23rd day of December 2013.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–31189 Filed 12–30–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 431

[Docket No. EERE–2011–BT–TP–0024]

RIN 1904–AC46

Energy Conservation Program: Alternative Efficiency Determination Methods, Basic Model Definition, and Compliance for Commercial HVAC, Refrigeration, and WH Equipment

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (DOE) is revising its existing regulations governing the use of particular methods as alternatives to testing for the purposes of certifying compliance with the applicable energy conservation standards and the reporting of related ratings for commercial and industrial equipment covered by EPCA. These regulations arose from a negotiated rulemaking effort on issues regarding certification of commercial heating, ventilating, air-conditioning (HVAC), water heating (WH), and refrigeration equipment. In addition, DOE is amending the compliance dates for the initial certification of commercial HVAC, WH, and refrigeration equipment.

DATES: *Effective Dates:* The amendments to 10 CFR 429.42, 429.43, 429.44, 429.70, and Part 431 are effective January 30, 2014. The amendments to 10 CFR 429.12 are effective December 31, 2013.

ADDRESSES: This rulemaking can be identified by docket number EERE–2011–BT–TP–0024 and/or Regulatory Identification Number (RIN) 1904–AC46.

Docket: For access to the docket to read background documents, or comments received, go to the *Federal eRulemaking Portal* at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Email: *Ashley.Armstrong@ee.doe.gov.* Phone: (202) 586–6590; and Ms. Laura Barhydt, U.S. Department of Energy, Office of the General Counsel, Forrestal Building, GC–32, 1000 Independence Avenue SW., Washington, DC 20585. Email: *Laura.Barhydt@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Authority and Background

A. Authority

Title III of the Energy Policy and Conservation Act of 1975, as amended (''EPCA'' or, in context, ''the Act'') sets forth a variety of provisions designed to improve energy efficiency. Part A of Title III (42 U.S.C. 6291–6309) provides for the Energy Conservation Program for Consumer Products Other Than Automobiles. The National Energy Conservation Policy Act (NECPA), Public Law 95–619, amended EPCA to add Part A–1 of Title III, which established an energy conservation program for certain industrial equipment. (42 U.S.C. 6311–6317) [1] The Department of Energy (''DOE'') is charged with implementing these provisions.

Under EPCA, this program consists essentially of four parts: (1) Testing; (2) labeling; (3) Federal energy conservation standards; and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered equipment must use (1) as the basis for certifying to DOE that their equipment complies with the applicable energy conservation standards adopted under EPCA, and (2) for making representations about the efficiency of such equipment. Similarly, DOE must use these test requirements to determine whether the equipment complies with any relevant standards promulgated under EPCA. DOE's existing testing regulations allow manufacturers of commercial heating, ventilation, and air conditioning (HVAC) equipment, water heating (WH) equipment, distribution transformers, electric motors, and small electric motors the use of an alternative efficiency determination method (AEDM), in lieu of actual testing, to simulate the energy consumption or efficiency of certain basic models of covered equipment under DOE's test procedure conditions.

In addition, sections 6299–6305, and 6316 of EPCA authorize DOE to enforce compliance with the energy and water conservation standards (all non-product specific references herein referring to energy use and consumption include water use and consumption; all references to energy efficiency include water efficiency) established for certain commercial equipment. (42 U.S.C. 6316 commercial equipment) DOE has promulgated enforcement regulations that include specific certification and compliance requirements. *See* 10 CFR part 429; 10 CFR part 431, subparts B, U, and V.

B. Background

On March 7, 2011, DOE published a final rule in the **Federal Register** that, in part, modified the requirements regarding manufacturer submission of compliance statements and certification reports to DOE (hereafter referred to as the March 2011 Final Rule). 76 FR 12421. As part of this rule, DOE imposed new or revised reporting requirements for some types of covered products and equipment, including a requirement that manufacturers submit annual reports to the Department certifying compliance of their basic models with applicable standards. See 76 FR 12428–12429 for more information.

In response to the initial deadline for certifying compliance imposed by the March 2011 Final Rule on commercial HVAC, refrigeration, and WH equipment manufacturers, certain manufacturers of particular types of commercial and industrial equipment stated that, for a variety of reasons, they would be unable to meet that deadline. DOE initially extended the deadline for certifications for commercial HVAC, WH, and refrigeration equipment in a final rule published June 30, 2011 (hereafter referred to as the June 2011 Final Rule). 76 FR 38287 (June 30, 2011). DOE subsequently extended the compliance date for certification by an additional 12 months to December 31, 2013, for these types of equipment (December 2012 Final Rule) to allow, among other things, the Department to explore the negotiated rulemaking process for setting requirements for these equipment categories. 77 FR 72763.

In the summer of 2012, DOE had an independent convener evaluate the likelihood of success, analyzing the feasibility of developing certification requirements for commercial HVAC, WH, and refrigeration equipment (not including walk-in coolers and freezers) through consensus-based negotiations among affected parties. In October 2012, the convener issued his report based on a confidential interview process involving forty (40) parties from a wide range of commercial HVAC, WH, and refrigeration equipment interests. Ultimately, the convener recommended that, with the proper scope of issues on the table surrounding commercial HVAC, WH, and refrigeration equipment certification, a negotiated rulemaking appeared to have a reasonable likelihood of achieving consensus based on the factors set forth in the Negotiated Rulemaking Act because the interviewed parties believed the negotiated rulemaking was superior to notice and comment rulemaking for certification-related issues. Additional details of the report can be found at *https://www1.eere.energy.gov/buildings/appliance_standards/pdfs/convening_report_hvac_cre_1.pdf*.

On February 26, 2013, members of the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC) unanimously decided to form a working group to engage in a negotiated rulemaking effort on the certification of commercial HVAC, WH, and refrigeration equipment. A notice of intent to form the Commercial Certification Working Group (Working Group) was published in the **Federal Register** on March 12, 2013, to which DOE received 35 nominations. 78 FR 15653. On April 16, 2013, the Department published a notice of open meeting that announced the first meeting and listed the 22 nominees that were selected to serve as members of the Working Group, in addition to two members from ASRAC, and one DOE representative. 78 FR 22431. The members of the Working Group were selected to ensure a broad and balanced array of stakeholder interests and expertise, and included efficiency advocates, manufacturers, a utility representative, and third-party laboratory representatives.

AEDMs are computer modeling or mathematical tools that predict the performance of non-tested basic models. They are derived from mathematical models and engineering principles that govern the energy efficiency and energy consumption characteristics of a type of covered equipment. These computer modeling and mathematical tools, when properly developed, can provide a relatively straight-forward and reasonably accurate means to predict the energy usage or efficiency characteristics of a basic model of a given covered product or equipment and reduce the burden and cost associated with testing.

Where authorized by regulation, AEDMs enable manufacturers to rate and certify their basic models by using the projected energy use or energy efficiency results derived from these simulation models in lieu of testing. DOE has authorized the use of AEDMs for certain covered products and equipment that are difficult or expensive to test in an effort to reduce the testing burden faced by manufacturers of expensive or highly customized basic models. DOE's regulations currently permit manufacturers of commercial HVAC,

[1] For editorial reasons, Parts B (consumer products) and C (commercial equipment) of Title III of EPCA were re-designated as parts A and A–1, respectively, in the United States Code.

WHs, distribution transformers, electric motors, and small electric motors to use AEDMs to rate their non-tested basic models (and combinations, where applicable) provided they meet the Department's regulations governing such use.

Initially, DOE undertook a conventional rulemaking to consider expanding and revising its regulations for AEDMs. On April 18, 2011, DOE published a Request for Information (hereafter referred to as the April 2011 RFI). 76 FR 21673. The April 2011 RFI requested suggestions, comments, and information relating to the Department's intent to expand and revise its existing AEDM and ARM requirements. In response to comments it received on the April 2011 RFI, DOE published a Notice of Proposed Rulemaking (NOPR) in the **Federal Register** on May 31, 2012 (hereafter referred to as the May 2012 NOPR). 77 FR 32038. DOE proposed to permit AEDM-based ratings and certifications for additional types of equipment, such as commercial refrigeration equipment (CRE), automatic commercial ice makers (ACIMs), beverage vending machines (BVMs), and walk-in cooler and freezer (WICF or walk-in) refrigeration systems. 77 FR 32055. DOE also proposed a number of requirements for manufacturers to meet to use an AEDM and laid out a method that DOE would employ to determine if an AEDM had been used appropriately by a manufacturer—along with the consequences if it had not. 77 FR 32055–32056.

During the Working Group's first meeting, Working Group members voted to expand the scope of the negotiated rulemaking efforts to include developing methods of estimating equipment performance based on AEDM simulations. The issues discussed by the various participants during the negotiations with DOE were those raised by the commenters in response to the May 2012 NOPR. The discussion of those issues in the negotiated rulemaking and the consensus reached are summarized in two documents included in the docket of this final rule and constitute DOE's response to the comments on the May 2012 NOPR. The documents discuss the particular elements that the AEDM simulations for each equipment should address and other related considerations of note, including potential basic model definitions, test procedure issues, the treatment of certain features, and certification of these equipment. See *http://www.regulations.gov/#!docketBrowser;rpp=25;po=0;dct=SR;D=EERE-2013-BT-NOC-0023.*

As required, the Working Group submitted an interim report to ASRAC on June 26, 2013, summarizing the group's recommendations regarding AEDMs for commercial HVAC, WH, and refrigeration equipment. The interim report to ASRAC can be found at *http://www.regulations.gov/#!documentDetail;D=EERE-2013-BT-NOC-0023-0046.* ASRAC subsequently voted unanimously to approve the recommendations in the interim report for AEDMs. Subsequently, the Working Group submitted a final report on August 30, 2013, summarizing the Working Group's recommendations for model grouping, certification requirements and deadlines. That report also detailed the features to be excluded from certification, verification, and enforcement testing as long as specific conditions were met. ASRAC voted unanimously to approve the recommendations in the final report.

On October 22, 2013, the Department published in the **Federal Register** a Supplemental Notice of Proposed Rulemaking regarding AEDMs, basic model definitions, and the compliance process for commercial HVAC, refrigeration, and WH equipment (AEDM SNOPR). 78 FR 62472. DOE proposed the Working Group's recommendations in the AEDM SNOPR, without modification, for AEDMs, basic model definitions, and the initial compliance date for certification. DOE will be addressing the remaining recommendations of the Working Group regarding certification requirements, and for the treatment of specific features when testing, in a separate rulemaking or guidance document. DOE will also be addressing the AEDM proposals of the May 2012 NOPR for BVM, ACIM and WICFs in a separately supplemental notice of proposed rulemaking.

II. Discussion of Specific Revisions to DOE's Regulations for Alternative Efficiency Determination Methods and Alternative Rating Methods

On May 14–15, 2013, the Working Group held a two-day meeting at the U.S. Department of Energy's headquarters in Washington, DC. Sixty-nine interested parties, including members of the Working Group, attended. A more detailed account of the discussions and recommendations can be found in the Working Group meeting transcripts, which are located at *http://www.regulations.gov/#!docketDetail;D=EERE-2013-BT-NOC-0023.*

As noted above, DOE published the Working Group's recommendations in an SNOPR on October 22, 2013, and received comments from 14 stakeholders including manufacturers, trade associations, advocacy groups, and a utility association. Table II.1 lists the entities that submitted comments and their affiliation. These comments are discussed in more detail below, and the full set of comments can be found at: *http://www.regulations.gov/#!docketDetail;dct=FR%252BPR%252BN%252BO%252BSR%252BPS;rpp=25;po=0;D=EERE-2011-BT-TP-0024.*

TABLE II.1—STAKEHOLDERS THAT SUBMITTED COMMENTS ON THE SNOPR

Name	Acronym	Organization type
AAON, Inc.	AAON	Manufacturer
American Boiler Manufacturers Association.	ABMA	Industry Trade Group
Air-Conditioning, Heating, and Refrigeration Institute.	AHRI	Industry Trade Group
American Council for an Energy Efficient Economy, Appliance Standards Awareness Project, Earthjustice, and Northwest Energy Efficiency Alliance.	ACEEE, ASAP, Earthjustice, NEEA (Joint Comment).	Advocacy Group
Florida Natural Gas Association.	FNGA	Utility Association
Goodman Global, Inc.	Goodman	Manufacturer
Hoshizaki America, Inc.	Hoshizaki America.	Manufacturer
Hussmann Corporation.	Hussmann.	Manufacturer
Lennox International, Inc.	Lennox	Manufacturer
Lochinvar, LLC	Lochinvar	Manufacturer
Mitsubishi Electric US, Inc.	MEUS	Manufacturer
Modine Manufacturing Company.	Modine	Manufacturer
Traulsen Refrigeration.	Traulsen	Manufacturer
Zero Zone, Inc.	Zero Zone	Manufacturer

DOE received general comments on the proposals in the AEDM SNOPR. Goodman, MEUS, and AHRI expressed support for the AEDM SNOPR. (Goodman, No. 0086.1 at p.1; MEUS, No. 0083.1 at p.1; AHRI, No.0076.1 at p.1) MEUS stated that the proposals in the AEDM SNOPR were representative of the Working Group's agreements. (MEUS, No. 0083.1 at p.1) The Joint Comment supported the AEDM SNOPR to the extent that it represented the consensus agreements reached by the

Working Group. The Joint Comment also recommended that DOE conduct a review of the AEDM process two years after implementation to assess whether the process is fair and prevents undue gaming of equipment ratings. (Joint Comment, No. 0081.1 at p.2)

While DOE appreciates the Joint Comment's recommendation, DOE currently does not plan at this time to re-evaluate the AEDM regulations in two years. DOE may reconsider this decision depending on whether new circumstances present themselves that may merit a review of these regulations.

Goodman made a general recommendation that in the regulatory text pertaining to AEDMs it is unnecessary to state ''validated AEDM'' because the regulations require all AEDMs to be validated before a manufacturer may use an AEDM for certification purposes. (Goodman, No. 0086.1 at p. 2) DOE agrees with Goodman and will remove the term ''validated.''

A. General Issues

1. Pre-Approval

The Working Group unanimously recommended that DOE not require pre-approval for AEDMs for commercial HVAC, WH, or refrigeration equipment. The SNOPR adopted this approach. 78 FR 62472. DOE did not receive any adverse comments on this proposal and thus DOE is not adopting a pre-approval process for AEDMs for the aforementioned equipment.

2. Applicable Equipment

The Working Group unanimously recommended the following types of covered equipment be allowed to use AEDMs.

- Commercial HVAC Equipment
  - Commercial packaged air-conditioning and heating equipment (air-cooled, water-cooled, evaporatively-cooled, and water-source)
  - Packaged terminal air conditioners and heat pumps
  - Computer room air conditioners
  - Single package vertical air conditioners and heat pumps
  - Variable refrigerant flow systems
- Commercial packaged boilers
- Commercial warm-air furnaces
- Commercial WH Equipment
  - Commercial electric storage water heaters
  - Commercial gas-fired and oil-fired storage water heaters
  - Commercial gas-fired and oil-fired instantaneous water heaters greater than or equal to 10 gallons
  - Commercial gas-fired and oil-fired hot water supply boilers greater than or equal to 10 gallons
  - Commercial gas-fired and oil-fired instantaneous water heaters less than 10 gallons
  - Commercial gas-fired and oil-fired hot water supply boilers less than 10 gallons
  - Commercial unfired hot water storage tanks
- Commercial Refrigeration Equipment

DOE currently allows the use of AEDMs for commercial HVAC and WH equipment. DOE proposed in the SNOPR to also permit manufacturers to use AEDMs when certifying CRE basic models. 78 FR 62472, 62474. Zero Zone stated that it was pleased that DOE plans to allow CRE manufacturers to use AEDMs because it would be impossible for manufacturers to evaluate the efficiency of all of their models without AEDMs. (Zero Zone, No. 0077.1 at p.1) Lennox and Hoshizaki American both supported extending AEDMs to commercial refrigeration equipment. (Lennox, No. 0080.1 at p.2; Hoshizaki America, No. 0087.1 at p.1) In this final rule, DOE is allowing CRE manufacturers to certify their basic models using AEDMs.

Lennox also recommended that DOE allow manufacturers to use AEDMs when certifying walk-in refrigeration systems. (Lennox, No. 0080.1 at p. 4) DOE notes that it has already proposed to allow the use of AEDMs for walk-in refrigeration systems in the May 2012 NOPR. See 77 FR 32038, 32041. The issue of using AEDMs for walk-ins is outside the scope of this notice, but the Department will continue to address this issue separately.

Lochinvar requested that DOE allow water volume for commercial water heaters to be calculated by an AEDM and have a 5 percent tolerance. (Lochinvar, No. 0088.1 at p. 1) DOE notes that AEDMs are used specifically for determining the energy efficiency or energy consumption of covered equipment but expects that capacity or volume measurements may be generated as a step in determining the model's applicable efficiency rating. DOE did not propose tolerances on measurements other than energy efficiency descriptors, thus this issue is beyond the scope of this rulemaking.

B. Validation

Prior to use for certifying the energy efficiency or energy use of a basic model, DOE generally requires AEDMs to be validated. The Working Group recommended the following validation process for AEDMs, which DOE proposed in the AEDM SNOPR. 78 FR 62472, 62474.

1. Number of Tested Units Required for Validation

To validate an AEDM, a manufacturer must select at least the minimum number of basic models, specified in Table II.2 through Table II.6, for each of the validation classes to which the AEDM will apply. Each selection represents a single test conducted in accordance with the DOE test procedure (TP) or applicable DOE TP waiver at a manufacturer's testing facility or a third-party testing facility, whose test result is directly compared to the result for that model from the AEDM.

TABLE II.2—COMMERCIAL HVAC VALIDATION CLASSES

Validation class	Minimum number of basic models that must be tested per AEDM
Air-Cooled, Split and Packaged Air Conditioners (ACs) and Heat Pumps (HPs) less than 65,000 Btu/h Cooling Capacity (3-Phase).	2 Basic Models.
Air-Cooled, Split and Packaged ACs and HPs greater than or equal to 65,000 Btu/h Cooling Capacity and Less than 760,000 Btu/h Cooling Capacity.	2 Basic Models.
Water-Cooled, Split and Packaged ACs and HPs, All Cooling Capacities	2 Basic Models.
Evaporatively-Cooled, Split and Packaged ACs and HPs, All Capacities	2 Basic Models.
Water-Source HPs, All Capacities	2 Basic Models.
Single Package Vertical ACs and HPs	2 Basic Models.
Packaged Terminal ACs and HPs	2 Basic Models.
Air-Cooled, Variable Refrigerant Flow ACs and HPs	2 Basic Models.
Water-Cooled, Variable Refrigerant Flow ACs and HPs	2 Basic Models.

TABLE II.2—COMMERCIAL HVAC VALIDATION CLASSES—Continued

Validation class	Minimum number of basic models that must be tested per AEDM
Computer Room Air Conditioners, Air Cooled	2 Basic Models.
Computer Room Air Conditioners, Water-Cooled	2 Basic Models.

TABLE II.3—COMMERCIAL WATER HEATERS VALIDATION CLASSES

Validation class	Minimum number of basic models that must be tested
Gas-fired Water Heaters and Hot Water Supply Boilers Less than 10 Gallons	2 Basic Models.
Gas-fired Water Heaters and Hot Water Supply Boilers Greater than or Equal to 10 Gallons	2 Basic Models.
Oil-fired Water Heaters and Hot Water Supply Boilers Less than 10 Gallons	2 Basic Models.
Oil-fired Water Heaters and Hot Water Supply Boilers Greater than or Equal to 10 Gallons	2 Basic Models.
Electric Water Heaters	2 Basic Models.
Heat Pump Water Heaters	2 Basic Models.
Unfired Hot Water Storage Tanks	2 Basic Models.

TABLE II.4—COMMERCIAL PACKAGED BOILERS VALIDATION CLASSES

Validation class	Minimum number of basic models that must be tested
Gas-fired, Hot Water Only Commercial Packaged Boilers	2 Basic Models.
Gas-fired, Steam Only Commercial Packaged Boilers	2 Basic Models.
Gas-fired Hot Water/Steam Commercial Packaged Boilers	2 Basic Models.
Oil-fired, Hot Water Only Commercial Packaged Boilers	2 Basic Models.
Oil-fired, Steam Only Commercial Packaged Boilers	2 Basic Models.
Oil-fired Hot Water/Steam Commercial Packaged Boilers	2 Basic Models.

TABLE II.5—COMMERCIAL FURNACES VALIDATION CLASSES

Validation class	Minimum number of basic models that must be tested
Gas-fired Furnaces	2 Basic Models.
Oil-fired Furnaces	2 Basic Models.

TABLE II.6—COMMERCIAL REFRIGERATION EQUIPMENT VALIDATION CLASSES

Validation class*	Minimum number of basic models that must be tested
Self-Contained Open Refrigerators	2 Basic Models.
Self-Contained Open Freezers	2 Basic Models.
Remote Condensing Open Refrigerators	2 Basic Models.
Remote Condensing Open Freezers	2 Basic Models.
Self-Contained Closed Refrigerators	2 Basic Models.
Self-Contained Closed Freezers	2 Basic Models.
Remote Condensing Closed Refrigerators	2 Basic Models.
Remote Condensing Closed Freezers	2 Basic Models.

*The minimum number of tests indicated above must be comprised of a transparent model, a solid model, a vertical model, a semi-vertical model, a horizontal model, and a service-over-the counter model, as applicable based on the equipment offering. However, manufacturers do not need to include all types of these models if it will increase the minimum number of tests that need to be conducted.

A manufacturer may elect to develop multiple AEDMs per validation class and each AEDM may span multiple validation classes; however, the minimum number of tests must be maintained per validation class for each AEDM a manufacturer chooses to develop and use. An AEDM may be applied to any individual model within the applicable validation classes at the manufacturer's discretion. All documentation of test results for the models used to validate each AEDM, the AEDM results, and the subsequent comparisons to the AEDM must be maintained as part of both the test data underlying the certified rating and the AEDM validation package pursuant to 10 CFR 429.71. 78 FR 62472, 62474.

DOE received two comments in support of the minimum number of

basic models required for each validation class. AAON commented in support of the number of validation tests for commercial HVAC equipment. (AAON, No. 0082.1 at p. 1) Zero Zone agreed with the number of basic models required for each specific validation class. (Zero Zone, No. 0077.1 at p. 2)

Hussmann requested that DOE clarify in the preamble that two tests, one per basic model, are required at a minimum for each validation class. (Hussmann, No. 0079 at p. 1) DOE agrees with Hussmann that DOE intended that the proposal indicate that only one sample is required to be tested for each basic model selected to validate an AEDM. The result of each test must be directly compared to the result for that model from the AEDM.

DOE has modified the language in paragraph 429.70(a) to remove language that appeared to contradict this provision. Paragraph 429.70(a) now states that testing must be conducted in accordance with 429.11. Section 429.11 states that the general rule is that two units must be tested but that the testing requirement may be modified by another, more specific provision. Therefore, for equipment types permitted to use an AEDM that were not subject to the negotiated rulemaking, the default rule of testing two units still applies. For the equipment types that were subject to the negotiated rulemaking, the paragraphs directly applicable to those equipment types state that only one unit of each basic model must be tested. DOE also notes, as was often discussed during Working Group meetings, that these testing limits are absolute minimums. A manufacturer must ensure that its AEDM(s) accurately predict performance for the full range of equipment classes to which the manufacturer is applying the AEDM.

ABMA commented that existing test data for large commercial packaged, built-to-order boilers are based on ASME PTC–4.1 instead of the DOE test procedure. ABMA requested that DOE grant a blanket waiver allowing these types of commercial boilers to be rated to ASME PTC–4.1 instead of the DOE test procedure so that AEDMs can be developed around this existing data. Additionally, ABMA suggested that large commercial packaged, built-to-order boilers be reclassified as ''industrial'' boilers to help distinguish these equipment types from smaller, high-volume boilers. (ABMA, No. 0075 at p. 1) DOE appreciates ABMA's suggestion, but clarifies that each manufacturer of a large commercial packaged, built-to-order boilers must individually submit a petition for waiver as outlined in 10 CFR 431.401. Pursuant to the test procedure waiver regulations, DOE cannot issue a blanket waiver for a test procedure waiver. While it is outside the scope of this rulemaking to consider a petition for waiver and propose alternative methods of testing requirements for commercial packaged boilers, DOE currently has an open rulemaking for commercial boilers where it may address the testing issues.

As DOE did not receive adverse comments regarding the AEDM SNOPR proposal for the minimum number of basic models, specified in Table II.2 through Table II.6, required to validate an AEDM, DOE is adopting these requirements as part of today's final rule.

2. Tolerances

To validate the AEDM, the test results from each model required to be tested according to the validation requirements described in the previous section must be compared to the simulated results from the applicable AEDM. The Working Group recommended that for energy consumption metrics, the AEDM result for a model must be greater than or equal to 95 percent of the tested results for that same model. Similarly, for energy efficiency metrics, the AEDM results for a model would need to be less than or equal to 105 percent of the tested results for that same model. In the AEDM SNOPR, DOE proposed this one-sided 5 percent tolerance for AEDM validation for all commercial HVAC, WH, and refrigeration equipment. 78 FR 62472, 62476.

DOE received several comments on validation tolerances. AAON commented in support of the one-sided tolerances for comparing test results to the AEDM output proposed in the SNOPR. (AAON, No. 0082.1 at p. 1) Zero Zone commented that DOE should provide tolerances for AEDMs, but requested DOE modify the regulatory language to state that test results used to validate an AEDM can be less than the energy efficiency standard or more than the energy consumption standard by the proposed 5 percent tolerance. (Zero Zone, No. 0077.1 at p. 1) DOE does not agree with Zero Zone. All test results used to validate an AEDM must at least meet the applicable energy conservation standard—Zero Zone's approach would not ensure the applicable standard would be met.

Hussmann commented that although the Working Group agreed on a one-sided 5 percent tolerance when comparing the validation test results to the AEDM output, this tolerance is only acceptable if a manufacturer can control the test conditions. Hussmann stated that inherent component tolerances, fluctuation of the internal average temperature, and fluctuation of the test room conditions could produce test results that vary more than 5 percent from the rating produced by an AEDM. (Hussmann, No. 0079 at p. 1) In response to Hussmann's comment, DOE clarifies that validation testing refers only to the requirements manufacturers must satisfy to confirm the functionality of an AEDM before such AEDM can be used to produce certified ratings. DOE did not propose any requirements on the test labs or test process for validation testing. A manufacturer may conduct its own validation testing within its facilities and control the test conditions to the extent allowable by the applicable test procedure. Conversely, verification testing, which is discussed in more detail in section II.C, is testing conducted by the Department as a means of checking the performance of an equipment model distributed in commerce. Verification testing is conducted at a third-party laboratory unless extenuating circumstances prevent third-party testing in which case the Department may allow testing at a manufacturer's lab. DOE has added regulatory text to clarify this issue. DOE notes Hussmann's concern that fluctuations in test conditions can produce test results that may vary more than 5 percent from the estimated performance rating produced by an AEDM. However, this concern is more germane to verification testing and will be discussed in more detail in section II.C.4.

In today's final rule, DOE is adopting the one-sided five percent tolerance for AEDM validation. As previously stated, for energy consumption metrics, the AEDM result for a model must be greater than or equal to 95 percent of the tested results for that same model. For energy efficiency metrics, the AEDM results for a model must be less than or equal to 105 percent of the tested results for that same model. In addition, AEDM results must meet the applicable standard.

3. Certified Ratings

For each basic model of commercial HVAC, WH, and refrigeration equipment distributed in commerce, manufacturers must determine the certified rating based on testing or use of a validated AEDM. DOE's current regulations provide manufacturers with some flexibility in rating each basic model by allowing the manufacturer the discretion to rate conservatively. The Working Group recommended that in the case of models rated with energy consumption metrics, those values must use a certified rating less than or equal

to the applicable Federal standard and greater than or equal to the model's AEDM result. For energy efficiency metrics, each model's certified rating must be less than or equal to the model's AEDM result and greater than or equal to the applicable Federal standard. DOE proposed in the AEDM SNOPR to retain the flexibility provided by its current regulatory approach and proposed the Working Group's recommendation without modification. 78 FR 62472, 62476.

Lennox and Zero Zone agreed that DOE should allow manufacturers to rate their products conservatively. (Lennox, No. 0080.1 at p. 3; Zero Zone, No. 0077.1 at p. 3) AAON also supported the concept of rating conservatively based on AEDM results as long as such ratings are better than the applicable energy conservation standards. (AAON, No. 0082.1 at p. 1) DOE received no adverse comments and thus is continuing to allow manufacturers to rate conservatively.

C. DOE Verification

Once a basic model has been distributed in commerce, DOE may select any model and verify the equipment's performance at any time. 10 CFR 429.104. The Working Group recommended the process described below in sections II.C.1 through II.C.7 for DOE's verification of certified ratings determined by an AEDM. DOE proposed this process in the AEDM SNOPR. 78 FR 62472, 62476.

DOE received several comments on the verification process. Specifically, manufacturers commented on existing regulatory text that allows the Department to verify the performance of an AEDM used for certified ratings by observing the operation of the AEDM, collecting analyses of previous simulations, and/or conducting testing on units certified using an AEDM. Traulsen requested an explanation as to the purpose of this text. (Traulsen, No. 0085.1 at p. 2) AHRI commented that although this regulatory text currently exists in the CFR, the AEDM validation requirements recommended by the Working Group makes these regulations unnecessary and redundant. AHRI recommended that DOE remove this text in its entirety. (AHRI, No. 0076.1 at p. 2)

DOE disagrees that these provisions are redundant with the validation requirements. The validation requirements provide for a manufacturer to ensure that its AEDM is functioning properly prior to using the AEDM. The verification testing requirements allow DOE to ensure that a specific basic model is properly rated using the AEDM. These provisions provide a mechanism for DOE to verify that a manufacturer is using its AEDM in conformance with the regulations.

1. Witness Testing

Currently, DOE's regulations do not permit a manufacturer to be present for DOE-initiated testing to verify equipment performance of a given basic model. The Working Group considered a variety of approaches to ensure manufacturers have an opportunity to witness the test set-up for verification testing of a basic model.

DOE received a number of comments regarding its proposal. Some comments supported the witness testing process proposed in the SNOPR. See AAON, No. 82.1 at p. 1 and Zero Zone, No. 0077.1 at p. 3) Zero Zone added that a manufacturer may not be able to witness the initial verification test unless it knows in advance which units will be tested. (Zero Zone, No. 0077.1 at p. 3)

Other commenters, however, raised specific issues regarding the proposal. Hoshizaki America, for example, disagreed with the proposed requirement that up to 10 percent of a manufacturer's certified basic models be subjected to witness testing because the affected units are so complex that slight changes could result in separate basic models. Instead, Hoshizaki America suggested DOE collaborate with existing bodies that test annually like the EPA's ENERGY STAR program. (Hoshizaki, No. 0087.1 at p. 1) Hussmann noted that CRE manufacturers have concerns about the expertise of third-party test facilities to either operate the CRE units under test or to conduct the DOE test procedure. (Hussmann, No. 0079.1 at p. 2)

Hussmann also remarked that manufacturers are responsible for the expense of any retesting needed. (Hussmann, No. 0079.1 at p. 2)

DOE has given consideration to the concerns raised by these commenters. In reviewing their comments, DOE now believes that its proposed regulatory text, which was based in large part on the Working Group's recommendation, may not have been sufficiently clear. Accordingly, DOE has decided to not finalize any regulation on witness testing at this time. To ensure that the regulatory text adequately reflects the recommendation of the Working Group, DOE will propose revised regulatory text for this particular aspect of the rule in order to provide additional clarification regarding the witness testing process. As part of this effort, DOE will provide interested parties with additional time within which to file comments before these particular provisions would be finalized and incorporated into DOE's regulations. DOE will issue a separate notice to address specifically this issue.

DOE notes that the witness testing provisions are triggered by DOE performing verification testing, which ensures that certified ratings are within specified tolerances of test results. DOE notes that manufacturers are not required to certify these equipment types for six to eighteen months (depending on equipment type) plus an additional six month enforcement grace period; therefore, DOE will have sufficient time to adopt final witness testing provisions before these verification testing procedures would be triggered.

2. Verification Process

In the AEDM SNOPR, DOE proposed the Working Group's recommended verification process that DOE will use to assess a unit's performance through third-party testing. Under this approach, DOE will begin the verification process by selecting a single unit of a given basic model for testing either from retail or by obtaining a sample from the manufacturer, with a preference for a unit from retail. DOE will select a third-party testing laboratory at its discretion to test the unit selected. The lab will adhere to the requirements recommended by the Working Group described in section II.C.3. As discussed in section II.C.1, DOE will address the witness testing arrangements in a subsequent rulemaking. In all cases, the Department will be responsible for the logistics of arranging a witnessed test, and the laboratory is not allowed to communicate directly with the manufacturer. 78 FR 62472, 62476.

Further, under this process, the manufacturer will provide any additional information regarding test set up or testing to DOE through the certification process in pdf format. (This provision will be addressed in a separate rulemaking on commercial certification of HVAC, WH, and refrigeration equipment.) DOE will provide this information to the test facility as long as the additional instructions do not conflict with the DOE test procedure or an applicable DOE test procedure waiver. The test facility may not use any additional information during the testing process that has not been approved by DOE or shipped in the packaging of the unit. If needed, the test facility may request from DOE additional information on test set up, installation, or testing. Upon receiving a request from the test facility for additional information, DOE may hold and coordinate a meeting with the

manufacturer and the test facility to discuss the additional details needed for testing. Additional instructions may be given to the test facility as agreed upon by DOE and the manufacturer. At no time may the test facility discuss DOE verification testing with the manufacturer without the Department present. 78 FR 62472, 62476.

Zero Zone agreed with the Department's proposal since, in its view, manufacturers should be able to provide additional test and set up information for third-party labs. (Zero Zone, No. 0077.1 at p. 3) Goodman, which also largely agreed with DOE's proposal, suggested that DOE amend the proposed regulatory text to allow a third-party test lab to use any manual that a manufacturer submits in connection with its certification report for verification testing. Goodman recommended this amendment to account for the possibility of a literature change after the initial production of the unit. (Goodman, No. 0086.1 at p. 2) As discussed in the Working Group, DOE will use supplementary information submitted with the certification report as long as the information was submitted to DOE before the unit was selected for verification testing. DOE will not use manuals that only reside on a manufacturer's Web site; DOE will only use supplementary information that is submitted with the certification report. DOE also notes that the supplementary information submitted with the certification report is only one of the types of information to which DOE will refer when testing. In no case shall the contents of these supplemental items displace the provisions specified in the DOE test procedure.

If a unit is tested and determined to fall outside the rating tolerances described in section II.C.4, DOE will notify the manufacturer. The manufacturer will receive all documentation related to the test set up, test conditions, and test results for the unit if the unit falls outside the rating tolerances. At that time, a manufacturer may present all claims regarding any issues directly associated with the test and initiate a discussion regarding retesting. If the manufacturer was not on-site for the initial test, the manufacturer may request a retest of the same unit, and DOE and the manufacturer can be present for the retest. DOE will not retest a different unit of the same basic model unless DOE and the manufacturer determine it is necessary based on the test results, claims presented, and DOE regulations. 78 FR 62472, 62476.

Lennox commented that DOE should clarify that the AEDM verification process codified in 429.70(c)(6) is based on a ''single unit'' unless a manufacturer has elected to have verification tests for up to 10 percent of the manufacturer's certified basic models rated with an AEDM. DOE concurs that an invalid rating can be determined by conducting verification testing on a single unit; however, to clarify, DOE did not propose to permit a manufacturer to have 10 percent of its basic models tested using the verification testing process. Instead, DOE proposed to permit a manufacturer to designate up to 10% of its basic models that were certified with an AEDM for witness testing if selected for verification testing. As discussed in section II.C.1, DOE will address the witness testing arrangements in a subsequent rulemaking.

Lennox also requested that DOE clarify that the verification provisions and tolerances proposed in this section and in section II.C.4, respectively, supersede and replace those in 10 CFR 429.110 with respect to a model rated using an AEDM. (Lennox, No. 0080.1 at p. 2) DOE notes that these proposals do not replace the enforcement regulatory text to which Lennox is referring. The enforcement regulations allow DOE to determine if a model complies with the applicable standard. The verification process outlined in today's final rule is specifically for determining if a unit was certified with a valid rating, i.e., that the test results for the basic model that was verification tested are within the permitted tolerance range from the AEDM-derived performance rating. The verification process also serves to ensure that the AEDM is generating valid results across a range of basic models.

ABMA commented that, as long as no efficiency or energy use criteria have changed, DOE should not require a retest for built-to-order packaged boilers on a periodic basis as there are enough checks and balances built into the boiler manufacturing system. Alternatively, company officers could issue a statement to DOE stating that no efficiency-related changes have been made within a certain period of time. (ABMA, No. 0075.1 at p. 2) DOE understands ABMA's comment to mean that no verification testing is necessary for built-to-order boilers. While it may be true that the boiler industry has a number of safeguards to ensure consistent energy performance from built-to-order boilers, the Department still reserves the right to verify a boiler's certified efficiency. DOE is not requiring boiler manufacturers to periodically retest units for the purposes of certification or AEDM validation, and the Department already requires manufacturers to submit a compliance statement with their annual certification that states, among other things, that all basic models included in the certification report comply with the applicable energy conservation standards. 10 CFR 429.12(c). DOE also notes that the certification deadline for these products is being delayed an additional 18 months as part of this final rule.

In today's final rule, DOE is adopting the verification process outlined in this section.

3. Verification Lab Requirements

The Working Group recommended that all AEDM verification tests should be conducted in a third-party testing facility of DOE's choice. Commercial equipment that cannot be tested at an independent third-party facility may be tested at a manufacturer's facility upon DOE's request. DOE proposed the Working Group's recommendation in the AEDM SNOPR. 78 FR 62472, 62477.

FGNA supported the Department's proposal that verification testing should generally take place at a third-party facility but should allow for equipment to be tested at the manufacturer's facility if the equipment cannot be tested at a third-party laboratory. (FGNA, No. 0085.1 at p. 2) AAON also agreed that verification testing should be conducted at a third-party facility qualified to conduct the specific test procedure. (AAON, No. 0082.1 at p. 2) Goodman encouraged DOE to utilize laboratories that are ISO 17025-certified to reduce the probability of questionable or disputed test results from incorrect testing or test set-ups. (Goodman, No. 0086.1 at p. 1) Regarding Goodman's recommendation, DOE notes that 10 CFR 429.110(a)(3) requires all DOE enforcement testing be performed at a lab accredited to ISO 17025:2005(E). While this requirement does not preclude verification testing from occurring at an unaccredited laboratory, DOE generally will use an ISO 17025:2005(E) accredited lab so that any verification test results could be used as part of an enforcement testing sample, if necessary, to reduce redundant testing. Therefore, DOE is not specifying that verification testing must occur at an ISO 17025:2005(E) accredited lab.

Zero Zone and Hoshizaki America recommended that for verification testing, a manufacturer's test facilities should be the primary facility to conduct this testing (rather than a third-party lab), in part to reduce cost. (Zero Zone, No. 0077.1 at p. 3; Hoshizaki, no. 0087.1 at p. 1) DOE does not agree that verification testing at a manufacturer's

test facility should be preferred over testing at a third-party lab. Testing at a third-party lab inherently offers impartiality in the test results, which a manufacturer-run test facility does not.

ABMA commented that the proposal to require all testing to be performed at an ISO-certified, third-party test facility or witnessed by personnel from such a facility has the potential to pose logistical problems. (ABMA, No. 0075.1 at p. 2) DOE did not propose to require all testing to be performed at an ISO-accredited, third-party test facility or witnessed by personnel from such a facility. As discussed in this section, DOE proposed to conduct verification testing at a third-party test facility but does not require that facility to be ISO-accredited.

DOE is adopting the Certification Working Group recommendation that all AEDM verification tests should be conducted in a third-party testing facility of DOE's choice and commercial equipment for which there is no third-party lab capable of conducting testing may be tested at a manufacturer's facility upon DOE's request.

4. Verification Tolerances

DOE proposed in the AEDM SNOPR that to verify the certified rating of a given model, the test results from a single unit test of the model will be compared to the certified rating in accordance with the tolerances set forth below. For energy consumption metrics, the Working Group recommended:

Test Result ≤ Certified Rating × (1 + Applicable Tolerance)

For energy efficiency metrics, the Working Group recommended:

Test Result ≥ Certified Rating × (1 − Applicable Tolerance)

TABLE II.7—RATING TOLERANCES

Equipment	Metric	Applicable tolerance
Commercial Packaged Boilers	Combustion Efficiency	5% (0.05)
	Thermal Efficiency	5% (0.05)
Commercial Water Heaters or Hot Water Supply Boilers	Thermal Efficiency	5% (0.05)
	Standby Loss	10% (0.1)
Unfired Storage Tanks	R-Value	10% (0.1)
Air-Cooled, Split and Packaged ACs and HPs less than 65,000 Btu/h Cooling Capacity (3-Phase).	Seasonal Energy-Efficiency Ratio	5% (0.05)
	Heating Season Performance Factor	5% (0.05)
	Energy Efficiency Ratio	10% (0.1)
Air-Cooled, Split and Packaged ACs and HPs greater than or equal to 65,000 Btu/h Cooling Capacity and Less than 760,000 Btu/h Cooling Capacity.	Energy Efficiency Ratio	5% (0.05)
	Coefficient of Performance	5% (0.05)
	Integrated Energy Efficiency Ratio	10% (0.1)
Water-Cooled, Split and Packaged ACs and HPs, All Cooling Capacities.	Energy Efficiency Ratio	5% (0.05)
	Coefficient of Performance	5% (0.05)
	Integrated Energy Efficiency Ratio	10% (0.1)
Evaporatively-Cooled, Split and Packaged ACs and HPs, All Capacities.	Energy Efficiency Ratio	5% (0.05)
	Coefficient of Performance	5% (0.05)
	Integrated Energy Efficiency Ratio	10% (0.1)
Water-Source HPs, All Capacities	Energy Efficiency Ratio	5% (0.05)
	Coefficient of Performance	5% (0.05)
	Integrated Energy Efficiency Ratio	10% (0.1)
Single Package Vertical ACs and HPs	Energy Efficiency Ratio	5% (0.05)
	Coefficient of Performance	5% (0.05)
Packaged Terminal ACs and HPs	Energy Efficiency Ratio	5% (0.05)
	Coefficient of Performance	5% (0.05)
Variable Refrigerant Flow ACs and HPs	Energy Efficiency Ratio	5% (0.05)
	Coefficient of Performance	5% (0.05)
	Integrated Energy Efficiency Ratio	10% (0.1)
Computer Room Air Conditioners	Sensible Coefficient of Performance	5% (0.05)
Commercial Warm-Air Furnaces	Thermal Efficiency	5% (0.05)
Commercial Refrigeration Equipment	Daily Energy Consumption	5% (0.05)

DOE received several comments regarding the confidence level for HVAC equipment. Goodman commented in support of the verification tolerances in the SNOPR but commented that HVAC equipment should have a 90% confidence level due to the uncertainty in psychrometric testing. (Goodman, No. 0086.1 at p. 2) MEUS and AHRI also commented that DOE should change the confidence level for HVAC equipment from 95% to 90% to match the confidence level of residential central air conditioners. (MEUS, No. 0083.1 at p. 1) Lennox requested that DOE change the confidence level for the IEER metric from 95% to 90%. (Lennox, No. 0080.1 at p. 3) DOE assumes that the references made by Goodman, AHRI, MEUS, and Lennox to ''confidence level'' refers to certification testing instead of verification testing because ''confidence level'' is the term used in 10 CFR 429.43, which applies in the certification context. DOE notes that aspects regarding the certification testing process fall outside the scope of this rulemaking.

AHRI and AAON also recommended that DOE adopt sampling procedures for low volume equipment as discussed in the Working Group meetings. (AHRI, No. 0076.1 at p. 2; AAON, No. 0082.1 at p. 2) DOE intends to address certification testing of low volume equipment and the remaining recommendations from the Working Group in a separate rulemaking. See, infra section IV.

Zero Zone noted that the proposed tolerances are too low to account for variability in products and testing. It asserted that DOE should have tolerances that do not penalize a manufacturer if one verification test does not meet the energy conservation standard plus the AEDM tolerance. Zero Zone recommended that DOE commission a study to evaluate the amount of experimental error in the Department's test procedures, and until

its completion, DOE should include an additional 5% test tolerance to account for experimental errors. (Zero Zone, No. 0077.1 at pp. 1–3) DOE notes that the verification tolerances proposed in this notice were developed by a Working Group that included representatives of CRE, HVAC, and WH manufacturers, efficiency advocates, a utility representative, and third-party laboratory representatives. The collective expertise of these different parties helped shape the provisions contained in today's final rule, which reflects the technical expertise of the different industries that will be affected by the rule. Consequently, the tolerance provisions in today's final rule account for the relevant technical factors. As a result, after careful consideration of these factors, DOE believes that the proposed tolerances—which are being adopted in today's rule—are reasonable and is declining to increase the tolerances by an additional 5% as suggested by Zero Zone.

Hussmann asked what the tolerance level would be to exceed the Federal energy conservation standards. (Hussmann, No. 0079.1 at p. 2) DOE clarifies that a certified rating, calculated in accordance with the applicable sampling plan in part 429 or as determined using an AEDM, must, at a minimum, meet the applicable energy conservation standard. However, a rating will not be deemed invalid by a single unit verification test result as long as the result adheres to the verification tolerances described in this section. This means, for example, for equipment with an energy efficiency standard, a verification result may be less than the efficiency standard level as long it does not fall outside the applicable tolerance level listed in Table II.7. However, DOE may initiate enforcement testing—in which case, a basic model will be determined compliant or non-compliant with the energy conservation standards based on the applicable enforcement statistics provided in 10 CFR 429.110.

Modine stated that the DOE test procedure for water-source heat pumps does not require part load tests, which result in the integrated energy efficiency ratio (IEER). In its view, DOE should not propose tolerances on IEER ratings. (Modine, No. 0084.1 at p. 1) DOE agrees that, at this time, part load testing is not required by the DOE test procedure and adds that DOE cannot verify a metric that is not certified to the Department. However, in light of the Working Group's recommended tolerances for part load metrics, the Department is not inclined at this time to remove these tolerances from the approach recommended by Working Group.

Lennox requested DOE clarify whether the tolerances discussed above in this section supersede the tolerances currently found in Appendix B to Subpart C of 10 CFR part 429, with respect to products certified with an AEDM. (Lennox, No. 0080.1 at p. 3) DOE notes that the proposed tolerances do not replace the sampling plan for enforcement testing of covered equipment and certain low-volume covered products as found in 10 CFR part 429, subpart C, appendix B. As discussed in section II.C.2, the regulations on enforcement testing are not superseded by today's verification testing proposals. Enforcement testing is the Department's method to determine if a model complies with the energy conservation standard; in contrast, verification testing determines if a model was rated correctly using an AEDM.

AAON supported the proposed tolerances for product and test uncertainty. (AAON, No. 0082.1 at p. 2). For the reasons stated above, DOE is adopting the tolerances described in this section as recommended by the Working Group.

5. Invalid Rating Process

In those cases where DOE has determined that a basic model's test results fall outside of the tolerances based on the verification process described in sections II.C.1 through II.C.4, the Working Group recommended that the following process apply when remedying the invalid rating. First, DOE will notify the manufacturer and the manufacturer will have 15 days to select and report one of the following options: (1) Conservatively rerate and recertify the model based on the DOE test data only, (2) discontinue the model through the certification process, or (3) conduct additional testing, rerate, and recertify the model in accordance with the sampling provisions of part 429, subpart B, using all additional manufacturer test data and the DOE test data. The manufacturer and DOE will determine the specific date by which the manufacturer must complete the process for correcting the invalid rating, but the process shall not take more than 180 days to complete.

AAON and Zero Zone support the options manufacturers can select to address an invalid rating. (AAON, No. 0082.1 at p. 2; Zero Zone, No. 0077.1 at p. 3) Lennox remarked that DOE should clarify that any notice of noncompliance shall not be issued pursuant to 10 CFR 429.114, with respect to a model rated with an AEDM, until after a manufacturer has been provided an opportunity to respond to an invalid rating as outlined in 429.70(c)(6)(vii). (Lennox, No. 0077.1 at p. 2) DOE notes that an invalid rating, which is determined by verification testing, is not equivalent to a determination of noncompliance. A unit may be found to be noncompliant based on enforcement testing, which is codified in 10 CFR 429.110. As no adverse comments were received regarding the Working Group's recommended process for addressing invalid ratings, DOE will adopt the process in today's final rule.

6. Consequences of an Invalid Rating

The Working Group negotiated the consequences of DOE determining that a rating is invalid for a given basic model based on assessment testing, which DOE proposed in the AEDM SNOPR. If the Department finds that within 24 rolling months a manufacturer has more than one basic model with an invalid rating whose results were derived from the same AEDM, then the manufacturer will be subject to the requirements listed in Table II.8. In general, to continue using the AEDM, if a manufacturer has between two and seven basic models with invalid ratings that were derived from the same AEDM, then the manufacturer must re-validate the AEDM according to the requirements in Table II.8 by conducting new testing of different basic models. If the manufacturer has eight or more basic models with invalid ratings from the same AEDM, then all the basic models to which the AEDM applied must be re-rated with physical testing in accordance with the applicable sampling plans in part 429. 10 CFR 429.11. 78 FR 62472, 62478.

TABLE II.8—CONSEQUENCES FOR INVALID RATINGS AS PROPOSED IN THE SNOPR

Number of invalid certified ratings from the same AEDM** within a rolling 24 month period†	Required manufacturer actions
2	Submit different test data and reports from testing to validate that AEDM within the validation classes to which it is applied.* Adjust the rating as appropriate.
4	Conduct double the minimum number of validation tests for the validation classes to which the AEDM is applied. Note, the tests required under subsection (c)(5)(H)(1) must be different tests on different models than the original tests performed under subsection (c)(2).
6	Conduct the minimum number of validation tests for the validation classes to which the AEDM is applied; and Conduct additional testing, which is equal to ½ the minimum number of validation tests for the validation classes to which the AEDM is applied, at either the manufacturer's facility or a third-party test facility, at the manufacturer's discretion. Note, the tests required under subsection (c)(5)(H)(1) must be different tests on different models than the original tests performed under subsection (c)(2).
>=8	Manufacturer has lost privilege to use AEDM. All ratings for models within the validation classes to which the AEDM applied should be rated via testing. Distribution cannot continue until certification(s) are corrected to reflect actual test data.

* A manufacturer may discuss with DOE's Office of Enforcement whether existing test data on different basic models within the validation classes to which that specific AEDM was applied may be used to meet this requirement.

** Where the same AEDM means a computer simulation or mathematical model that is identified by the manufacturer at the time of certification as having been used to rate a model or group of models.

† The twenty-four month period begins with a DOE determination that a rating is invalid through the process outlined above. Additional invalid ratings apply for the purposes of determining the appropriate consequences if the subsequent determination(s) is based on selection of a unit for testing within the twenty-four month period (i.e., subsequent determinations need not be made within 24 months).

DOE received comments in support of the consequences proposed in the AEDM SNOPR from AAON and Zero Zone. (AAON, No. 0082.1 at p. 2; Zero Zone, No. 0077.1 at p. 3) Hussmann commented that the penalty for six failures appeared less severe than the penalty for four failures. (Hussmann, No. 0079.1 at p. 2) DOE agrees with Hussmann that the table does not clearly indicate that if a manufacturer has 6 invalid certified ratings from the same AEDM within a rolling 24-month period then the manufacturer must conduct the minimum number of validation tests at a third-party test facility. The manufacturer must conduct additional testing, at least half the minimum number of validation tests for the validation classes to which the AEDM is applied, at either a third-party test facility or at the manufacturer's lab.

Goodman commented that Table II.8 should be modified from ''adjust the rating as appropriate'' to ''adjust the ratings as appropriate.'' (Goodman, No. 0086.1 at p. 2) DOE agrees with Goodman's suggestion to correct the typographical error. In today's final rule, DOE is adopting the proposed penalties for invalid ratings with Hussmann's and Goodman's suggested modifications as discussed in further detail above.

7. Regaining the Use of AEDMs

If, as a result of eight or more invalid ratings, a manufacturer has lost the privilege of using an AEDM for rating purposes, the manufacturer may regain the ability to use an AEDM by (1) investigating the cause(s) for the failures, (2) identifying the root cause(s) for the failures, (3) taking corrective action to address the root cause(s), (4) validating the AEDM by performing six new tests for each validation class with a minimum of two of the tests performed at a third-party test facility, and (5) obtaining DOE authorization to resume the use of the AEDM. At its discretion, DOE may reduce or waive these requirements, in which case, DOE will provide public notice and a written explanation of the grounds for reducing or waiving the requirements. 78 FR 62472, 62478. AAON and Zero Zone commented in support of the process outlined for allowing manufacturers to regain the use of AEDMs. (AAON, No. 0082.1 at p. 2; Zero Zone, No. 0077.1 at p. 3) As no adverse comments were received, DOE is adopting this proposed process.

III. Basic Model Definitions

The Working Group recommended amended basic model definitions for commercial refrigeration equipment; commercial warm air furnaces; commercial packaged boilers; and commercial water heaters. Additionally, the Working Group recommended distinct basic model definitions for each type of commercial HVAC equipment, such as packaged terminal air conditioners (PTACs) and heat pumps (PTHPs); small, large, and very large air-cooled commercial package air conditioning and heating equipment; small, large, and very large water-cooled, evaporatively-cooled, and water source commercial package air conditioning and heating equipment; single package vertical air conditioners and heat pumps (SPVUs); computer room air conditioners; and variable refrigerant flow multi-split air conditioners and heat pumps with capacities greater than 65,000 Btu/h. The AEDM SNOPR presented the basic model definitions by covered equipment type that the Working Group developed and added several clarifications made by DOE to harmonize the wording of the definitions for consistency purposes. These clarifications did not change the meaning of the definitions as agreed upon by the Working Group. 78 FR 62472, 62478.

Goodman commented that DOE added the term ''within a single equipment class'' to all the definitions, and in some cases this term is not applicable. (Goodman, No. 0086.1 at p. 2) DOE does not agree with Goodman's comment. When evaluating and establishing energy conservation standards, DOE divides covered equipment into equipment classes by the type of energy used or by capacity or other performance-related features that justify a different standard. (42 U.S.C. 6295(q)) Currently, DOE has established a number of different equipment classes for commercial HVAC, WH, and refrigeration equipment in the course of the individual standards rulemakings by considering the type of energy use, capacity, or other performance-related features of the equipment. Each equipment class has a different standard that applies. Thus, DOE does not believe manufacturers are able to group models into basic models that span equipment classes and may have different standards that apply. Consequently,

DOE is clarifying that a basic model cannot extend across multiple equipment classes. In today's rule, DOE is adopting the basic model definitions as they were proposed in the AEDM SNOPR.

IV. Discussion of Specific Revisions to the Compliance Date for Certification of Commercial HVAC, WH, and Refrigeration Equipment

In the AEDM SNOPR, DOE proposed the Working Group's recommendation that certification reports must be initially submitted for all basic models distributed in commerce according to the schedule shown in Table IV.1. After the initial certification date, DOE's existing regulations require that manufacturers certify: (1) New basic models before distribution in commerce; (2) existing basic models, whose certified rating remains valid, annually; (3) existing basic models, whose design is altered resulting in a change in rating that is more consumptive or less efficient, at the time the design change is made; and (4) previously certified basic models that have been discontinued annually.

TABLE IV.1—INITIAL CERTIFICATION COMPLIANCE SCHEDULE

The initial certification date is the number of months shown below after the AEDM final rule is published in the **Federal Register**	Equipment type
6	Commercial Warm Air Furnaces PTACs and PTHPs.
9	Commercial gas-fired and oil-fired instantaneous water heaters less than 10 gallons.
	Commercial gas-fired and oil-fired hot water supply boilers less than 10 gallons.
12	Commercial water heaters (all others types).
	Small commercial packaged boilers (≤ 2.5 million Btu/h).
	Self-Contained CRE with solid or transparent doors.
15	VRFs.
18	Small, large and very large air, water, and evaporatively-cooled and water source commercial packaged ACs and HPs.
	SPVUs.
	CRACs.
	Large packaged boilers (> 2.5 million Btu/h).
	CRE (all other types).

The Working Group also agreed to the following caveats on the above schedule. If, in the separate, certification rulemaking, DOE adopts regulations that are significantly different from the remainder of the Working Group recommendations, then the initial certification compliance dates will be based on the final rule date for the separate rulemaking effort. The Working Group agreed that in no instance should the initial certification compliance date be less than two months after the issuance of the final rule adopting the remainder of the Working Group's recommendations. Additionally, the Working Group recommended that DOE allow a six-month grace period following each certification date during which DOE will not pursue civil penalties for certification violations. The Working Group emphasized that a grace period would allow manufacturers time to gain familiarity with the certification process and remedy any problems. 78 FR 62472, 62478.

Lennox commented that it is essential for DOE to extend the current compliance dates by the timeline outlined in the AEDM SNOPR and include the 6-month grace period, agreed upon by the Working Group, in the finalized regulatory text. Additionally, Lennox indicated that DOE should reiterate the caveats to the compliance date extensions that the Working Group recommended (Lennox, No. 0080.1 at p. 2). DOE notes that the six-month grace period and caveats agreed upon by the working group are clearly stated in the previous paragraph. Hoshizaki America requested that DOE give more time to allow each manufacturer to review and validate its AEDMs. (Hoshizaki American, No. 0087.1 at p. 1) The Working Group determined that the extension to the certification deadlines described in Table IV.1 allowed manufacturers sufficient time to validate AEDMs and certify compliance. The Department agrees with the Working Group's proposal.

DOE plans to issue a notice of proposed rulemaking containing the remaining issues from the Working Group recommendations before the end of the year, which was the target timeframe discussed by the Working Group. Accordingly, DOE is adopting the schedule in today's final rule.

V. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget has determined that test procedure rulemakings do not constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. Administrative Procedure Act

DOE has determined, pursuant to authority at 5 U.S.C. 553(d)(1), that the amendment to 10 CFR 429.12 is not subject to a 30-day delay in effective date because this rule extending the compliance date for a requirement relieves a restriction.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601, et seq.) requires the preparation of an initial regulatory flexibility analysis (RFA) for any rule that by law must be proposed for public

comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site: *www.gc.doe.gov.* DOE reviewed the test procedures considered in today's final rule under the provisions of the Regulatory Flexibility Act (RFA) and the policies and procedures published on February 19, 2003.

DOE reviewed the AEDM requirements being adopted under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. As discussed in more detail below, DOE found that because the provisions of this rule will not result in increased testing and/or reporting burden for manufacturers already eligible to use an AEDM and will extend AEDM use to a number of manufacturers, thus reducing their testing burden. Manufacturers will not experience increased financial burden as a result of this rule.

Today's final rule, which adopts voluntary methods for certifying compliance in lieu of conducting actual physical testing, would not increase the testing or reporting burden of manufacturers who currently use, or are eligible to use, an AEDM to certify their products. Furthermore, the requirements for validation of an AEDM adopted in today's final rule do not require more testing than that required by the AEDM provisions included in the March 7, 2011 Certification, Compliance and Enforcement Final Rule (76 FR 12422) (''March 2011 Final Rule''), and would relax tolerances that tested equipment are required to meet in order to substantiate the AEDM.

DOE has also clarified in today's final rule how it intends to exercise its authority to verify the performance of equipment certified using an AEDM. DOE negotiated the process with industry, resulting in the requirements that are being adopted in today's final rule. Because testing conducted to verify AEDM performance would be DOE-initiated and conducted testing and the process to determine an invalid rating includes manufacturer involvement throughout, DOE does not believe that verification of ratings resulting from an AEDM will have a substantial impact on small businesses.

Today's final rule also permits the manufacturer of other types of covered equipment that are currently not permitted to use an AEDM to rate and certify equipment using an AEDM. Manufacturers that are not eligible to use AEDMs must currently test at least two units of every basic model that they produce to certify compliance to the Department pursuant to the March 2011 Final Rule. The provisions in today's final rule would, if followed by a manufacturer choosing to use an AEDM rather than conduct a full physical test, reduce that manufacturer's testing burden by enabling it to simulate testing based on test data derived from a reduced number of units. While the Department believes that permitting the greater use of AEDMs will reduce the affected manufacturer's test burden, use of an AEDM is at the manufacturer's discretion. If, as a result of any of the regulations in this final rule, a manufacturer believes that use of an AEDM would increase rather than decrease its financial burden, the manufacturer may choose not to employ this alternative method. Should a manufacturer choose to abstain from using an AEDM, this provision would not apply and the manufacturer would continue to remain subject to the requirements of any DOE test procedure that applies to that product, which would result in no change in burden from that which is required currently.

Finally, DOE is codifying two aspects regarding the certification of commercial HVAC, WH, and refrigeration equipment that should further decrease the burden of existing DOE regulations. First, DOE is clarifying its basic model definitions, which allow a manufacturer to group individual models based on certain characteristics. The basic model definitions provide the manufacturer with flexibility in making these groupings and were negotiated as part of the Working Group's meetings to develop a recommended proposal for adoption by DOE. Lastly, DOE is extending the initial compliance date for the certification of commercial HVAC, WH, and refrigeration equipment from the current date of December 31, 2013. The new compliance dates range from 6 months to 18 months from publication of this final rule.

For the reasons enumerated above, DOE is certifying that this final rule will not have a significant impact on a substantial number of small entities.

D. Review Under the Paperwork Reduction Act

Manufacturers of the covered equipment addressed in today's final rule must certify to DOE that their equipment comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their equipment according to the applicable DOE test procedures for the given equipment type, including any amendments adopted for those test procedures, or use an AEDM to develop the certified ratings of the basic models. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including the equipment at issue in this final rule. (76 FR 12422 (March 7, 2011)). The collection-of-information requirement for these certification and recordkeeping provisions is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB Control Number 1910–1400. Public reporting burden for the certification is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

E. Review Under the National Environmental Policy Act

DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this rule would adopt changes for certifying certain covered equipment, so it would not affect the amount, quality or distribution of energy usage, and, therefore, would not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A6 under 10 CFR part 1021, subpart D. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

F. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this rule and has determined that it 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the equipment that is the subject of today's final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

G. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

H. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *www.gc.doe.gov.* DOE examined today's rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

I. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

J. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988),that this regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

K. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's rule under the OMB and DOE guidelines and has concluded that it is consistent with the applicable policies in those guidelines.

L. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's rule to establish alternate certification requirements for certain covered equipment is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

M. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition. Today's rule to amend regulations relating to AEDMs does not propose the use of any commercial standards.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's final rule.

List of Subjects in 10 CFR Parts 429 and 431

Administrative practice and procedure, Confidential business information, Energy conservation, Reporting and recordkeeping requirements.

Issued in Washington, DC, on December 24, 2013.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE amends parts 429 and 431 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations, as set forth below:

PART 429—CERTIFICATION, COMPLIANCE AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 2. Section 429.12 is amended by revising paragraph (i) to read as follows:

§ 429.12 General requirements applicable to certification reports.

* * * * *

(i) *Compliance dates.* For any product subject to an applicable energy conservation standard for which the compliance date has not yet occurred, a certification report must be submitted not later than the compliance date for the applicable energy conservation standard. The covered products enumerated below are subject to the stated compliance dates for initial certification:

(1) Commercial warm air furnaces, packaged terminal air conditioners, and packaged terminal heat pumps, July 1, 2014;

(2) Commercial gas-fired and oil-fired instantaneous water heaters less than 10 gallons and commercial gas-fired and oil-fired hot water supply boilers less than 10 gallons, October 1, 2014;

(3) All other types of covered commercial water heaters except those specified in paragraph (i)(2) of this section, commercial packaged boilers with input capacities less than or equal to 2.5 million Btu/h, and self-contained commercial refrigeration equipment with solid or transparent doors, December 31, 2014;

(4) Variable refrigerant flow air conditioners and heat pumps, March 31, 2015;

(5) Small, large, or very large air-cooled, water-cooled, evaporatively-cooled, and water-source commercial air conditioning and heating equipment, single package vertical units, computer room air conditioners, commercial packaged boilers with input capacities greater than 2.5 million Btu/h, and all other types of commercial refrigeration equipment except those specified in paragraph (i)(3) of this section, July 1, 2015.

■ 3. Section 429.42 is amended by revising paragraph (a) to read as follows:

§ 429.42 Commercial refrigerators, freezers, and refrigerator-freezers.

(a) *Determination of represented value.* Manufacturers can determine the represented value, which includes the certified rating, for each basic model of commercial refrigerator, freezer, or refrigerator-freezer either by testing, in conjunction with the applicable sampling provisions, or by applying an AEDM.

(1) *Units to be tested.* (i) If the represented value for a given basic model is determined through testing, the general requirements of § 429.11 are applicable; and

(ii) For each basic model selected for testing, a sample of sufficient size shall be randomly selected and tested to ensure that—

(A) Any represented value of energy consumption or other measure of energy use of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of:

(*1*) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

And $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample; or,

(*2*) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.10, where:

$$UCL = \bar{x} + t_{0.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A to subpart B of part 429); And,

(B) Any represented value of the energy efficiency or other measure of energy consumption of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

(*1*) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

And, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample; or,

(*2*) The lower 95 percent confidence limit (LCL) of the true mean divided by 0.90, where:

$$LCL = \bar{x} - t_{0.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom

(from Appendix A to subpart B of part 429).

(2) *Alternative efficiency determination methods.* In lieu of testing, a represented value of efficiency or consumption for a basic model of commercial refrigerator, freezer or refrigerator-freezer must be determined through the application of an AEDM pursuant to the requirements of § 429.70 and the provisions of this section, where:

(i) Any represented value of energy consumption or other measure of energy use of a basic model for which consumers would favor lower values shall be greater than or equal to the output of the AEDM and less than or equal to the Federal standard for that basic model; and

(ii) Any represented value of energy efficiency or other measure of energy consumption of a basic model for which consumers would favor higher values shall be less than or equal to the output of the AEDM and greater than or equal to the Federal standard for that basic model.

* * * * *

■ 4. Section 429.43 is amended by revising paragraph (a) to read as follows:

§ 429.43 Commercial heating, ventilating, air conditioning (HVAC) equipment.

(a) *Determination of represented value.* Manufacturers can determine the represented value, which includes the certified rating, for each basic model of commercial HVAC equipment either by testing, in conjunction with the applicable sampling provisions, or by applying an AEDM.

(1) *Units to be tested.* (i) If the represented value is determined through testing, the general requirements of § 429.11 are applicable; and

(ii) For each basic model selected for testing, a sample of sufficient size shall be randomly selected and tested to ensure that—

(A) Any represented value of energy consumption or other measure of energy use of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of:

(*1*) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

And, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample; or,

(*2*) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A to subpart B of part 429). And,

(B) Any represented value of energy efficiency or other measure of energy consumption of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

(*1*) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

And, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample; or,

(*2*) The lower 95 percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A to subpart B of part 429).

(2) *Alternative efficiency determination methods.* In lieu of testing, a represented value of efficiency or consumption for a basic model of commercial HVAC equipment must be determined through the application of an AEDM pursuant to the requirements of § 429.70 and the provisions of this section, where:

(i) Any represented value of energy consumption or other measure of energy use of a basic model for which consumers would favor lower values shall be greater than or equal to the output of the AEDM and less than or equal to the Federal standard for that basic model; and

(ii) Any represented value of energy efficiency or other measure of energy consumption of a basic model for which consumers would favor higher values shall be less than or equal to the output of the AEDM and greater than or equal to the Federal standard for that basic model.

* * * * *

■ 5. Section 429.44 is amended by revising paragraph (a) to read as follows:

§ 429.44 Commercial water heating equipment.

(a) *Determination of represented value.* Manufacturers can determine the represented value, which includes the certified rating, for each basic model of commercial water heating equipment, either by testing, in conjunction with the applicable sampling provisions, or by applying an AEDM.

(1) *Units to be tested.* (i) If the represented value for a given basic model is determined through testing, the general requirements of § 429.11 are applicable; and

(ii) For each basic model selected for testing, a sample of sufficient size shall be randomly selected and tested to ensure that—

(A) Any represented value of energy consumption or other measure of energy use of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of:

(*1*) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

And, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample; or,

(*2*) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A to subpart B of part 429). And,

(B) Any represented value of energy efficiency or other measure of energy consumption of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

(*1*) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

And, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample; or,

(*2*) The lower 95 percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n-1 degrees of freedom (from Appendix A to subpart B of part 429).

(2) *Alternative efficiency determination methods.* In lieu of testing, a represented value of efficiency or consumption for a basic model of commercial water heating equipment must be determined through the application of an AEDM pursuant to the requirements of § 429.70 and the provisions of this section, where:

(i) Any represented value of energy consumption or other measure of energy use of a basic model for which consumers would favor lower values shall be greater than or equal to the output of the AEDM and less than or equal to the Federal standard for that basic model; and

(ii) Any represented value of energy efficiency or other measure of energy consumption of a basic model for which consumers would favor higher values shall be less than or equal to the output of the AEDM and greater than or equal to the Federal standard for that basic model.

* * * * *

■ 6. Section 429.70 is amended by revising paragraphs (a), (b) and (c) to read as follows:

§ 429.70 Alternative methods for determining energy efficiency and energy use.

(a) *General applicability of an AEDM.* A manufacturer of covered products or covered equipment explicitly authorized to use an AEDM in §§ 429.14 through 429.54 may not distribute any basic model of such equipment in commerce unless the manufacturer has determined the energy efficiency of the basic model, either from testing the basic model in conjunction with DOE's certification sampling plans and statistics or from applying an alternative method for determining energy efficiency or energy use (AEDM) to the basic model, in accordance with the requirements of this section. In instances where a manufacturer has tested a basic model, the manufacturer may not knowingly use an AEDM to overrate the efficiency (or underrate the consumption) of the model.

(b) *Testing.* Testing for each covered product or covered equipment must be done in accordance with the sampling plan provisions established in § 429.11 and the testing procedures in parts 430 and 431 of this chapter.

(c) *Alternative efficiency determination method (AEDM) for commercial HVAC, WH, and refrigeration equipment*— (1) *Criteria an AEDM must satisfy.* A manufacturer may not apply an AEDM to a basic model to determine its efficiency pursuant to this section unless:

(i) The AEDM is derived from a mathematical model that estimates the energy efficiency or energy consumption characteristics of the basic model as measured by the applicable DOE test procedure;

(ii) The AEDM is based on engineering or statistical analysis, computer simulation or modeling, or other analytic evaluation of performance data; and

(iii) The manufacturer has validated the AEDM, in accordance with paragraph (c)(2) of this section with basic models that meet the current Federal energy conservation standards.

(2) *Validation of an AEDM.* Before using an AEDM, the manufacturer must validate the AEDM's accuracy and reliability as follows:

(i) The manufacturer must select at least the minimum number of basic models for each validation class specified in paragraph (c)(2)(iv) of this section to which the particular AEDM applies. Using the AEDM, calculate the energy use or efficiency for each of the selected basic models. Test a single unit of each selected basic model in accordance with paragraph (c)(2)(iii) of this section. Compare the results from the single unit test and the AEDM energy use or efficiency output according to paragraph (c)(2)(ii) of this section. The manufacturer is responsible for ensuring the accuracy and reliability of the AEDM.

(ii) *Individual model tolerances.* (A) For those covered products with an energy-efficiency metric, the predicted efficiency for each model calculated by applying the AEDM may not be more than five percent greater than the efficiency determined from the corresponding test of the model.

(B) For those covered products with an energy-consumption metric, the predicted energy consumption for each model, calculated by applying the AEDM, may not be more than five percent less than the energy consumption determined from the corresponding test of the model.

(C) For all covered products, the predicted energy efficiency or consumption for each model calculated by applying the AEDM must meet or exceed the applicable federal energy conservation performance standard.

(iii) *Additional test unit requirements.* (A) Each AEDM must be supported by test data obtained from physical tests of current models; and

(B) Test results used to validate the AEDM must meet or exceed current, applicable Federal standards as specified in part 431 of this chapter; and

(C) Each test must have been performed in accordance with the DOE test procedure specified in parts 430 or 431 of this chapter or test procedure waiver for which compliance is required at the time the basic model is distributed in commerce.

(iv) *Validation classes.*

Validation class	Minimum number of distinct models that must be tested per AEDM
Air-Cooled, Split and Packaged Air Conditioners (ACs) and Heat Pumps (HPs) less than 65,000 Btu/h Cooling Capacity (3-Phase).	2 Basic Models.
(A) Commercial HVAC validation classes	
Air-Cooled, Split and Packaged ACs and HPs greater than or equal to 65,000 Btu/h Cooling Capacity and Less than 760,000 Btu/h Cooling Capacity.	2 Basic Models.
Water-Cooled, Split and Packaged ACs and HPs, All Cooling Capacities	2 Basic Models.
Evaporatively-Cooled, Split and Packaged ACs and HPs, All Capacities	2 Basic Models.
Water-Source HPs, All Capacities	2 Basic Models.
Single Package Vertical ACs and HPs	2 Basic Models.
Packaged Terminal ACs and HPs	2 Basic Models.
Air-Cooled, Variable Refrigerant Flow ACs and HPs	2 Basic Models.
Water-Cooled, Variable Refrigerant Flow ACs and HPs	2 Basic Models.

Validation class	Minimum number of distinct models that must be tested per AEDM
Computer Room Air Conditioners, Air Cooled	2 Basic Models.
Computer Room Air Conditioners, Water-Cooled	2 Basic Models.
(B) Commercial water heater validation classes	
Gas-fired Water Heaters and Hot Water Supply Boilers Less than 10 Gallons	2 Basic Models.
Gas-fired Water Heaters and Hot Water Supply Boilers Greater than or Equal to 10 Gallons	2 Basic Models.
Oil-fired Water Heaters and Hot Water Supply Boilers Less than 10 Gallons	2 Basic Models.
Oil-fired Water Heaters and Hot Water Supply Boilers Greater than or Equal to 10 Gallons	2 Basic Models.
Electric Water Heaters	2 Basic Models.
Heat Pump Water Heaters	2 Basic Models.
Unfired Hot Water Storage Tanks	2 Basic Models.
(C) Commercial packaged boilers validation classes	
Gas-fired, Hot Water Only Commercial Packaged Boilers	2 Basic Models.
Gas-fired, Steam Only Commercial Packaged Boilers	2 Basic Models.
Gas-fired Hot Water/Steam Commercial Packaged Boilers	2 Basic Models.
Oil-fired, Hot Water Only Commercial Packaged Boilers	2 Basic Models.
Oil-fired, Steam Only Commercial Packaged Boilers	2 Basic Models.
Oil-fired Hot Water/Steam Commercial Packaged Boilers	2 Basic Models.
(D) Commercial furnace validation classes	
Gas-fired Furnaces	2 Basic Models.
Oil-fired Furnaces	2 Basic Models.
(E) Commercial refrigeration equipment validation classes	
Self-Contained Open Refrigerators	2 Basic Models.
Self-Contained Open Freezers	2 Basic Models.
Remote Condensing Open Refrigerators	2 Basic Models.
Remote Condensing Open Freezers	2 Basic Models.
Self-Contained Closed Refrigerators	2 Basic Models.
Self-Contained Closed Freezers	2 Basic Models.
Remote Condensing Closed Refrigerators	2 Basic Models.
Remote Condensing Closed Freezers	2 Basic Models.

[1] The minimum number of tests indicated above must be comprised of a transparent model, a solid model, a vertical model, a semi-vertical model, a horizontal model, and a service-over-the counter model, as applicable based on the equipment offering. However, manufacturers do not need to include all types of these models if it will increase the minimum number of tests that need to be conducted.

(3) *AEDM records retention requirements.* If a manufacturer has used an AEDM to determine representative values pursuant to this section, the manufacturer must have available upon request for inspection by the Department records showing:

(i) The AEDM, including the mathematical model, the engineering or statistical analysis, and/or computer simulation or modeling that is the basis of the AEDM;

(ii) Product information, complete test data, AEDM calculations, and the statistical comparisons from the units tested that were used to validate the AEDM pursuant to paragraph (c)(2) of this section; and

(iii) Product information and AEDM calculations for each basic model to which the AEDM has been applied.

(4) *Additional AEDM requirements.* If requested by the Department and at DOE's discretion, the manufacturer must perform at least one of the following:

(i) Conduct simulations before representatives of the Department to predict the performance of particular basic models of the product to which the AEDM was applied;

(ii) Provide analyses of previous simulations conducted by the manufacturer; or

(iii) Conduct certification testing of basic models selected by the Department.

(5) *AEDM verification testing.* DOE may use the test data for a given individual model generated pursuant to § 429.104 to verify the certified rating determined by an AEDM as long as the following process is followed:

(i) *Selection of units.* DOE will obtain units for test from retail, where available. If units cannot be obtained from retail, DOE will request that a unit be provided by the manufacturer;

(ii) *Lab requirements.* DOE will conduct testing at an independent, third-party testing facility of its choosing. In cases where no third-party laboratory is capable of testing the equipment, it may be tested at a manufacturer's facility upon DOE's request.

(iii) *Manufacturer participation.* [Reserved]

(iv) *Testing.* At no time during verification testing may the lab and the manufacturer communicate without DOE authorization. All verification testing will be conducted in accordance with the applicable DOE test procedure, as well as each of the following to the extent that they apply:

(A) Any active test procedure waivers that have been granted for the basic model;

(B) Any test procedure guidance that has been issued by DOE;

(C) The installation and operations manual that is shipped with the unit;

(D) Any additional information that was provided by the manufacturer at the time of certification (prior to DOE obtaining the unit for test); and

(E) If during test set-up or testing, the lab indicates to DOE that it needs additional information regarding a given basic model in order to test in accordance with the applicable DOE test procedure, DOE may organize a meeting between DOE, the manufacturer and the lab to provide such information.

(v) *Failure to meet certified rating.* If a model tests worse than its certified rating by an amount exceeding the tolerance prescribed in paragraph (c)(5)(vi) of this section, DOE will notify the manufacturer. DOE will provide the manufacturer with all documentation related to the test set up, test conditions, and test results for the unit. Within the timeframe allotted by DOE, the manufacturer may then:

(A) Present all claims regarding testing validity; and

(B) If the manufacturer was not on site for the initial test set-up, request a retest of the previously tested unit with manufacturer and DOE representatives on-site for the test set-up. DOE will not conduct the retest using a different unit of the same basic model unless DOE and the manufacturer determine it is necessary based on the test results, claims presented, and DOE regulations.

(vi) *Tolerances.* (A) For consumption metrics, the result from a DOE verification test must be less than or equal to the certified rating × (1 + the applicable tolerance).

(B) For efficiency metrics, the result from a DOE verification test must be greater than or equal to the certified rating × (1 − the applicable tolerance).

Equipment	Metric	Applicable tolerance
Commercial Packaged Boilers	Combustion Efficiency	5% (0.05)
	Thermal Efficiency	5% (0.05)
Commercial Water Heaters or Hot Water Supply Boilers	Thermal Efficiency	5% (0.05)
	Standby Loss	10% (0.1)
Unfired Storage Tanks	R-Value	10% (0.1)
Air-Cooled, Split and Packaged ACs and HPs less than 65,000 Btu/h.	Seasonal Energy-Efficiency Ratio	5% (0.05)
Cooling Capacity (3-Phase)	Heating Season Performance Factor	5% (0.05)
	Energy Efficiency Ratio	10% (0.1)
Air-Cooled, Split and Packaged ACs and HPs greater than or equal to 65,000 Btu/h Cooling Capacity and Less than 760,000 Btu/h Cooling Capacity.	Energy Efficiency Ratio	5% (0.05)
	Coefficient of Performance	5% (0.05)
	Integrated Energy Efficiency Ratio	10% (0.1)
Water-Cooled, Split and Packaged ACs and HPs, All Cooling Capacities.	Energy Efficiency Ratio	5% (0.05)
	Coefficient of Performance	5% (0.05)
	Integrated Energy Efficiency Ratio	10% (0.1)
Evaporatively-Cooled, Split and Packaged ACs and HPs, All Capacities.	Energy Efficiency Ratio	5% (0.05)
	Coefficient of Performance	5% (0.05)
	Integrated Energy Efficiency Ratio	10% (0.1)
Water-Source HPs, All Capacities	Energy Efficiency Ratio	5% (0.05)
	Coefficient of Performance	5% (0.05)
	Integrated Energy Efficiency Ratio	10% (0.1)
Single Package Vertical ACs and HPs	Energy Efficiency Ratio	5% (0.05)
	Coefficient of Performance	5% (0.05)
Packaged Terminal ACs and HPs	Energy Efficiency Ratio	5% (0.05)
	Coefficient of Performance	5% (0.05)
Variable Refrigerant Flow ACs and HPs	Energy Efficiency Ratio	5% (0.05)
	Coefficient of Performance	5% (0.05)
	Integrated Energy Efficiency Ratio	10% (0.1)
Computer Room Air Conditioners	Sensible Coefficient of Performance	5% (0.05)
Commercial Warm-Air Furnaces	Thermal Efficiency	5% (0.05)
Commercial Refrigeration Equipment	Daily Energy Consumption	5% (0.05)

(vii) *Invalid rating.* If, following discussions with the manufacturer and a retest where applicable, DOE determines that the verification testing was conducted appropriately in accordance with the DOE test procedure, DOE will issue a determination that the rating for the model is invalid. The manufacturer must elect, within 15 days, one of the following to be completed in a time frame specified by DOE, which is never to exceed 180 days:

(A) Re-rate and re-certify the model based on DOE's test data alone; or

(B) Discontinue the model through the certification process; or

(C) Conduct additional testing and re-rate and re-certify the basic model based on all test data collected, including DOE's test data.

(viii) *AEDM use.* (A) If DOE has determined that a manufacturer made invalid ratings on two or more models rated using the same AEDM within a 24 month period, the manufacturer must take the action listed in the table corresponding to the number of invalid certified ratings. The twenty-four month period begins with a DOE determination that a rating is invalid through the process outlined above. Additional invalid ratings apply for the purposes of determining the appropriate consequences if the subsequent determination(s) is based on selection of a unit for testing within the twenty-four month period (i.e., subsequent determinations need not be made within 24 months).

Number of invalid certified ratings from the same AEDM[2] within a rolling 24 month period[3]	Required manufacturer actions
2	Submit different test data and reports from testing to validate that AEDM within the validation classes to which it is applied.[1] Adjust the ratings as appropriate.
4	Conduct double the minimum number of validation tests for the validation classes to which the AEDM is applied. Note, the tests required under this paragraph (c)(5)(viii) must be performed on different models than the original tests required under paragraph (c)(2) of this section.
6	Conduct the minimum number of validation tests for the validation classes to which the AEDM is applied at a third-part test facility; And Conduct addition testing, which is equal to ½ the minimum number of validation tests for the validation classes to which the AEDM is applied , at either the manufacturer's facility or a third-party test facility, at the manufacturer's discretion. Note, the tests required under this paragraph (c)(5)(viii) must be performed on different models than the original tests performed under paragraph (c)(2) of this section.
> = 8	Manufacturer has lost privilege to use AEDM. All ratings for models within the validation classes to which the AEDM applied should be rated via testing. Distribution cannot continue until certification(s) are corrected to reflect actual test data.

[1] A manufacturer may discuss with DOE's Office of Enforcement whether existing test data on different basic models within the validation classes to which that specific AEDM was applied may be used to meet this requirement.

[2] The "same AEDM" means a computer simulation or mathematical model that is identified by the manufacturer at the time of certification as having been used to rate a model or group of models.

[3] The twenty-four month period begins with a DOE determination that a rating is invalid through the process outlined above. Additional invalid ratings apply for the purposes of determining the appropriate consequences if the subsequent determination(s) is based on testing of a unit that was selected for testing within the twenty-four month period (i.e., subsequent determinations need not be made within 24 months).

(B) If, as a result of eight or more invalid ratings, a manufacturer has lost the privilege of using an AEDM for rating, the manufacturer may regain the ability to use an AEDM by:

(*1*) Investigating and identifying cause(s) for failures;

(*2*) Taking corrective action to address cause(s);

(*3*) Performing six new tests per validation class, a minimum of two of which must be performed by an independent, third-party laboratory to validate the AEDM; and

(*4*) Obtaining DOE authorization to resume use of the AEDM.

* * * * *

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 7. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 8. Section 431.62 is amended by revising the definition of "basic model" to read as follows:

§ 431.62 Definitions concerning commercial refrigerators, freezers and refrigerator-freezers.

* * * * *

Basic model means all commercial refrigeration equipment manufactured by one manufacturer within a single equipment class, having the same primary energy source, and that have essentially identical electrical, physical, and functional characteristics that affect energy consumption.

* * * * *

■ 9. Section 431.72 is amended by revising the definition of "basic model" to read as follows:

§ 431.72 Definitions concerning commercial warm air furnaces.

* * * * *

Basic model means all commercial warm air furnaces manufactured by one manufacturer within a single equipment class, that have the same nominal input rating and the same primary energy source (e.g. gas or oil) and that do not have any differing physical or functional characteristics that affect energy efficiency.

* * * * *

■ 10. Section 431.82 is amended by revising the definition of "basic model" to read as follows:

§ 431.82 Definitions concerning commercial packaged boilers.

* * * * *

Basic model means all commercial packaged boilers manufactured by one manufacturer within a single equipment class having the same primary energy source (e.g., gas or oil) and that have essentially identical electrical, physical and functional characteristics that affect energy efficiency.

* * * * *

■ 11. Section 431.92 is amended by revising the definition of "basic model" to read as follows:

§ 431.92 Definitions concerning commercial air conditioners and heat pumps.

* * * * *

Basic model includes:

(1) *Packaged terminal air conditioner (PTAC)* or packaged terminal heat pump (PTHP) means all units manufactured by one manufacturer within a single equipment class, having the same primary energy source (e.g., electric or gas), and which have the same or comparable compressors, same or comparable heat exchangers, and same or comparable air moving systems that have a cooling capacity within 300 Btu/h of one another.

(2) *Small, large, and very large air-cooled or water-cooled commercial package air conditioning and heating equipment* means all units manufactured by one manufacturer within a single equipment class, having the same or comparably performing compressor(s), heat exchangers, and air moving system(s) that have a common "nominal" cooling capacity.

(3) *Single package vertical units* means all units manufactured by one manufacturer within a single equipment class, having the same primary energy source (e.g., electric or gas), and which have the same or comparably performing compressor(s), heat exchangers, and air moving system(s) that have a rated cooling capacity within 1500 Btu/h of one another.

(4) *Computer room air conditioners* means all units manufactured by one manufacturer within a single equipment class, having the same primary energy source (e.g., electric or gas), and which have the same or comparably

performing compressor(s), heat exchangers, and air moving system(s) that have a common ''nominal'' cooling capacity.

(5) *Variable refrigerant flow systems* means all units manufactured by one manufacturer within a single equipment class, having the same primary energy source (e.g., electric or gas), and which have the same or comparably performing compressor(s) that have a common ''nominal'' cooling capacity and the same heat rejection medium (e.g., air or water) (includes VRF water source heat pumps).

(6) *Small, large, and very large water source heat pump* means all units manufactured by one manufacturer within a single equipment class, having the same primary energy source (e.g., electric or gas), and which have the same or comparable compressors, same or comparable heat exchangers, and same or comparable ''nominal'' capacity.

* * * * *

■ 12. Section 431.102 is amended by revising the definition of ''basic model'' to read as follows:

§ 431.102 Definitions concerning commercial water heaters, hot water supply boilers, and unfired hot water storage tanks.

* * * * *

Basic model means all water heaters, hot water supply boilers, or unfired hot water storage tanks manufactured by one manufacturer within a single equipment class, having the same primary energy source (e.g., gas or oil) and that have essentially identical electrical, physical and functional characteristics that affect energy efficiency.

* * * * *

[FR Doc. 2013–31211 Filed 12–30–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0023; Directorate Identifier 96–CE–072–AD; Amendment 39–17688; AD 99–01–05 R1]

RIN 2120–AA64

Airworthiness Directives; Various Aircraft Equipped With Wing Lift Struts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting an airworthiness directive (AD) that published in the **Federal Register**. That AD applies to certain aircraft equipped with wing lift struts. The list of affected airplanes in the Applicability section is incorrect. Several Piper Aircraft, Inc. Model PA–18 airplanes were inadvertently omitted from the final rule; however, those models were included in the notice of proposed rulemaking. This document corrects that error. In all other respects, the original document remains the same.

DATES: This final rule is effective January 14, 2014.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2013–00023; 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 AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For Piper Aircraft, Inc. airplanes, contact: Gregory ''Keith'' Noles, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1701 Columbia Avenue, College Park, Georgia 30337; phone: (404) 474–5551; fax: (404) 474–5606; email: *gregory.noles@faa.gov*.

For FS 2000 Corp, FS 2001 Corp, FS 2002 Corporation, and FS 2003 Corporation airplanes, contact: Jeff Morfitt, Aerospace Engineer, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057; phone: (425) 917–6405; fax: (245) 917–6590; email: *jeff.morfitt@faa.gov*.

For LAVIA ARGENTINA S.A. (LAVIASA) airplanes, contact: S.M. Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090; email: *sarjapur.nagarajan@faa.gov*.

SUPPLEMENTARY INFORMATION: Airworthiness Directive 99–01–05 R1, Amendment 39–17688 (78 FR 73997, December 10, 2013), will require repetitively inspecting the wing lift struts for corrosion; repetitively inspecting the wing lift strut forks for cracks; replacing any corroded wing lift strut; replacing any cracked wing lift strut fork; repetitively replacing the wing lift strut forks at a specified time for certain airplanes; and incorporating a ''NO STEP'' placard on the wing lift strut.

As published, table 1 of paragraph (c) in the Applicability section is incorrect. Several Piper Aircraft, Inc. Model PA–18 airplanes were inadvertently omitted from the final rule; however, those models were included in the notice of proposed rulemaking that was published in the **Federal Register** on January 16, 2013 (78 FR 3356).

No other part of the preamble or regulatory information has been changed; therefore, only the changed portion of the final rule is being published in the **Federal Register**.

The effective date of this AD remains January 14, 2013.

Correction of Regulatory Text

§ 39.13 [Corrected]

In the **Federal Register** of December 10, 2013, on page 73999, in Table 1 to Paragraph (c) of this AD—Applicability, paragraph (c) of AD 99–01–05 R1; Amendment 39–17688 is corrected as follows:

* * * * *

TABLE 1 TO PARAGRAPH (C) OF THIS AD—APPLICABILITY

Type certificate holder	Aircraft model	Serial numbers
FS 2000 Corp	L–14	All.
FS 2001 Corp	J5A (Army L–4F), J5A–80, J5B (Army L–4G), J5C, AE–1, and HE–1.	All.
FS 2002 Corporation	PA–14	14–1 through 14–523.
FS 2003 Corporation	PA–12 and PA–12S	12–1 through 12–4036.

TABLE 1 TO PARAGRAPH (C) OF THIS AD—APPLICABILITY—Continued

Type certificate holder	Aircraft model	Serial numbers
LAVIA ARGENTINA S.A. (LAVIASA)	PA–25, PA–25–235, and PA–25–260	25–1 through 25–8156024.
Piper Aircraft, Inc.	TG–8 (Army TG–8, Navy XLNP–1)	All.
Piper Aircraft, Inc.	E–2 and F–2	All.
Piper Aircraft, Inc.	J3C–40, J3C–50, J3C–50S, (Army L–4, L–4B,L–4H, and L–4J), J3C–65 (Navy NE–1 and NE–2), J3C–65S, J3F–50, J3F–50S, J3F–60, J3F–60S, J3F–65 (Army L–4D), J3F–65S, J3L, J3L–S, J3L–65 (Army L–4C), and J3L–65S.	All.
Piper Aircraft, Inc.	J4, J4A, J4A–S, and J4E (Army L–4E)	4–401 through 4–1649.
Piper Aircraft, Inc.	PA–11 and PA–11S	11–1 through 11–1678.
Piper Aircraft, Inc.	PA–15	15–1 through 15–388.
Piper Aircraft, Inc.	PA–16 and PA–16S	16–1 through 16–736.
Piper Aircraft, Inc.	PA–17	17–1 through 17–215.
Piper Aircraft, Inc.	PA–18, PA–18S, PA–18 "105" (Special), PA–18S "105" (Special), PA–18A, PA–18 "125" (Army L–21A), PA–18S "125", PA–18AS "125", PA–18 "135" (Army L–21B), PA–18A "135", PA–18S "135", PA–18AS "135", PA–18 "150", PA–18A "150", PA–18S "150", PA–18AS "150", PA–18A (Restricted), PA–18A "135" (Restricted), and PA–18A "150" (Restricted).	18–1 through 18–8309025, 18900 through 1809032, and 1809034 through 1809040.
Piper Aircraft, Inc.	PA–19 (Army L–18C), and PA–19S	19–1, 19–2, and 19–3.
Piper Aircraft, Inc.	PA–20, PA–20S, PA–20 "115", PA–20S "115", PA–20 "135", and PA–20S "135".	20–1 through 20–1121.
Piper Aircraft, Inc.	PA–22, PA–22–108, PA–22–135, PA–22S–135, PA–22–150, PA–22S–150, PA–22–160, and PA–22S–160.	22–1 through 22–9848.

* * * * *

Issued in Kansas City, Missouri, on December 18, 2013.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–30859 Filed 12–30–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 131121982–3982–01]

RIN 0694–AG03

Removal of Person From the Entity List Based on a Removal Request

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR) by removing one person from the Entity List. This rule removes one person in Russia from the Entity List, along with entries for this person under Germany and Taiwan. This person is being removed from the Entity List as a result of a request for removal submitted by the person, a review of information provided in the removal request in accordance with § 744.16 (Procedure for requesting removal or modification of an Entity List entity), and further review conducted by the End-user Review Committee (ERC).

DATES: *Effective Date:* This rule is effective December 31, 2013.

FOR FURTHER INFORMATION CONTACT: Karen Nies-Vogel, Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Fax: (202) 482–3911, Email: *ERC@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Entity List (Supplement No. 4 to Part 744) notifies the public about entities that have engaged in activities that could result in an increased risk of the diversion of exported, reexported or transferred (in-country) items to weapons of mass destruction (WMD) programs. Since its initial publication, grounds for inclusion on the Entity List have expanded to include activities sanctioned by the State Department and activities contrary to U.S. national security or foreign policy interests, including terrorism and export control violations involving abuse of human rights. Certain exports, reexports, and transfers (in-country) to entities identified on the Entity List require licenses from BIS and are usually subject to a policy of denial. The availability of license exceptions in such transactions is very limited. The license review policy for each entity is identified in the license review policy column on the Entity List and the availability of license exceptions is noted in the **Federal Register** notices adding persons to the Entity List. BIS places entities on the Entity List based on certain sections of part 744 (Control Policy: End-User and End-Use Based) of the EAR.

The ERC, which is composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and all decisions to remove or modify an entry by unanimous vote.

ERC Entity List Decisions

Removal From the Entity List

This rule implements a decision of the ERC to remove three entries consisting of one person located in Russia, along with entries for this person in Germany and Taiwan, from the Entity List on the basis of a removal request by the listed person. Based upon

a review of the information provided in the removal request in accordance with § 744.16 (Procedure for requesting removal or modification of an Entity List entity), the ERC determined that this person should be removed from the Entity List.

The ERC decision to remove this person took into account this person's cooperation with the U.S. Government, as well as this person's assurances of future compliance with the EAR. In accordance with § 744.16(c), the Deputy Assistant Secretary for Export Administration has sent written notification to this person, informing the person of the ERC's decision to remove the person from the Entity List.

This final rule removes the following person in Russia, along with entries for this person under Germany and Taiwan from the Entity List:

Germany

(1) *T-Platforms GmbH,* a.k.a., the following one alias: -tPlatforms GmbH. Woehlerstrasse 42, d-30163, Hanover, Germany (See alternate addresses under T-Platforms in Russia and T Platforms in Taiwan).

Russia

(1) *T-Platforms,* Leninsky Prospect 113/1, Suite B–705, Moscow, Russia; *and* 8 Vvedenskogo Street, Suite K52B, Moscow, Russia (See alternate addresses under T-Platforms GmbH in Germany and T Platforms in Taiwan).

Taiwan

(1) *T Platforms,* a.k.a., the following one alias: -Platforms Solutions Development Limited. 10F, No. 409, Sec. 2 Tiding Blvd., Neihu District, Taipei, Taiwan (See alternate addresses under T-Platforms GmbH in Germany and T-Platforms in Russia).

The removal of the above referenced person from the Entity List eliminates the existing license requirements in Supplement No. 4 to part 744 for exports, reexports and transfers (in-country) to this person. However, the removal of this person from the Entity List does not relieve persons proposing to export, reexport or transfer (in-country) items subject to the EAR to the removed person of other obligations under part 744 of the EAR or under other parts of the EAR. Neither the removal of a person from the Entity List nor the removal of Entity List-based license requirements relieves persons of their obligations under General Prohibition 5 in § 736.2(b)(5) of the EAR which provides that, ''you may not, without a license, knowingly export or reexport any item subject to the EAR to an end-user or end-use that is prohibited by part 744 of the EAR.'' Additionally this removal does not relieve persons of their obligation to apply for export, reexport or in-country transfer licenses required by other provisions of the EAR. BIS strongly urges the use of Supplement No. 3 to part 732 of the EAR, ''BIS's 'Know Your Customer' Guidance and Red Flags,'' when persons are involved in transactions that are subject to the EAR.

Export Administration Act

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 8, 2013, 78 FR 49107 (August 12, 2013), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and carries a burden estimate of 43.8 minutes for a manual or electronic submission. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. Pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B), BIS finds good cause to waive requirements that this rule be subject to notice and the opportunity for public comment because it would be contrary to the public interest.

In determining whether to grant removal requests from the Entity List, a committee of U.S. Government agencies (the End-user Review Committee (ERC)) evaluates information about and commitments made by listed persons requesting removal from the Entity List, the nature and terms of which are set forth in 15 CFR part 744, Supplement No. 5, as noted in 15 CFR 744.16(b). The information, commitments, and criteria for this extensive review were all established through the notice of proposed rulemaking and public comment process (72 FR 31005 (June 5, 2007) (proposed rule), and 73 FR 49311 (August 21, 2008) (final rule)). This removal has been made within the established regulatory framework of the Entity List. If the rule were to be delayed to allow for public comment, U.S. exporters may face unnecessary economic losses as they turn away potential sales because the customer remained a listed person on the Entity List even after the ERC approved the removal pursuant to the rule published at 73 FR 49311 on August 21, 2008. By publishing without prior notice and comment, BIS allows the applicant to receive U.S. exports immediately since the applicant already has received approval by the ERC pursuant to 15 CFR part 744, Supplement No. 5, as noted in 15 CFR 744.16(b).

The removals from the Entity List granted by the ERC involve interagency deliberation and result from review of public and non-public sources, including sensitive law enforcement information and classified information, and the measurement of such information against the Entity List removal criteria. This information is extensively reviewed according to the criteria for evaluating removal requests from the Entity List, as set out in 15 CFR

part 744, Supplement No. 5 and 15 CFR 744.16(b). For reasons of national security, BIS is not at liberty to provide to the public the information on which the ERC relied to make the decision to remove this entity. In addition, the information included in the removal request is specific to information exchanged between the applicant and the ERC, which by law (section 12(c) of the Export Administration Act (EAA)), BIS is restricted from sharing with the public. The removal requests from the Entity List contain confidential business information, which is necessary for the extensive review conducted by the U.S. Government in assessing such removal requests.

Section 553(d) of the APA generally provides that rules may not take effect earlier than thirty (30) days after they are published in the **Federal Register.** BIS finds good cause to waive the 30-day delay in effectiveness under 5 U.S.C. 553(d)(1) because this rule is a substantive rule which relieves a restriction. This rule removes a requirement (the Entity-List-based license requirement and limitation on use of license exceptions) on this one person being removed from the Entity List. The rule does not impose a requirement on any other person.

No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required under the APA or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. As a result, no final regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of January 17, 2013, 78 FR 4303 (January 22, 2013) Notice of August 8, 2013, 78 FR 49107 (August 12, 2013); Notice of September 18, 2013, 78 FR 58151 (September 20, 2013); Notice of November 7, 2013, 78 FR 67289 (November 12, 2013).

■ 2. Supplement No. 4 to part 744 is amended:

■ a. By removing under Germany, one German entity: ''T-Platforms GmbH, a.k.a., the following one alias: -tPlatforms GmbH. Woehlerstrasse 42, d-30163, Hanover, Germany (See alternate addresses under T-Platforms in Russia and T Platforms in Taiwan);''

■ b. By removing under Russia, one Russian entity: ''T-Platforms, Leninsky Prospect 113/1, Suite B–705, Moscow, Russia; *and* 8 Vvedenskogo Street, Suite K52B, Moscow, Russia (See alternate addresses under T-Platforms GmbH in Germany and T Platforms in Taiwan);'' and

■ c. By removing under Taiwan, one Taiwanese entity: ''T Platforms, a.k.a., the following one alias: -Platforms Solutions Development Limited. 10F, No. 409, Sec. 2 Tiding Blvd., Neihu District, Taipei, Taiwan (See alternate addresses under T-Platforms GmbH in Germany and T-Platforms in Russia).''

Dated: December 23, 2013.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2013–31361 Filed 12–30–13; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9650]

RIN 1545–BK67; RIN 1545–BK91

Definitions and Reporting Requirements for Shareholders of Passive Foreign Investment Companies; Insurance Income of a Controlled Foreign Corporation for Taxable Years Beginning After December 31, 1986

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains temporary regulations that provide guidance on determining ownership of a passive foreign investment company (''PFIC'') and on the annual filing requirements for shareholders of PFICs. These temporary regulations primarily affect shareholders of PFICs that do not currently file Form 8621, ''Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund,'' with respect to their PFIC interests. In addition, these temporary regulations provide guidance on an exception to the requirement for certain shareholders of foreign corporations to file Form 5471, ''Information Return of U.S. Persons with Respect to Certain Foreign Corporations.'' These regulations also update certain rules related to Form 5471 to take into account statutory changes. The text of these temporary regulations also serves as the text of the proposed regulations (REG–140974–11) set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on December 31, 2013.

Applicability Date: For dates of applicability, see §§ 1.1291–1T(k), 1.1291–9T(k)(3), 1.1298–1T(h), 1.6038–2T(m), and 1.6046–1T(l)(3).

FOR FURTHER INFORMATION CONTACT: Barbara E. Rasch or Susan E. Massey at (202) 317–6934 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

A. Sections 1291 and 1298

Sections 1291 through 1298 of the Internal Revenue Code (''Code'') set forth three tax regimes for shareholders that own stock of a PFIC: (i) the excess distribution rules under section 1291 (''section 1291 regime''); (ii) the qualified electing fund (''QEF'') rules under section 1293; and (iii) the mark to market (''MTM'') rules under section 1296. In general, section 1291 imposes a special tax and interest charge on a United States person that is a shareholder of a PFIC and that receives an excess distribution (within the meaning of section 1291(b)) from a PFIC or recognizes gain derived from a disposition of stock in a PFIC that is treated as an excess distribution (within the meaning of section 1291(a)(2)). A shareholder that is subject to the QEF rules includes amounts in gross income under section 1293, and a shareholder that is subject to the MTM rules includes amounts in gross income under section 1296. Section 1298 sets forth special rules applicable to shareholders of PFICs, including attribution rules that treat a United States person as the owner of PFIC stock that is owned by another person (other than an individual). For instance, section 1298(a)(2) sets forth the attribution rules for ownership through a corporation, and section 1298(a)(3) sets forth the

attribution rules for ownership through a partnership, estate, or trust. In addition, section 1298(a)(1)(B) provides that, pursuant to regulations, stock owned (or treated as owned) by a United States person may be treated as owned by another United States person.

On April 1, 1992, the **Federal Register** published proposed regulations (57 FR 11024) under sections 1291, 1293, 1295, and 1297 of the Code concerning, among other things, the taxation of shareholders of certain PFICs upon payment of distributions by such companies or upon disposition of the stock of such companies (''1992 proposed regulations''). The IRS and the Department of the Treasury (''Treasury Department'') received written comments on the 1992 proposed regulations and held a hearing on November 23, 1992.

Subsequently, the Taxpayer Relief Act of 1997 (Public Law 105–34, 111 Stat. 788) (''Taxpayer Relief Act'') modified certain aspects of the PFIC rules. Section 1122(a) of the Taxpayer Relief Act added the MTM regime under section 1296 to the Code, and section 1121 of the Taxpayer Relief Act added section 1297(d). Section 1297(d) provides that, in certain situations, a PFIC that is also a controlled foreign corporation (''CFC'') is not treated as a PFIC with respect to certain shareholders. However, section 1298(a)(2)(B) provides that a foreign corporation that would, but for the rules of section 1297(d), be a PFIC is treated as a PFIC with respect to its shareholders for purposes of determining whether the shareholders own an interest in any PFIC held by the foreign corporation.

Section 521 of the Hiring Incentives to Restore Employment Act of 2010 (Pub. L. 111–147, 124 Stat. 71) (''HIRE Act'') added new paragraph (f) to section 1298, effective March 18, 2010. Section 1298(f) requires a United States person that is a shareholder of a PFIC to file an annual report containing such information as the Secretary may require. The HIRE Act also amended section 6501(c)(8) (which was further amended by Public Law 111–226, 124 Stat. 2389) to extend the statute of limitations for assessment of tax for a shareholder that fails to comply with the reporting requirements of section 1298(f).

In Notice 2010–34 (2010–1 CB 612 (April 26, 2010)) (see 26 CFR § 601.601(d)(2)(ii)(*b*)), the IRS and the Treasury Department announced that they were developing further guidance regarding the reporting obligations under section 1298(f) and that PFIC shareholders that were not otherwise required to file Form 8621 prior to March 18, 2010, would not be required to file an annual report under section 1298(f) for taxable years beginning before March 18, 2010.

In Notice 2011–55 (2011–29 CB 663 (July 18, 2011)) (see 26 CFR § 601.601(d)(2)(ii)(*b*)), the IRS and the Treasury Department announced their intention to issue regulations under section 1298(f) and to release a revised Form 8621, modified to reflect the reporting requirements under section 1298(f). In addition, Notice 2011–55 suspended the section 1298(f) reporting requirements until the release of the revised Form 8621 for PFIC shareholders that were not otherwise required to file Form 8621 under the then-current Instructions to Form 8621. The notice stated that PFIC shareholders with Form 8621 reporting obligations as provided in the then-current Instructions to Form 8621 were required to continue filing Form 8621 with an income tax or information return filed prior to the release of the revised Form 8621. Notice 2011–55 further provided that following the release of revised Form 8621, PFIC shareholders for which the filing of Form 8621 had been suspended under the notice would be required to attach Form 8621 for the suspended taxable year to their next income tax or information return required to be filed with the IRS. The notice also provided that a failure to furnish Form 8621 for a suspended taxable year could result in the extension of the statute of limitations for such year under section 6501(c)(8), and penalties could apply. However, since Notice 2011–55 was issued, the IRS and the Treasury Department have determined that it is not necessary for taxpayers to file a Form 8621 under section 1298(f) for suspended taxable years. Accordingly, these regulations provide that PFIC shareholders are not required to file Form 8621 under section 1298(f) with respect to taxable years ending before December 31, 2013.

This document contains amendments to 26 CFR part 1 under sections 1291 and 1298. Although comments were received on the 1992 proposed regulations, none relate to the specific issues addressed in these temporary regulations. These temporary regulations generally adopt certain portions of the 1992 proposed regulations, some of which are revised to take into account statutory changes. This preamble discusses these revisions but does not discuss comments concerning other rules in the 1992 proposed regulations, which are beyond the scope of these temporary regulations. These temporary regulations also set forth the filing requirements under section 1298(f), including the time and manner for filing Form 8621 for taxable years ending on or after December 31, 2013.

B. Sections 6038 and 6046

This document contains amendments to 26 CFR part 1 under sections 6038 and 6046. Sections 6038 and 6046 set forth information return reporting requirements applicable to certain United States persons that own an interest in foreign corporations and certain United States persons that are officers and directors of the foreign corporations. These temporary regulations provide guidance on an exception to the requirement to file Form 5471 under sections 6038 and 6046 that is applicable to certain United States persons that own an interest in a foreign corporation under constructive ownership rules.

In addition, these regulations take into account statutory changes in section 1012(i) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647, 102 Stat. 3342) and section 1146(a) of the Taxpayer Relief Act. The first statutory change relates to the requirement for persons treated as United States shareholders under section 953(c) to file an information return under section 6046. This requirement was added to the Code in 1988, shortly after section 953(c) was added to the Code by the Tax Reform Act of 1986 (Pub. L. 99–514, 100 Stat. 2085). On April 17, 1991, the **Federal Register** published proposed regulations (56 FR 15540; INTL–939–86; REG–208289–86) under sections 953 and 6046 concerning, among other things, the requirements for persons treated as United States shareholders under section 953(c) to file an information return with respect to the CFC, and for certain United States persons that are officers and directors of such CFCs to file an information return (''1991 proposed regulations''). These regulations finalize § 1.6046–1 of the 1991 proposed regulations (REG–116180–12; RIN 1545–BK91) without substantive changes. The other portions of the 1991 proposed regulations (REG–123286–13; RIN 1545–BL63) remain in proposed form.

The second statutory change relates to the ownership threshold for reporting set forth in section 6046. Prior to the modifications made by the Taxpayer Relief Act, the stock ownership threshold at which reporting was required under section 6046 was 5 percent. These regulations revise § 1.6046–1 to reflect the 10 percent ownership threshold change that was

made in the Taxpayer Relief Act. In addition, these regulations revise the examples to reflect the 10 percent ownership threshold.

Finally, these regulations revise § 1.6046–1 to reflect the current name and form number of the information return required to be filed pursuant to section 6046.

Explanation of Provisions

A. Section 1291

1. Definition of Pedigreed QEF

Prop. Treas. Reg. § 1.1291–1(b)(2)(ii) of the 1992 proposed regulations defines the term pedigreed QEF, and § 1.1291–9(j)(2)(ii) contains a similar definition of the term. Section 1.1291–1T(b)(2)(ii) adopts the 1992 proposed regulations' definition of pedigreed QEF without substantive modification to be consistent with the definition of pedigreed QEF in § 1.1291–9(j)(2)(ii). The definition of pedigreed QEF in the 1992 proposed regulations is withdrawn in this issue of the **Federal Register**.

2. Definition of Section 1291 Fund

Prop. Treas. Reg. § 1.1291–1(b)(2)(v) of the 1992 proposed regulations defines the term section 1291 fund as an unpedigreed QEF or a nonqualified fund. These temporary regulations adopt the 1992 proposed regulations' definition of section 1291 fund with some modifications to reflect the enactment of the MTM rules under section 1296, which occurred after the 1992 proposed regulations were published. Under § 1.1291–1T(b)(2)(v), a PFIC is a section 1291 fund with respect to a shareholder unless the PFIC is a pedigreed QEF with respect to the shareholder or a section 1296 election is in effect with respect to the shareholder. The definition of section 1291 fund in the 1992 proposed regulations is withdrawn in this issue of the **Federal Register**.

3. Definitions of Shareholder and Indirect Shareholder

Prop. Treas. Reg. § 1.1291–1(b)(7) and (b)(8) of the 1992 proposed regulations define the terms shareholder and indirect shareholder for purposes of section 1291. These definitions are cross-referenced in the definition of shareholder provided in § 1.1291–9(j)(3). However, § 1.1295–1(j) defines shareholder for QEF purposes, and section 1296(g) and § 1.1296–1(e) provide a separate set of attribution rules for purposes of applying the MTM rules to United States persons that own an interest in a PFIC.

These temporary regulations generally adopt the definition of shareholder provided in the 1992 proposed regulations. Under § 1.1291–1T(b)(7), the term *shareholder* means any United States person that owns stock of a PFIC directly or indirectly. For purposes of these regulations, a domestic partnership or an S corporation is treated as a shareholder of a PFIC only for purposes of the information reporting requirements of sections 1291 and 1298, including section 1298(f). In addition, these regulations provide that a domestic grantor trust is treated as a shareholder of a PFIC only for purposes of the information reporting requirement set forth at § 1.1298–1T(b)(3)(i), which applies to domestic liquidating trusts and fixed investment trusts.

These temporary regulations revise certain aspects of the definition of indirect shareholder in the 1992 proposed regulations and adopt other aspects of the definition without amendment. Section 1.1291–1T(b)(8) defines the term *indirect shareholder* as a United States person that indirectly owns stock in a PFIC and provides rules for attributing ownership of PFIC stock through corporations, partnerships, S corporations, estates, and trusts. The rule in the 1992 proposed regulations concerning ownership through a PFIC has been revised in § 1.1291–1T(b)(8)(ii)(B) to incorporate a statutory change to section 1298(a)(2)(B) made in the Taxpayer Relief Act, which provides that section 1297(d) does not apply for purposes of determining whether a United States person owns a PFIC indirectly through a foreign corporation. Thus, in the case of a person that owns stock of a PFIC that is also a CFC, notwithstanding that under section 1297(d) such corporation may not be treated as a PFIC with respect to certain shareholders, the foreign corporation is treated as a PFIC with respect to the shareholder for purposes of determining whether the shareholder owns an interest in any stock of a PFIC held by the foreign corporation.

These temporary regulations make certain changes to the rules in the 1992 proposed regulations for attributing ownership of PFIC stock through partnerships, estates, and trusts. The 1992 proposed regulations generally provide that in the case of a partnership, S corporation, estate, or trust that directly or indirectly owns stock, the partners, shareholders, or beneficiaries (as the case may be) are considered to own a proportionate amount of such stock. These temporary regulations clarify that the attribution rules apply to both domestic and foreign partnerships, estates, and trusts.

These temporary regulations also provide special rules for nongrantor trusts and grantor trusts. In particular, Treas. Reg. § 1.1291–1T(b)(8)(iii)(D) provides that if a foreign or domestic grantor trust directly or indirectly owns PFIC stock, a person that is treated under sections 671 through 679 as the owner of any portion of the trust that holds an interest in the stock is considered to own an interest in the stock held by that portion of the trust. In addition, Treas. Reg. § 1.1291–1T(b)(8)(iii)(C) provides that, in general, if a foreign or domestic estate or nongrantor trust directly or indirectly owns PFIC stock, each beneficiary of the estate or trust is considered to own a proportionate amount of such stock. The cross-referenced notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register** requests comments on the determination of proportionate ownership by a beneficiary of PFIC stock held by a domestic or foreign estate or nongrantor trust. Until further guidance is provided on estate and trust attribution rules, beneficiaries of estates and nongrantor trusts that hold PFIC stock subject to the section 1291 regime should use a reasonable method to determine their ownership interests in a PFIC held by the estate or nongrantor trust. Moreover, until further guidance is provided, beneficiaries of estates and nongrantor trusts that are subject to the section 1291 regime with respect to PFIC stock held by the estate or nongrantor trust are exempt from section 1298(f) filing requirements for taxable years in which the beneficiary is not treated as receiving an excess distribution (within the meaning of section 1291(b)) or as recognizing gain that is treated as an excess distribution (under section 1291(a)(2)) with respect to the stock of the PFIC that the beneficiary is considered to own through the estate or trust. See, for example, § 1.1298–1T(b)(3)(iii).

These temporary regulations do not provide guidance on the application of section 1291 when an estate or nongrantor trust, or beneficiary thereof, receives, or is treated as receiving, an excess distribution (including an amount of gain treated as an excess distribution). Section 1291 and the principles of subchapter J must, however, be applied in a reasonable manner with respect to estates and trusts, and beneficiaries thereof, to preserve or trigger the tax and interest charge rules under section 1291. Accordingly, until further guidance is issued, the estate or trust, or the beneficiary thereof, must take excess

distributions into account under section 1291 in a reasonable manner, consistent with the general operating rules of subchapter J. It would be unreasonable for the shareholders of the section 1291 fund to take the position that neither the beneficiaries nor the estate or trust are subject to the tax and interest charge rules under section 1291. The definitions in the 1992 proposed regulations of shareholder and indirect shareholder are withdrawn in this issue of the **Federal Register**.

As stated earlier, the term shareholder is defined in § 1.1291–9(j)(3) by cross-reference to the definitions of shareholder and indirect shareholder set forth in the 1992 proposed regulations. Certain other provisions, including §§ 1.1291–10(a), 1.1297–3(a), and 1.1298–3(a), cross-reference the definition of shareholder in § 1.1291–9(j)(3). These temporary regulations include a definition of shareholder in § 1.1291–9T(j)(3) that cross-references the definitions of shareholder and indirect shareholder in § 1.1291–1T(b)(7) and (b)(8). In addition, § 1.1291–9(j)(3) is amended to cross-reference the definition of shareholder in § 1.1291–9T(j)(3) rather than the definitions of shareholder and indirect shareholder in the 1992 proposed regulations. Accordingly, the § 1.1291–1T(b) definition of shareholder applies for purposes of sections 1291 and 1298(f) as well as other provisions that cross-reference § 1.1291–9(j)(3).

B. Section 1298(f)

1. General Filing Requirement Under Section 1298(f)

Except as otherwise provided by the Secretary, section 1298(f) requires a United States person that is a shareholder of a PFIC to file an annual report containing such information as the Secretary may require. These temporary regulations generally require a United States person that is a shareholder of a PFIC to complete and file Form 8621 (or successor form). The requirement to file Form 8621 under these temporary regulations applies to a shareholder that owns an interest in a PFIC at any time during the shareholder's taxable year, regardless of whether the PFIC has a taxable year ending within the shareholder's taxable year. These temporary regulations generally require the United States person that is at the lowest tier in a chain of ownership, and that is a shareholder (including an indirect shareholder) of a PFIC, to file an annual report on Form 8621. In addition, a United States person that owns PFIC stock through another United States person also is required to file an annual report in certain circumstances, including when that person is required to include an amount in income with respect to the PFIC or when that person is subject to tax under section 1291 as a result of being treated as receiving an excess distribution or as recognizing gain that is treated as an excess distribution with respect to the PFIC. For example, if a United States citizen owns an interest in a domestic partnership, which, in turn, owns an interest in a PFIC, the domestic partnership is required to file an annual report because the domestic partnership is the United States person that is at the lowest tier in the chain of ownership. In addition, the United States citizen is required to file an annual report when such person is treated as receiving an excess distribution or as recognizing gain that is treated as an excess distribution with respect to the PFIC.

In order to eliminate certain duplicative reporting obligations, these regulations provide an exception to the rule that requires a United States person that owns an interest in a PFIC through another United States person to submit an annual report. In particular, under § 1.1298–1T(b)(2)(ii), a United States person that is required to include an amount in income only under the QEF or MTM rules with respect to PFIC stock held through other United States persons generally is not required to file an annual report under section 1298(f) with respect to the PFIC if another shareholder through which the United States person holds the PFIC stock timely files an annual report under section 1298(f) with respect to the PFIC. This exception does not apply, however, if the United States person made a QEF election with respect to the PFIC and then transferred the shares of the PFIC to a domestic partnership or S corporation that did not itself make a QEF election with respect to the PFIC.

The section 1298(f) filing requirements set forth in these temporary regulations generally apply to domestic estates, domestic nongrantor trusts, and United States persons that are treated under sections 671 through 679 as owners of any portion of foreign and domestic grantor trusts. In general, domestic estates and nongrantor trusts are required to file an annual report (subject to the exceptions provided in these regulations) under the rules generally applicable to United States persons, which are set forth in § 1.1298–1T(b)(1) and (b)(2). United States persons that are treated as the owners of domestic and foreign grantor trusts that own PFIC stock generally are required to file an annual report under § 1.1298–1T(b)(1) and (b)(2) (subject to the exceptions provided in these regulations).

However, a United States person that is treated as the owner of any portion of a domestic liquidating trust described in § 301.7701–4(d) of this chapter and created pursuant to a court order issued in bankruptcy under Chapter 7 (11 U.S.C. 701 *et seq.*) of the Bankruptcy Code or pursuant to a confirmed plan under Chapter 11 (11 U.S.C. 1101 *et seq.*) of the Bankruptcy Code, or of any portion of a domestic widely held fixed investment trust under § 1.671–5, is not required to file Form 8621 under section 1298(f) and these regulations with respect to any PFICs owned by such trust. In such a case, § 1.1298–1T(b)(3)(i) provides that the trust itself must file Form 8621.

Further, § 1.1298–1T(b)(3)(ii) provides that the filing requirement under section 1298(f) does not apply to a United States person that is treated as the owner of any portion of a foreign grantor trust that is a foreign pension fund operated principally to provide pension or retirement benefits, if, pursuant to an income tax convention to which the United States is a party, income earned by the pension fund is taxed as income of the United States person only when and to the extent it is paid to, or for the benefit of, the United States person.

United States persons that are beneficiaries of foreign estates and nongrantor trusts and that have made elections under section 1295 or 1296 with respect to PFIC stock held by the estate or trust are required to file an annual report under these regulations (subject to the exceptions provided in these regulations) with respect to the PFIC. United States persons that are beneficiaries of domestic estates and nongrantor trusts that hold PFIC stock, which have made elections under section 1295 or 1296 with respect to the PFIC stock, generally are required to file an annual report under these regulations (subject to the exceptions provided in these regulations) with respect to the PFIC only if the estate or trust (and any other United States person in the chain of ownership) fails to file an annual report under these regulations. In addition, United States persons that are beneficiaries of domestic and foreign estates and nongrantor trusts are required to file an annual report under these regulations (subject to the exceptions provided in these regulations) for taxable years in which the beneficiary is treated as receiving an excess distribution (under section 1291(b)) or recognizing gain treated as an excess distribution (under section

1291(a)(2)) with respect to PFIC stock held by the estate or trust.

2. Exception for Tax Exempt Organizations

A United States person that qualifies as a tax exempt organization under certain Code provisions may own an interest in a PFIC but may not be subject to tax under subchapter F of Subtitle A of the Code (addressing exempt organizations) with respect to the PFIC. In such a case, the United States person is not required to file an annual report under section 1298(f) and these regulations with respect to the PFIC. Specifically, § 1.1298–1T(c)(1) provides that a shareholder that is an organization exempt under section 501(a), a state college or university described in section 511(a)(2)(B), a plan described in section 403(b) or 457(b), an individual retirement plan or annuity as defined in section 7701(a)(37), or a qualified tuition program described in section 529 or 530 is required to file an annual report under section 1298(f) with respect to a PFIC only if the income derived with respect to the PFIC would be taxable to the organization under subchapter F of Subtitle A of the Code.

3. $25,000 and $5,000 Exceptions

A comment letter was received that requested the IRS and the Treasury Department to exercise the authority to promulgate exceptions to the filing requirements set forth under section 1298(f). These temporary regulations provide exceptions to the section 1298(f) filing requirements to address the concerns underlying the comment. Section 1.1298–1T(c)(2)(i) provides exceptions to the requirement to file an annual report under section 1298(f) and these regulations for certain shareholders with respect to an interest owned in a PFIC for which the shareholder is subject to tax only under section 1291 (that is, no QEF or MTM election is in effect with respect to the shareholder). Under § 1.1298–1T(c)(2)(i), this exception applies with respect to a PFIC only if: (i) The shareholder is not subject to tax under section 1291 with respect to any excess distributions received from the PFIC, or gains derived with respect to the PFIC that are treated as excess distributions, during the taxable year of the shareholder (§ 1.1298–1T(c)(2)(i)(B)); and (ii) either (A) the aggregate value of all PFIC stock owned by the shareholder at the end of the taxable year of the shareholder does not exceed $25,000, or (B) the PFIC stock is owned by the shareholder through another PFIC, and the value of the shareholder's proportionate share of the upper-tier PFIC's interest in the lower-tier PFIC does not exceed $5,000. The $25,000 threshold in § 1.1298–1T(c)(2)(i)(A)(*1*) is increased to $50,000 for shareholders who file a joint return.

These temporary regulations provide special rules for determining whether the $25,000 threshold is met in the case of indirect ownership. Under § 1.1298–1T(c)(2)(ii), shareholders must take into account all PFIC stock owned directly or indirectly except for PFIC stock owned through another United States person that itself is a shareholder of the PFIC. Moreover, for these purposes, shareholders would not take into account PFIC stock owned through another PFIC because the value of the stock of the lower tier PFIC is reflected in the value of the upper tier PFIC stock.

Shareholders are not required to obtain an appraisal in order to determine the value of PFIC stock. Section 1.1298–1T(c)(2)(iv) provides that shareholders may rely upon periodic account statements provided at least annually to determine the value of a PFIC unless the shareholder has reason to know that the statements do not reflect a reasonable estimate of the PFIC's value.

C. Time and Manner for Filing Form 8621

Section 1298(f) was effective on March 18, 2010. As stated earlier, Notice 2010–34 provided that PFIC shareholders that were not otherwise required to file Form 8621 prior to March 18, 2010, would not be required to file an annual report under section 1298(f) for taxable years beginning before March 18, 2010. Furthermore, Notice 2011–55 suspended the requirement to file an annual report under section 1298(f) for taxable years beginning on or after March 18, 2010, for PFIC shareholders that were not otherwise required to file Form 8621 under the then-current Instructions to Form 8621. Section 1.1298–1T(c)(3) provides that United States persons are not required under section 1298(f) and these regulations to file an annual report with respect to a PFIC for a taxable year of the United States person ending before December 31, 2013. The rules described in Notice 2011–55 for suspended taxable years (as defined in Notice 2011–55) with respect to section 1298(f) and Form 8621 are no longer applicable. For taxable years ending on or after December 31, 2013, a shareholder that is required to file Form 8621 under these regulations with respect to a PFIC that it owns during a taxable year must attach Form 8621 to its Federal income tax return (or, if applicable, partnership or exempt organization return) for such taxable year. See § 1.1298–1T(d). Although Notice 2011–55 is no longer applicable with respect to section 1298(f) and Form 8621, these regulations do not affect Notice 2011–55 with respect to filing requirements under section 6038D (relating to Form 8938).

These temporary regulations provide that if a United States person is required to file Form 8621 with respect to more than one PFIC, the United States person must file a separate Form 8621 for each PFIC. However, United States persons that file a joint return may file a single Form 8621 with respect to a PFIC in which they jointly or individually own an interest. See § 1.1298–1T(e).

A revised Form 8621 has been released and the Instructions to the form will be modified to reflect the filing requirements under section 1298(f) and these regulations.

D. Coordination With Other Filing Requirements

1. Coordination with Other PFIC Filing Requirements

A shareholder may be required to file Form 8621 pursuant to provisions other than those under section 1298(f) and these temporary regulations. For example, § 1.1295–1(f)(2)(i) requires a shareholder to file Form 8621 annually in connection with the shareholder's QEF election. Moreover, a shareholder must file Form 8621 in order to make certain elections (such as a deemed sale election pursuant to § 1.1297–3(b)(4)). Nothing in section 1298(f) or these regulations relieves a person from the obligation to file Form 8621 under any other provision. If a shareholder is required to file Form 8621 (or successor form) with respect to a PFIC pursuant to section 1298(f) and these regulations, as well as another information reporting obligation, the shareholder may file a single Form 8621 that contains all of the required information.

2. Coordination With Section 6038D

Section 6038D requires an individual who holds any interest in a specified foreign financial asset (as defined in section 6038D(b)) during any taxable year to provide information with respect to such asset. Certain United States persons that own an interest in a PFIC may be subject to the information reporting requirements of both sections 1298(f) and 6038D with respect to the PFIC interest. The regulations under section 6038D provide guidance coordinating the two reporting requirements to eliminate duplicative reporting. See §§ 1.6038D–1T through 1.6038D–8T for rules relating to section

6038D reporting. Pursuant to those regulations, in order to avoid duplicative reporting of assets, a United States person is not required to report a PFIC under section 6038D if the person reports the PFIC on a timely filed Form 8621 and the person's report under section 6038D (on Form 8938) indicates, as provided on the form, that the person complied with its Form 8621 filing requirement with respect to the PFIC.

E. Form 5471 Filing Obligations

Pursuant to sections 6038 and 6046, certain United States persons are required to file an information return on Form 5471, ''Information Return of U.S. Persons with Respect to Certain Foreign Corporations,'' with respect to their ownership in certain foreign corporations or because they are an officer or director of certain foreign corporations.

1. Constructive Ownership Exception

Certain United States persons otherwise required to file Form 5471 do not have to file if: (i) the United States person does not directly own an interest in the foreign corporation, (ii) the United States person would otherwise be required to furnish the information solely by reason of attribution of stock ownership from a United States person, and (iii) the person from whom the stock ownership is attributed furnishes all of the information required to be reported by the person to whom the stock ownership is attributed (''constructive ownership exception''). See §§ 1.6038–2(j)(2) and 1.6046–1(e)(4)(iii). In addition, pursuant to §§ 1.6038–2(j)(3) and 1.6046–1(e)(5), shareholders that are excepted from filing Form 5471 under the constructive ownership exception have been required to file a statement with their returns indicating that the requirement to provide information has been satisfied and identifying the return with which the information was or will be filed and the place of filing. The IRS believes that this statement is not necessary. Accordingly, these temporary regulations remove the requirement to file a statement in circumstances where a United States person qualifies for the constructive ownership exception. See §§ 1.6038–2T(j)(3) and 1.6046–1T(e)(5).

2. Section 953(c) Shareholders

As discussed earlier, the requirement to file an information return for persons treated as United States shareholders under section 953(c), as well as certain United States persons that are officers and directors of the CFC, was added to the Code in 1988. The 1991 proposed regulations addressed these new filing requirements.

These regulations finalize § 1.6046–1(a)(2) and (c) to reflect the additional filing requirement imposed on United States persons treated as section 953(c) shareholders, and officers and directors of CFCs that have United States persons treated as section 953(c) shareholders, without any substantive changes from the 1991 proposed regulations.

3. Changes To Conform the Section 6046 Regulations to the Code and Current Information Return Form

Section 6046(a)(1)(B) through (D) mandates the filing of an information return by United States persons that: (i) acquire 10 percent or more of the stock of a foreign corporation; (ii) acquire stock, which, when added to any stock owned on the date of acquisition, equals 10 percent or more of the stock of the foreign corporation; (iii) are treated as a United States shareholder under section 953(c) with respect to a foreign corporation; or (iv) become a United States person while owning 10 percent or more of the stock of a foreign corporation. As discussed earlier, prior to the modifications made by the Taxpayer Relief Act, the stock ownership threshold at which reporting was required was 5 percent. Section 1.6046–1 was published in 1962, when the stock ownership threshold was 5 percent. These regulations revise § 1.6046–1 to reflect the 10 percent ownership threshold change that was made in the Taxpayer Relief Act. These regulations also revise the examples to reflect the 10 percent ownership threshold.

In addition, several paragraphs of § 1.6046–1 reference ''Form 959'', Return by an Officer, Director, or Shareholder with Respect to the Organization or Reorganization of a Foreign Corporation and Acquisition of Stock. Form 959 was replaced in 1983 by Form 5471. These regulations modify § 1.6046–1 to reference Form 5471 (or subsequent form), rather than Form 959, and remove § 1.6046–1(f)(4), which described Form 959.

Effect on Other Documents

Notice 2010–34 (2010–1 CB 612) is obsolete as of December 31, 2013. Notice 2011–55 (2011–29 CB 663) is partially obsolete as of December 31, 2013. Notice 2011–55 is only obsolete with respect to section 1298(f) and Form 8621. Notice 2011–55 continues to be in effect with respect to section 6038D and Form 8938.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13653. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), please refer to the cross-referenced notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f), these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are Barbara E. Rasch and Susan E. Massey of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order as follows:

Authority: 26 U.S.C. 7805 * * *

Sections 1.1291–1T, 1.1291–9, 1.1291–9T, and 1.1298–1T also issued under 26 U.S.C. 1298(a) and (g) * * *

Section 1.1298–1T also issued under 26 U.S.C. 1298(f) and (g) * * *

Section 1.6038–2T also issued under 26 U.S.C. 6038(d) * * *

Section 1.6046–1T also issued under 26 U.S.C. 6046(b) * * *

■ **Par. 2.** Section 1.1291–0T is added to read as follows:

§ 1.1291–0T Passive foreign investment company—table of contents (temporary).

This section lists the table of contents for §§ 1.1291–1T and 1.1291–9T.

§ 1.1291–1T Taxation of United States persons that are shareholders of section 1291 funds (temporary).

(a) through (b)(2)(i) [Reserved].

(ii) Pedigreed QEF.

(b)(2)(iii) and (iv) [Reserved].

(v) Section 1291 fund.
(3) through (6) [Reserved].
(7) Shareholder.
(8) Indirect shareholder.
(i) In general.
(ii) Ownership through a corporation.
(A) Ownership through a non-PFIC foreign corporation.
(B) Ownership through a PFIC.
(C) Ownership through a domestic corporation.
(iii) Ownership through pass-through entities.
(A) Partnerships.
(B) S Corporations.
(C) Estates and nongrantor trusts.
(D) Grantor trusts.
(c) through (j) [Reserved].
(k) Effective/applicability dates.

§ 1.1291–9T Deemed dividend election (temporary).

(a) through (j)(2) [Reserved].
(3) Shareholder.
(k) Effective/applicability date.

■ **Par. 3.** Section 1.1291–1T is added to read as follows:

§ 1.1291–1T Taxation of United States persons that are shareholders of section 1291 funds (temporary).

(a) through (b)(2)(i) [Reserved].
(ii) *Pedigreed QEF.* A PFIC is a *pedigreed QEF* with respect to a shareholder if the PFIC has been a QEF with respect to the shareholder for all taxable years during which the corporation was a PFIC that are included wholly or partly in the shareholder's holding period of the PFIC stock.
(b)(2)(iii) and (iv) [Reserved].
(v) *Section 1291 fund.* A PFIC is a *section 1291 fund* with respect to a shareholder unless the PFIC is a pedigreed QEF with respect to the shareholder or a section 1296 election is in effect with respect to the shareholder.
(3) through (6) [Reserved].
(7) *Shareholder.* A *shareholder* is a United States person that directly owns stock of a PFIC (a direct shareholder), or that is an indirect shareholder (as defined in section 1298(a) and paragraph (b)(8) of this section). For purposes of sections 1291 and 1298, a domestic partnership or S corporation (as defined in section 1361) is not treated as a shareholder of a PFIC except for purposes of any information reporting requirements, including the requirement to file an annual report under section 1298(f). In addition, to the extent that a person is treated under sections 671 through 678 as the owner of a portion of a domestic trust, the trust is not treated as a shareholder of a PFIC with respect to PFIC stock held by that portion of the trust, except for purposes of the information reporting requirements of § 1.1298–1T(b)(3)(i) (imposing an information reporting requirement on domestic liquidating trusts and fixed investment trusts).
(8) *Indirect shareholder*—(i) *In general.* An *indirect shareholder* of a PFIC is a United States person that indirectly owns stock of a PFIC. A person indirectly owns stock when it is treated as owning stock of a corporation owned by another person, including another United States person, under this paragraph (b)(8). In applying this paragraph (b)(8), the determination of a person's indirect ownership is made on the basis of all the facts and circumstances in each case; the substance rather than the form of ownership is controlling, taking into account the purpose of sections 1291 through 1298.
(ii) *Ownership through a corporation*—(A) *Ownership through a non-PFIC foreign corporation.* A person that directly or indirectly owns 50 percent or more in value of the stock of a foreign corporation that is not a PFIC is considered to own a proportionate amount (by value) of any stock owned directly or indirectly by the foreign corporation.
(B) *Ownership through a PFIC.* A person that directly or indirectly owns stock of a PFIC is considered to own a proportionate amount (by value) of any stock owned directly or indirectly by the PFIC. Section 1297(d) shall not apply in determining whether a corporation is a PFIC for purposes of this paragraph (b)(8)(ii)(B).
(C) *Ownership through a domestic corporation.* Except as provided in paragraph (b)(8)(iii)(B) of this section, if stock of a section 1291 fund is not treated as owned indirectly by a United States person under this paragraph (b)(8) (determined without regard to this paragraph (b)(8)(ii)(C)), but would be treated as owned by a United States person if paragraph (b)(8)(ii)(A) of this section applied to domestic corporations as well as foreign corporations, then the stock is considered owned by the United States person.
(iii) *Ownership through pass-through entities*—(A) *Partnerships.* If a foreign or domestic partnership directly or indirectly owns stock, the partners of the partnership are considered to own such stock proportionately in accordance with their ownership interests in the partnership.
(B) *S Corporations.* If an S corporation directly or indirectly owns stock, each S corporation shareholder is considered to own such stock proportionately in accordance with the shareholder's ownership interest in the S corporation.
(C) *Estates and nongrantor trusts.* If a foreign or domestic estate or nongrantor trust (other than an employees' trust described in section 401(a) that is exempt from tax under section 501(a)) directly or indirectly owns stock, each beneficiary of the estate or trust is considered to own a proportionate amount of such stock. For purposes of this paragraph (b)(8)(iii)(C), a nongrantor trust is any trust or portion of a trust that is not treated as owned by one or more persons under sections 671 through 679.
(D) *Grantor trusts.* If a foreign or domestic trust directly or indirectly owns stock, a person that is treated under sections 671 through 679 as the owner of any portion of the trust that holds an interest in the stock is considered to own the interest in the stock held by that portion of the trust.
(c) (1) and (2) [Reserved].
(3) [Reserved]. For further guidance, see § 1.1291–1(c)(3).
(d) [Reserved].
(e) [Reserved]. For further guidance, see § 1.1291–1(e).
(f) through (i) [Reserved].
(j) [Reserved]. For further guidance, see § 1.1291–1(j).
(k) *Effective/applicability dates.* Paragraphs (b)(2)(ii), (b)(2)(v), (b)(7), and (b)(8) of this section apply to taxable years of shareholders ending on or after December 31, 2013.
(l) *Expiration date.* The applicability of paragraphs (b)(2)(ii), (b)(2)(v), (b)(7), and (b)(8) of this section expires on December 30, 2016.

■ **Par. 4.** Section 1.1291–9 is amended by revising paragraph (j)(3) and adding paragraph (k)(3) to read as follows:

§ 1.1291–9 Deemed dividend election.

* * * * *

(j) * * *
(3) [Reserved]. For further guidance see § 1.1291–9T(j)(3).
(k) * * *
(3) [Reserved]. For further guidance see § 1.1291–9T(k)(3).

■ **Par. 5.** Section 1.1291–9T is added to read as follows:

§ 1.1291–9T Deemed dividend election (temporary).

(a) through (j)(2) [Reserved]. For further guidance see § 1.1291–9(a) through (j)(2).
(3) *Shareholder.* A *shareholder* is a United States person that is a shareholder as defined in § 1.1291–1T(b)(7) or an indirect shareholder as defined in § 1.1291–1T(b)(8).
(k) *Effective/applicability date*—(1) [Reserved]. For further guidance see § 1.1291–9(k)(1).

(2) [Reserved]. For further guidance see § 1.1291–9(k)(2).

(3) Paragraph (j)(3) of this section applies to taxable years of shareholders ending on or after December 31, 2013.

(l) *Expiration date.* The applicability of paragraph (j)(3) of this section expires on December 30, 2016.

■ **Par. 6.** Section 1.1298–0T is added to read as follows:

§ 1.1298–0T Passive foreign investment company—table of contents (temporary).

This section lists the table of contents for § 1.1298–1T.

§ 1.1298–1T Section 1298(f) annual reporting requirements for United States persons that are shareholders of a passive foreign investment company (temporary).

(a) Overview.

(b) Requirement to file.

(1) General rule.

(2) Additional requirement to file for certain indirect shareholders.

(i) General rule.

(ii) Exception to indirect shareholder reporting for certain QEF inclusions and MTM inclusions.

(3) Special rules for estates and trusts.

(i) Domestic liquidating trusts and fixed investment trusts.

(ii) Foreign pension funds.

(iii) Beneficiaries of foreign estates and trusts.

(c) Exceptions.

(1) Exception if shareholder is a tax exempt entity.

(2) Exception if aggregate value of shareholder's PFIC stock is $25,000 or less, or value of shareholder's indirect PFIC stock is $5,000 or less.

(i) General rule.

(ii) Determination of the $25,000 threshold in the case of indirect ownership.

(iii) Application of the $25,000 exception to shareholders who file a joint return.

(iv) Reliance on periodic account statements.

(3) Exception for taxable years ending before December 31, 2013.

(d) Time and manner for filing.

(e) Separate annual report for each PFIC.

(1) General rule.

(2) Special rule for shareholders who file a joint return.

(f) Coordination rule.

(g) Examples.

(h) Effective/applicability date.

■ **Par. 7.** Section 1.1298–1T is added to read as follows:

§ 1.1298–1T Section 1298(f) annual reporting requirements for United States persons that are shareholders of a passive foreign investment company (temporary).

(a) *Overview.* This section provides rules regarding the reporting requirements under section 1298(f) applicable to a United States person that is a shareholder (as defined in § 1.1291–1T(b)(7)) of a passive foreign investment company (PFIC). Paragraph (b) of this section provides the section 1298(f) annual reporting requirements generally applicable to United States persons. Paragraph (c) of this section sets forth exceptions to reporting for certain shareholders that are tax exempt entities, that own PFIC stock with an aggregate value of $25,000 or less, or that own certain PFIC stock with a value of $5,000 or less, and provides an exception to reporting for all shareholders for taxable years ending before December 31, 2013. Paragraph (d) of this section provides rules regarding the time and manner of filing the annual report. Paragraph (e) of this section sets forth the requirement to file a separate annual report with respect to each PFIC. Paragraph (f) of this section coordinates the requirement to file an annual report under section 1298(f) with the requirement to file an annual report under other provisions of the Internal Revenue Code (Code). Paragraph (g) of this section sets forth examples illustrating the application of this section.

(b) *Requirement to file*—(1) *General rule.* Except as otherwise provided in this section, a United States person that is a shareholder of a PFIC must complete and file Form 8621, ''Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund'' (or successor form), under section 1298(f) and these regulations for the PFIC if, during the shareholder's taxable year, the shareholder—

(i) Directly owns stock of the PFIC;

(ii) Is an indirect shareholder under § 1.1291–1T(b)(8) that holds any interest in the PFIC through one or more entities, each of which is foreign; or

(iii) Is an indirect shareholder under § 1.1291–1T(b)(8)(iii)(D) that is treated under sections 671 through 678 as the owner of any portion of a trust described in section 7701(a)(30)(E) that owns, directly or indirectly through one or more entities, each of which is foreign, any interest in the PFIC.

(2) *Additional requirement to file for certain indirect shareholders*—(i) *General rule.* Except as otherwise provided in this section, an indirect shareholder that owns an interest in a PFIC through one or more United States persons also must file Form 8621 (or successor form) with respect to the PFIC under section 1298(f) and these regulations if, during the indirect shareholder's taxable year, the indirect shareholder is—

(A) Treated as receiving an excess distribution (within the meaning of section 1291(b)) with respect to the PFIC;

(B) Treated as recognizing gain that is treated as an excess distribution (under section 1291(a)(2)) as a result of a disposition of the PFIC;

(C) Required to include an amount in income under section 1293(a) with respect to the PFIC (QEF inclusion);

(D) Required to include an amount in income under section 1296(a) with respect to the PFIC (MTM inclusion); or

(E) Required to report the status of a section 1294 election with respect to the PFIC (see § 1.1294–1T(h)).

(ii) *Exception to indirect shareholder reporting for certain QEF inclusions and MTM inclusions.* Except as otherwise provided in this paragraph (b)(2)(ii), the filing requirements under paragraph (b)(2)(i)(C) and (D) of this section do not apply with respect to a PFIC owned by an indirect shareholder described in paragraph (b)(2)(i)(C) or (b)(2)(i)(D) of this section if another shareholder through which the indirect shareholder owns an interest in the PFIC timely files Form 8621 (or successor form) with respect to the PFIC under paragraph (b)(1) or (b)(2) of this section. However, the exception in this paragraph (b)(2)(ii) does not apply with respect to a PFIC owned by an indirect shareholder described in paragraph (b)(2)(i)(C) of this section that owns the PFIC through a domestic partnership or S corporation if the domestic partnership or S corporation does not make a qualified electing fund election with respect to the PFIC (see § 1.1293–1(c)(2)(ii), addressing QEF stock transferred to a pass through entity that does not make a section 1295 election).

(3) *Special rules for estates and trusts*—(i) *Domestic liquidating trusts and fixed investment trusts.* A United States person that is treated under sections 671 through 678 as the owner of any portion of a trust described in section 7701(a)(30)(E) that owns, directly or indirectly, any interest in a PFIC is not required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to the PFIC if the trust is either a domestic liquidating trust under § 301.7701–4(d) of this chapter created pursuant to a court order issued in a bankruptcy under Chapter 7 (11 U.S.C. 701 *et seq.*) of the Bankruptcy Code or a confirmed plan under Chapter 11 (11 U.S.C. 1101 *et seq.*) of the Bankruptcy Code, or a widely held fixed investment trust under § 1.671–5. Such a trust is treated as a shareholder for purposes of section 1298(f) and these regulations, and thus, except as otherwise provided

in this section, the trust is required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to the PFIC as provided in paragraphs (b)(1) and (b)(2) of this section.

(ii) *Foreign pension funds.* A United States person that is treated as the owner of any portion of a trust described in section 7701(a)(31)(B) that owns, directly or indirectly, any interest in a PFIC is not required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to the PFIC if the foreign trust is a foreign pension fund (including a foreign pension fund that is an individual retirement plan) operated principally to provide pension or retirement benefits, and, pursuant to an income tax convention to which the United States is a party, income earned by the pension fund may be taxed as the income of the owner of the trust only when and to the extent the income is paid to, or for the benefit of, the owner.

(iii) *Beneficiaries of foreign estates and trusts.* A United States person that is considered to own an interest in a PFIC because it is a beneficiary of an estate described in section 7701(a)(31)(A) or a trust described in section 7701(a)(31)(B) that owns, directly or indirectly, stock of a PFIC, and that has not made an election under section 1295 or 1296 with respect to the PFIC, is not required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to the stock of the PFIC that it is considered to own through the estate or trust if, during the beneficiary's taxable year, the beneficiary is not treated as receiving an excess distribution (within the meaning of section 1291(b)) or as recognizing gain that is treated as an excess distribution (under section 1291(a)(2)) with respect to the stock.

(c) *Exceptions*—(1) *Exception if shareholder is a tax exempt entity.* A shareholder that is an organization exempt under section 501(a) because it is described in section 501(c), 501(d), or 401(a), a state college or university described in section 511(a)(2)(B), a plan described in section 403(b) or 457(b), an individual retirement plan or annuity as defined in section 7701(a)(37), or a qualified tuition program described in section 529 or 530 is not required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to a PFIC unless the income derived with respect to the PFIC stock would be taxable to the organization under subchapter F of Subtitle A of the Code.

(2) *Exception if aggregate value of shareholder's PFIC stock is $25,000 or less, or value of shareholder's indirect PFIC stock is $5,000 or less*—(i) *General rule.* A shareholder is not required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to a section 1291 fund (as defined in § 1.1291–1T(b)(2)(v)) for a shareholder's taxable year if—

(A) On the last day of the shareholder's taxable year,

(*1*) The value of all PFIC stock owned directly or indirectly under section 1298(a) and § 1.1291–1T(b)(8) by the shareholder is $25,000 or less; or

(*2*) The section 1291 fund stock is indirectly owned by the shareholder under section 1298(a)(2)(B) and § 1.1291–1T(b)(8)(ii)(B), and the value of the section 1291 fund stock indirectly owned by the shareholder is $5,000 or less;

(B) The shareholder is not treated as receiving an excess distribution (within the meaning of section 1291(b)) with respect to the section 1291 fund during the taxable year or as recognizing gain treated as an excess distribution under section 1291(a)(2) as the result of a disposition of the section 1291 fund during the taxable year; and

(C) An election under section 1295 has not been made to treat the section 1291 fund as a qualified electing fund with respect to the shareholder.

(ii) *Determination of the $25,000 threshold in the case of indirect ownership.* For purposes of determining the value of stock held by a shareholder for purposes of paragraph (c)(2)(i)(A)(*1*) of this section, the shareholder must take into account the value of all PFIC stock owned directly or indirectly under section 1298(a) and § 1.1291–1T(b)(8), except for PFIC stock that is—

(A) Owned through another United States person that itself is a shareholder of the PFIC (including a domestic partnership or S corporation treated as a shareholder of a PFIC for purposes of information reporting requirements applicable to a shareholder); or

(B) Owned through a PFIC under section 1298(a)(2)(B) and § 1.1291–1T(b)(8)(ii)(B).

(iii) *Application of the $25,000 exception to shareholders who file a joint return.* In the case of a joint return, the exception described in paragraph (c)(2)(i)(A)(*1*) of this section shall apply if the value of all PFIC stock owned directly or indirectly (as determined under section 1298(a), § 1.1291–1T(b)(8), and paragraph (c)(2)(ii) of this section) by both spouses is $50,000 or less, and all of the other applicable requirements of paragraph (c)(2) are met.

(iv) *Reliance on periodic account statements.* A shareholder may rely upon periodic account statements provided at least annually to determine the value of a PFIC unless the shareholder has actual knowledge or reason to know based on readily accessible information that the statements do not reflect a reasonable estimate of the PFIC's value.

(3) *Exception for taxable years ending before December 31, 2013.* A United States person is not required under section 1298(f) and these regulations to file an annual report with respect to a PFIC for a taxable year of the United States person ending before December 31, 2013.

(d) *Time and manner for filing.* A United States person required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to a PFIC must attach the form to its Federal income tax return (or, if applicable, partnership or exempt organization return) for the taxable year to which the filing obligation relates on or before the due date (including extensions) for the filing of the return. In the case of any failure to report information that is required to be reported pursuant to section 1298(f) and these regulations, the time for assessment of tax will be extended pursuant to section 6501(c)(8).

(e) *Separate annual report for each PFIC*—(1) *General rule.* If a United States person is required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to more than one PFIC, the United States person must file a separate Form 8621 (or successor form) for each PFIC.

(2) *Special rule for shareholders who file a joint return.* United States persons that file a joint return may file a single Form 8621 (or successor form) with respect to a PFIC in which they jointly or individually own an interest.

(f) *Coordination rule.* A United States person that is a shareholder of a PFIC may file a single Form 8621 (or successor form) with respect to the PFIC that contains all of the information required to be reported pursuant to section 1298(f) and these regulations and any other information reporting requirements or election rules.

(g) *Examples.* The following examples illustrate the rules of this section:

Example 1. General requirement to file. (i) *Facts.* In 2013, J, a United States citizen, directly owns an interest in Partnership X, a domestic partnership, which, in turn, owns an interest in A Corp, which is a PFIC. In addition, J directly owns an interest in

Partnership Y, a foreign partnership, which, in turn, owns an interest in A Corp. Neither J nor Partnership X has made a qualified electing fund election under section 1295 or a mark to market election under section 1296 with respect to A Corp. As of the last day of 2013, the value of Partnership X's interest in A Corp is $200,000, and the value of J's proportionate share of Partnership Y's interest in A Corp is $100,000. During 2013, J is not treated as receiving an excess distribution or recognizing gain treated as an excess distribution with respect to A Corp. Partnership X timely files a Form 8621 under section 1298(f) and paragraph (b)(1) of this section with respect to A Corp for 2013.

(ii) *Results.* J is the first United States person in the chain of ownership with respect to J's interest in A Corp held through Partnership Y. Under paragraph (b)(1) of this section, J must file a Form 8621 under section 1298(f) with respect to J's interest in A Corp held through Partnership Y because J is an indirect shareholder of A Corp under § 1.1291–1T(b)(8) that holds PFIC stock through a foreign entity (Partnership Y), and there are no other United States persons in the chain of ownership. The fact that Partnership X filed a Form 8621 with respect to A Corp does not relieve J of the obligation under paragraph (b)(1) of this section to file a Form 8621 with respect to J's interest in A Corp held through Partnership Y.

Example 2. Application of the $25,000 exception. (i) *Facts.* In 2013, J, a United States citizen, directly owns stock of A Corp, B Corp, and C Corp, all of which were PFICs during 2013. As of the last day of 2013, the value of J's interests was $5,000 in A Corp, $10,000 in B Corp, and $4,000 in C Corp. J timely filed an election under section 1295 to treat A Corp as a qualified electing fund for the first year in which A Corp qualified as a PFIC, and a mark-to-market election under section 1296 with respect to the stock of B Corp. J did not make a qualified electing fund election under section 1295 or a mark to market election under section 1296 with respect to C Corp. J did not receive an excess distribution or recognize gain treated as an excess distribution in respect of C Corp during 2013.

(ii) *Results.* Under paragraph (b)(1) of this section, J must file separate Forms 8621 with respect to A Corp and B Corp for 2013. However, J is not required to file a Form 8621 with respect to C Corp because J owns, in the aggregate, PFIC stock with a value of less than $25,000 on the last day of J's taxable year, C Corp is not subject to a qualified electing fund election or mark to market election with respect to J, and J did not receive an excess distribution in respect of C Corp or recognize gain treated as an excess distribution in respect of C Corp during 2013. Therefore, J qualifies for the $25,000 exception in paragraph (c)(2) of this section with respect to C Corp.

Example 3. Application of the $25,000 exception to indirect shareholder. (i) *Facts.* E, a United States citizen, directly owns an interest in Partnership X, a domestic partnership. Partnership X, in turn, directly owns an interest in A Corp and B Corp, both of which are PFICs. Partnership X timely filed an election under section 1295 to treat B Corp as a qualified electing fund for the first year in which B Corp qualified as a PFIC. In addition, E directly owns an interest in C Corp, which is a PFIC. C Corp, in turn, owns an interest in D Corp, which is a PFIC. E has not made a qualified electing fund election under section 1295 or a mark to market election under section 1296 with respect to A Corp, C Corp, or D Corp. As of the last day of 2013, the value of Partnership X's interest in A Corp is $30,000, the value of Partnership X's interest in B Corp is $30,000, the value of E's indirect interest in A Corp is $10,000, the value of E's indirect interest in B Corp is $10,000, the value of E's interest in C Corp is $20,000, and the value of C Corp's interest in D Corp is $10,000. During 2013, E did not receive an excess distribution, or recognize gain treated as an excess distribution, with respect to A Corp, C Corp, or D Corp. Partnership X timely files Forms 8621 under section 1298(f) and paragraph (b)(1) of this section with respect to A Corp and B Corp for 2013.

(ii) *Results.* Under paragraph (b) of this section, E does not have to file a Form 8621 under section 1298(f) and these regulations with respect to A Corp because E is not the United States person that is at the lowest tier in the chain of ownership with respect to A Corp and E did not receive an excess distribution or recognize gain treated as an excess distribution with respect to A Corp. Furthermore, under paragraph (b)(2)(ii) of this section, E does not have to file a Form 8621 under section 1298(f) and these regulations with respect to B Corp because Partnership X timely filed a Form 8621 with respect to B Corp. In addition, under paragraph (c)(2)(ii)(A) of this section, E does not take into account the value of A Corp and B Corp, which E owns through Partnership X, in determining whether E qualifies for the $25,000 exception. Further, under paragraph (c)(2)(ii)(B) of this section, E does not take into account the value of D Corp in determining whether E qualifies for the $25,000 exception. Therefore, even though E is the United States person that is at the lowest tier in the chain of ownership with respect to C Corp and D Corp, E does not have to file a Form 8621 with respect to C Corp or D Corp because E qualifies for the $25,000 exception set forth in paragraph (c)(2)(i)(A)(*1*) of this section.

Example 4. Indirect shareholder's requirement to file. (i) *Facts.* The facts are the same as in *Example 3,* except that the value of E's interest in C Corp is $30,000 and the value of E's proportionate share of C Corp's interest in D Corp is $3,000.

(ii) *Results.* The results are the same as in *Example 3* with respect to the requirement to file a Form 8621 under section 1298(f) and these regulations with respect to A Corp and B Corp. However, under the facts in this *Example 4,* E does not qualify for the $25,000 exception under paragraph (c)(2)(i)(A)(*1*) of this section because the value of E's interest in C Corp is $30,000. Accordingly, E must file a Form 8621 under section 1298(f) and these regulations with respect to C Corp. However, E does qualify for the $5,000 exception under paragraph (c)(2)(i)(A)(*2*) of this section with respect to D Corp, and thus does not have to file a Form 8621 with respect to D Corp.

(h) *Effective/applicability date.* Except as provided in paragraph (c)(3) of this section, this section applies to taxable years of shareholders ending on or after December 31, 2013. Paragraph (c)(3) of this section applies to taxable years of shareholders ending before December 31, 2013.

(i) *Expiration date.* This section expires on December 30, 2016.

■ **Par. 8.** Section 1.6038–2 is amended by revising paragraph (j)(3) to read as follows:

§ 1.6038–2 Information returns required of United States persons with respect to annual accounting periods of certain foreign corporations beginning after December 31, 1962.

* * * * *

(j) * * *

(3) [Reserved]. For further guidance, see § 1.6038–2T(j)(3).

* * * * *

■ **Par. 9.** Section 1.6038–2T is added to read as follows:

§ 1.6038–2T Information returns required of United States persons with respect to annual accounting periods of certain foreign corporations (temporary).

(a) through (j)(2). [Reserved]. For further guidance, see § 1.6038(a) through (j)(2).

(3) *Statement required.* Any United States person required to furnish information under this section with his return who does not do so by reason of the provisions of paragraph (j)(1) of this section shall file a statement with his income tax return indicating that such liability has been (or will be) satisfied and identifying the return with which the information was or will be filed and the place of filing.

(k) through (l). [Reserved]. For further guidance, see § 1.6038(k) through (l).

(m) *Effective/applicability date.* Except as otherwise provided, this section applies with respect to information for annual accounting periods beginning on or after June 21, 2006. Paragraphs (k)(1) and (k)(5) *Examples 3* and *4* of this section apply June 21, 2006. Paragraph (d) of this section applies to taxable years ending after April 9, 2008. Paragraph (j)(3) of this section applies to returns filed on or after December 31, 2013.

(n) *Expiration date.* Paragraph (j)(3) of this section expires on or before December 30, 2016.

■ **Par. 10.** Section 1.6046–1 is amended by:

■ 1. Paragraph (a)(1) is amended by removing the language ''Form 959'' and adding ''Form 5471 (or subsequent form)'' in its place.

■ 2. Paragraph (f)(1) is amended by removing the language ''5'' and adding ''10'' in its place.
■ 3. Revising paragraph (a)(2)(i).
■ 4. Revising *Examples 2* through *4* of paragraph (a)(3).
■ 5. Revising paragraph (c).
■ 6. Revising paragraph (e)(5).
■ 7. Revising paragraph (f)(4).
■ 8. Redesignating paragraph (l) as paragraph (l)(1).
■ 9. Adding paragraph (l)(2).

The additions and revisions read as follows:

§ 1.6046–1 Returns as to organizations or reorganizations of foreign corporations and as to acquisitions of their stock.

(a) * * *

(2) * * * (i) *Requirement of return.* Each United States citizen or resident who is at any time after January 1, 1963, an officer or director of a foreign corporation shall make a return on Form 5471 setting forth the information described in paragraph (a)(2)(ii) of this section with respect to each United States person who, during the time such citizen or resident is such an officer or director—

(*a*) Acquires (whether in one or more transactions) outstanding stock of such corporation which has, or which when added to any such stock then owned by him (excluding any stock owned by him on January 1, 1963, if on that date he owned 10 percent or more in value of such stock) has, a value equal to 10 percent or more in value of the outstanding stock of such foreign corporation;

(*b*) Acquires (whether in one or more transactions) an additional 10 percent or more in value of the outstanding stock of such foreign corporation; or

(*c*) Is not described in paragraph (a)(2)(i)(*a*) or (*b*) of this section, and who, at any time after January 1, 1987, is treated as a United States shareholder under section 953(c) with respect to such foreign corporation.

* * * * *

(3) * * *

Example 2. (i) *Facts.* A, a United States citizen, is, on January 1, 2014, a director of M, a foreign corporation. X, on January 1, 2014, is a United States person owning 4% in value of the outstanding stock of M Corporation. On July 1, 2014, X acquires 4% in value of the outstanding stock of M Corporation and on September 1, 2014, he acquires an additional 4% in value of such stock.

(ii) *Results.* The July 1, 2014, transaction does not give rise to liability to file a return; however, A must file a return as a result of the September 1, 2014, transaction because X's holdings now exceed 10%.

Example 3. (i) *Facts.* The facts are the same as in *Example 2* and, on September 15, 2014, X acquires an additional 8% in value of the outstanding stock of M Corporation. (X's total holdings are now 20%.) On November 1, 2014, X acquires an additional 4% in value of the outstanding stock of M Corporation.

(ii) *Results.* The September 15, 2014, transaction does not give rise to liability to file a return since X has not acquired 10% in value of the outstanding stock of M Corporation since A last became liable to file a return. However, A must file a return as a result of the November 1, 2014, transaction because X has now acquired an additional 10% in value of the outstanding stock of M Corporation.

Example 4. (i) *Facts.* The facts are the same as in *Examples 2* and *3* and, in addition, B, a United States citizen, becomes an officer of M Corporation on September 10, 2014.

(ii) *Results.* B is not required to file a return either as a result of the facts set forth in *Example 2* or as a result of the September 15, 2014, transaction described in *Example 3.* However, B is required to file a return as a result of the November 1, 2014, transaction described in *Example 3* because X has acquired an additional 10% in value of the outstanding stock of M Corporation while B is an officer or director.

* * * * *

(c) *Returns required of U.S. persons when liability to file arises after January 1, 1963*—(1) *U.S. persons required to file.* A return on Form 5471, containing the information required by paragraph (c)(4) of this section, shall be made by each U.S. person when at any time after January 1, 1963:

(i) Such person acquires (whether in one or more transactions) outstanding stock of such foreign corporation which has, or which when added to any such stock then owned by him (excluding any stock owned by him on January 1, 1963, if on that date he owned 10 percent or more in value of such stock) has, a value equal to 10 percent or more in value of the outstanding stock of such foreign corporation;

(ii) Such person, having already acquired the interest referred to in paragraph (b) of this section or in paragraph (c)(1)(i) of this section—

(*a*) Acquires (whether in one or more transactions) an additional 10 percent or more in value of the outstanding stock of such foreign corporation;

(*b*) Owns 10 percent or more in value of the outstanding stock of such foreign corporation when such foreign corporation is reorganized (as defined in paragraph (f)); or

(*c*) Disposes of sufficient stock in such foreign corporation to reduce his interest to less than 10 percent in value of the outstanding stock of such foreign corporation; or

(iii) Such person is, at any time after January 1, 1987, treated as a United States shareholder under *section 953(c)* with respect to a foreign corporation.

(2) *Examples.* The provisions of paragraph (c)(1) of this section may be illustrated by the following examples:

Example 1. (i) *Facts.* On January 15, 2014, A, a United States person, acquires 10% in value of the outstanding stock of M, a foreign corporation.

(ii) *Results.* A must file a return under the provisions of paragraph (c)(1) of this section.

Example 2. (i) *Facts.* On January 1, 2014, B, a United States person, owns 4% in value of the outstanding stock of M, a foreign corporation. On February 1, 2015, B acquires an additional 6% in value of the outstanding stock of M Corporation.

(ii) *Results.* B is not required to file a return for 2014 under the provisions of this section because he does not own 10% or more in value of the outstanding stock of M Corporation. B must file a return for 2015 under the provisions of paragraph (c)(1) of this section.

Example 3. (i) *Facts.* On January 1, 2014, C, a United States person, owns 12% in value of the outstanding stock of M, a foreign corporation. On February 1, 2014, C acquires an additional 4% in value of the outstanding stock of M Corporation in a transaction not involving a reorganization.

(ii) *Results.* C is not required to file a return under the provisions of paragraph (c)(1) of this section with respect to the acquisition of the additional 4% of M Corporation.

Example 4. (i) *Facts.* The facts are the same as in *Example 3* except that, in addition, on April 1, 2014, C acquires 4% in value of the outstanding stock of M Corporation in a transaction not involving a reorganization. (C's total holdings are now 20%.) On May 1, 2014, C acquires 2% in value of the outstanding stock of M Corporation.

(ii) *Results.* C is not required to file a return under the provisions of paragraph (c)(1) of this section as a result of the April 1, 2014, acquisition because he has not acquired 10% or more in value of the outstanding stock of M Corporation since he last became liable to file a return. C must file a return under the provisions of paragraph (c)(1) of this section as a result of the May 1, 2014, acquisition because C acquired 10% of the outstanding stock of M Corporation during 2014.

Example 5. (i) *Facts.* On June 1, 2014, D, a United States person, owns 24% in value of the outstanding stock of M, a foreign corporation. Also, on June 1, 2014, M Corporation is reorganized and, as a result of such reorganization, D owns only 12% of the outstanding stock of such foreign corporation.

(ii) *Results.* D must file a return under the provisions of paragraph (c)(1) of this section.

Example 6. (i) *Facts.* The facts are the same as in *Example 5* except that, in addition, on November 1, 2015, D donates 4% of the outstanding stock of M Corporation to a charity.

(ii) *Results.* Since D has disposed of sufficient stock to reduce his interest in M Corporation to less than 10% in value of the outstanding stock of such corporation, D must file a return under the provisions of paragraph (c)(1) of this section.

(3) *Shareholders who become U.S. persons.* A return on Form 5471,

containing the information required by paragraph (c)(4) of this section, shall be made by each person who at any time after January 1, 1963, becomes a U.S. person while owning 10 percent or more in value of the outstanding stock of such foreign corporation.

(4) *Information required to be shown on return*—(i) *In general.* The return on Form 5471, required to be filed by persons described in paragraph (c)(1) or (3) of this section, shall set forth the same information as is required by the provisions of paragraph (b) of this section except that where such provisions require information with respect to January 1, 1963, such information shall be furnished with respect to the date on which liability arises to file the return required under this paragraph.

(ii) *Additional information.* In addition to the information required under paragraph (c)(4)(i) of this section, the following information shall also be furnished in the return required under this paragraph:

(*a*) The date on or after January 1, 1963, if any, on which such shareholder (or shareholders) last filed a return under this section with respect to the corporation;

(*b*) If a return is filed by reason of becoming a United States person, the date the shareholder became a United States person;

(*c*) If a return is filed by reason of the disposition of stock, the date and method of such disposition and the person to whom such disposition was made; and

(*d*) If a return is filed by reason of the organization or reorganization of the foreign corporation on or after January 1, 1963, the following information with respect to such organization or reorganization:

(*1*) A statement showing a detailed list of the classes and kinds of assets transferred to the foreign corporation including a description of the assets (such as a list of patents, copyrights, stock, securities, etc.), the fair market value of each asset transferred (and, if such asset is transferred by a United States person, its adjusted basis), the date of transfer, the name, address, and identifying number, if any, of the owner immediately prior to the transfer, and the consideration paid by the foreign corporation for such transfer;

(*2*) A statement showing the assets transferred and the notes or securities issued by the foreign corporation, the name, address, and identifying number, if any, of each person to whom such transfer or issue was made, and the consideration paid to the foreign corporation for such transfer or issue; and

(*3*) An analysis of the changes in the corporation's surplus accounts occurring on or after January 1, 1963.

(iii) *Exclusion of information previously furnished.* In any case where any identical item of information required to be filed under this paragraph by a shareholder with respect to a foreign corporation has previously been furnished by such shareholder in any return made in accordance with the provisions of this section, such shareholder may satisfy the requirements of this paragraph by filing Form 5471, identifying such item of information, the date furnished, and stating that it is unchanged.

* * * * *

(e) * * *

(5) [Reserved]. For further guidance see § 1.6046–1T(e)(5).

* * * * *

(f) * * *

(4) [Reserved].

* * * * *

(l) *Effective/applicability date*—(1) * * *

(2) Paragraph (c)(1)(iii) of this section applies to taxable years ending after December 31, 2013.

■ **Par. 11.** Section 1.6046–1T is added to read as follows:

§ 1.6046–1T Returns as to organizations or reorganizations of foreign corporations and as to acquisitions of their stock (temporary).

(a)(1) through (e)(4). [Reserved]. For further guidance, see § 1.6046–1(a)(1) through (e)(4).

(5) *Persons excepted from furnishing items of information.* Any person required to furnish any item of information under paragraph (b) or (c) of this section with respect to a foreign corporation may, if such item of information is furnished by another person having an equal or greater stock interest (measured in terms of value of such stock) in such foreign corporation, satisfy such requirement by filing a statement with his return on Form 5471 indicating that such liability has been satisfied and identifying the return in which such item of information was included. This paragraph (e)(5) does not apply to persons excepted from filing a return by reason of the provisions of paragraph (e)(4) of this section.

(f)(1) through (l)(2). [Reserved]. For further guidance, see § 1.6046–1(f)(1) through (l)(2).

(3) Paragraph (e)(5) of this section applies to returns filed on or after December 31, 2013. See paragraph (e)(5) of § 1.6046–1, as contained in 26 CFR part 1 revised as of April 1, 2012, for returns filed before December 31, 2013.

(m) *Expiration date.* Paragraph (e)(5) of this section expires on or before December 30, 2016.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: December 12, 2013.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2013–30847 Filed 12–30–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF EDUCATION

34 CFR Chapter II

[CFDA Number 84.144F]

Final Requirement—Migrant Education Program Consortium Incentive Grant Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final requirement.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education announces a final requirement under the Migrant Education Program (MEP) Consortium Incentive Grant (CIG) Program. This final requirement changes the maximum project period of grants awarded to State educational agencies (SEAs) under the MEP CIG program from two years to three years. We take this action to allow participating SEAs, where appropriate, to have an additional year to conduct needed activities, evaluate their projects, and provide a final report addressing their success in completing project activities and achieving the objectives and outcomes that were established in their approved CIG program application.

DATES: *Effective Date:* This requirement is effective January 30, 2014.

FOR FURTHER INFORMATION CONTACT: Lisa Gillette, U.S. Department of Education, 400 Maryland Avenue SW., Room 3E313, Washington, DC 20202. Telephone: (202) 260–1426 or by email: *lisa.gillette@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Purpose of Program: The MEP, authorized in title I, part C, section 1301 *et seq.* of the Elementary and Secondary Education Act of 1965, as amended

(ESEA) (20 U.S.C. 6391 *et seq.*), is a State-operated and State-administered formula grant program. The MEP helps SEAs support high-quality and comprehensive educational programs that do two things: provide migratory children with appropriate educational and supportive services that address their special needs in a coordinated and efficient manner, and give migratory children the opportunity to meet the same challenging State academic content and student academic achievement standards that all children are expected to meet.

One component of the MEP is the CIG program, authorized in section 1308(d) of the ESEA (20 U.S.C. 6398(d)). Through the MEP CIG program, the Department provides financial incentives to SEAs to participate in high-quality consortia that improve the interstate or intrastate coordination of migrant education programs by addressing key needs of migratory children who have their education interrupted.

Program Authority: 20 U.S.C. 6398.

Applicable Program Regulations: 34 CFR part 200, subpart C.

We published a notice of proposed requirement for this program in the **Federal Register** on July 3, 2013 (78 FR 40084). That notice contained background information and our reasons for proposing the particular requirement.

Except for one minor technical revision, there are no differences between the proposed requirement and this final requirement.

Public Comment: In response to our invitation in the notice of proposed requirement, the Department received one comment.

Analysis of Comments and Changes

Comment: The one comment supported the proposed requirement because the additional year will allow time for projects to mature and will also provide time to disseminate successful and promising practices, as well as share lessons learned.

Changes: None.

Final Requirement—Duration of Incentive Grants

The Secretary may provide a maximum project period of three years for grants awarded under the MEP CIG program. The Secretary may extend the current two-year project period of the FY 2012 grantees to three years as well as determine a project period for future competitions of up to three years.

For grants with a three-year project period, grantees must submit a performance report at the end of each project year and are eligible for a continuation award at the end of the first and second project years based on the two-tiered funding formula in the 2004 Notice of Final Requirements published in the **Federal Register** on March 3, 2004 (69 FR 10110). The second and third year's continuation funding is contingent on the grantee making substantial progress in performing the previous year's consortium activities and in attaining the outcomes identified in the approved consortium application. Grantees must submit their final summary evaluation report at the end of the third project year.

Note: This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this requirement, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentive—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing this final requirement only on a reasoned determination that its benefits justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for

administering the Department's programs and activities.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the *Code of Federal Regulations* is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: December 26, 2013.

Deborah S. Delisle,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2013–31325 Filed 12–30–13; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R01–RCRA–2013–0554; FRL—9904–47–Region 1]

Vermont: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct Final Rule.

SUMMARY: The State of Vermont has applied to the Environmental Protection Agency (EPA) for Final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is authorizing the State's changes through this direct final action.

DATES: This rule is effective on March 3, 2014 without further notice, unless EPA receives adverse written comment by January 30, 2014. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–RCRA–2013–0554, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: leitch.sharon@epa.gov*
- *Fax:* (617) 918–0647, to the attention of Sharon Leitch.
- *Mail:* Sharon Leitch, RCRA Waste Management and UST Section, Office of Site Remediation and Restoration (OSRR07–1), US EPA Region 1, 5 Post Office Square, Suite 100, Boston, MA 02109–3912.
- *Hand Delivery:* Sharon Leitch, RCRA Waste Management and UST Section, Office of Site Remediation and Restoration (OSRR07–1), US EPA Region 1, 5 Post Office Square, 7th floor, Boston, MA 02109–3912. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please contact Sharon Leitch at (617) 918–1647.

Instructions: Direct your comments to Docket ID No. EPA–R01–RCRA–2013–0554. 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 docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the EPA Region 1 Library, 5 Post Office Square, 1st floor, Boston, MA 02109–3912; by appointment only; tel: (617) 918–1990.

FOR FURTHER INFORMATION CONTACT: Sharon Leitch, RCRA Waste Management and UST Section, Office of Site Remediation and Restoration, (Mail Code: OSRR07–1), EPA Region 1, 5 Post Office Square, Suite 100, Boston, MA 02109–3912; telephone number: (617) 918–1647; fax number (617) 918–0647; email address: *leitch.sharon@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Why are revisions to state programs necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in Title 40 of the Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What decisions have we made in this Rule?

We have concluded that Vermont's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Vermont Final authorization to operate its hazardous waste program with the changes described in the authorization application. Vermont has responsibility for permitting treatment, storage, and disposal facilities (TSDFs) within its borders and for carrying out the aspects of the RCRA program covered by its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement any such requirements and prohibitions in Vermont, including issuing permits, until the State is granted authorization to do so.

C. What is the effect of today's authorization decision?

The effect of this decision is that a facility in Vermont subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Vermont has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA also retains its full authority under RCRA sections 3007, 3008, 3013, and 7003, which includes, among others, authority to:

- Perform inspections, and require monitoring, tests, analyses or reports
- Enforce RCRA requirements and suspend or revoke permits
- Take enforcement actions

This action does not impose additional requirements on the regulated community because the regulations for which Vermont is being authorized by today's action are already effective under state law, and are not changed by today's action.

D. Why wasn't there a Proposed Rule before today's Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect adverse comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the ''Proposed Rules'' section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

E. What happens if the EPA receives comments that oppose this action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule based upon this proposed rule that also appears in today's **Federal Register**. You may not have another opportunity to comment. If you want to comment on this authorization, you should do so at this time.

If we receive adverse comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw that part of this rule but the authorization of the program changes that the comments do not oppose will become effective on the date specified in this document. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What has Vermont previously been authorized for?

The State of Vermont initially received Final authorization on January 7, 1985, with an effective date of January 21, 1985 (50 FR 775) to implement the RCRA hazardous waste management program. The Region published an immediate final rule for certain revisions to Vermont's program on May 3, 1993 (58 FR 26242) and reopened the comment period for these revisions on June 7, 1993 (58 FR 31911). This authorization became effective August 6, 1993 (58 FR 31911). The Region granted authorization for further revisions to Vermont's program on September 24, 1999 (64 FR 51702), effective November 23, 1999. On October 18, 1999 (64 FR 46174) the Region published a correction to the immediate final rule that was published on September 24, 1999. The Region granted authorization for further revisions to Vermont's program on October 26, 2000, effective December 26, 2000 (65 FR 64164). That **Federal Register** also made a technical correction. On June 23, 2005 (70 FR 36350) the Region published an immediate final rule for additional revisions to Vermont's program. This authorization became effective on August 22, 2005. The most recent authorization was granted to Vermont on March 16, 2007 (72 FR 12568) and became effective on May 15, 2007.

G. What changes are we authorizing with today's action?

On August 20, 2013, Vermont submitted a final complete program revision application, seeking authorization for their changes in accordance with 40 CFR 271.21. In particular, Vermont is seeking authorization for updated state regulations addressing federal requirements added from July 1, 2005 through June 30, 2011. Also, Vermont is seeking authorization for various changes it recently has made to its base program regulations.

We are now making an immediate final decision that, subject to reconsideration only if we receive written comments that oppose this action, Vermont's hazardous waste program revisions satisfy all of the requirements necessary to qualify for Final authorization. Therefore, we grant Vermont Final authorization for the following program changes. First, we are authorizing state regulations that track federal regulations adopted since July 1, 2005, as follows (the Federal Citation is followed by the analog from chapter 7 of the Vermont Environmental Protection Rules (Hazardous Waste Management Regulations), effective March 15, 2013): Federal: *Methods Innovation Rule and SW–846 Final Update IIIB* [70 FR 34538, June 14, 2005. As amended August 1, 2005; 70 FR 44150] (Checklist 208)– State: 7–106(a), 7–109(a), 7–109(b)(1), 7–202(a)(9), 7–205(a)(1), 7–206(a)(1) & (a)(2), 7–210, 7–217(c), 7–219, 7–219(c), 7–219(e), 7–504(e)(1), 7–505(c), 7–510(c)(1), 7–511(a) & (d), 7–805(f), 7–811(b)(5), 7–812(d), 7–813(a); Federal: *Revision of Wastewater Treatment Exemptions for Hazardous Waste Mixtures* (''*Headworks exemptions*'') [70 FR 57769, October 4, 2005] (Checklist 211)– State: 7–109(a) and 203(k)(3); Federal: *Burden Reduction Initiative*; [71 FR 16862, April 4, 2006] (Checklist 213)—State: 7–106(a), 7–109(a), 7–109(b)(1), 7–204(b)&(c), 7–203(i)(4), 7–504(e)(1), 7–505(c), 7–507(f)(1), 7–510(c)(1); Federal: *Corrections to Errors in the Code of Federal Regulations* [71 FR 40254, July 14, 2006] (Checklist 214)—State: 7–103, 7–106(a), 7–108(d), 7–109(a), 7–109(b)(1) & (b)(2), 7–203(i)(4), 7–203(v), 7–203(r), 7–204(f), 7–204(f)(3), 7–204(g), 7–204(g)(1) & (g)(2), 7–205(a)(3) & (a)(4), 7–205(a)(4)(A), (B), (C) & (D), 7–208(b), 7–210, 7–215, 7–217(c), 7–311(h), 7–501, 7–502(d), 7–504, 7–504(e)(1), 7–505, 7–505(c), 7–507(f)(1), 7–508(e)(2), 7–

510(c)(1), 7–510(d), 7–512, 7–606, 7–608, 7–705(b)(2), 7–705(d), 7–706(c), 7–708(c), 7–802, 7–803, 7–805(f)(2), 7–806(e), 7–811(b)(3), 7–811(b)(5)(A), 7–811(b)(6)(A), 7–811(i)(1), 7–811(i)(3)(A), 7–812(c), 7–812(d), 7–813, 7–902(d), 7–911, 7–912(d)(2), Appendix I, II, III, IV & IX; Federal: *Academic Laboratories Generator Standards and Technical Corrections* [73 FR 72912, December 1, 2008 and 75 FR 79304, December 20, 2010] (Checklists 220 and 226)—State: 7–103, 7–109(b)(4), 7–305(a)(7), 7–306(c)(1)(A), 7–306(d), 7–307(c)(1) and (6), 7–307(d), 7–308(b)(1) and (6), 7–308(c); *OECD Requirements; Export Shipments of Spent Lead–Acid Batteries* [75 FR 1236, January 8, 2010] (Checklist 222)—State: 7–109(a), 7–204(f)(3), 7–307(c)(8 & 9), 7–308(b)(8 & 9), 7–402(b), 7–504(e), 7–510(c), 7–704(c) & (e), 7–705(c) & (d), 7–706(c), 7–707(c) (but note that EPA directly administers the export and import requirements in 40 CFR part 262, subpart H referenced by the State regulations); *Hazardous Waste Technical Corrections and Clarifications* [75 FR 12989, March 18, 2010 and 75 FR 31716, June 4, 2010] (Checklist 223)—State: 7–103, 7–106(a), 7–109(a) & (a)(7), 7–202(e), 7–203(j)(1), 7–203(j)(3), 7–204(f), 7–204(g), 7–207(a)(8), 7–209(b), 7–210, 7–306, 7–306(a)(2) & (a)(3), 7–306(b) & (c), 7–307(c)(4), 7–308(a) & (b) and ''Note'' in (b), 7–310(a), 7–311(c), 7–504(e)(1), 7–510(c)(1), 7–512, 7–607, 7–608, 7–702(b)(12), 7–706(b), 7–707(a), (b) & (d), 7–708(a), Appendix I, III, & IV; *Removal of Saccharin and Its Salts from the Lists of Hazardous Constituents* [75 FR 78918, December 17, 2010] (Checklist 225) —State: Appendix II & III; *Revision of the Land Disposal Treatment Standards for Carbamate Wastes* [76 FR 34147, June 13, 2011] (Checklist 227)—State: IBR, 7–106(a).

In addition to the regulations listed above, there are various previously authorized state program regulations to which the state has made changes. The EPA is also authorizing these changes. These changes are as follows: Regarding Subchapter 1 of the State Regulations, Federal: definitions in 40 CFR 260.10—State: added definitions of elementary neutralization unit, tank system and wastewater treatment unit (instead of citing federal definitions), revised definitions of pesticidal waste, registration, and used oil, and removed the definition for ''performance track member facility'' in 7–103; Federal: 40 CFR 262.12 (i.d. numbers)—State: provisions for temporary i.d. numbers added to 7–104; Federal: 40 CFR part 260–279—State: general update to incorporation by reference of federal regulations, 7–109(a); Regarding Subchapter 2 of the State Regulations, Federal: 40 CFR 262.11 (waste determinations)—State: 7–202(d) revised to clarify recordkeeping requirements; Federal: 40 CFR 261.4(a)(13) and (14) (scrap metal and shredded circuit board exemptions. Note: EPA interprets the scrap metal exemption to cover intact circuit boards that meet certain conditions.)—State: Revision to 7–204(h) allowing intact as well as shredded circuit boards, meeting the required conditions, to qualify for the exemption; Federal: 40 CFR 261.2(c)(2)(ii), exemption for certain commercial chemical products burned as fuels—State: clarified container and tank marking requirements and added requirements for aggregation facilities, 7–204(1)(4) and (6); Federal: 40 CFR 261.33(c), regarding commercial chemical products listings—State: 7–214(d) and 7–215(d) revised to track the federal language; Regarding Subchapter 3 of the State Regulations, Federal: 40 CFR 262.12 (i.d. nos.)—State: 7–304(a), revision clarifying that temporary i.d. numbers are only issued for hazardous wastes that are episodically generated; Federal: 40 CFR 265.111, 265.114 and 265.197 (generator closure)—State: revisions to generator closure requirements at 7–304(d) and 7–309(c)(2), being authorized as applied to tank closures and is broader in scope as applied to closure of other units; Federal: 40 CFR 262.34(d), small quantity generators—State: clarification of small quantity generator requirements in 7–307; Federal: 40 CFR 262.34(a), large quantity generators—State: clarification of large quantity generator requirements in 7–308; Federal: 40 CFR 262.34(d)(5)(iv), regulation of small quantity generator emergency response requirements—State: revised, 7–307(c)(14) by revising subsection (A) and adding subsection (D) making it equivalent to the federal requirements; Federal: 40 CFR 265.32(b), preparedness and prevention requirements for large quantity generators and small quantity generators as referenced in 40 CFR 262.34(a)(4) and 40 CFR 262.34(d)(4), respectively—State: revised to make the requirements more up-to-date with current practices (e.g., substituted reference to cell phone for reference to two-way radios), 7–307(c)(14)(B), 7–308(b)(14)(A)(iv), 7–309(a)(1)(B), and 7–309(a)(3)(B); Federal: 40 CFR 261.5, requirements for CESQGs—State: 7–306, except for 7–306(c)(1)(G) (fees). Note: 7–306 previously was authorized in 1999 with respect to Checklist 153, we are now confirming that this provision is authorized for all purposes, not just with respect to Checklist 153; Federal: 40 CFR 270.1(c), prohibition of unpermitted disposal of hazardous waste—State: 7–302(a), prohibiting disposal of hazardous waste by evaporation. Note: this provision was adopted by the State in 1998 but was inadvertently not previously authorized and is being authorized now; Regarding Subchapter 4 of the State Regulations, Federal: 40 CFR 263.12, transfer facility requirements—State: clarifying requirements for the management of off-loaded containers of hazardous waste from transport vehicles, 7–404(b) (formerly 7–404(c)); Federal: 40 CFR part 263—State: clarification when transporter requirements apply, 7–401(b)(1)(A) and 7–405(d); Regarding Subchapter 5 of the State Regulations, Federal: 40 CFR 264.1(g)(6), 265.1(c)(10) and 270.1(c)(2)(v), elementary neutralization and wastewater treatment unit exemptions—State: revised exemption (changed cross-reference) at 7–502(c); Federal: 40 CFR 262.34, as interpreted at 51 FR 10168—State: 7–502(o) revisions to generator treatment in containers and tanks standards, except for 7–502(o)(8) and revision to the note following 7–502(o)(10) (not yet submitted for authorization), and addition of 7–502(k)(1)(C); Federal: 40 CFR 270.50, duration of permits—State: 7–504(g), changing from 5 year permits to 10 year permits, as federally allowed; Regarding Subchapter 6 of the State Regulations, Federal: 40 CFR 260.30, variances—State: 7–608(d), (e) & (f) setting time limits on variances, as applied to any federally regulated wastes; Regarding Subchapter 8 of the State Regulations, Federal: 40 CFR 279.11, specification used oil burned for energy recovery—State: revised 7–801 and 7–802, and 7–812(c)(3) and added 7–804(g) (being authorized except for (g)(3) which is broader in scope); Federal: 40 CFR 279.20—279.24, generator standards—State: 7–807(h), added record-keeping requirement; Regarding Subchapter 9 of the State Regulations, Federal: 40 CFR 273.11 and 40 CFR 273.31, prohibitions of treatment by universal waste handlers—State: added Notes clarifying that drum top crushing is regulated as treatment rather than being considered an exempt recycling activity (this is equivalent to the federal approach with respect to universal waste handlers); Federal: 40 CFR part 273, Standards for Universal Waste Management—State: 10 V.S.A. sec. 6680 designating postconsumer paint as universal waste and setting management standards, 7–901, 7–910, 7–911, 7–912(a)&(b), 7–912(c)(1)&(c)(2)(A), 7–912(c)(2)Note, 7–

912(c)(3), 7–912(f)–(k), 7–913, 7–914, 7–915, 7–916.

The final authorization of new state regulations and regulation changes is in addition to the previous authorization of state regulations, which remain part of the authorized program. Vermont initially received authorization for its base program requirements in 1985 and again in 1993. Vermont subsequently reformatted and renumbered various base program regulations, and submitted revised base program Checklists in connection with the EPA's 1999 authorization. The renumbered and reformatted provisions, as referenced in those Checklists, are part of the authorized program. See 64 FR 51706 (Sept. 24, 1999). The current authorized program consists of the base program requirements together with the additional requirements and changes authorized by the EPA in the 1993, 1999, 2000, 2005 and 2007 authorizations. Added to this will be the requirements being authorized through this rulemaking today.

H. Where are the revised state rules different from the federal rules?

The most significant differences between the State rules being authorized and the Federal rules are summarized below. It should be noted that this summary does not describe every difference, or every detail regarding the differences that are described. Members of the regulated community are advised to read the complete regulations to ensure that they understand all of the requirements with which they will need to comply.

1. More Stringent Provisions

There are aspects of the Vermont program which are more stringent than the Federal program. All of these more stringent requirements are, or will become, part of the federally enforceable RCRA program when authorized by the EPA and must be complied with in addition to the State requirements which track the minimum Federal requirements. These more stringent requirements include the following: (a) the state has adopted the federal Academic Labs rule but has also added requirements for Laboratory Management Plans that are more stringent, 7–109(b)(4)(B) to (D); (b) the State has revised its exemption for commercial chemical product fuels in 7–204(l)(6) by more stringently specifying the management requirements for aggregation facilities. As noted in our 2007 authorization, the underlying State exemption is equivalent to the combination of the federal exemption for commercial chemical product fuels being burned for energy recovery and the federal exemption for commercial chemical products being reclaimed, in 40 CFR 261.2(c)(2)(ii) and (c)(3), respectively.

2. Broader in Scope Provisions

There are also aspects of the Vermont program which are broader in scope than the Federal program. The portion of the State requirements which are broader in scope are not considered to be part of the Federally enforceable RCRA program. However, they are fully enforceable under State law and must be complied with by sources in Vermont. These broader in scope requirements include the following: (a) the state has revised its Used Oil regulations by adding management standards in 7–804(g) for used oil that has been shown to meet fuel burning specifications (''used oil fuel''). The broader in scope provisions are found in 7–804(g)(3); (b) With respect to point source discharges of wastewaters that are hazardous wastes, the State has amended state regulation 7–203(q) to only exempt from its hazardous waste regulations those discharges that are ''in compliance with'' State water act requirements rather than exempting from hazardous waste requirements all discharges that are ''subject to'' the State water act requirements. The comparable federal exemption at 40 CFR 261.4(a)(2) exempts discharges that are ''subject to'' section 402 of the Clean Water Act. Thus the State is exempting fewer sources from hazardous waste regulation than does the federal exemption and is, therefore, regulating more broadly in scope.

3. Different but Equivalent Provisions

Vermont also has added a provision to its state statute which differs from the Federal regulations but has been determined to be equivalent to them. These State revisions will become part of the federally enforceable RCRA program when authorized by the EPA. These different but equivalent provisions are as follows. Vermont has added postconsumer paint to its Universal Waste rules through a state statutory provision found at 10 V.S.A. sec. 6680. We are authorizing this as being equivalent to the requirements of 40 CFR part 273 Subpart G since we have determined that it is an appropriate universal waste to approve and that the rules allow the States the flexibility to add additional wastes to their list of universal wastes. In particular, we are authorizing the specific management requirements for these paint wastes as they are identified in the statute under sec. 6680(b) and (c). The statute also specifies that the existing state universal waste regulation requirements apply to the handling of postconsumer paint. In addition, EPA is reauthorizing the existing universal waste regulations as they are applied to the paint wastes.

I. Who handles permits after the authorization takes effect?

Vermont will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will implement and issue permits for any HSWA requirements for which Vermont is not yet authorized in the future.

J. What is codification and is EPA codifying Vermont's hazardous waste program as authorized in this rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR Part 272. We reserve the amendment of 40 CFR Part 272, Subpart UU for this authorization of Vermont's program until a later date.

K. Administrative Requirements

The Office of Management and Budget (OMB) has exempted this action (RCRA State Authorization) from the requirements of Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011), therefore, this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it 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). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects 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, as

specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a ''significant regulatory action'' as defined under Executive Order 12866.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 F.R. 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 F.R. 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Executive Order 12898 (59 FR 7629, Feb. 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. Because this rule authorizes pre-existing State rules which are equivalent to, and no less stringent than existing federal requirements, and imposes no additional requirements beyond those imposed by State law and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

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. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This action nevertheless will be effective 60 days after it is published, because it is an immediate final rule.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: November 5, 2013.

H. Curtis Spalding,

Regional Administrator, EPA Region 1.

[FR Doc. 2013–31121 Filed 12–30–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 155

[CMS–9957–CN; 9964–CN]

RIN 0938–AR82; RIN 0938–AR74

Patient Protection and Affordable Care Act; Program Integrity: Exchange, Premium Stabilization Programs, and Market Standards; Amendments to the HHS Notice of Benefit and Payment Parameters for 2014 Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule; correction.

SUMMARY: This document corrects an error that appeared in the final rule published in the **Federal Register** on October 30, 2013 entitled, ''Patient Protection and Affordable Care Act; Program Integrity: Exchange, Premium Stabilization Programs, and Market Standards; Amendments to the HHS Notice of Benefit and Payment Parameters for 2014.''

DATES: *Effective Date:* December 30, 2013.

FOR FURTHER INFORMATION CONTACT: Scott Dafflitto (301) 492–4198.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2013–25326 of October 30, 2013 (78 FR 65046), final rule entitled ''Patient Protection and Affordable Care Act; Program Integrity: Exchange, Premium Stabilization Programs, and Market Standards; Amendments to the HHS Notice of Benefit and Payment Parameters for 2014 (78 FR 65046), there was a technical nonconformity that is identified and corrected in the regulations text of this correction notice. This correction is effective December 30, 2013, just as if it had been included in the document published on October 30, 2013.

The October 30, 2013 final rule implements provisions of the Patient Protection and Affordable Care Act (Pub. L. 111–148) and the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) (collectively referred to as the Affordable Care Act). In relevant part, the October 30, 2013 final rule establishes standards, at 45 CFR part 155, subpart M, that require State Exchanges to submit certain reports to the Department of Health and Human Services (HHS) and to undertake certain recordkeeping and self-auditing activities to ensure compliance with Federal requirements, such as those governing eligibility determinations for advance payments of the premium tax

credit and cost-sharing reductions. The standards established at subpart M enable HHS to carry out its responsibility of ensuring that Federal funds are used appropriately in the administration of State Exchange activities.

II. Summary of Error

On page 65095, in the **Federal Register** of October 30, 2013, we added subpart M ''Oversight and Program Integrity Standards for State Exchanges'' to the regulations text at 45 CFR part 155. While it was clear from the preamble and regulations text that subpart M applies to all Exchanges, including small business health options program (SHOP) Exchanges, due to an oversight we inadvertently omitted cross-referencing new subpart M at § 155.705(a) of the regulations in part 155, subpart H—Exchange Functions: Small Business Health Options Program. Accordingly, we are revising § 155.705(a) so that the regulations in part 155 consistently reflect our policy that all Exchanges, including SHOP Exchanges, must carry out the required functions of an Exchange that are set forth at subpart M. We are correcting § 155.705(a) by adding a cross reference to subpart M, so that the provision reads, ''Exchange functions that apply to SHOP''. The SHOP must carry out all the required functions of an Exchange described in this subpart and in subparts C, E, K, and M of this part, except: . . . .''

III. Waiver of Proposed Rulemaking and Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect, in accordance with section 553(b) and (c) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b) & (c)). However, we can waive notice and comment if the Secretary finds, for good cause, that notice and comment would be impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefor in the notice.

Section 553(d) of the APA ordinarily requires a 30-day delay in the effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if the Secretary finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the findings and the reasons therefor in the rule issued.

It was clear from both the preamble and the regulations text for 45 CFR part 155, subpart M, that subpart M applies to all Exchanges, including SHOP Exchanges. Both the preamble and the regulations text for part 155, subpart M use the term ''Exchange'' when describing the new requirements. The term ''Exchange'' is defined at § 155.20 as including SHOP Exchanges. In relevant part, the definition of ''Exchange'' in § 155.20 states: ''Unless otherwise identified, this term includes an Exchange serving the individual market for qualified individuals and a SHOP serving the small group market for qualified employers . . . .'' This conforming amendment merely corrects a technical nonconformity in the regulations text so that the regulations consistently reflect the policy adopted in the October 30, 2013 final rule. Therefore, we find that undertaking further notice and comment before this correction is incorporated into the final rule is unnecessary.

For the same reasons, we also find good cause to waive the 30-day delay in effective date.

IV. Correction of Errors

On page 65095, in the third column, after the regulations text for § 155.420—Special enrollment periods, insert the following amendment to § 155.705—Functions of a SHOP to read as follows:

§ 155.705 [Corrected]

26a. Section 155.705 is amended by revising paragraph (a) introductory text to read as follows:

§ 155.705 Functions of a SHOP.

(a) *Exchange functions that apply to SHOP.* The SHOP must carry out all the required functions of an Exchange described in this subpart and in subparts C, E, K, and M of this part, except:

* * * * *

Dated: December 23, 2013.

Oliver Potts,

Deputy Executive Secretary to the Department, Department of Health and Human Services.

[FR Doc. 2013–31319 Filed 12–30–13; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF DEFENSE

Defense Acquisitions Regulations System

48 CFR Parts 225 and 252

RIN 0750–AI17

Defense Federal Acquisition Regulation Supplement; Trade Agreements Thresholds (DFARS Case 2013–D032)

AGENCY: Defense Acquisition Regulations System; Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to incorporate increased thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements, as determined by the United States Trade Representative.

DATES: *Effective:* January 1, 2014.

FOR FURTHER INFORMATION CONTACT: Ms. Annette Gray, (703) 602–6093.

SUPPLEMENTARY INFORMATION:

I. Background

Every two years, the trade agreements thresholds are escalated according to a pre-determined formula set forth in the agreements. The United States Trade Representative has specified the following new thresholds in the **Federal Register** (78 FR 76700, December 18, 2013):

Trade agreement	Supply contract (equal to or exceeding)	Construction contract (equal to or exceeding)
WTO GPA	204,000	7,864,000
FTAs:		
Australia FTA	79,507	7,864,000
Bahrain FTA	204,000	10,335,931
CAFTA–DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua)	79,507	7,864,000
Chile FTA	79,507	7,864,000
Colombia FTA	79,507	7,864,000
Korea FTA	100,000	7,864,000

Trade agreement	Supply contract (equal to or exceeding)	Construction contract (equal to or exceeding)
Morocco FTA	204,000	7,864,000
NAFTA:		
—Canada	25,000	10,335,931
—Mexico	79,507	10,335,931
Panama FTA	204,000	7,864,000
Peru FTA	204,000	7,864,000
Singapore FTA	79,507	7,864,000

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

Publication of proposed regulations, 41 U.S.C. 1707, is the statute which applies to the publication of the Federal Acquisition Regulation. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it implements the new thresholds in the clause prescriptions at DFARS 225.1101, 225.7017–3, 225.7503 and in the clauses at 252.225–7017 and 252.225–7018. These requirements affect only the internal operating procedures of the Government.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant FAR revision within the meaning of FAR 1.501–1, and 41 U.S.C. 1707 and does not require publication for public comment.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 225 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and CFR chapter 1.

PART 225—FOREIGN CONTRACTING

225.1101 [Amended]

■ 2. Section 225.1101 is amended—

■ a. In paragraph (10)(i) introductory text, by removing ''$202,000'' and adding ''$204,000'' in its place; and

■ b. In paragraphs (10)(i)(A), (10)(i)(B), and (10)(i)(C), by removing ''$77,494'' and adding ''$79,507'' in its place.

■ 3. Section 225.7017–3 is amended in paragraphs (b) and (c)(2), by removing ''$202,000'' and adding ''$204,000'' in its place.

■ 4. Section 225.7503 is amended—

■ a. In paragraphs (a)(1) and (b)(1), by removing ''$7,777,000'' and adding ''$7,864,000'' in its place;

■ b. In paragraph (b)(2), by removing ''$7,777,000'' and adding ''$7,864,000'' in its place, and by removing ''$10,074,262'' and adding ''$10,335,931'' in its place.

■ c. In paragraph (b)(3) by removing ''$10,074,262'' and adding ''$10,335,931'' in its place; and

■ d. In paragraph (b)(4) by removing ''$7,777,000'' and adding ''$7,864,000'' in its place, and by removing ''$10,074,262'' and adding ''$10,335,931'' in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225–7017 [Amended]

■ 5. Section 252.225–7017 is amended—

■ a. By removing clause date ''(DEC 2013)'' and adding ''(JAN 2014)'' in its place.

■ b. In paragraphs (c)(2) and (c)(3), by removing ''$77,494'' and adding ''$79,507'' in its place; and

■ c. In paragraphs (c)(4) and (c)(5), by removing ''$202,000'' and adding ''$204,000'' in its place.

252.225–7018 [Amended]

■ 6. Section 252.225–7018 is amended—

■ a. By removing clause date ''(DEC 2013)'' and adding ''(JAN 2014)'' in its place.

■ b. In paragraphs (b)(1) and (b)(2), by removing ''$202,000'' and adding ''$204,000'' in its place;

■ c. In paragraphs (d)(3) and (d)(4) introductory text, by removing ''$77,494'' and adding ''$79,507'' in its place; and

■ d. In paragraphs (d)(5) and (d)(6) introductory text, by removing ''$202,000'' and adding ''$204,000'' in its place.

[FR Doc. 2013–30792 Filed 12–30–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 121210693–3985–01]

RIN 0648–BC68

Endangered and Threatened Species: Designation of a Nonessential Experimental Population of Central Valley Spring-Run Chinook Salmon Below Friant Dam in the San Joaquin River, CA

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

ACTION: Final rule and notice of availability of a final environmental assessment.

SUMMARY: We, the National Marine Fisheries Service (NMFS), designate a nonessential experimental population of Central Valley spring-run Chinook salmon (*Oncorhynchus tshawytscha)* under the Endangered Species Act (ESA) in portions of the San Joaquin River, California, and establish take exceptions for the nonessential experimental population for particular activities inside the experimental population's geographic range and limited take exceptions outside the experimental population geographic range. This document also announces the availability of a final environmental assessment (EA) that analyzed the environmental impacts of promulgating the experimental population rule and associated take exceptions.

DATES: The final rule is effective January 30, 2014.

ADDRESSES: The Final Environmental Assessment and other reference materials regarding this final rule can be obtained via the Internet at *http://www.westcoast.fisheries.noaa.gov/central_valley/san_joaquin/san_joaquin_reint.html* or by submitting a request to the Assistant Regional Administrator, California Central Valley Area Office, West Coast Region, NMFS, 650 Capitol Mall, Suite 5–100, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Elif Fehm-Sullivan, National Marine Fisheries Service, 650 Capitol Mall, Suite 5–100, Sacramento, CA 95814 (916–930–3723) or Dwayne Meadows, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 (301–427–8403).

SUPPLEMENTARY INFORMATION:

Background Information Relevant to Experimental Population Designation

In 1988, a coalition of environmental groups, led by the Natural Resources Defense Council (NRDC), filed a lawsuit challenging renewal of long-term water service contracts between the United States and the Central Valley Project (CVP) Friant Division contractors (NRDC, *et al.,* v. Kirk Rodgers, *et al.*). After more than 18 years of litigation, a Settlement was reached (Settlement) on September 13, 2006. The Settling Parties, including NRDC, Friant Water Users Authority (now the Friant Water Authority (FWA)), and the U.S. Departments of the Interior and Commerce, agreed on the terms and conditions of the Settlement, which was subsequently approved by the U.S. Eastern District Court of California on October 23, 2006. The Settlement establishes two primary goals: (1) Restoration Goal—To restore and maintain fish populations in ''good condition'' in the mainstem San Joaquin River below Friant Dam to its confluence with the Merced River, including naturally reproducing and self-sustaining populations of salmon and other fish; and (2) Water Management Goal—To reduce or avoid adverse water supply impacts on all of the Friant Division long-term contractors that may result from the interim and restoration flows provided for in the Settlement. Paragraph 14 of the Settlement indicates that the Restoration Goal shall include the reintroduction of Central Valley spring-run Chinook salmon (hereafter, CV spring-run Chinook salmon) to the San Joaquin River between Friant Dam and its confluence with the Merced River. The settlement is implemented through the San Joaquin River Restoration Program (SJRRP).

In 2009, as part of the Omnibus Public Land Management Act, Congress enacted the San Joaquin River Restoration Settlement Act (Pub. L. 111–11, 123 Stat. 1349) (SJRRSA), which ratified the terms of the Settlement and provided additional authorities to the Department of the Interior to facilitate successful implementation of the Settlement. The SJRRSA provides that if the Secretary of Commerce (Secretary) concludes that a program to reintroduce CV spring-run Chinook salmon into the San Joaquin River can be implemented consistent with other requirements of the ESA, the reintroduction ''shall be [conducted] pursuant to § 10(j)'' of the ESA.

Supplemental Information

This is a final rule stemming from a proposed rule that was published January 16, 2013 (78 FR 3381). This final rule implements the experimental population area to include the San Joaquin River just upstream from its confluence with, but not including, the Merced River upstream to Friant Dam; all sloughs, channels, floodways, and waterways that allow for CV spring-run Chinook salmon access along the San Joaquin River; and portions of the Kings River, when high water years connect the Kings River with the San Joaquin River. This experimental area is part of the species' historical range. The San Joaquin River experimental population is all CV spring-run Chinook salmon, including fish that have been released or propagated, naturally or artificially, within the defined experimental population area.

The CV spring-run Chinook salmon Evolutionarily Significant Unit (ESU; 70 FR 37160; June 28, 2005) is listed as threatened under the ESA, and its threatened status was recently confirmed following completion of a 5-year review (NMFS, 2011). The CV spring-run Chinook salmon ESU includes all naturally spawned populations of spring-run Chinook salmon in the Sacramento River and its tributaries, as well as the Feather River Fish Hatchery (FRFH) spring-run Chinook salmon program. We have issued protective regulations under section 4(d) of the ESA for CV spring-run Chinook salmon that prohibit their ''take'' unless otherwise authorized (50 CFR 223.203).

Statutory and Regulatory Framework for Experimental Population Designation

Section 10(j) of the ESA (16 U.S.C. 1539(j)) defines an experimental population as a population that has been authorized for release by the Secretary but only when, and at such times as, the population is wholly separate geographically from nonexperimental populations of the same species. The Secretary may authorize the release of ''experimental'' populations of listed species outside of their current range if the release would ''further the conservation'' of the listed species. Section 10(j) also requires that before authorizing the release of an experimental population, the Secretary identify the experimental population by regulation and determine, based on the best available information, whether the experimental population is ''essential to the continued existence'' of the listed species (16 U.S.C. 1539(j)(2)(B)).

The U.S. Fish and Wildlife Service (USFWS) promulgated regulations to guide its implementation of section 10(j) (see 50 CFR 17.80 through 17.84). While we do not have regulations governing the designation of experimental populations, we considered their regulations where appropriate in making the required determinations under section 10(j) and in formulating this rule to designate and release an experimental population of CV spring-run Chinook salmon into the San Joaquin River upstream of the Merced River confluence. Although the USFWS regulations do not govern our regulatory action, the record demonstrates that this rule would be consistent with the criteria of those regulations.

Using the best available information, the following three key elements of ESA section 10(j) were analyzed in formulating this rule:

Element 1: Whether release of an experimental population of CV spring-run Chinook salmon into the San Joaquin River would further the conservation of the species;

Element 2: An appropriate means to identify the experimental population; and

Element 3: Whether the experimental population is essential to the continued existence of the species in the wild.

We discuss in more detail below how we considered each of these three elements.

In addition to the requirements of ESA section 10(j), we considered whether any additional measures were necessary to address management concerns under local conditions and to comply with Section 10011 and 10004 of the SJRRSA. Also, we considered a process for data collection and periodic review of the status of the experimental population. These additional considerations are not required under ESA section 10(j), but they provide information as to how our determination was reached, as well as explaining how we intend to assess the effect of the reintroduction on the conservation of the species.

Section 10(j) of the ESA requires that an experimental population be treated as a threatened species under the ESA, with two exceptions that apply if an experimental population is not determined to be essential to the listed species' continued existence (i.e., nonessential): 1) section 7 of the ESA applies in a different manner as described below in this paragraph, and 2) critical habitat shall not be designated for that experimental population. If the experimental population is determined to be nonessential, then section 10(j) requires that we apply the section 7 consultation provisions as if the population is a species proposed for listing. This means that the section 7(a)(2) consultation requirement does not apply to any experimental population of CV spring-run Chinook salmon that we determine is nonessential. The only provisions of section 7 that apply to a nonessential experimental population (NEP) outside of a National Park or Wildlife Refuge are sections 7(a)(1) and 7(a)(4). Section 7(a)(1) requires that Federal agencies use their authorities in furtherance of the purposes of the ESA by carrying out programs for the conservation of threatened and endangered species. Section 7(a)(4) requires Federal agencies to confer, rather than consult, with us on actions that are likely to jeopardize the continued existence of a species proposed to be listed. The results of a conference are advisory in nature.

Section 7 of the ESA does not apply to activities undertaken on private land unless they are authorized, funded, or carried out by a Federal agency. The take exceptions outlined below associated with the experimental population will provide sufficient protections to reduce effects of existing or anticipated Federal or State actions, or private activities within or adjacent to the experimental population area.

Element 1: Whether release of an experimental population of CV spring-run Chinook salmon into the San Joaquin River would further the conservation of the species.

The ESA defines ''conservation'' as ''the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this [Act] are no longer necessary.'' In making the determination whether release of an experimental population would ''further the conservation'' of CV spring-run Chinook we considered the following factors: (1) the effects of gathering broodstock on the extant populations of the ESU; (2) the potential for the released population to survive in the foreseeable future; and (3) the potential contribution of an experimental population to the recovery of the Central Valley spring-run Chinook salmon ESU.

We first considered the most appropriate source of fish within the CV spring-run Chinook salmon ESU to be used to establish an experimental population. Reintroduction efforts have the best chance for success when the donor population has life history characteristics and genetic diversity compatible with the anticipated environmental conditions of the habitat into which fish will be reintroduced. Populations found in watersheds closest to the reintroduction area are most likely to have adaptive traits that will lead to a successful reintroduction, and therefore, only spring-run Chinook salmon populations found in the California Central Valley will be used in establishing the experimental population in the San Joaquin River. The selection of which source population(s) will be utilized for the SJRRP reintroduction effort will be dependent upon the genetic diversity needs of the broodstock, the specific conditions of the proposed donor population(s) at the time, and whether the collection will jeopardize the continued existence of the species.

Functionally independent populations of CV spring-run Chinook salmon occur in Deer, Mill, and Butte creeks and on the Feather River. The Feather River CV spring-run Chinook salmon population is also supplemented by operation of the FRFH. All of these populations are genetically unique from one another. Additional dependent or establishing populations occur in the Sacramento River Basin, but these are not known to be genetically unique. The Deer and Mill creek populations have been at a high risk of extinction and special care and consideration will be used when considering these fish as a donor source for reintroduction into the San Joaquin River. The Butte Creek CV spring-run Chinook salmon population is considered to be at a low risk of extinction and has the largest run size of the three major CV spring-run Chinook salmon populations in the Central Valley (NMFS, 2011). Thus it may be possible to remove fish from this population in years with high adult returns.

Through our ESA section 10 permitting authority and the section 7 consultation process, we will also ensure that the use of CV spring-run Chinook salmon from any donor populations for release into the San Joaquin River is not likely to jeopardize the continued existence of the species in the wild. Recently NMFS issued a permit under section 10(a)(1)(A) of the ESA along with a section 7 Biological Opinion (2012) that reached a non-jeopardy conclusion on the first 5 years of broodstock collection from FRFH.

As noted above, there are several choices for source populations for this experimental population. A captive broodstock program is being established as part of the SJRRP to augment and supplement the establishment of an experimental population in the San Joaquin River. Initially we will be using FRFH fish for captive broodstock and

direct release to the river. We would later consider diversifying the donor stock with fish from naturally spawning populations in other streams if and when those populations can sustain the removal of fish. Any collection of CV spring-run Chinook salmon would be subject to approval of a permit under ESA section 10(a)(1)(A), which includes analysis under the National Environmental Policy Act (NEPA) and ESA Section 7.

Over time, we expect the captive broodstock at the San Joaquin River conservation hatchery will produce sufficient numbers of eggs and juveniles to support reintroduction actions, and will reduce or eliminate the need for fish to be taken from existing hatchery or natural populations in the Sacramento River basin. If we consider using CV spring-run Chinook salmon from naturally spawning populations, we will remove only small numbers when such collections would not jeopardize the continued existence of the species and will contribute to the enhancement or propagation of the species. FRFH fish used for the reintroduction will be genetically screened to avoid hybrids. The FRFH is planning to produce sufficient fish to allow for eggs or juveniles to be collected for the reintroduction, in addition to the hatchery production needed for the Feather River. The consistent availability of hatchery produced fish, combined with existing protections for wild populations, can allow collection of fish for reintroduction of CV spring-run Chinook salmon to the San Joaquin River with no adverse impact on the ESU.

In determining whether release of the experimental population would further the conservation of CV spring-run Chinook salmon, we also considered the potential for the released population to survive in the foreseeable future. The California Central Valley drainage as a whole is estimated to have supported spring-run Chinook salmon returns as large as 600,000 fish between the late 1880s and 1940s (CDFG, 1998). However, the CV spring-run Chinook salmon runs in the San Joaquin River were extirpated as a direct result of the completion of Friant Dam and the associated operation of the Friant-Kern and Madera irrigation canals, which caused the river to run dry in many locations. As a result of these impacts, the last substantial CV spring-run Chinook salmon spawning cohort (numbering >1,900) returned in 1948 (Yoshiyama *et al.,* 1996). Central Valley spring-run Chinook salmon were originally most abundant in the San Joaquin River basin where the run ascended to high-elevation streams fed by snow-melt where they over-summered until the fall spawning season (Yoshiyama *et al.,* 1996). Construction of other low elevation dams in the foothills of the Sierra Nevada on the American, Mokelumne, Stanislaus, Tuolumne, and Merced rivers largely extirpated CV spring-run Chinook salmon in these watersheds as well.

NMFS' Draft Recovery Plan for Central Valley salmonids characterizes the San Joaquin River basin below Friant Dam as having a high potential to support a spawning population of reintroduced CV spring-run Chinook salmon with implementation of the SJRRP. The Settlement establishes a framework for accomplishing the Restoration Goal including channel and structural modifications along the San Joaquin River below Friant Dam and releases of water from Friant Dam downstream to the river's confluence with the Merced River. Based on the available information, we believe that implementation of these actions will create habitat conditions in the San Joaquin River from Friant Dam to its confluence with the Merced River sufficient to support the establishment of CV spring-run Chinook salmon populations.

In addition to actions undertaken by the SJRRP, there are many Federal and State laws and regulations that will also aid in the establishment and survival of the experimental population through the protection of aquatic and riparian habitat. Section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344) requires a permit before dredged or fill material may be discharged into waters of the United States, unless the activity is exempt. This permit program provides avoidance, minimization, and mitigation measures for the potential adverse effects of dredge and fill activities within the nation's waterways. CWA section 401 (33. U.S.C. 1341) requires an application for a Federal license or permit to provide a certification for the relevant state(s) that any discharges from the facility will comply with applicable state water quality standards. In addition, CWA Section 402 (33 U.S.C. 1342) establishes the National Pollutant Discharge Elimination System permit program to regulate point source discharges of pollutants into waters of the United States. Also, the Magnuson-Stevens Fishery Conservation and Management Act, as amended (16 U.S.C. 1801 *et seq.*), requires that essential fish habitat (EFH) be identified and Federal action agencies must consult with NMFS on any activity which they fund, permit, or carry out that may adversely affect EFH. Freshwater EFH for Pacific salmon in the California Central Valley includes waters currently or historically accessible to salmon within the Central Valley ecosystem as described in Myers *et al.* (1998), which includes the area where this NEP is located.

At the state level, the California Fish and Game Code section 1600, *et seq.* and the California Environmental Quality Act (Pub. Resources Code sections 21000, *et seq.*) (CEQA) set forth criteria for the incorporation of avoidance, minimization, and feasible mitigation measures for on-going activities as well as for individual projects. Section 1600, *et seq.* was enacted to provide conservation for the state's fish and wildlife resources and includes requirements to protect riparian habitat resources on the bed, channel, or bank of streams and other waterways.

Section 1600, *et seq.* prohibits an entity from: (1) substantially diverting or obstructing the natural flow of any river, stream, or lake: (2) substantially changing or using any material from the bed, channel, or bank of, any river, stream, or lake: or (3) depositing or disposing of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake, without first notifying the California Department of Fish and Wildlife (CDFW) of the activity. CDFW (previously called California Department of Fish and Game until December 31, 2012) then has the opportunity to determine whether the activity may substantially adversely affect an existing fish or wildlife resource and, if the activity may have such an effect, to issue a final agreement that includes reasonable measures necessary to protect the resource (California Fish and Game Code Section 1602). Under CEQA, no public agency shall approve or carry out a project without identifying all feasible mitigation measures necessary to reduce impacts to a less than significant level, and shall incorporate such measures absent overriding considerations. In addition, protective measures, including programs for strategic screening and participation in habitat conservation programs, will be implemented in conjunction with SJRRP activities and are intended to provide a net benefit to the reintroduction.

This rule incorporates all reasonably feasible management restrictions, protective measures, prohibitions, and exceptions to the prohibitions to avoid and minimize the impacts of any taking allowed by this regulation. The

combination of SJRRP actions, implemented to achieve the Restoration Goal, the protective measures in this rule, as well as compliance with existing laws, statutes, and regulations, including in particular those that provide specific protections for aquatic and riparian habitats, provides these measures, and is expected to result in the survival of the experimental population in the San Joaquin River into the foreseeable future.

The third consideration in determining whether release of the experimental population would further the conservation of the CV spring-run Chinook salmon ESU is the potential contribution of the experimental population toward recovery of the ESU. NMFS' Draft Recovery Plan for Central Valley salmonids contains specific management strategies for recovering CV spring-run Chinook salmon that include securing existing populations and reintroducing populations into historically occupied habitats, including the San Joaquin River. Establishing an experimental population of CV spring-run Chinook salmon in the San Joaquin River that persists into the foreseeable future is expected to reduce the species' overall extinction risk from natural and anthropogenic factors by increasing its abundance, productivity, spatial structure, and diversity within the Central Valley. These expected improvements in the overall viability of CV spring-run Chinook salmon, in addition to other actions being implemented throughout the Central Valley, will contribute to the species' recovery. In light of the foregoing, we conclude that release of the experimental population would further the conservation of CV spring-run Chinook salmon.

Element 2. Identification of the experimental population.

Section 10(j) of the ESA requires that the experimental population be designated only when, and at such times, as it is geographically separate from nonexperimental populations of the same species. We are designating the experimental population area for the experimental population of CV spring-run Chinook salmon as the San Joaquin River from its confluence upstream of the Merced River to Friant Dam, including all sloughs, channels, and waterways that connect the San Joaquin River and provide passage for the species. In addition, the experimental area includes portions of the Kings River in high water years that provide connectivity between the Kings River and the San Joaquin River. The experimental population area is within the species' historical range, but it is presently unoccupied by CV spring-run Chinook salmon.

False pathways (waterways that salmon follow that do not lead to spawning habitat) that fish may use as a result of restored flows have not yet been identified; however, the SJRRP includes actions to prevent or reduce straying to false pathways, and this experimental population designation assumes that the SJRRP will take appropriate action to reduce losses of the experimental population caused by undesirable straying. In addition, we will be using other means of identifying fish that are reintroduced, such as marking fish with specific fin clips (e.g., coded-wire tags, genetic testing) or other methods and field sampling.

Element 3. Whether the experimental population is essential to the continued existence of the species.

Because we do not have regulations implementing ESA section 10(j), we considered the USFWS regulations (50 CFR 17.80(b)), which define an essential experimental population as one ''whose loss would be likely to appreciably reduce the likelihood of the survival of the species in the wild.'' While we are not bound by the definition of ''essential'' in the USFWS regulations, we have determined it is appropriate for use in this rule.

In making the determination whether the experimental population of CV spring-run Chinook salmon is essential, we used the best available information as required by ESA section 10(j)(2)(B). Furthermore, we considered the geographic location of the experimental population in relation to other populations of CV spring-run Chinook salmon, and the likelihood of survival of these populations without the existence of the experimental population. The San Joaquin River is geographically separated from the watersheds that support extant populations of CV spring-run Chinook salmon in the Sacramento River basin.

We expect that CV spring-run Chinook salmon reintroduced to the San Joaquin River will imprint on this river and would therefore be unlikely to stray, beyond natural levels, into the Sacramento River basin and interact with extant populations found in that watershed. Natural straying rates would be expected to be low such that existing populations would not depend on supplementation of individuals from the experimental population to persist. The ESU includes four independent populations, one of which is supplemented by a hatchery, and several dependent or establishing populations. Given current protections and restoration efforts, these populations are persisting or expanding, without the presence of a population in the NEP area. Thus it is expected that the experimental population will exist as a population independent from those in the Sacramento River basin and will not contribute to the survival of those populations.

Based on these considerations, we conclude that the loss of the experimental San Joaquin River population of CV spring-run Chinook salmon is not likely to appreciably reduce the likelihood of the survival of the species in the wild. Accordingly, this population will be considered nonessential under this designation.

Additional Management Restrictions, Protective Measures, and Other Special Management Considerations

The ESA defines ''take'' to mean: harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. For threatened species such as the NEP of CV spring-run Chinook salmon, the ESA does not automatically prohibit take, but ESA section 4(d) (16 U.S.C. 1533(d)) provides that the Secretary of Commerce shall issue protective regulations he or she deems necessary and advisable for the species' conservation. Such protective regulations may, if appropriate, include the take prohibitions of section 9 of the ESA and exceptions to those take prohibitions.

In addition to take prohibitions in regulations promulgated under ESA section 4(d), section 7 and section 10 of the ESA provide for exceptions or authorizations of take of listed species under certain circumstances. The consultation process under section 7 of the ESA provides an exception for incidental take of listed species under certain circumstances. Section 7(a)(2) of the ESA provides that each Federal agency shall, through consultation with and with the assistance of the Secretary of Commerce, insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of critical habitat designated for such species. The formal consultation process results in NMFS issuing a biological opinion with an incidental take statement. The incidental take statement, among other things, specifies the amount or extent of incidental taking of listed species as a result of the proposed action, reasonable and prudent measures that NMFS considers necessary and appropriate to minimize the impact of such incidental

taking, and terms and conditions that the Federal agency or applicant must comply with in order to implement the reasonable and prudent measures. Under the terms of section 7(b)(4) and section 7(o)(2) of the ESA, any such incidental taking is not considered to be prohibited taking under the ESA, provided that such taking is in compliance with the terms and conditions of the incidental take statement. Section 10 of the ESA provides NMFS with authority to issue permits under certain circumstances for any otherwise prohibited act or taking. NMFS may issue permits for scientific purposes or to enhance the propagation or survival of the affected species, including, but not limited to, acts necessary for the establishment and maintenance of experimental populations pursuant to ESA section 10(j); or taking that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity (i.e., incidental take permits).

Prohibited Take and Exceptions to Prohibited Take Within the Experimental Population Area

In conjunction with our designation and authorization of the release of a CV spring-run Chinook salmon NEP in the San Joaquin River, we are also promulgating protective regulations under section 4(d) of the ESA that apply to the NEP. To ensure that the NEP has protections from activities that are not lawful under Federal, State or local laws and regulations, we are applying all take prohibitions listed under ESA sections 9(a)(1)(A) through 9(a)(1)(G), except for section 9(a)(1)(C) which involves the irrelevant issue of take upon the high seas, to the experimental population when it is within the experimental population area. Such activities include those resulting in direct intentional take or harm or illegal activities that result in incidental take or harm, including angling. These prohibitions apply to all CV spring-run Chinook salmon in the experimental population area that have intact adipose fins as well as those that are adipose fin-clipped.

In addition, the unintentional take of CV spring-run Chinook salmon in the experimental population area that is caused by otherwise lawful activities is excepted from the take prohibitions under section 9. Examples of otherwise lawful activities include, but are not limited to, recreation, agriculture, municipal usage, flood control, water management, and other similar activities which are carried out in accordance with Federal, State, and local laws and regulations. Take that is intentional, or incidental to unlawful activities or negligent conduct is not excepted. The intent of the action that results in take is a consideration in this exception. Negligent conduct includes the failure to exercise the degree of care that a reasonably prudent person would exercise in like circumstances. Negligence denotes a lack of diligence, a disregard of the consequences likely to result from one's actions, or carelessness. Similarly, this rule excepts handling of fish in the experimental population for salvage/rescue and scientific research subject to specific requirements. We are providing an exception from the section 9 take prohibitions for specified scientific research activities conducted by the State of California that is consistent with the existing state research programs excepted under the current ESA section 4(d) rule established for threatened salmonids (codified at 50 CFR 223.203), making use of the system already in place. Federal, State, and private-sponsored research activities for scientific research or enhancement purposes that are not covered under the exception described above, may take CV spring-run Chinook salmon in the NEP pursuant to the specifications of an ESA section 10 permit. Section 9(a)(1)(B) take prohibitions will not apply to ongoing research activities if an application for an ESA section 10(a)(1)(A) permit is received by NMFS, preferably through the NMFS online application Web site. Because the cycle for the existing State research program, described above, may not coincide with the effective date of this rule, an exception for take resulting from the research activities proposed in the Monitoring and Assessment Plan developed by the SJRRP and approved by NMFS, has been included.

As described above, there is an exception to the take prohibitions under this rule applicable to take that is unintentional and incidental to carrying out an otherwise lawful activity. Within the experimental population area, persons or entities diverting or receiving water pursuant to applicable State and Federal laws would be carrying out an otherwise lawful activity. Therefore, this exception would apply to incidental take of CV spring-run Chinook salmon by those persons or entities, and this rule would not impose any water supply reductions, additional storage releases or bypass flows unwillingly on them. Questions regarding whether specific activities will constitute a violation of the section 9 take prohibition, and general inquiries regarding prohibitions, exceptions, and permits, should be directed to NMFS (see **ADDRESSES**).

As noted above, we prohibit the intentional take of CV spring-run Chinook salmon in the experimental population area by angling. We intend to work with CDFW to review fishing regulations in the geographic area in order to minimize the impact of this prohibition on current angling on other species. In the future, if the experimental population becomes established, we may consider allowing limited harvest of CV spring-run Chinook salmon in the experimental population area through a Fishery Management and Evaluation Plan developed by CDFW and approved by NMFS.

Limited Take Exceptions Outside of the Experimental Population Area

The SJRSSA established two twin objectives relating to the impacts associated with the CV spring-run Chinook salmon reintroduction. First the SJRRSA established that the reintroduction of CV spring-run Chinook salmon to the San Joaquin River must not impose more than *de minimus* water supply reductions, additional storage releases, or bypass flows on unwilling third parties. Second, the SJRRSA provides that nothing in the SJRRSA diminishes ESA protections for listed species other than the reintroduced population of CV spring-run Chinook salmon. This final rule is therefore framed to achieve these twin objectives by specifying how the take prohibitions and exceptions apply to activities in the NEP area and activities downstream of the NEP area, as described further below. Further, nothing in this rule precludes imposing protections under the ESA for other listed species when those protections provide incidental benefits to such reintroduced CV spring-run Chinook salmon.

The SJRRSA defines ''third party'' to mean persons or entities diverting or receiving water pursuant to applicable State and Federal laws. This includes CVP contractors outside of the Friant Division of the CVP and the State Water Project (SWP) contractors. Because some of these third parties operate outside of the experimental population area, this rule also includes limited take exceptions outside of the experimental population area when avoidance of take of CV spring-run Chinook salmon reintroduced by the SJRRP would result in more than *de minimus* impact to water supply reductions, additional storage releases, or bypass flows on unwilling third parties. These limited take exceptions apply to fish that have

been released or propagated, naturally or artificially, within the experimental population area in the San Joaquin River above the confluence with the Merced River. Outside of the experimental population area, CV spring-run Chinook salmon will continue to be covered by the take prohibitions and exceptions applicable to the non-experimental part of the ESU (50 CFR 223.203), but additional limited take exceptions will now apply to meet the *de minimus* conditions of the SJRRSA. In the lower San Joaquin River and its tributaries, including the Merced River, downstream from its confluence with the Merced River to Mossdale County Park in San Joaquin County, take of CV spring-run Chinook salmon is excepted if the avoidance of such take would impose more than *de minimus* impact on water supply reductions, additional storage releases, or bypass flows on unwilling third parties. This exception applies to CV spring-run Chinook salmon that may occur in the lower San Joaquin River and its tributaries, and is not specifically limited to reintroduced CV spring-run Chinook salmon.

This exception does not diminish current protections for CV spring-run Chinook salmon downstream of the NEP area for the following reasons. First, past and recent status reviews have concluded that CV spring-run Chinook salmon have been largely extirpated in this area. Therefore, NMFS generally has not consulted under ESA section 7 on the effects on this species of proposed actions in the lower San Joaquin River and its tributaries. However, connectivity with the south Delta does not prohibit potential individual CV spring-run Chinook salmon from straying to these waterways. After reintroduction of CV spring-run Chinook salmon into the experimental population area, CV spring-run Chinook salmon that originate from the experimental population area will migrate through the lower San Joaquin River. In the lower San Joaquin River and its tributaries it will be difficult to differentiate whether any individual CV spring-run Chinook salmon originated from the experimental population area or strayed from the area outside the San Joaquin River. These fish will more likely have originated from the experimental population area because of the numbers of fish to be released for the reintroduction and the close proximity of the Lower San Joaquin River and its tributaries to the experimental population area.

Second, California Central Valley (CCV) steelhead, a threatened species, does occur in the lower San Joaquin River and its tributaries. Owing to similarities in habitat requirements, actions that could adversely affect CV spring-run Chinook salmon would also similarly affect CCV steelhead. Therefore, ESA consultation and take avoidance requirements for CCV steelhead would apply whether or not CV spring-run Chinook salmon were present. Should NMFS decide to consult on CV spring-run Chinook salmon and avoidance measures were required over and above those required for CCV steelhead, then NMFS would not require or implement these measures, if such measures would result in more than a *de minimus* impact on water supply reductions, additional storage releases, or bypass flows, on unwilling third parties. This determination would be made on a case by case basis as part of the ESA section 7 or section 10 processes. Take avoidance or minimization measures that would have a *de minimus* or no effect on water supply reductions, additional storage releases, or bypass flows associated with the aforementioned third parties, could still be required through the ESA section 7 or section 10 processes. Such measures might include best management practices such as sediment containment, in-water work windows, or bank revegetation associated with stream construction activities.

As stated above, the definition of ''third parties'' in the SJRRSA section 10011(c) includes CVP contractors outside of the Friant Division of the CVP and the SWP contractors. This rule prescribes the process by which the *de minimus* requirement in the SJRRSA will be implemented through the NMFS June 2009 Biological Opinion on the Long-term Operations of the CVP and SWP (NMFS 2009 Biological Opinion) or future and successive biological opinions on these operations. The aforementioned NMFS 2009 Biological Opinion identifies operational triggers intended to avoid or minimize take of listed anadromous fish, including CV spring-run Chinook salmon. The successful reintroduction of CV spring-run Chinook salmon to the San Joaquin River potentially could result in application of operational triggers more frequently or could result in reaching allowed take thresholds, and thereby impact water supply.

NMFS will develop a technical memorandum (tech memo) annually containing a share of take calculation in coordination with and with opportunity for comment by interested parties. The purpose of this tech memo is to ensure that avoidance of take of CV spring-run Chinook salmon originating from reintroduction to the San Joaquin River does not cause more than a *de minimus* impact on water supply, additional storage releases, and bypass flows associated with the operations of the CVP and SWP. NMFS will annually calculate and document the proportionate contribution of CV spring-run Chinook salmon originating from the reintroduction to the San Joaquin River and deduct or otherwise adjust for this share of CV spring-run Chinook salmon take when applying the operational triggers and incidental take statements associated with the NMFS 2009 Biological Opinion or subsequent future biological opinions, or section 10 permits. Section 11.2.1 (Decision Making Procedures) of the aforementioned NMFS 2009 Biological Opinion (with 2011 amendments) provides for an annual adjustment process. In preparing the tech memo, NMFS will consider whether the presence of such fish will modify the application of operational triggers more frequently, reach allowed take thresholds that otherwise would not have been reached, or cause changes to project operations by other factors. These adjustments will ensure that the reintroduction will not impose more than *de minimus* water supply reductions, additional storage releases, or bypass flows on unwilling third party water users. NMFS will use best available commercial or scientific information to inform these calculations. Depending on available information and relevance to operational triggers, these calculations may include incidental take of CV spring-run Chinook salmon that originate from the reintroduction to the San Joaquin river that may occur due to: (1) elevated water temperatures and poor water quality, (2) entrainment at unscreened diversions, (3) predation associated with diversion waterways and facilities, (4) reverse flow conditions in the Delta as a result of CVP/SWP pumping, and (5) direct loss at the CVP/SWP South Delta pumping and salvage facilities. This exception does not diminish ESA protections for existing listed species because it is limited to spring-run Chinook salmon that originate from the reintroduction to the San Joaquin River.

Process for Periodic Review

The ESA requires that NMFS conduct a status review every 5 years for all listed species under its responsibility. This requirement will ensure that NMFS is tracking the status of the reintroduced spring-run Chinook population and the ESU, and will develop information to assess the effectiveness of this rule, and if necessary, will trigger revision to the

regulation through the rulemaking process. This will ensure that the reintroduction of spring-run Chinook to the San Joaquin River is providing for the conservation of the species as expected, and that the experimental population is not essential to the continued survival of the species.

Monitoring and analysis is necessary to gauge the progress of the reintroduction program and to provide information for decision-making and adaptive management. Fish passage, fish biology, aquatic habitat, and conservation hatchery facility operations will be the primary focus of the monitoring (FMP, 2009).

Fish passage monitoring will focus on addressing a variety of issues important to successful reintroduction. These issues include measuring fish passage success, smolt injury and mortality rates, and adult river passage to spawning areas. Passive integrated transponder tags and radio tags will be used to evaluate and monitor fish passage effectiveness. Biological evaluation and monitoring will concentrate on adult escapement and spawning success, competition with resident species, predation, disease transfer, smolt production, harvest, and sustainability of natural runs. Habitat monitoring will focus on long-term trends in the productive capacity of the reintroduction area (i.e., habitat availability, habitat effectiveness, riparian condition) and natural production (the number, size, productivity, and life history diversity) of CV spring-run Chinook salmon in the experimental population area.

Monitoring at the conservation hatchery facility will focus on multiple issues important to the quality of fish collected and produced for use in the reintroduction program. Monitoring activities will consist mainly of tracking broodstock sources; disease history and treatment; pre-release performance such as survival, growth, and fish health by life stage; the numerical production advantage provided by the conservation hatchery facility program relative to natural production; and success of the conservation hatchery facility program in meeting the program's objectives.

While this monitoring is being conducted for adaptive management purposes to make the reintroduction effort successful, we will also use the information to determine if the experimental population designation is causing any harm or benefit to CV spring-run Chinook salmon that are part of the threatened ESU and their habitat, and then, based on this and other available information, determine if any changes to the experimental population designation may be warranted. Any contribution that an experimental population might make to the overall viability of CV spring-run Chinook salmon would be considered in future status assessments required under the ESA.

Summary of Comments and Responses

The public comment period for the proposed rule and draft Environmental Assessment (EA) was open from January 16 until March 4, 2013. Public scoping meetings were held January 24, January 25, and February 5, 2013 to obtain public comment and to help us better understand their concerns with the proposed experimental population designation, take and take exceptions, and associated Draft EA. During the comment period, NMFS received written comments on the rule and draft EA from 29 different entities representing various agencies, non-governmental organizations, and individuals. A summary of the comments and our responses to those comments are presented here. The summary begins with the comments we received in response to the specific questions that we posed with the proposed rule.

Comments and Responses:

The geographic boundary of the designated experimental population

Comment 1: Two commenters thought that the location should be larger to include the lower San Joaquin River, its tributaries, and the entire Delta to include water users in these areas to be excepted from take of CV spring-run Chinook salmon. One commenter, based on incorrect interpretation, wanted the location to be smaller to exclude all back water, sloughs, and flood control channels that salmon may be able to swim into, so that less regulatory burden would be placed on flood management and maintenance activities. Clarification was requested as to whether the Merced River was included in the NEP area. Four comments were received in favor of keeping the experimental population area as defined in the proposed rule.

Response: The comments were noted; but the proposed NEP area was not changed for the reasons discussed below. Including the tributaries and the delta within the experimental population area was not an option, as the ESA is very clear that the experimental population must be wholly geographically isolated from other populations of the species. There is some current evidence, as seen in the discussions in section 3 in the EA associated with this rule, that there are spring-running fish within the tributaries of the San Joaquin River, and therefore those areas cannot be included in the designation. The NEP description has been modified to delineate that the Merced River is not included in the NEP. The experimental population area does include all backwater, sloughs and flood control channels that salmon may be able to access upstream of the confluence of the Merced River. By including all of the possible locations that salmon may be able to access we are protecting water users and land owners from having undue regulatory burden placed upon them if there were no experimental population designation.

The extent to which the experimental population would be affected by current or future Federal, State, or private actions within or adjacent to the experimental population area

Comment 2: Two responses indicated agreement that other existing laws and regulations will provide protection for the reintroduced fish. Other responses to this question did not address how the experimental population might be affected, rather two commenters raised concerns that they would be affected by the reintroduction if the implementation of the SJRRP is delayed or only partially implemented.

Response: Most of the concerns expressed were related to impacts associated with implementation of the SJRRP as a whole. These impacts have been analyzed in the SJRRP Program Environmental Impact Statement/Report and are beyond the scope of this regulation. The EA was revised to include analysis of the impact of the proposed rule in the event that the SJRRP was only partially implemented and no significant impacts were identified.

Any necessary management restrictions, protective measures, or other management measures that we may have not considered

Comment 3: A comment was raised that management restrictions, and protective measures, should be considered and/or be extended to basic flood control problems and to management and maintenance of facilities of the State Plan of Flood Control in the project area. The comment stated that these flood control facilities could be impacted by the restrictions of the ESA. We received two comment letters suggesting that the rule should include a list of all activities for which take exceptions would apply. In addition, one comment letter advocated

reintroduction of CV spring-run Chinook salmon using only volitional straying of fish.

Response: We did not adopt the approach of listing all take excepted activities, as it would be virtually impossible to list all the activities that are intended to be covered by the rule language. We have included some examples of common activities that would be covered in the Supplemental Information of this rule. Incidental take that may result from the lawful operation and maintenance of flood control facilities, which are located within the experimental population area, is excepted. Hence, such activities will not be restricted by the reintroduction of spring-run Chinook salmon. The definition of ''third parties'' in the SJRRSA as it pertains to the 4(d) rule is not written to include flood management activities outside of the NEP area.

In response to advocating volitional reintroduction of CV spring-run Chinook salmon, this approach to reintroduction was analyzed in the No Action Alternative of the EA and rejected because, while restoration of flows to the San Joaquin River make it possible that spring-run Chinook could potentially recolonize the San Joaquin River naturally, there is no evidence that such a volunteer population could meet either the terms of the Settlement or spring-run Chinook recovery objectives.

The extent to which we have provided protections for third parties as required by the SJRRSA

Comment 4: We received seven comment letters regarding the ESA 4(d) rule required by the SJRRSA. Some stated that the regulations needed to be more explicitly related to the purpose of the 4(d) rule outlined in section 10011(c)(3) of the SJRRSA including; (1) the rule should include authorization for all take NMFS attributed to CVP and SWP operations, such as indirect take, not only take ''at'' the export pumps, and (2) the final rule should be as definite as possible about how NMFS will ensure no more than *de minimus* water supply reductions from reintroduction. There was concern by two commenters over the contents of the annual technical memo that the annual schedule for revision was too frequent, and there was little involvement of stakeholders in its development. This commenter wanted to have a larger involvement in the development and execution of the technical memo. One comment stated that the take exception for CVP and SWP operations should apply to all progeny of the reintroduced fish, especially when they stray to the Sacramento River, and to any CV spring-run Chinook salmon that are spawned in the San Joaquin river or its tributaries.

Response: The paragraphs of the regulation that describe take exceptions to achieve the *de minimus* requirement (now (b)(5)(i) and (b)(5)(ii) of 50 CFR 223.301) have been modified to connect, more explicitly, the purpose of these take exceptions to the language of section 10011(c)(3) of the SJRRSA. Section 10011(c)(3) of the SJRRSA requires that the rule issued pursuant to ESA section 4(d) shall provide that the reintroduction of CV spring-run Chinook salmon to the San Joaquin River will not impose more than *de minimus* water supply reductions, additional storage releases, or bypass flows on unwilling third parties [as specifically defined] due to such reintroduction. It does not require that all take be excepted. The regulation has been modified in paragraph (b)(5)(ii) of 50 CFR 223.301 to define the purpose of the annual technical memo, and NMFS' commitment to coordinate with parties outside the agency in the development of this document. The schedule for this document was not changed, because we believe that an annual assessment of the effectiveness of the methodology to achieve the *de minimus* impact requirement is warranted. We acknowledge that over some periods there may be no need to revise this document, but in other years, conditions may change or the progress of the reintroduction may require a change in the methodology. The regulation has been edited to more clearly relate to the population of CV spring-run Chinook salmon reintroduced to the San Joaquin River. This would not include progeny of adult CV spring-run Chinook salmon that were spawned in the San Joaquin River, but then strayed as adults to Sacramento River basin streams to spawn. Some straying occurs naturally in all salmonid populations, but at naturally low levels, to the degree that it is our determination that this would not exceed the *de minimus* impact requirement of SJRRSA section 10011(c)(3). Imprinting procedures for CV spring-run Chinook salmon released to the San Joaquin River will further assure more natural, low levels of straying of adults. However, should this calculation be proven to be incorrect in the future, the annual methodology produced by NMFS to account for the proportionate share of the take by the CVP and SWP can be adjusted to ensure the *de minimus* standard is met.

Whether we should propose the experimental population as nonessential

Comment 5: All but one of the four responses to this question supported the nonessential designation. The dissenting view was based on an objection based on an incorrect interpretation that this designation would change the status of individual wild fish that were collected for the reintroduction.

Response: The nonessential designation was not changed as all but one response supported this designation. The designation of an experimental population area does not change the status of individual fish found in locations outside of the designated area.

Whether the proposed designation furthers the conservation of the species and whether we have used the best available science in making this determination

Comment 6: Five commenters expressed concerns over the impacts of collection of CV spring-run Chinook salmon on the donor/source populations, especially that Mill Creek should not be considered for collection of donor stock. These same 5 commenters questioned the basis for expecting that CV spring-run Chinook salmon could survive in the San Joaquin River, both under present and future restored conditions.

Response: Mill Creek fish are included in the collection possibilities because we concluded, based on the best available scientific information, that genetic input from the most diverse range of CV spring-run Chinook salmon populations will give the best chance of survival to founding stock released to the San Joaquin River. Collection of CV spring-run Chinook salmon from Mill Creek, or any other population, will be subject to approval of a permit under ESA section 10(a)(1)(A) which includes analysis under NEPA and ESA section 7. No collection would occur on Mill Creek if such collection would jeopardize the continued existence of CV spring-run Chinook salmon. This process will utilize the best information available at the time, including the 5-year status reviews for the species, the latest of which occurred in 2011 and is cited in the EA.

Additional information was included in the EA to provide a better explanation of available habitat under current conditions of the San Joaquin River, and links were provided to the background reports and literature that led to the Settlement requirement that both spring-run and fall-run Chinook

salmon be reintroduced to the San Joaquin River.

Summary of Additional Comments Received

Habitat restoration and construction of site specific work within the restoration area

Comment 7: Eight comments noted that the habitat restoration and construction of site specific work required under the Settlement has not begun and is delayed. Some postulated that the river is currently not ready for the reintroduction of CV spring-run Chinook salmon. The question was raised as to what is the validity of placing threatened CV spring-run Chinook salmon in the river prior to habitat construction being complete.

Response: For the purposes of the EA, we assumed that all channel and structural modifications, habitat improvements, and water release, will be implemented as required by the Settlement. Implementing only some of these measures would not achieve the Restoration Goal, and thereby would not fulfill the terms and conditions of the Settlement.

The SJRRP is currently in the process of developing and implementing activities associated with the restoration of Chinook salmon habitat between Friant Dam and the Merced River confluence. These projects are large and complex and will take several years to complete. Timeframes associated with these actions are identified through the SJRRP. Surveys for gravel suitability, temperatures, egg survival, and other fisheries elements have been occurring and are available by referencing the SJRRP Monitoring and Analysis Plan, *http://restoresjr.net/flows/ATR/index.html.* Specific actions, such as riparian habitat restoration, are part of the site-specific channel improvement projects identified in the Settlement and are not part of the EA for an experimental population designation. Any collection and release activities would be subject to approval of a permit under ESA section 10(a)(1)(A), which includes analysis under NEPA and ESA section 7. No collection or release will occur if such collection or release would jeopardize the continued existence of CV spring-run Chinook salmon. In addition, there is currently an interim Salmon Conservation and Research Facility and plans for a permanent facility which will house the broodstock. Those fish collected from donor streams will be collected and used as broodstock, and their offspring will then be either used for the next generation of broodstock, or be placed into the river. Suitable habitat for CV spring-run Chinook salmon is present below Friant Dam, but lack of flow and other past channel modifications have prevented salmon from accessing these areas. Until full channel and flow restoration is completed, Chinook salmon will need assistance by the agencies to access available habitat.

Hybridization

Comment 8: We received two comments concerned that fall-run Chinook salmon would hybridize with reintroduced spring-run Chinook salmon or cause fall-run superimposition on spring-run redds in the limited spawning areas below Friant Dam.

Response: The SJRRP is evaluating the risk of hybridization and spawning interference between CV fall-run and spring-run Chinook salmon to determine what measures may be necessary to address these concerns. The SJRRP is determining where CV fall-run and spring-run Chinook salmon will spawn, determining the timing of spawning in the Restoration Area for each run, and evaluating exclusion methods (e.g., fall-run exclusion weir). The results of these evaluations will help the program determine if a physical separation weir is necessary to protect spawning CV spring-run Chinook salmon and their eggs. Currently, Hills Ferry Barrier is maintained near the confluence of the Merced River to prevent fall-run Chinook salmon from entering the Restoration Area.

Expiration Date of Final Rule

Comment 9: There were five comments on the duration or expiration of the experimental population designation.

Response: The final rule has no specified expiration date as all feedback on this matter indicated support for no expiration date, as was proposed, or an expiration date that was much later than 2025.

Experimental Population Findings

Based on the best available scientific information, we have determined that the designation and release of a NEP of CV spring-run Chinook salmon in the San Joaquin River basin as described in this final rule will further the conservation of CV spring-run Chinook salmon. Fish used for the reintroduction will be obtained from hatchery fish produced for the reintroduction, or fish produced from a conservation hatchery facility from limited collection of wild and hatchery fish. The collection of wild fish will be permitted only after issuance of permits under section 10(a)(1)(A) of the ESA, which includes analysis under ESA section 7, that ensures that any such collections will not be likely to jeopardize the continued existence of listed species. We have determined that this experimental population is nonessential because it is not essential to the continued existence of CV spring-run Chinook salmon. However, the experimental population is expected to contribute to the recovery of CV spring-run Chinook salmon if the reintroduction is successful. This experimental population designation and release is being implemented in association with the reintroduction efforts called for in the SJRRP and the Settlement. Actions of the SJRRP are intended to provide habitat conditions that will be sufficient to establish a naturally self-sustaining CV spring-run Chinook salmon population in the San Joaquin River while at the same time ensuring that no further protections will be needed and that the reintroduction will meet the applicable requirements of the SJRRSA. The success of the reintroduction of CV spring-run Chinook salmon in the experimental population area will be monitored as part of the SJRRP. We will assess the contribution of the NEP to the status of the species during the required 5 year status review of the CV spring-run Chinook salmon ESU. This information will be used by NMFS to determine if changes to the NEP designation may be warranted.

Information Quality Act and Peer Review

In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review pursuant to the Information Quality Act (Section 515 of Public Law No. 106–554) in the **Federal Register** on January 14, 2005 (70 FR 2664). The Bulletin established minimum peer review standards, a transparent process for public disclosure of peer review planning, and opportunities for public participation with regard to certain types of information disseminated by the Federal Government. The peer review requirements of the OMB Bulletin apply to influential or highly influential scientific information disseminated on or after June 16, 2005. There are no documents supporting this rule that meet this criteria.

Classification

Executive Order 12866

This final rule has been determined to be not significant under E.O. 12866.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 801 *et seq.),* whenever a Federal agency is required to publish a notification of rulemaking for any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

The Chief Counsel for Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy at the Small Business Administration, that this rule will not have a significant economic effect on a substantial number of small entities. The factual basis for this certification was published with the proposed rule and is not repeated here. No comments were received regarding the economic impact of this final rule. As a result, a final regulatory flexibility analysis is not required and one was not prepared.

Executive Order 12630

In accordance with E.O. 12630, the rule does not have significant takings implications. A takings implication assessment is not required because this rule: (1) Would not effectively compel a property owner to have the government physically invade their property, and (2) would not deny all economically beneficial or productive use of the land or aquatic resources. This rule would substantially advance a legitimate government interest (conservation and recovery of a listed fish species) and would not present a barrier to all reasonable and expected beneficial use of private property.

Executive Order 13132

In accordance with E.O. 13132, we have determined that this rule does not have federalism implications as that term is defined in E.O. 13132.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), require that Federal agencies obtain approval from OMB before collecting information from the public. A Federal 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. This rule does not include any new collections of information that require approval by OMB under the Paperwork Reduction Act.

National Environmental Policy Act

In compliance with all provisions of the National Environmental Policy Act of 1969, we have analyzed the impact on the human environment and considered a reasonable range of alternatives for this rule. We made the draft EA available for public comment along with the proposed rule, received 36 written comment documents, and responded to those comments in an Appendix to the EA. We have prepared a final EA on this action and have made it available for public inspection (see **ADDRESSES** section).

Government-to-Government Relationship With Tribes (E.O. 13175)

E.O. 13175, Consultation and Coordination with Indian Tribal Governments, outlines the responsibilities of the Federal Government in matters affecting tribal interests. If we issue a regulation with tribal implications (defined as having 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), we must consult with those governments or the Federal Government must provide funds necessary to pay direct compliance costs incurred by tribal governments.

There are no tribally owned or managed lands included in the experimental population area. We have invited all possibly impacted tribes (letter dated November, 15, 2010, from Maria Rea, Central Valley Office Supervisor, NMFS) to discuss the rule at their convenience should they choose to have a government-to-government consultation.

Energy Supply, Distribution, or Use (E.O. 13211)

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking any action that promulgates or is expected to lead to the promulgation of final rule or regulation that (1) is a significant regulatory action under E.O. 12866 and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy.

This final rule is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required. We did not receive any comments regarding energy supplies, distribution, and use.

References Cited

A complete list of all references cited in this rule is available upon request from National Marine Fisheries Service office (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Imports.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, part 223 of chapter II, title 50 of the Code of Federal Regulations, is amended as follows.

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.201–202 also issued under 16 U.S.C. 1361 et seq.; 16 U.S.C. *5503(d)* for § 223.206(d)(9).

■ 2. Add § 223.102(c)(30) to read as follows:

§ 223.102 Enumeration of threatened marine and anadromous species.

* * * * *

Species [1]		Where listed	Citation(s) for listing determination	Citation(s) for critical habitat designation(s)
Common name	Scientific name			
*	*	*	*	*
(c) * * *				
(30) Central Valley spring-run Chinook salmon (non-essential experimental population).	*Oncorhynchus tshawytscha*.	U.S.A.–CA, only when, and at such times, as they are found in the San Joaquin River from Friant Dam downstream to its confluence with the Merced River, delineated by a line between decimal latitude and longitude coordinates: 37.348930° N, 120.975174° W and 37.349099° N, 120.974749° W, as well as all sloughs, channels, floodways, and waterways connected with the San Joaquin River that allow for CV spring-run Chinook salmon access, but excluding the Merced River. Those portions of the Kings River that connect with the San Joaquin River during high water years.	[Insert **Federal Register** citation] 12/31/13.	N/A
*	*	*	*	*

[1] Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

* * * * *

■ 3. Add paragraph (b) to § 223.301, to read as follows:

§ 223.301 Special rules—marine and anadromous fishes.

* * * * *

(b) San Joaquin River Central Valley (CV) spring-run Chinook Salmon Experimental Population (*Oncorhynchus tshawytscha*). (1) The San Joaquin River CV spring-run Chinook salmon population identified in paragraph (b)(2) of this section is designated as a nonessential experimental population under section 10(j) of the ESA.

(2) San Joaquin River CV Spring-run Chinook Salmon Experimental Population. All CV spring-run Chinook salmon, including those that have been released or propagated, naturally or artificially, within the experimental population area in the San Joaquin River as defined here are considered part of the San Joaquin River experimental population. The boundaries of this experimental population area include the San Joaquin River from Friant Dam downstream to its confluence with the Merced River, delineated by a line between decimal latitude and longitude coordinates: 37.348930° N, 120.975174° W and 37.349099° N, 120.974749° W, as well as all sloughs, channels, floodways, and waterways connected with the San Joaquin River that allow for CV spring-run Chinook salmon access, but excluding the Merced River. Those portions of the Kings River that connect with the San Joaquin River during high water years are also part of the experimental population area.

(3) Prohibitions. Except as expressly allowed in paragraph (b)(4) of this section, all prohibitions of section 9(a)(1) of the ESA (16 U.S.C. 1538(a)(1)), except 9(a)(1)(C), apply to fish that are part of the threatened, nonessential experimental population of CV spring-run Chinook salmon identified in paragraph (b)(2) of this section.

(4) Exceptions to the Application of Section 9 Take Prohibitions in the Experimental Population Area. The following forms of take in the experimental population area identified in paragraph (b)(2) of this section are not prohibited by this section:

(i) Any taking of CV spring-run Chinook salmon provided that it is unintentional, not due to negligent conduct, and incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

(ii) Any taking of CV spring-run Chinook salmon by an employee or designee of NMFS, the USFWS, other Federal resource management agencies, the California Department of Fish and Wildlife, or any other governmental entity if in the course of their duties it is necessary to: aid a sick, injured or stranded fish; dispose of a dead fish; or salvage a dead fish which may be useful for scientific study. Any agency acting under this provision must report to NMFS (see **ADDRESSES** section) the numbers of fish handled and their status on an annual basis.

(iii) Any taking of CV spring-run Chinook salmon for scientific research or enhancement purposes by a person or entity with a valid section ESA 10(a)(1)(A) permit issued by NMFS and a valid incidental take permit, consistency determination, or other take authorization issued by the CDFW.

(iv) Any taking of CV spring-run Chinook salmon for scientific research purposes by the CDFW provided that:

(A) Scientific research activities involving purposeful take are conducted by employees or contractors of CDFW or as a part of a monitoring and research program overseen by or coordinated with CDFW.

(B) CDFW provides for NMFS' review and approval a list of all scientific research activities involving direct take planned for the coming year, including an estimate of the total direct take that is anticipated, a description of the study design, including a justification for taking the species and a description of the techniques to be used, and a point of contact.

(C) CDFW annually provides to NMFS the results of scientific research activities directed at fish in the experimental population, including a report of the direct take resulting from the studies and a summary of the results of such studies.

(D) Scientific research activities that may incidentally take fish in the experimental population are either conducted by CDFW personnel, or are in accord with a permit issued by the CDFW.

(E) CDFW provides NMFS annually, for its review and approval, a report listing all scientific research activities it conducts or permits that may incidentally take fish in the experimental population during the coming year. Such reports shall also contain the amount of incidental take occurring in the previous year's

scientific research activities and a summary of the results of such research.

(F) Electro fishing in any body of water known or suspected to contain fish in the experimental population is conducted in accordance with NMFS ''Guidelines for Electrofishing Waters Containing Salmonids Listed Under the Endangered Species Act'' (NMFS, 2000a).

(G) CDFW provides NMFS, for its review and approval, the Monitoring and Analysis Plan produced by the San Joaquin River Restoration Program, including an estimate of the direct and indirect take that may result from all scientific research activities in that plan for the period from January 30, 2014 until January 30, 2015.

(H) NMFS' approval of a research program shall be a written approval by the NMFS West Coast Regional Administrator.

(5) Limited Exception to the Application of Section 9(a)(1) Take Prohibitions Outside of the Experimental Population Area. The following forms of take are not prohibited:

(i) Any taking of CV spring-run Chinook salmon in those portions of the lower San Joaquin River and its tributaries, including the Merced River, downstream from its confluence with the Merced River to Mossdale County Park in San Joaquin County, that the avoidance of which would impose more than *de minimus* water supply reductions, additional storage releases, or bypass flows on unwilling persons or entities diverting or receiving water pursuant to applicable State and Federal laws.

(ii)(A) Any taking of CV spring-run Chinook salmon by the Central Valley Project (CVP) and State Water Project (SWP) that originates from reintroduction to the San Joaquin River that the avoidance of which would impose more than *de minimus* water supply reductions, additional storage releases, or bypass flows on unwilling persons or entities diverting or receiving water pursuant to applicable State and Federal laws.

(B) NMFS will prepare a technical memorandum that describes the methodology to ensure that CV spring-run Chinook salmon originating from reintroduction to the San Joaquin River do not cause more than *de minimus* water supply reductions, additional storage releases, or bypass flows associated with the operations of the CVP and SWP under any ESA section 7 biological opinion or section 10 permit that is in effect at the time for operations of the CVP and SWP. To the maximum extent feasible, NMFS will develop this technical memorandum in coordination with and with opportunity for comment by interested parties. The first technical memorandum will be completed before CV spring-run Chinook salmon will be released in the San Joaquin River. Prior to January 15 of each succeeding year, NMFS will update the technical memorandum and, if required by the methodology, determine the share of take at the CVP and SWP facilities that originates from the reintroduction to the San Joaquin River. This share of take of CV spring-run Chinook salmon reintroduced to the San Joaquin River will be deducted from or otherwise used to adjust the operational triggers and incidental take statements associated with any biological opinion that is in effect at the time for operations of the CVP and SWP facilities. NMFS will use best available commercial or scientific information to inform these calculations. The technical memorandum and annual determination will ensure that the reintroduction of CV spring-run Chinook salmon will not result in more than *de minimus* water supply reductions, additional storage releases or bypass flows of the CVP and SWP operations under any biological opinion or ESA section 10 permit that is in effect at the time for operations of the CVP and SWP on unwilling persons or entities diverting or receiving water pursuant to applicable State and Federal laws.

[FR Doc. 2013–31296 Filed 12–30–13; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 78, No. 251

Tuesday, December 31, 2013

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 AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2013–0016]

RIN 0579–AD81

Importation of Fresh Blueberry Fruit From Morocco Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations concerning the importation of fruits and vegetables to allow the importation of fresh blueberry fruit from Morocco into the continental United States. As a condition of entry, the blueberries would have to be produced under a systems approach employing a combination of mitigation measures for two quarantine pests, *Ceratitis capitata* and *Monilinia fructigena,* and would have to be inspected prior to exportation from Morocco and found free of these pests. The blueberries would have to be imported in commercial consignments only and would have to be treated with one of two approved postharvest treatments to mitigate the risk of *C. capitata.* The blueberries would also have to be accompanied by a phytosanitary certificate with an additional declaration stating that the conditions for importation have been met. This action would allow the importation of blueberries from Morocco while continuing to protect against the introduction of plant pests into the United States.

DATES: We will consider all comments that we receive on or before March 3, 2014.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2013-0016-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2013–0016, 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-2013-0016* 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: Ms. Dorothy Wayson, Senior Regulatory Policy Specialist, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 851–2036.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–62, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

The national plant protection organization (NPPO) of Morocco has requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow fresh blueberry fruit from Morocco to be imported into the continental United States.

As part of our evaluation of Morocco's request, we prepared a pest risk assessment (PRA), titled ''Importation of Fresh Fruit of Highbush Blueberry (*Vaccinium corymbosum* Linnaeus) and its hybrid varieties Southern Highbush Blueberry [*V. corymbosum* x *angustifolium* (*V.* x *atlanticum*) and *V. corymbosum* x *virgatum*] into the Continental United States from Morocco'' (March 2012). The PRA evaluated the risks associated with the importation of blueberries into the continental United States from Morocco.

The PRA identified two pests of quarantine significance present in Morocco that could be introduced into the United States through the importation of blueberries: *Ceratitis capitata,* the Meditterranean fruit fly, and *Monilinia fructigena* Honey ex Whetzel, a fungus.

According to our PRA, both pests are rated high risk. Pests with high pest risk potential generally require measures in addition to inspection at the port of entry to mitigate risk. To recommend specific measures to mitigate the risk posed by the pests identified in the PRA, we prepared a risk management document (RMD). Copies of the PRA and RMD may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

Based on the recommendations of the RMD, we are proposing to allow the importation of blueberries from Morocco into the continental United States only if they are produced in accordance with a systems approach. The systems approach we are proposing would require that blueberries be imported only under the conditions described below. These conditions would be added to the regulations in a new § 319.56–63.

Proposed paragraph (a) of § 319.56–63 would state that blueberries from Morocco may be imported in commercial consignments only. Produce grown commercially is less likely to be infested with plant pests than noncommercial shipments. Noncommercial shipments are more prone to infestations because the commodity is often ripe to overripe, could be of a variety with unknown susceptibility to pests, and is often grown with little or no pest control. Commercial consignments, as defined in § 319.56–2, are consignments that an inspector identifies as having been imported for sale and distribution. Such identification is based on a variety of indicators, including, but not limited to: Quantity of produce, type of packaging, identification of grower or packinghouse on the packaging, and documents consigning the fruits or vegetables to a wholesaler or retailer.

Paragraph (b) would require blueberries to be grown at places of production that are registered with the

NPPO of Morocco. Registering places of production would allow APHIS and the NPPO of Morocco to trace back consignments of blueberries to the orchard of origin if a pest or disease of concern is detected after harvest.

M. fructigena is the most common cause of fruit rot in the fruit orchards in Europe and Asia, causing characteristic brown rot symptoms that can easily be identified during visual inspections. Therefore, paragraph (c) would require that, 30 days prior to harvest, blueberries be inspected in the field by the NPPO of Morocco for signs of *M. fructigena* infestation. If the fungal disease is detected, the NPPO of Morocco would have to notify APHIS, at which point APHIS will prohibit the importation of blueberries into the continental United States from the place of production for the remainder of the season. The place of production may resume shipments of blueberries to the United States in the next growing season if an investigation is conducted and APHIS and the NPPO of Morocco agree that appropriate remedial actions have been taken.

C. capitata produce oviposition scars in blueberries, but eggs are laid below the skin of the fruit and larvae are internal feeders; therefore, infested fruit may be overlooked during inspection. Thus, additional safeguards beyond field and packinghouse inspections would be necessary to prevent the pest from being introduced into the United States. The RMD discusses the use of two treatments to reduce the risk of *C. capitata* from blueberries from Morocco: Fumigation with methyl bromide according to treatment schedule T101–i–1–1 or cold treatment according to treatment schedule T107–a. Both are approved APHIS treatments for *C. capitata* in blueberries.

Accordingly, paragraph (d) would require that each consignment of blueberries be treated in accordance with 7 CFR part 305 for *C. capitata* with one of the two above-mentioned treatment methods. Within part 305, § 305.2 provides that approved treatment schedules are set out in the Plant Protection and Quarantine Treatment Manual, found online at *http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/treatment.pdf*. Treatments would also be conducted in accordance with the other requirements of part 305.

Paragraph (e) of § 319.56–63 would require each consignment of blueberries imported from Morocco into the continental United States to be accompanied by a phytosanitary certificate issued by the NPPO of Morocco with an additional declaration stating that the requirements of § 319.56–63 have been met and the consignment has been inspected and found free of *M. fructigena.*

Under the general conditions for the importation of fruits and vegetables in § 319.56–3, each consignment of blueberries would be subject to further inspection at the port of entry into the United States.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

Morocco expects to export 360,000 pounds of fresh blueberries to the continental United States annually. This quantity is equivalent to about one-tenth of 1 percent of U.S fresh blueberry supply, 2007–2011. Morocco is expected to export fresh blueberries to the continental United States in July and August. The U.S. blueberry season is from April to August. Even though the two seasons overlap and most, if not all, fresh blueberry producers in the United States are small entities, the relatively small quantity expected to be imported from Morocco would not significantly affect the U.S. market or prices.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule would allow fresh blueberry fruit to be imported into the continental United States from Morocco. If this proposed rule is adopted, State and local laws and regulations regarding blueberries imported under this rule would be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2013–0016. Please send a copy of your comments to: (1) APHIS, using one of the methods described under **ADDRESSES** at the beginning of this document, and (2) Clearance Officer, OCIO, USDA, Room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would amend the fruits and vegetables regulations to allow the importation of fresh blueberry fruit from Morocco into the continental United States. As a condition of entry, the blueberries would have to be produced under a systems approach employing a combination of mitigation measures for two quarantine pests and would have to be inspected prior to exportation from Morocco and found free of these pests. The blueberries would have to be imported in commercial consignments only and would have to be treated with one of two approved postharvest treatments to mitigate the risk of *C. capitata.* The blueberries would also have to be accompanied by a phytosanitary certificate with an additional declaration stating that the conditions for importation have been met. Implementing this rulemaking would require production site registration and the completion of phytosanitary certificates.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, 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 information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average .55 hours per response.

Respondents: NPPO of Morocco, blueberry producers in Morocco, and U.S. importers.

Estimated annual number of respondents: 8.

Estimated annual number of responses per respondent: 3.

Estimated annual number of responses: 20.

Estimated total annual burden on respondents: 11 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.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the EGovernment Act 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. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

Lists of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are proposing to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 319.56–63 is added to read as follows:

§ 319.56–63 Fresh blueberries from Morocco.

Fresh fruit of highbush blueberry (*Vaccinimum corymbosum* L.) and its hybrid varieties southern highbush blueberry [*V. corymbosum* x *angustifolium* (*V.* x *atlanticum*) and *V. corymbosum x virgatum*] may be imported into the continental United States from Morocco only under the conditions described in this section. These conditions are designed to prevent the introduction of the following quarantine pests: *Ceratitis capitata,* the Mediterranean fruit fly, and the fungus *Monilinia fructigena* Honey ex Whetzel.

(a) The blueberries may be imported in commercial consignments only.

(b) The blueberries must be grown at places of production that are registered with the national plant protection organization (NPPO) of Morocco.

(c) During the growing season, blueberries must be inspected in the field for signs of *M. fructigena* infestation 30 days prior to harvest. If the fungal disease is detected, the NPPO of Morocco must notify APHIS. APHIS will prohibit the importation of blueberries from Morocco into the continental United States from the place of production for the remainder of the growing season. The exportation of blueberries from the rejected place of production may resume in the next growing season if an investigation is conducted and APHIS and the NPPO of Morocco agree that appropriate remedial actions have been taken.

(d) Each consignment of blueberries must be treated in accordance with 7 CFR part 305 for *C. capitata.*

(e) Each consignment of blueberries must be accompanied by a phytosanitary certificate issued by the NPPO of Morocco with an additional declaration stating that the conditions of this section have been met, and that the consignment has been inspected prior to export from Morocco and found free of *M. fructigena.*

Done in Washington, DC, this 20th day of December 2013.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–31144 Filed 12–30–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 319 and 340

[Docket No. APHIS–2008–0011]

RIN 0579–AD75

Restructuring of Regulations on the Importation of Plants for Planting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We are reopening the comment period for our proposed rule that would restructure the regulations governing the importation of plants for planting. We are requesting comments on our proposed framework for integrated pest risk management measures for plants for planting. We are especially interested in: The differences commenters perceive between International Standard for Phytosanitary Measures No. 36 and the North American Plant Protection Organization's Regional Standard for Phytosanitary Measures No. 24, and reasons to prefer one over the other as a basis for such measures; and how to address the risk posed when plant brokers purchase and move plants for planting after they leave their place of production and before they are exported to the United States. This action will allow interested persons additional time to prepare and submit comments on these topics.

DATES: The comment period for the proposed rule published April 25, 2013 (78 FR 24634) is reopened. We will consider all comments that we receive on or before January 30, 2014.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2008-0011-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2008–0011, 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-2008-0011* 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: Ms. Heather Coady, Regulatory Policy Specialist, Plants for Planting Policy, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 851–2076.

SUPPLEMENTARY INFORMATION:

On April 25, 2013, we published in the **Federal Register** (78 FR 24634–24663, Docket No. APHIS–2008–0011) a proposal that would restructure the regulations governing the importation of plants for planting in 7 CFR part 319.

Comments on the proposed rule were required to be received on or before June 24, 2013. We reopened and extended the deadline for comments until September 10, 2013, in a document published in the **Federal Register** on July 12, 2013 (78 FR 41866–41867, Docket No. APHIS–2008–0011).

Among other changes, we proposed to establish a framework for the development of integrated pest risk management measures in the regulations. We did not propose to require any specific pest risk management measures; rather, we intended the proposed regulatory text to serve as a framework for their eventual development. We based the provisions for the integrated pest risk management measures on the North American Plant Protection Organization's Regional Standard for Phytosanitary Measures (RSPM) No. 24, which addresses trade in plants for planting. As we stated in the proposed rule, our framework for integrated pest risk management measures is also consistent with the International Plant Protection Convention's International Standard for Phytosanitary Measures (ISPM) No. 36, which addresses the same topic.

One element of RSPM No. 24 that we included in the proposed framework was a requirement that persons trading in plants for planting intended for export without growing the plants (whom we referred to in the proposal as plant brokers) be approved by the national plant protection organization of the exporting country. In addition, we proposed to require plant brokers to ensure the traceability of export consignments to an approved place of production or production site, and to maintain the phytosanitary status of the plants in a manner equivalent to an approved place of production from purchase, storage, and transportation to the export destination. (The ''phytosanitary status'' refers to their freedom from exposure to the quarantine pests addressed by the integrated pest risk management measures.)

We received several comments on our decision to base the proposed framework for integrated pest risk management measures on RSPM No. 24, rather than ISPM No. 36. Most of the commenters preferred that we base our measures on ISPM No. 36. Some commenters on the proposed rule stated that the two standards differed significantly and that the framework we proposed was not consistent with ISPM No. 36. We also received several comments on our proposed requirement for approval of plant brokers, with some commenters indicating that such a requirement would be unworkable and that there could be other means for ensuring that plants for planting that are intended for export retain their phytosanitary status after leaving the place of production. We are considering whether to revise the proposed framework to base it on ISPM No. 36 and what other means might be available to ensure that the phytosanitary status of plants for planting is maintained after they leave an approved place of production.

We are reopening the comment period on Docket No. APHIS–2008–0011 for an additional 30 days. This action will allow interested persons additional time to prepare and submit comments. We are particularly interested in detailed comments on the issues discussed above; specific comments will help us to evaluate potential changes to the proposed rule. We will also consider all comments received between September 10, 2013, and the date of this notice.

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 20th day of December 2013.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–31146 Filed 12–30–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[Docket No. EERE–2012–BT–TP–0046]

RIN 1904–AC52

Energy Conservation Program: Test Procedure for Set-Top Boxes

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Proposed rule; withdrawal.

SUMMARY: The U.S. Department of Energy (DOE) withdraws a proposed rule published January 23, 2013 to establish a test procedure to measure the energy consumption of set-top boxes (STBs). DOE is taking this action in light of a consensus agreement entered by a broadly representative group that DOE believes has the potential to achieve significant energy savings in STBs.

DATES: The proposed rule is withdrawn December 31, 2013.

FOR FURTHER INFORMATION CONTACT:

Mr. Jeremy Dommu, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–9870. Email: *Jeremy.Dommu@ee.doe.gov.*

Ms. Celia Sher, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–6122. Email: *Celia.Sher@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Authority

Title III of the Energy Policy and Conservation Act (42 U.S.C. 6291, *et seq.;* ''EPCA'') sets forth a variety of provisions designed to improve energy efficiency. (All references to EPCA refer to the statute as amended through the American Energy Manufacturing Technical Corrections Act (AEMTCA), Pub. L. 112–210 (Dec. 18, 2012)). Part A of Title III of EPCA (42 U.S.C. 6291–6309) established the ''Energy Conservation Program for Consumer Products Other Than Automobiles,'' which covers consumer products and certain commercial products (hereafter referred to as ''covered products'').[1] In addition to specifying a list of covered residential and commercial products, EPCA contains provisions that enable the Secretary of Energy to classify additional types of consumer products as covered products. (42 U.S.C. 6292(a)(20)) DOE may prescribe test procedures for any product it classifies as a ''covered product.'' (42 U.S.C. 6293(b))

II. Background

On June 15, 2011, DOE published a notice of proposed determination that tentatively determined that STBs and network equipment qualify as a covered product. 76 FR at 34914. Subsequently, DOE initiated the rulemaking process to

[1] For editorial reasons, upon codification in the U.S. code, Part B was re-designated Part A.

establish a test procedure for STBs. First, DOE issued a request for information document on December 16, 2011, requesting stakeholders to provide technical information regarding various test procedures used by industry to measure the energy consumption of STBs and network equipment. 76 FR at 78174. DOE then published a notice of proposed rulemaking (NOPR) on January 23, 2013 to establish a new test procedure focused exclusively on STBs. 78 FR 5076. DOE held a public meeting and requested stakeholder comments on all aspects of the NOPR.

III. Discussion

In September, 2013 a broadly representative group of Pay-TV, consumer electronics industries and energy advocates announced a Voluntary Agreement for Ongoing Improvement to the Energy Efficiency of Set-Top Boxes (Agreement).[2] The Agreement established a five-year written commitment to continue improvements in the energy efficiency of STBs used in the distribution of digital video signals. Under the terms of the Agreement, it is predicted that consumers will realize significant annual residential electricity savings. DOE encourages the development of market-based solutions, such as the Agreement, that are a result of a consensus among and including all relevant parties. DOE also recognizes that there are multiple paths forward to ensure that the maximum economic benefits and energy savings occur through increasing the efficiency of STBs. DOE believes that the Agreement has the potential to achieve significant energy savings in STBs. Thus, in light of the newly adopted Agreement, DOE withdraws its proposed test procedure for STBs. DOE notes that it will continue to monitor the STB market closely and would consider reinitiating the rulemaking if it was found that the energy efficiency gains for STBs and consumer savings envisioned in the Agreement were not being realized.

By separate action published elsewhere in today's **Federal Register**, DOE is withdrawing its proposed rule to determine STBs as a covered product.

IV. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this withdrawal.

List of Subjects

10 CFR Part 429

Confidential business information, Energy conservation, Household appliances, Imports, Reporting and recordkeeping requirements.

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on December 20, 2013.

Kathleen B. Hogan,

Deputy Assistant Secretary of Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2013–31264 Filed 12–30–13; 8:45 am]

BILLING CODE 6450–01–P

[2] *http://www.ncta.com/energyagreement.*

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No EERE–2013–BT–DET–0057]

RIN 1904–AD14

Energy Conservation Program for Consumer Products: Proposed Determination of Hearth Products as a Covered Consumer Product

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Proposed determination of coverage.

SUMMARY: The U.S. Department of Energy (DOE or the ''Department'') has tentatively determined that hearth products qualify as a covered product under Part A of Title III of the Energy Policy and Conservation Act (EPCA), as amended. More specifically, DOE has tentatively determined that hearth products meet the criteria for covered products because classifying products of such type as covered products is necessary or appropriate to carry out the purposes of EPCA (which is to improve the efficiency of covered consumer products to conserve the energy resources of the Nation), and the average annual U.S. household energy use for hearth products is likely to exceed 100 kilowatt-hours (kWh) per year.

DATES: DOE will accept written comments, data, and information on this notice, but no later than January 30, 2014.

ADDRESSES: Interested persons are encouraged to submit comments electronically. However, interested persons may submit comments, identified by docket number EERE–2013–BT–DET–0057 or Regulatory Information Number (RIN) 1904–AD14, by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: HearthHtgProd2013DET0057@ee.doe.gov.* Include EERE–2013–BT–DET–0057 and/or RIN 1904–AD14 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, portable document format (PDF), or American Standard Code for Information Exchange (ASCII) file format, and avoid the use of special characters or any form of encryption.
- *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, Mailstop EE–2J, Proposed Determination for Hearth Products, EERE–2013–BT–DET–0057 and/or RIN 1904–AD14, 1000 Independence Avenue SW., Washington, DC 20585–0121. *Telephone:* (202) 586–2945. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, 6th Floor, 950 L'Enfant Plaza SW., Washington, DC 20024. *Telephone:* (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

Instructions: All submissions received must include the agency name and docket number or RIN for this rulemaking. No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section VI of this document (Public Participation).

Docket: The docket is available for review at *www.regulations.gov,* including **Federal Register** notices, comments, and other supporting documents/materials (search EERE–2013–BT–DET–0035). All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket Web page can be found at: *http://www.regulations.gov/#!docketDetail;D=EERE-2013-BT-DET-0057.* This Web page contains a link to the docket for this notice on the *www.regulations.gov* site. The *www.regulations.gov* Web page contains instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT: Mr. John Cymbalsky, U.S. Department of

Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–1692. Email: *hearth_products@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–9507 Email: *Eric.Stas@hq.doe.gov.*

For information on how to submit or review public comments, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Email: *Brenda.Edwards@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Statutory Authority
II. Current Rulemaking Process
III. Proposed Definition
IV. Evaluation of Hearth Products as a Covered Product Subject to Energy Conservation Standards
A. Coverage Necessary or Appropriate to Carry Out Purposes of EPCA
B. Average Household Energy Use
V. Procedural Issues and Regulatory Review
A. Review Under Executive Order 12866
B. Review Under the Regulatory Flexibility Act
C. Review Under the Paperwork Reduction Act of 1995
D. Review Under the National Environmental Policy Act of 1969
E. Review Under Executive Order 13132
F. Review Under Executive Order 12988
G. Review Under the Unfunded Mandates Reform Act of 1995
H. Review Under the Treasury and General Government Appropriations Act, 1999
I. Review Under Executive Order 12630
J. Review Under the Treasury and General Government Appropriations Act, 2001
K. Review Under Executive Order 13211
L. Review Under the Information Quality Bulletin for Peer Review
VI. Public Participation
A. Submission of Comments
B. Issues on Which DOE Seeks Comments

I. Statutory Authority

Title III of the Energy Policy and Conservation Act of 1975 (EPCA), as amended (42 U.S.C. 6291 *et seq.*), sets forth various provisions designed to improve energy efficiency for consumer products and certain commercial and industrial equipment. Title III, Part B [1] of EPCA,[2] Pubic Law 94–163 (42 U.S.C. 6291–6309, as codified) established the ''Energy Conservation Program for Consumer Products Other Than Automobiles,'' a program covering most major household appliances (hereafter referred to as ''covered products''). In addition to specifying a list of covered residential and commercial products, EPCA contains provisions that enable the Secretary of Energy to classify additional types of consumer products as covered products. (42 U.S.C. 6292(a)(20)) Specifically, for a given product to be classified as a covered product, the Secretary must determine that:

(A) Classifying the product as a covered product is necessary or appropriate for the purposes of carrying out EPCA; and

(B) The average annual per-household energy use by products of such type is likely to exceed 100 kilowatt-hours (kWh) per year.

(42 U.S.C. 6292(b)(1)(A) and (B))

For the Secretary to prescribe an energy conservation standard pursuant to 42 U.S.C. 6295(o) and (p) for covered products added pursuant to 42 U.S.C. 6292(b)(1), the Secretary must also determine that:

(A) The average household energy use of the products has exceeded 150 kWh (or its Btu equivalent) per household for any 12-month period;

(B) The aggregate 12-month household energy use of the products has exceeded 4.2 TWh;

(C) Substantial improvement in energy efficiency is technologically feasible; and

(D) Application of a labeling rule under 42 U.S.C. 6294 is unlikely to be sufficient to induce manufacturers to produce, and consumers and other persons to purchase, covered products of such type (or class) that achieve the maximum energy efficiency that is technologically feasible and economically justified.

(42 U.S.C. 6295(l)(1)(A)–(D)) [3]

Hearth products are gas-fired equipment that provide space heating and/or provide an aesthetic appeal to the living space. If DOE issues a final determination that hearth products are a covered product, DOE will consider test procedures and energy conservation standards for hearth products, including an initial determination as to whether hearth products satisfy the provisions of 42 U.S.C. 6295(l)(1).

II. Current Rulemaking Process

On April 16, 2010, DOE published a final rule in the **Federal Register** (hereafter referred to as the ''April 2010 final rule'') in accordance with the relevant statutory provisions discussed in that final rule, which, in relevant part, promulgated definitions and energy conservation standards for vented gas hearth products. 75 FR 20112. Following DOE's adoption of the April 2010 final rule, the Hearth, Patio & Barbecue Association (HPBA) sued DOE in the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) to invalidate the April 2010 rule and an amendment to that rule published on November 18, 2011 (76 FR 71836) as those rules pertained to vented gas hearth products. Statement of Issues to Be Raised, *Hearth, Patio & Barbecue Association* v. *Department of Energy, et al.,* No. 10–1113 (D.C. Cir. filed July 1, 2010). On February 8, 2013, the D.C. Circuit issued its opinion in the HPBA case and ordered that the definition of ''vented hearth heater'' adopted by DOE be vacated, and remanded the matter to DOE to interpret the challenged provisions in accordance with the Court's opinion. *Hearth, Patio & Barbecue Association* v. *Department of Energy, et al.,* 706 F.3d 499 (D.C. Cir. 2013).

DOE has not previously conducted an energy conservation standards rulemaking for hearth products with the exception of the vented hearth heaters, which are no longer covered products as a result of the Court ruling. If, after public comment, DOE issues a final determination of coverage for this type of product, DOE will consider both test procedures and energy conservation standards for all hearth products.

With respect to test procedures, DOE would consider a proposed test procedure for measuring the energy efficiency, energy use, or estimated annual operating cost of hearth products during a representative average use cycle or period of use that is not unduly burdensome to conduct. (42 U.S.C.

[1] For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

[2] All references to EPCA in this document refer to the statute as amended through the American Energy Manufacturing Technical Corrections Act (AEMTCA), Public Law 112–210 (Dec. 18, 2012).

[3] DOE notes that a drafting error arose at the time Congress adopted the amendments to EPCA contained in the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140. As part of the EISA 2007 amendments, Congress added metal halide lamp fixtures to the list of specifically enumerated covered products at 42 U.S.C. 6292(a)(19) and shifted the provision for the Secretary to classify ''any other type'' of a consumer product as a covered product to 42 U.S.C. 6292(a)(20). However, Congress did not similarly amend the criteria and other requirements for setting energy conservation standards for ''other'' covered products in 42 U.S.C. 6295(l)(1) and (2). The provisions in 42 U.S.C. 6295(l) continued to refer to standards for ''any type'' of covered product, while continuing to refer to 42 U.S.C. 6292(a)(20). Clearly, the provisions at 42 U.S.C. 6295(l) were intended to apply more broadly than to metal halide lamp fixtures, so DOE continues to apply this provision as if the drafting error had not occurred. To do otherwise would render the provision at 42 U.S.C. 6295(l) a nullity, thereby thwarting DOE's ability to set energy conservation standards for newly covered products, an outcome which Congress could not have intended.

6293(b)(3)) In a test procedure rulemaking, DOE initially prepares a notice of proposed rulemaking (NOPR) and allows interested parties to present oral and written data, views, and arguments with respect to such procedures. In prescribing new test procedures, DOE would take into account relevant information including technological developments relating to energy use or energy efficiency of hearth products.

With respect to energy conservation standards, DOE is required to publish a NOPR that would provide DOE's proposal for potential energy conservations standards and a summary of the results of DOE's supporting technical analysis. The details of DOE's energy conservation standards analysis would be provided in a technical support document (TSD) that describes the details of DOE's analysis of both the burdens and benefits of potential standards, pursuant to 42 U.S.C. 6295(o). Because hearth products would be a product that is newly covered under 42 U.S.C. 6292(b)(1), DOE would also consider as part of any energy conservation standard NOPR whether hearth products satisfy the requirements of 42 U.S.C. 6295(l)(1). After the publication of the NOPR, DOE would afford interested persons an opportunity during a period of not less than 60 days to provide oral and written comment. (42 U.S.C. 6295(p)(2)) After receiving and considering the comments on the NOPR and not less than 90 days after the publication of the NOPR, DOE would issue the final rule prescribing any new energy conservation standards for hearth products. (42 U.S.C. 6295(p)(3))

III. Proposed Definition

DOE proposes to add a definition for ''hearth products'' in the Code of Federal Regulations (CFR) to clarify coverage of any potential test procedure or energy conservation standard that may arise from today's proposed determination. There currently is no statutory definition of ''hearth products.'' As discussed in section IV of this notice, DOE has preliminarily determined that adding hearth products as a covered product is justified under the relevant statutory criteria. Accordingly, DOE proposes to adopt the following definition of ''hearth products'' to consider in the context of any subsequent test procedures and energy conservation standards for hearth products, and to provide clarity for interested parties as it continues its analyses:

Hearth product means a gas-fired appliance that simulates a solid-fueled fireplace or presents a flame pattern (for aesthetics or other purpose) and that may provide space heating directly to the space in which it is installed.

This proposed definition includes (but is not necessarily limited to) all vented and unvented hearth products. More specifically, it includes vented decorative hearth products, vented heater hearth products, vented gas logs, gas stoves, outdoor hearth products, and ventless hearth products.

DOE seeks comments from interested parties on its proposed definition of ''hearth products.''

IV. Evaluation of Hearth Products as a Covered Product

The following sections describe DOE's evaluation of whether hearth products fulfill the criteria for being added as a covered product pursuant to 42 U.S.C. 6292(b)(1). As stated previously, DOE may classify a consumer product as a covered product if: (1) Classifying products of such type as covered products is necessary or appropriate to carry out the purposes of EPCA; and (2) the average annual per-household energy use by products of such type is likely to exceed 100 kWh (or its Btu equivalent) per year.

A. Coverage Necessary or Appropriate to Carry Out Purposes of EPCA

Coverage of hearth products is necessary or appropriate to carry out the purposes of EPCA, which include: (1) To conserve energy supplies through energy conservation programs, and, where necessary, the regulation of certain energy uses; and (2) to provide for improved energy efficiency of motor vehicles, major appliances, and certain other consumer products. (42 U.S.C. 6201) The aggregate national energy use of hearth products is estimated to be 0.11 quads (31.2 TWh).[4] Coverage of hearth products will further the conservation of energy supplies through both labeling programs and the regulation of energy efficiency. There is significant variation in the annual energy consumption of otherwise comparable models currently available, indicating that technologies exist to reduce the energy consumption of hearth products. Therefore, DOE has tentatively determined that coverage of hearth products is necessary and appropriate to carrying out the purposes of EPCA, thereby satisfying the provisions of 42 U.S.C. 6292(b)(1)(A).

B. Average Household Energy Use

DOE calculated average household energy use for hearth products, in households that use the product, based on a study prepared for HPBA.[5] Based on this study, vented heater hearth products operate on average 75 hours per year, while vented decorative hearth products operate half that number (or 37.5 hours per year). DOE assumes that ventless hearth products operate 75 hours per year (similar to vented heater hearth products), while vented gas logs and outdoor units operate 37.5 hours per year (similar to vented decorative hearth products). Based upon a review of available information, DOE has tentatively determined that the average input capacity for all hearth products is 35,000 Btu/h, based on hearth models offered in 2010.[6] DOE also took into account the energy use from a standing pilot light or other continuously-burning ignition source. DOE estimated that on average, continuous pilot energy use is about 800 Btu/h.[7] DOE assumed

[4] The aggregate national energy use of hearth products is based on energy use estimates for hearth products provided in section IV.B, Energy Information Administration, 2009 Residential Energy Consumption Survey (Available at: *http://www.eia.doe.gov/emeu/recs*), U.S. Census, 2011 American Housing Survey (Available at *http://www.census.gov/housing/ahs/data/national.html*), 2002 to 2012 HPBA U.S. hearth shipments (Available at *http://www.hpba.org/statistics/hpba-us-hearth-statistics*), and. 2010 report prepared for HPBA by J. Houck, Residential Decorative Gas Fireplace Usage Characteristic (Available at: *http://energy.gov/sites/prod/files/gcprod/documents/RFIRegReview_HPBAAttachC_03212011.pdf*).

[5] Houck, James. Residential Decorative Gas Fireplace Usage Characteristic. Report prepared for HPBA (2010) (Available at: *http://energy.gov/sites/prod/files/gcprod/documents/RFIRegReview_HPBAAttachC_03212011.pdf*).

[6] U.S. Department of Energy-Office of Codes and Standards, Analytical Tools: Energy Conservation Standards for Residential Water Heaters, Direct Heating Equipment, and Pool Heaters (April 27, 2010) (Available at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/htgp_finalrule_correction.pdf*).

[7] This value was derived from data collected on the following manufacturer Web sites: GRI 1997 Study: Menkedick, J., Hartford, P., Collins, S., Chumaker, S., Wells, D. ''Topic Report: Hearth Products Study (1995–1997)''. Gas Research Institute (GRI). September 1997. GRI–97/0298.

Intertek Testing Service. NOPR Comment # 0198 to Hearth Products NOPR. (Available at: *http://www.regulations.gov/#%21docketDetail;dct=FR+PR+N+O+SR+PS;rpp=50;so=DESC;sb=postedDate;po=0;D=EERE-2011-BT-STD-0047*).

Heatilator. Common Questions. (URL: *http://www.heatilator.com/customerCare/searchFaq.asp?c=Gas*).

EER Consulting, ''Input Rate of Pilot Burners on Gas Fireplaces'' (Consultant Report). EER Consulting (Nov. 6, 2011).

NRCAN. Personal: Residential: Chapter 3—All About Gas Fireplaces (Available at URL: *http://oee.nrcan.gc.ca/Publications/infosource/Pub/home/all_about_gas_fireplaces_chapter3.cfm?text=N&printview=N*).

Pittsburg Gas Grill and Heater Co. Frequently Asked Questions. (Available at URL: *http://www.pittsburghgasgrill.com/faq.html*).

that pilot lights operate year round (*i.e.,* 8,760 h/yr) for 25 percent of the installations, only during the heating season (about one-fourth of the year, or 2,190 h/yr) for 25 percent of the installations, and only when the burner is on for the remaining 50 percent of the installations. Based on these combined estimates, vented heater hearth products and ventless hearth products are estimated to consume 4.82 MMBtu/yr (1,411 kWh/yr) per hearth product, while vented decorative hearth products and vented gas logs and outdoor units are estimated to consume 3.49 MMBtu/yr (1,022 kWh/yr) per hearth product.

Based on disaggregated shipments provided by HPBA from 2002–2003, vented decorative hearth products account for 30 percent of total shipments, vented heater hearth products account for 13 percent, vented gas logs and outdoor units account for 7 percent, and ventless hearth products account for 51 percent. Using the distribution of shipments from the data provided by HPBA results in a weighted average energy use of 4.33 MMBtu/yr (1,269 kWh/yr) per hearth product. Therefore, DOE has tentatively determined that the average annual per-household energy use for hearth products is likely to exceed 100 kWh/yr, thereby satisfying the provisions of 42 U.S.C. 6292(b)(1)(B).

Based on the above, DOE has determined tentatively that hearth products qualify as a covered product under Part A of Title III of the EPCA, as amended.

V. Procedural Issues and Regulatory Review

DOE has reviewed its proposed determination of hearth products under the following Executive Orders and Acts.

A. Review Under Executive Order 12866

The Office of Management and Budget (OMB) has determined that coverage determination rulemakings do not constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993). Accordingly, this proposed action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in OMB.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996) requires preparation of an initial regulatory flexibility analysis for any rule that, by law, must be proposed for public comment, unless the agency certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative effects. Also, as required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003 to ensure that the potential impact of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990 (Feb. 19, 2003). DOE makes its procedures and policies available on the Office of the General Counsel's Web site at *www.gc.doe.gov./gc/office-general-counsel.*

DOE reviewed today's proposed determination under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003.

For manufacturers of hearth products, the Small Business Administration (SBA) has set a size threshold, which defines those entities classified as ''small businesses'' for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. 65 FR 30836, 30848 (May 15, 2000), as amended at 65 FR 53533, 53544 (Sept. 5, 2000) and codified at 13 CFR part 121. The size standards are listed by North American Industry Classification System (NAICS) code and industry description, which are available at: *http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf.* There is no specific NAICS code for hearth products, so DOE applied the size threshold used for NAICS 333414, ''Heating Equipment (except Warm Air Furnaces) Manufacturing.'' The SBA sets a threshold of 500 employees or less for an entity to be considered as a small business for this category

DOE surveyed available information, including the HPBA membership directory, Air-conditioning, Heating, and Refrigeration Institute (AHRI) product databases, SBA databases, and individual company Web sites, to identify potential small manufacturers of ''hearth products,'' as defined in this notice. DOE screened out companies that did not offer products covered by this rulemaking, did not meet the definition of a ''small business,'' or are foreign-owned and operated. DOE identified 16 domestic, small business manufacturers of hearth products that are to be considered in this regulatory flexibility analysis.

If adopted, today's proposed determination would set no standards; it would only positively determine that future standards may be warranted and should be explored in subsequent energy conservation standards and test procedure rulemakings. Economic impacts on small entities would be considered in the context of such rulemakings. On the basis of the foregoing, DOE certifies that the proposed determination, if adopted, would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this proposed determination. DOE will transmit this certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

This proposed determination, which proposes to determine that hearth products meet the criteria for classification as a covered product for which the Secretary may prescribe an energy conservation standard pursuant to 42 U.S.C. 6295(o) and (p), will impose no new information or record-keeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

D. Review Under the National Environmental Policy Act of 1969

In this notice, DOE proposes to positively determine that hearth products meet the criteria for classification as a covered product. Environmental impacts would be explored in any future energy conservation standards rulemaking for hearth products. DOE has determined that review under the National Environmental Policy Act of 1969 (NEPA), Public Law 91–190, codified at 42 U.S.C. 4321 *et seq.* is not required at this time. NEPA review can only be initiated ''as soon as environmental impacts can be meaningfully evaluated'' (10 CFR 1021.213(b)). This proposed determination would only determine

Leonard's Stone & Fireplace. Frequently Asked Questions. (Available at URL: *http://www.leonardsstoneandfireplace.net/faq.html*).

Fireside Hearth & Home. Frequently Asked Questions. (Available at URL: *http://www.firesidehearthandhome.com/faq.php*).

Fireplace Professionals. Frequently Asked Questions. (Available at URL: *http://www.fireplaceprofessionals.com/faqs.htm*).

that future standards may be warranted, but would not itself propose to set any specific standard. DOE has, therefore, determined that there are no environmental impacts to be evaluated at this time. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 10, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to assess carefully the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in developing regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process that it will follow in developing such regulations. 65 FR 13735 (March 14, 2000). DOE has examined today's proposed determination and concludes that it would not preempt State law or have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the product that is the subject of today's proposed determination. States can petition DOE for exemption from such preemption to the extent permitted, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the duty to: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation specifies the following: (1) The preemptive effect, if any; (2) any effect on existing Federal law or regulation; (3) a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) the retroactive effect, if any; (5) definitions of key terms; and (6) other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether these standards are met, or whether it is unreasonable to meet one or more of them. DOE completed the required review and determined that, to the extent permitted by law, this proposed determination meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4, codified at 2 U.S.C. 1501 *et seq.*) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector. For regulatory actions likely to result in a rule that may cause expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any 1 year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a) and (b)) UMRA requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' UMRA also requires an agency plan for giving notice and opportunity for timely input to small governments that may be potentially affected before establishing any requirement that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820 (March 18, 1997). (This policy also is available at *www.gc.doe.gov/gc/downloads/unfunded-mandates-reform-act-intergovernmental-relations*). DOE reviewed today's proposed determination pursuant to these existing authorities and its policy statement and determined that the proposed determination contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of $100 million or more in any year, so the UMRA requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed determination would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 15, 1988), DOE determined that this proposed determination would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriation Act, 2001 (44 U.S.C. 3516 note) requires agencies to review most disseminations of information they make to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. The OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's proposed determination under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates a final rule or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have

a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the proposal is implemented, and of reasonable alternatives to the proposed action and their expected benefits on energy supply, distribution, and use.

DOE has concluded that today's regulatory action proposing to determine that hearth products meet the criteria for a covered product for which the Secretary may prescribe an energy conservation standard pursuant to 42 U.S.C. 6295(o) and (p) would not have a significant adverse effect on the supply, distribution, or use of energy. This action is also not a significant regulatory action for purposes of Executive Order 12866, and the OIRA Administrator has not designated this proposed determination as a significant energy action under Executive Order 12866 or any successor order. Therefore, this proposed determination is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects for this proposed determination.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal government, including influential scientific information related to agency regulatory actions. The purpose of the Bulletin is to enhance the quality and credibility of the Government's scientific information. DOE has determined that the analyses conducted for this rulemaking do not constitute ''influential scientific information,'' which the Bulletin defines as ''scientific information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions.'' 70 FR 2667 (Jan. 14, 2005). The analyses were subject to pre-dissemination review prior to issuance of this rulemaking.

DOE will determine the appropriate level of review that would be applicable to any future rulemaking to establish energy conservation standards for hearth products.

VI. Public Participation

A. Submission of Comments

DOE will accept comments, data, and information regarding this notice of proposed determination no later than the date provided at the beginning of this notice. After the close of the comment period, DOE will review the comments received and determine whether hearth products are a covered product under EPCA.

Comments, data, and information submitted to DOE's email address for this proposed determination should be provided in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format. Submissions should avoid the use of special characters or any form of encryption, and wherever possible comments should include the electronic signature of the author. No telefacsimiles (faxes) will be accepted.

Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: One copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with all the information believed to be confidential deleted. DOE will make its own determination as to the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known or available from public sources; (4) whether the information has previously been made available to others without obligations concerning its confidentiality; (5) an explanation of the competitive injury to the submitting persons which would result from public disclosure; (6) a date after which such information might no longer be considered confidential; and (7) why disclosure of the information would be contrary to the public interest.

B. Issues on Which DOE Seeks Comments

DOE welcomes comments on all aspects of this proposed determination. DOE is particularly interested in receiving comments from interested parties on the following issues related to the proposed determination for hearth products:

- Definition(s) of ''hearth product'';
- Whether classifying hearth products as a covered product is necessary or appropriate to carry out the purposes of EPCA;
- Calculations and values for average household energy consumption of hearth products; and
- Availability or lack of availability of technologies for improving the energy efficiency of hearth products.

The Department is interested in receiving views concerning other relevant issues that participants believe may affect DOE's ability to establish test procedures and energy conservation standards for hearth products. The Department invites all interested parties to submit in writing by January 30, 2014, comments and information on matters addressed in this notice and on other matters relevant to consideration of a determination for hearth products.

After the expiration of the period for submitting written statements, the Department will consider all comments and additional information that is obtained from interested parties or through further analyses, and it will prepare a final determination. If DOE determines that hearth products qualify as a covered product, DOE will consider a test procedure and energy conservation standards for hearth products. Members of the public will be given an opportunity to submit written and oral comments on any proposed test procedure and standards.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Reporting and recordkeeping requirements, Small businesses.

Issued in Washington, DC, on December 24, 2013.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficency, Energy Efficiency and Renewable Energy.

[FR Doc. 2013–31261 Filed 12–30–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2013–BT–PET–0043]

Energy Conservation Program for Consumer Products: Landmark Legal Foundation; Petition for Reconsideration

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Petition for reconsideration; Notice of denial.

SUMMARY: This document announces the Department of Energy's (DOE) denial of a petition from the Landmark Legal Foundation (LLF) requesting reconsideration of DOE's final rule of energy conservation standards for standby mode and off mode for microwave ovens. DOE published the LLF petition and a request for comments in the **Federal Register** on August 16, 2013. Based upon its evaluation of the petition and careful consideration of the public comments, DOE has decided to deny this petition for rulemaking.

DATES: This denial was issued on December 24, 2013.

ADDRESSES: *Docket:* For access to the docket to read the petition or comments received thereon, go to the Federal eRulemaking Portal at *http://www.regulations.gov/#!docketDetail;D=EERE-2013-BT-PET-0043*. In addition, electronic copies of the Petition are available online at DOE's Web site at *http://www.regulations.gov/#!docketDetail;D=EERE-2013-BT-PET-0043*. For access to the docket for DOE's energy conservation standards for microwave ovens, go to the Federal eRulemaking Portal at *https://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/48*.

FOR FURTHER INFORMATION CONTACT: John Cymbalsky, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–1692. Email: *John.Cymbalsky@ee.doe.gov*.

Ami Grace-Tardy, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–5709. Email: *Ami.Grace-Tardy@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. The SCC Analysis Did Not Change the Final Standard as Proposed or Adopted
III. The Final Rule Was the Logical Outgrowth of the Proposed Rule
IV. Comments on Sufficiency of the Science and Precedential Effects
V. Conclusion

I. Background

The Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.,* provides, among other things, that ''[e]ach agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.'' (5 U.S.C. 553(e).) DOE received a petition from the Landmark Legal Foundation (LLF) on July 2, 2013, requesting that DOE reconsider its final rule of Energy Conservation Standards for Standby Mode and Off Mode for Microwave Ovens, Docket No. EERE–2011–BT–STD–0048, RIN 1904–AC07, 78 FR 36316 (June 17, 2013) (''final rule'').

The final rule was adopted by DOE in accordance with the Energy Policy and Conservation Act of 1975 (EPCA; 42 U.S.C. 6291 *et seq.*). *See* 78 FR 36316. Under EPCA, any new or amended energy conservation standard shall achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(3)(A)–(B)) In deciding whether an amended standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens. (42 U.S.C. 6295(o)(2)(B)(i)) DOE must make this determination by considering, to the greatest extent practicable, seven factors set out in EPCA. *Id.* On June 17, 2013, DOE published a final rule adopting standby mode and off mode standards that DOE determined would result in significant conservation of energy and that were technologically feasible and economically justified. *See* 78 FR 36316.

The final rule was the result of a rulemaking that began in 2008 and resulted in a decision by DOE to analyze potential energy conservation standards for the active mode of microwave ovens separate from the standby and off modes of microwave ovens. *See* 73 FR 62034 (October 17, 2008). In April 2009, DOE concluded that it should defer a decision regarding amended energy conservation standards that would address standby and off modes for microwave ovens pending further rulemaking and finalized a ''no standard'' standard for microwave oven active mode energy use. 74 FR 16040 (April 8, 2009).

DOE issued a Supplemental Notice of Proposed Rulemaking (SNOPR) on February 14, 2012, that proposed energy conservation standards for microwave oven stand by and off modes. 77 FR 8526. In the SNOPR, as part of its economic analysis of the proposed rule, DOE sought to monetize the cost savings associated with the reduced carbon dioxide (CO_2) emissions that would result from the expected energy savings of the proposed rule. To do this, DOE used the most recent values of the Social Cost of Carbon (SCC) available, which, at the time, was the SCC calculation developed by the ''Interagency Working Group on Social Cost of Carbon 2010.''[1] 77 FR 8555.

Monetizing the cost savings associated with the reduced carbon emissions has been routine practice in DOE energy conservation standards rulemakings. The purpose of the SCC estimates presented in the microwave oven rule, and other DOE energy conservation standards rulemakings, was to allow DOE to assess the monetized social benefits of reducing CO_2 emissions as part of the analysis of these regulatory actions that have small, or ''marginal,'' impacts on cumulative global emissions. In the rulemaking at-hand and many other past rulemakings, DOE has utilized SCC values to calculate whether the economic effect of reduced CO_2 emissions impacts the Department's regulatory decision. As evidenced by Table I–3 in the final rule, DOE calculates a standard's SCC values and incorporates those calculations in the analysis for the rulemaking to see whether, and if so how, the weighing of benefits and costs is impacted when the SCC values are also applied to the standard. *See* 78 FR 36318–19. The SCC values may or may not affect DOE's decision on a final standard.

DOE includes an analysis with SCC values because under section 1(b)(6) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993), agencies must, to the extent permitted by law, assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. The Interagency Working Group on Social Cost of Carbon (''Interagency Working Group'' or ''IWG'') was formed to allow agencies to incorporate the monetized social benefits of reducing CO_2 emissions into cost-benefit analyses of regulatory actions that have small, or ''marginal,'' impacts on cumulative global emissions (such as the rule at-hand). DOE has incorporated SCC values into its rulemakings since the first microwave oven notice of proposed rulemaking (NOPR) in 2008.

As described in the SNOPR, the 2010 SCC values were developed through an interagency process in accordance with Executive Order 12866. In the 2012 SNOPR, DOE stated that the IWG planned to update the 2010 SCC as DOE's understanding of climate change and its impacts on society improves

[1] Available at: *http://www.whitehouse.gov/sites/default/files/omb/inforeg/for-agencies/Social-Cost-of-Carbon-for-RIA.pdf.*

over time, specifically noting that the interagency group had set a preliminary goal of revisiting the SCC values within two years or at such time as substantially updated models become available. 77 FR 8553–54.

In May 2013, subsequent to the SNOPR but prior to DOE's issuance of the final rule, the IWG released revised SCC values. (''Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866,'' Interagency Working Group on Social Cost of Carbon, United States Government, 2013[2]) As these were ''the most recent (2013) SCC values from the interagency group,'' DOE included both these revised SCC values and the 2010 SCC values in the final rule. 78 FR 36318.

On November 1, 2013, the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB) announced minor technical corrections to the 2013 SCC values, which result in a central estimated value of the Social Cost of Carbon in 2015 of $37 per metric ton of CO_2, instead of the $38 per metric ton of CO_2 estimate released in May 2013.[3] This change is based on two corrections made to the runs based on the FUND model.[4] OMB also announced a new opportunity for public comment on the revised TSD underlying the SCC estimates in addition to the public comment opportunities already available through particular rulemakings. In a November 26, 2013 notice, OMB described the changes detailed above and announced a 60-day public comment period on all aspects of the revised TSD. 78 FR 70586.

DOE adjusted Table 1–3 as displayed in the final rule to account for these minor technical corrections to the 2013 SCC values. As evidenced by the information displayed Table 1 below, the corrections to the 2013 SCC values, when evaluated as part of the analysis, did not significantly alter the net benefits of the final rule.

TABLE 1—SUMMARY OF NATIONAL ECONOMIC BENEFITS AND COSTS OF MICROWAVE OVEN STANDBY POWER ENERGY CONSERVATION STANDARDS

Category	Present value (Million 2011$)	Discount rate (percent)
Benefits:		
Operating Cost Savings	2,306	7
	4,717	3
Using November 2013 Social Cost of Carbon Values		
CO_2 Reduction Monetized Value ($12.6/t case)*	254	5
CO_2 Reduction Monetized Value ($40.0/t case)*	1,166	3
CO_2 Reduction Monetized Value ($62.2/t case)*	1,853	2.5
CO_2 Reduction Monetized Value ($118/t case)*	3,599	3
NO_X Reduction Monetized Value (at $2,567/ton)*	21.8	7
	44.5	3
Total Benefits †	3,493	7
	5,927	3
Using May 2013 Social Cost of Carbon Values		
CO_2 Reduction Monetized Value ($12.6/t case)*	255	5
CO_2 Reduction Monetized Value ($41.1/t case)*	1,179	3
CO_2 Reduction Monetized Value ($63.2/t case)*	1,876	2.5
CO_2 Reduction Monetized Value ($119/t case)*	3,615	3
NO_X Reduction Monetized Value (at $2,567/ton)*	21.8	7
	44.5	3
Total Benefits †	3,507	7
	5,941	3
Costs:		
Incremental Installed Costs	776	7
	1,341	3
Net Benefits (using Revised May 2013 SCC values):		
Including CO_2 and NO_X Reduction Monetized Value	2,717	7
	4,586	3
Net Benefits (using November 2013 SCC values):		
Including CO_2 and NO_X Reduction Monetized Value	2,731	7
	4,600	3

* The CO_2 values represent global values of the social cost of CO_2 emissions (in 2011$) in 2016 under several scenarios. The first three values are averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The fourth value represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The value for NO_X is the mid-range value used in DOE's analysis.

† Total Benefits for both the 3% and 7% cases are derived using the series corresponding to SCC value of $40.0/t or $41.1/t in 2015 (derived from the 3% discount rate value for SCC).

[2] Available at: *http://www.whitehouse.gov/sites/default/files/omb/inforeg/social_cost_of_carbon_for_ria_2013_update.pdf.*

[3] See *http://www.whitehouse.gov/blog/2013/11/01/refining-estimates-social-cost-carbon.*

[4] See Appendix B, available at: *http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/technical-update-social-cost-of-carbon-for-regulator-impact-analysis.pdf.*

Before the revisions to the 2013 SCC values were announced in November 2013, on July 2, 2013, LLF petitioned DOE to reconsider the final rule on the grounds that the SCC values were a critical part of the cost-benefit analysis in this rulemaking and that the SCC values changed from the SNOPR phase to the final rule phase of the rulemaking without an opportunity for public comment on those changed values.[5] *See* 78 FR 49976–78. LLF's primary contention is that DOE's used the 2013 SCC values in the final rule (as opposed to the 2010 SCC values used in the SNOPR) without sufficient notice and an opportunity for public comment in violation of the APA and Executive Order 13563 (76 FR 3281 (January 21, 2011)). LLF stated that the SCC value change is a fundamental change in a critical component of DOE's analysis, which the Department was required to publish and provide an opportunity for public comment on prior to use in the final rule. *See* 78 FR 49977. Because the change in SCC values could affect how other agencies use the SCC when calculating the costs and benefits of other rules relating to greenhouse gasses, LLF contends that the change in SCC values is ''significant and wide reaching.'' *See id.* LLF requested that DOE immediately rescind the final rule and halt implementation of the rule or, in the alternative, publish the changes described in the petition and provide an opportunity for public comment. 78 FR 49978.

As noted above, DOE published a document in the **Federal Register** on August 16, 2013, containing the petition and requesting public comment. 78 FR 49975. DOE received comments from non-governmental organizations, manufacturers, and utilities. DOE received comments from the Laclede Gas Company (Laclede), Heritage Foundation (Heritage), Tri-State Generation and Transmission Association, Inc. (Tri-State), Southeastern Legal Foundation, Inc. (Southeastern), Florida Municipal Electric Association (FMEA), Gainesville Regional Utilities (GRU), Science and Environmental Policy Project (SEPP), Competitive Enterprise Institute (CEI), Association of Home Appliance Manufacturers (AHAM), Environmental Defense Fund (EDF), joint comments from the American Chemistry Council, American Petroleum Institute, National Association of Home Builders, Portland Cement Association, American Forest & Paper Association, Council of Industrial Boiler Owners, and National Mining Association (collectively, ACC), National Federation of Independent Businesses (NFIB), the American Petroleum Institute (API), American Fuel and Petrochemicals Manufacturers (AFPM), American Public Gas Association (APGA), Utility Air Regulatory Group (UARG), George Washington University Regulatory Studies Center (GWU–RSC), Right Climate Stuff Research Team (TRCS), Institute for Energy Research (IER), AFFORD Coalition (AFFORD), Industrial Energy Consumers of America (IECA), American Gas Association (AGA), Cato Institute Center for Study of Science (Cato), Consumers Energy (CE), American for Tax Reform (ATR), George Mason University Mercatus Center (George Mason), U.S. Chamber of Commerce (Chamber), National Association of Manufacturers (NAM), joint comments from Appliance Standards Awareness Project, Earthjustice, Natural Resources Defense Council (collectively, ASAP), and several individuals. With the exception of the commenters discussed below, all of the commenters listed above support LLF's petition. Like LLF, they did not find fault with the standby and off mode energy conservation standards themselves, but rather criticized DOE's use of the SCC values.

Three commenters (Chamber, AHAM, and NAM) support some of the contentions in LLF's petition, but urged DOE not to reconsider the rule. AHAM stated that it opposes LLF's petition because granting it would ''seriously disrupt'' the certainty regarding microwave oven standby and off mode standards that manufacturers are using for planning and investment. (AHAM, No. 33)[6] NAM requested that DOE remove the SCC from the microwave rule and finalize the rule to avoid any uncertainty to manufacturers. (NAM, No. 29)

Three other commenters, including one set of joint comments from environmental and energy efficiency advocates, oppose the petition in its entirety and encouraged DOE to not reconsider the rule. (EDF, No. 31; ASAP, No. 32; Adam Christensen (Christensen), No. 14) The following discussion summarizes and responds to comments on the LLF petition, as well as the LLF petition itself.

II. The SCC Analysis Did Not Impact the Standard as Proposed or Adopted

As described above, DOE utilized SCC values—in both the SNOPR and final rule analysis—as a way to assess the economic effects of reduced CO_2 emissions. DOE calculates a standard's SCC values and incorporates those calculations in the analysis for the rulemaking to see whether, and if so how, the weighing of benefits and costs is impacted when the SCC values are also applied to the standard. The SCC values may or may not affect DOE's decision on a final standard.

In the microwave oven rule, the SCC analysis did not affect DOE's decision regarding the standards that were published in the **Federal Register** at either the proposed rule or final rule stage because the estimated benefits to consumers of the standard exceeded the costs of the standard, even without considering the SCC values. At the proposed rule stage, without adding any benefits from reducing CO_2, the annualized operating cost savings at the proposed standard level were significantly larger than the annualized incremental product costs. *See* 77 FR 8528–59. At the final rule stage, rather than change the outcome of DOE's microwave oven standards, the updated May 2013 SCC values served only as an incremental increase in the benefits of the standards that DOE had already proposed adopting. *See* 78 FR 36318. Specifically, the $4.2 billion net benefits of the SNOPR increased to $4.6 billion in the final rule as a result of the change in SCC values to the 2013 updated values. *See id.* Again, as with the SNOPR, the operating cost savings were significantly larger than the incremental installed costs, even without adding in the economic effect of reduced CO_2 emissions. *See* 78 FR 36318–20. Given DOE's legal obligation to establish any new or amended energy conservation standard at the point that achieves the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified (42 U.S.C. 6295(o)(3)(A)–(B)), and given that in deciding whether an amended standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens, DOE would have chosen the same energy conservation standards at both the proposed rule and final rule stage regardless of its SCC analysis.

Finally, additional notice and comment is required in instances where the new data provided the ''most critical

[5] LLF's petition and associated comments can be found under Docket No. EERE–BT–PET–0043 found at: *http://www.regulations.gov/#!docketDetail;D=EERE-2013-BT-PET-0043.*

[6] Notations of this form appear throughout this document and identify statements made in written comments that DOE has received and has included in the docket for this petition. For example, ''AHAM, No. 33'' refers to a comment from AHAM in document 33 in the docket of this rulemaking (available at: *http://www.regulations.gov/#!docketDetail;D=EERE-2013-BT-PET-0043).*

factual material that is used to support the agency's position.'' (*Chamber of Commerce of U.S.,* 443 F.3d at 900) UARG did not specifically contend that DOE violated the APA, but did comment that the SCC values are a ''critical assumption'' for DOE's economic analysis for the microwave oven rule, stating that Executive Order 12866 requires DOE to provide the public notice and an opportunity to comment on the SCC values at both the proposed and final rule stage because the SCC values were, according to UARG, a critical assumption for DOE's economic analysis for the final rule. (UARG, No. 28) As described above, the SCC values were not critical to any analysis in DOE's final rule. Although the SCC values increased in the 2013 update, this input did not influence DOE's decision regarding the final energy conservation standard chosen. DOE proposed the same standard in the SNOPR as it finalized in the final rule.[7]

Because DOE adopted the same standard in the final rule that it had proposed in the SNOPR, LLF has not demonstrated that the Department would—or even might—have changed the standard adopted in the final rule if LLF (and others) had been given an opportunity to comment on the 2013 SCC values. To the contrary, even if comments had convinced DOE not to update the SCC values, given that DOE adopted the same standard it had proposed based on the 2010 SCC values DOE would have chosen the same standards as it did in the final rule. Moreover, as described previously, the other benefits of the rule so outweighed its costs that DOE's choice of a proposed standard was not influenced by the SCC analysis. Even when the SCC values increased, DOE's choice of a final standard was not influenced by the SCC analysis. As demonstrated in the table above, this remains the case even applying the modifications released by OMB on November 1. Therefore, any reconsideration of the microwave oven rule would be an inefficient use of government resources and would not inform further the choice of final standard to be adopted.

III. The Final Rule Was the Logical Outgrowth of the Proposed Rule

In response to the notice of LLF's petition, many commenters agreed with LLF that because the final rule applied the 2013 SCC values whereas the SNOPR applied the 2010 SCC values and there was not an opportunity for the public to comment on the change to the SCC values between the SNOPR and final rule stages, the notice and comment requirements under the APA were violated. (Laclede, No.7; Tri-State, No. 18; Southeastern, No. 17; GRU, No. 21; CEI, No. 34; AHAM, No. 33; NFIB, No. 6; API, No. 30; NAM, No. 29; George Mason, No. 11; AFPM, No. 16; APGA, No. 13; GWU–RSC, No. 5; Chamber, No. 23; TRCS, No. 25; IER, No. 9; AFFORD, No. 20; IECA, No. 22; AGA, No. 10; Cato, No. 8; CE, No. 15; ATR, No. 12; ACC, No. 29; FMEA, No. 19; Heritage, No. 26) A few commenters contended that the notice provided by the entirety of DOE's rulemaking easily provided sufficient notice and comment regarding the SCC values and the final rule (and associated SCC values) were the logical outgrowth of the SNOPR. (ASAP, No. 32; EDF, No. 31; Christensen, No. 14)[8]

The APA requires Federal agencies to give interested persons an opportunity to participate in a rulemaking through submission of written data, views or arguments, after the Federal agency gives proper notice. (5 U.S.C. 553(c)) As described, DOE has provided the public with notice and the opportunity to comment throughout this rulemaking, including the opportunity to comment on DOE's use of the SCC values. In the SNOPR, DOE sought to monetize the cost savings associated with the reduced carbon emissions that would result from the energy conservation standards, if adopted. DOE included in the SNOPR Technical Support Document (TSD) a robust description of the data source, the peer-reviewed economic models (the FUND, DICE, and PAGE models) and the methodology used to derive the SCC.[9] Further, DOE explicitly stated in the SNOPR, SNOPR TSD, final rule, and final rule TSD that, while the methodology used to derive the SCC would not change, the SCC values used in the rulemaking were undergoing review and were subject to change based on updated inputs to the models. In the SNOPR, DOE stated that the 2010 SCC estimates were presented and utilized in DOE's analyses with an acknowledgement that many uncertainties are involved and with a clear understanding that the estimates should be updated over time to reflect increased knowledge of the science and economics of climate change. 77 FR 8553. At the time of the SNOPR's publication, the 2010 SCC values were used because they were, at the time, the most recent interagency estimates. *Id.* DOE cautioned, however, that the interagency process planned to update these estimates as the science and economic understanding of climate change and its impact on society improved over time, noting that the interagency group had set a preliminary goal of revisiting the SCC values within two years or at such time as substantially updated models become available. *Id.* at 8554. DOE stated that current SCC estimates should be treated as ''provisional and revisable'' because the values will evolve with improved scientific and economic understanding. *Id.* at 8555. These statements were reiterated in chapter 16 of the TSD that supported the SNOPR.[10] The SNOPR TSD included the 2010 IWG's TSD.

In the interim between the SNOPR and the final rule, in May 2013, the IWG released revised SCC values that estimated higher values for CO_2 emissions avoided than the 2010 SCC values.[11] According to OMB, since the release of the SCC values in February 2010, numerous rulemakings have used the 2010 values for the SCC and many of those rulemakings received extensive public comments, including comments on the discount rate chosen and the three peer-reviewed models used to develop the SCC estimates.[12] Since the 2010 SCC values were published, the three models (the FUND, DICE, and PAGE models) that underpin the SCC estimates were all updated and used in

[7] There is no dispute that DOE accepted public comment on the 2008 proposed rule and 2012 SNOPR.

[8] Because DOE concludes in this notice to deny the petition, DOE does not here detail the legal arguments put forth by these organizations as to why DOE should deny the petition. It should be noted, however, that DOE bases its decision to deny the petition on some of the legal bases included in these comments, but does not address each legal basis discussed by commenters in this notice.

[9] The SCC was also discussed in the 2008 NOPR (proposing the development of separate standards for microwave ovens in active, standby and off modes) and the 2009 final rule (finalizing a ''no standard'' standard for microwave ovens in active mode and deferring the rulemaking for standby and off modes for microwave ovens). A different model and different SCC values were utilized for the 2008 and 2009 rules than the models and SCC values used for the 2012 SNOPR and 2013 final rule. For the 2008 and 2009 rules, DOE used the most current SCC values then available: those based on the estimates identified by the study cited in ''Summary for Policymakers,'' prepared by Working Group II of the IPCC's ''Fourth Assessment Report,'' to estimate the potential monetary value of CO_2 reductions likely to result from standards considered in the rulemaking, assigned a SCC value range of $0 to $20 (2007$) per ton of CO_2 emissions in both rulemakings. *See* 74 FR 16079 (April 8, 2009); 73 FR 62120 (October 17, 2008).

[10] *See* TSD, Chapter 16 and Appendix 16A, available at: *http://www.regulations.gov/#!documentDetail;D=EERE-2011-BT-STD-0048-0002.*

[11] Available at: *http://www.whitehouse.gov/sites/default/files/omb/inforeg/social_cost_of_carbon_for_ria_2013_update.pdf.*

[12] *See* Testimony of Howard Shelanski, available at: *http://oversight.house.gov/wp-content/uploads/2013/07/Shelanski-OIRA-Testimony-SCC-7-18.pdf* (July 18, 2013).

peer-reviewed literature.[13] The changes made in May 2013 to the SCC estimates reflect the refinements to the underlying models, not to the methodology followed or to any Federal government inputs, such as discount rates, population growth, climate sensitivity distribution, and socio-economic trajectories.[14]

Consistent with its statement in the SNOPR that it would use the most recent SCC values, DOE utilized the 2013 SCC values in the June 2013 final rule. Again, DOE stated that the SCC estimates are provisional and would be updated over time to reflect increasing knowledge of the science and economics of climate impacts. 78 FR 36349–51. In the final rule, DOE described the updates to the three integrated assessment models that are used to estimate the SCC (FUND, DICE, and PAGE models). 78 FR 36349. The final rule TSD includes as appendices both the 2010 and 2013 interagency TSDs upon which the SCC values are based.[15]

The regulatory history cited above also refutes any contention that—the 2013 SCC values were not a ''logical outgrowth'' of the proposed rule—and therefore that the use of the 2013 SCC values violates the notice and opportunity to comment provisions of the APA. A final rule satisfies the ''logical outgrowth'' test if parties should have anticipated that the change at issue was possible and, thus, reasonably should have filed their comments during the comment period. (*Ne. Md. Waste Disposal Auth.* v. *EPA,* 358 F.3d 936, 952 (D.C. Cir. 2004) (citing *City of Waukesha* v. *EPA,* 320 F.3d 228, 245 (D.C. Cir. 2003)) An agency that adopts a final rule that differs from its proposed rules is required to provide notice and an additional opportunity for public comment when the changes are so major that the original notice did not adequately frame the subjects for discussion. The purpose of the new notice is to allow interested parties a fair opportunity to comment upon the final rules in their altered form. The agency need not renotice changes that follow logically from, or that reasonably develop, the rule the agency proposed originally. (*Connecticut Light & Power Co.* v. *Nuclear Regulatory Comm'n,* 673 F.2d 525, 533 (D.C. Cir. 1982) (citations omitted))

With regard to DOE's calculation of the monetized benefits associated with the reduced carbon emissions, DOE gave notice to interested parties both in the SNOPR and the TSD to the SNOPR that the agency was considering SCC values in its decision-making and that those SCC values were subject to change based on scientific and economic understanding of climate change and were expected to be updated approximately every two years.

Moreover, DOE relied on SCC values that were generated from the same models (i.e., the FUND, DICE, and PAGE models) for both the SNOPR and final rule. In *Solite Corporation* v. *EPA,* the DC Circuit held that an agency is not required to provide additional notice and opportunity for comment when its ''methodology remain[s] constant'' and new data is used to ''check or confirm prior assessments.'' (952 F.2d 473, 485 (D.C. Cir. 1991); *see also Chamber of Commerce of U.S.* v. *S.E.C.,* 443 F.3d 890, 900 (D.C. Cir. 2006)) Where, as here, an agency is continuing to use the same methodologies (i.e., the FUND, DICE, and PAGE models) but is updating the data used in those models, additional notice and comment is not required.

LLF also contends that DOE disregarded its obligation to have a transparent, public rulemaking as required under Executive Order 13563. Several commenters agreed with LLF that DOE's change in SCC values was not transparent; some of these commenters argued that this apparent lack of transparency is a violation of Executive Order 13563 (*see e.g.,* Southeastern, No. 17) whereas others pointed to the need for transparency in general as a means to good governance (*see* e.*g.,* Chamber, No. 23). IER commented that the SCC process is a ''black box'' and because intermediate results from the modeling runs are not available, it is not possible for outside analysts to check the robustness of the IWG's conclusions. (IER, No. 9) Some entities commented that they would have raised a number of concerns regarding the basic assumptions and methodology made by the IWG with regard to the 2010 SCC values if notice and an opportunity for comment had been provided at that time. (FMEA, No. 19; GRU, No. 21) (*See also* Laclede, No. 7; Heritage, No. 26; NFIB, No. 6; API, No. 30; NAM, No. 29; APGA, No. 13; GWU–RSC, No. 5; TRCS, No. 25; IER, No. 9; IECA, No. 22; AGA, No. 10; Cato, No. 8; CEI, No. 34; ATR, No. 12; Todd Kiefer (Kiefer), No. 4)

As evidenced by the regulatory history described previously, the rulemaking at hand provided the public a 60-day comment period during which comments were made through a variety of means and the materials related to the rulemaking were kept on the microwave oven docket on the regulations.gov Web site at *http://www.regulations.gov/#!docketDetail;D=EERE-2011-BT-STD-0048.* As detailed at the same Web site, a public meeting was held on the SNOPR on March 14, 2012. The technical and scientific findings that DOE relied upon for its SNOPR and final rule were included in the rule itself, as well as the relevant TSDs. DOE's assessment with respect to the SCC was very clearly described in each of those documents. All of these materials were provided in a searchable format on the electronic docket. DOE accepted and responded to public comments on all aspects of this rulemaking.

In response to the notice of LLF's petition, one stakeholder commented on DOE's authority under EPCA to evaluate SCC values when setting energy conservation standards. Laclede commented that section 331 of EPCA, as amended, was intended to constrain cost-benefit analyses to utility costs, not ''environmental externalities'' such as the SCC. (Laclede, No. 7) As described above, DOE did not consider SCC as a utility cost in the microwave oven rulemaking.

IECA also argued that DOE's use of the SCC makes DOE's rule ''significant'' under Executive Order 12866 and OMB requirements because DOE intends to use the SCC in multiple rulemakings, which will increase costs to an amount above $100 million. (IECA, No. 22) DOE notes that the final rule was deemed to be an ''economically significant regulatory action'' under section 3(f)(1) of Executive Order 12866. Accordingly, as required by section 6(a)(3) of the Executive Order, DOE prepared a regulatory impact analysis that OMB reviewed in addition to OMB review of the final rule itself. *See* 78 FR 36365.

ACC commented that the IWG failed to disclose the effects and uncertainties related to alternative regulatory actions as required by OMB Circular A–4.[16] (ACC, No. 29) Through its extensive analysis of different TSLs, including their effects and uncertainties, DOE met this requirement with regard to the final energy conservation standards as part of

[13] *See id.*

[14] *See id.*

[15] *See* Appendix 16A and Appendix16B, available at: *http://www.regulations.gov/#!documentDetail;D=EERE-2011-BT-STD-0048-0021.*

[16] DOE recognizes that ACC and the Chamber both attached to their comments on the petition at-hand a September 4, 2013, petition to OMB for correction to the 2010 and 2013 SCC TSDs. Because those petitions are under consideration at OMB, in this notice, DOE only addresses the comments made in the microwave rule petition.

its Executive Order 13563 review. *See* 78 FR 36365.

IV. Comments on Sufficiency of the Science and Precedential Effects

In responding to the August 16, 2013, **Federal Register** petition document, many commenters questioned the scientific and economic basis of the SCC values. These commenters made extensive comments about: the alleged lack of economic theory underlying the models; the sufficiency of the models for policy-making; potential flaws in the models' inputs and assumptions (including the discount rates and climate sensitivity chosen); whether there was adequate peer review of the three models; whether there was adequate peer review of the TSD supporting the 2013 SCC values; [17] whether the SCC estimates comply with OMB's ''Final Information Quality Bulletin for Peer Review'' [18] and DOE's own guidelines for ensuring and maximizing the quality, objectivity, utility and integrity of information disseminated by DOE; whether DOE's use of the updated SCC values has precedential effect for other agency rulemakings; and why DOE is considering global benefits of carbon dioxide emission reductions rather than solely domestic benefits. (*See* CEI, No. 34; Heritage, No. 24; IER, No. 9; Cato, No. 8; AFFORD, No. 20; ATR, No. 12; ACC, No. 29; AFPM, No. 16; FMEA, No. 19; Heritage, No 26; IECA, No. 22; TRCS, No. 25; SEEP No. 27; Kiefer, No. 4; ACC, No. 29; Chamber, No. 23; Laclede, No. 7; API, No. 30; APGA, No. 13; GWU–RSC, No. 5; AGA, No. 10; GRU, No. 21; NAM, No. 29; George Mason, No. 11)

As described above, OMB has announced minor technical corrections to the 2013 SCC values and a new opportunity for public comment on the revised TSD underlying the SCC estimates. Comments regarding the underlying science and potential precedential effect of the SCC estimates resulting from the interagency process should be directed to that process. *See* 78 FR 70586. Additionally, as EDF documented in its comments, several current rulemakings also use the 2013 SCC values and the public is welcome to comment on the values as applied in those rulemakings just as the public was welcome to comment on the use and application of the 2010 SCC values in the many rules that were published using those values in the past three years. (EDF, No. at pp. 4–5).

Finally, in addition to the topics above, commenters provided feedback on several other issues that go beyond the scope of the notice asking for comments on whether DOE should reconsider the microwave oven rule. IECA commented that the use of SCC values in regulation will negatively impact U.S. manufacturers, shipping U.S. production, jobs and investments overseas, which IECA contends would lead to more CO emissions by non-U.S. energy sources. IECA also questioned why the benefits of U.S. production to U.S. consumers and the economy are not considered by DOE. (IECA, No. 22) Other comments include statements about whether climate change is occurring at all, contentions that climate change may be natural and not human-caused, and that climate change may not have significant, adverse impacts; statements that all fossil-fueled power plants should be replaced with nuclear power plants and DOE should be reorganized to only work on nuclear issues; suggestions to use the IPCC Fifth Assessment Report when considering SCC values; statements that effects due to other greenhouse gases and other harms to society need to be included in the SCC as well; comments that the standards rule (apart from the SCC portion) must be reopened because the regulation fails to pass benefit-cost tests because it assumes irrational consumer behavior; and questions about why comments on the Draft National Climate Assessment were not addressed in DOE's rule.

V. Conclusion

After reviewing LLF's petition and comments on the petition, DOE has concluded that it has provided sufficient notice and the opportunity for public comment as required under the Administrative Procedure Act and a level of transparency in accordance with Executive Order 13563 regarding the use of SCC values in the microwave oven SNOPR and final rule. DOE has also concluded that reconsidering the microwave oven final rule would not result in any change to the standard ultimately adopted by DOE. As a result of the above analysis, and in consideration of LLF's petition and the comments received thereon, DOE denies the petition.

Issued in Washington, DC, on December 24, 2013.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2013–31273 Filed 12–30–13; 8:45 am]

BILLING CODE 6450–01–P

[17] Available at: *http://www.whitehouse.gov/sites/default/files/omb/inforeg/social_cost_of_carbon_for_ria_2013_update.pdf.*

[18] Available at: *http://www.cio.noaa.gov/services_programs/pdfs/OMB_Peer_Review_Bulletin_m05-03.pdf.*

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2010–BT–DET–0040]

RIN 1904–AC52

Energy Conservation Program: Proposed Determination of Set-Top Boxes and Network Equipment as a Covered Consumer Product

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Proposed determination; withdrawal.

SUMMARY: The U.S. Department of Energy (DOE) withdraws a proposed determination published June 15, 2011 that set-top boxes (STBs) and network equipment qualify as a covered product under Part A of Title III of the Energy Policy and Conservation Act (EPCA), as amended. DOE is taking this action in light of a consensus agreement entered by a broadly representative group that DOE believes has the potential to achieve significant energy savings in STBs.

DATES: The proposed determination is withdrawn December 31, 2013.

FOR FURTHER INFORMATION CONTACT:

Mr. Jeremy Dommu, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–9870. Email: *Jeremy.Dommu@ee.doe.gov*.

Ms. Celia Sher, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–6122. Email: *Celia.Sher@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

I. Authority

Title III of EPCA (42 U.S.C. 6291, *et seq.*) sets forth a variety of provisions designed to improve energy efficiency. Part A of Title III of EPCA (42 U.S.C. 6291–6309) established the ''Energy Conservation Program for Consumer Products Other Than Automobiles,'' which covers consumer products and

certain commercial products (hereafter referred to as ''covered products'').[1] In addition to specifying a list of covered residential and commercial products, EPCA contains provisions that enable the Secretary of Energy to classify additional types of consumer products as covered products. (42 U.S.C. 6292(a)(20)) DOE may prescribe test procedures for any product it classifies as a ''covered product.'' (42 U.S.C. 6293(b))

II. Background

On June 15, 2011, DOE published a notice of proposed determination that tentatively determined that STBs and network equipment qualify as a covered product. 76 FR 34914. Subsequently, DOE initiated the rulemaking process to establish a test procedure for STBs. First, DOE issued a request for information document on December 16, 2011, requesting stakeholders to provide technical information regarding various test procedures used by industry to measure the energy consumption of STBs and network equipment. 76 FR 78174. DOE then published a notice of proposed rulemaking (NOPR) on January 23, 2013 to establish a new test procedure focused exclusively on STBs. 78 FR 5076. DOE held a public meeting and requested stakeholder comments on all aspects of the NOPR.

III. Discussion

In September, 2013 a broadly representative group of Pay-TV, consumer electronics industries and energy advocates announced a Voluntary Agreement for Ongoing Improvement to the Energy Efficiency of Set-Top Boxes (Agreement).[2] The Agreement established a five-year written commitment to continue improvements in the energy efficiency of STBs used in the distribution of digital video signals. Under the terms of the Agreement, it is predicted that consumers will realize significant annual residential electricity savings. DOE encourages the development of market-based solutions, such as the Agreement. DOE also recognizes that there are multiple paths forward to ensure that the maximum economic benefits and energy savings occur through increasing the efficiency of STBs. DOE believes that the Agreement has the potential to achieve significant energy savings in STBs. Thus, in light of the newly adopted Agreement, DOE withdraws its proposed rule to determine STBs and network equipment as a covered product. DOE notes that it will continue to monitor the STB market closely and would consider reinitiating the rulemaking if it was found that the energy efficiency gains for STBs and consumer savings envisioned in the Agreement were not being realized.

By separate action published elsewhere in today's **Federal Register**, DOE is withdrawing its proposed rule to establish a test procedure for STBs.

IV. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this withdrawal.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on December 20, 2013.

Kathleen B. Hogan,

Deputy Assistant Secretary of Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2013–31275 Filed 12–30–13; 8:45 am]

BILLING CODE 6450–01–P

[1] For editorial reasons, upon codification in the U.S. code, Part B was re-designated Part A.

[2] *http://www.ncta.com/energyagreement.*

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–140974–11]

RIN 1545–BK66

Definitions and Reporting Requirements for Shareholders of Passive Foreign Investment Companies

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS and the Department of the Treasury (Treasury Department) are issuing temporary regulations that provide guidance on determining the ownership of a passive foreign investment company (PFIC), the annual filing requirements for shareholders of PFICs, and an exclusion from certain filing requirement for shareholders that constructively own interests in certain foreign corporations. The temporary regulations primarily affect shareholders of PFICs that do not currently file Form 8621, ''Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund'', with respect to their PFIC interests. The temporary regulations also affect certain shareholders that rely on a constructive ownership exception to the requirement to file Form 5471, ''Information Return of U.S. Persons with Respect to Certain Foreign Corporations.'' The text of those temporary regulations published in this issue of the **Federal Register** also serves as the text of these proposed regulations.

DATES: Comments and requests for a public hearing must be received by March 31, 2014.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–140974–11), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–140974–11), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–140974–11).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Susan E. Massey or Barbara E. Rasch, (202) 317–6934; concerning submissions of comments or requests for a public hearing, Oluwafunmilayo Taylor, (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

The temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) under sections 1291 and 1298 of the Internal Revenue Code (Code). The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13653. Accordingly, a regulatory assessment is not required.

It is hereby certified that the collection of information in this regulation will not have a significant economic impact on a substantial

number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6). This certification is based on the fact that most small entities do not own an interest in a PFIC, and the fact that PFIC shareholders (including small entities) that currently report information on Form 8621, ''Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund'', with respect to a PFIC will not be required to file additional reports with respect to the same PFIC under these proposed regulations. Most small entities that are shareholders of a PFIC either make a qualified electing fund (QEF) election under section 1295 or make a mark to market election under section 1296 and, therefore, already file Form 8621 with respect to the PFIC stock. In addition, shareholders that are subject to section 1291 as a result of receiving a distribution from a PFIC or disposing of their interest in a PFIC are currently required to file Form 8621. Thus, there is a limited class of PFIC shareholders that will be required to file Form 8621 under these regulations that are not currently required to do so. Accordingly, the collection of information required by these proposed regulations does not affect a substantial number of small entities.

Further, the collection of information required under these proposed regulations does not have a significant economic impact because neither the time nor the costs necessary for shareholders to comply with the collection of information requirements is significant. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

It also has been determined that section 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) do not apply to these regulations.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are timely submitted to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The IRS and the Treasury Department request comments on all aspects of the proposed rules.

In addition, the IRS and the Treasury Department request comments on whether, for ease of administration, the section 1291(d)(2) deemed dividend and deemed sale elections should be available at the domestic partnership level. In particular, the IRS and the Treasury Department request comments on how the election can be effectuated in a manner consistent with the PFIC regimes and Subchapter K of chapter 1 of the Code. The IRS and the Treasury Department also request comments on the determination of proportionate ownership by a beneficiary of PFIC stock held through a domestic or foreign estate or nongrantor trust.

All comments will be available for public inspection and copying at *www.regulations.gov* or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits electronic or written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these proposed regulations are Susan E. Massey and Barbara E. Rasch of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Sections 1.1291–1 and 1.1291–9 also issued under 26 U.S.C. 1298(a) and (g) * * *

Section 1.1298–1 also issued under 26 U.S.C. 1298(f) * * *

Section 1.6038–2 also issued under 26 U.S.C. 6038(d) * * *

Section 1.6046–1 also issued under 26 U.S.C. 6046(b) * * *

* * * * *

■ **Par. 2.** Section 1.1291–0 is amended by adding a listing of the paragraph headings for §§ 1.1291–1 and 1.1291–9 as follows:

§ 1.1291–0 Passive foreign investment companies—table of contents.

[The text of the proposed amendments to § 1.1291–0 is the same as the text of § 1.1291–0T published elsewhere in this issue of the **Federal Register**].

■ **Par. 3.** Section 1.1291–1 is amended by revising the section heading and adding paragraphs (b)(2)(ii), (b)(2)(v), (b)(7), (b)(8), and (k) as follows:

§ 1.1291–1 Taxation of United States persons that are shareholders of section 1291 funds.

(a) through (b)(2)(i) [Reserved].

(b)(2)(ii) [The text of the proposed amendments to § 1.1291–1(b)(2)(ii) is the same as the text of § 1.1291–1T(b)(2)(ii) published elsewhere in this issue of the **Federal Register**].

(b)(2)(iii) and (iv) [Reserved].

(v) [The text of the proposed amendments to § 1.1291–1(b)(2)(v) is the same as the text of § 1.1291–1T(b)(2)(v) published elsewhere in this issue of the **Federal Register**].

(3) through (6) [Reserved].

(7) [The text of the proposed amendments to § 1.1291–1(b)(7) is the same as the text of § 1.1291–1T(b)(7) published elsewhere in this issue of the **Federal Register**].

(8) [The text of the proposed amendments to § 1.1291–1(b)(8) is the same as the text of § 1.1291–1T(b)(8) published elsewhere in this issue of the **Federal Register**].

* * * * *

(k) [The text of the proposed amendments to § 1.1291–1(k) is the same as the text of § 1.1291–1T(k) published elsewhere in this issue of the **Federal Register**].

■ **Par. 4.** Section 1.1291–9 is amended by revising paragraph (j)(3) and adding paragraph (k)(3) as follows:

§ 1.1291–9 Deemed dividend election.

* * * * *

(j) * * *

(3) [Reserved]. For further guidance, see § 1.1291–9T(j)(3).

(k) * * *

(3) [The text of the proposed amendments to § 1.1291–9(k)(3) is the same as the text of § 1.1291–9T(k)(3) published elsewhere in this issue of the **Federal Register**].

■ **Par. 5.** Section 1.1298–0 is amended by adding a listing of the paragraph headings for § 1.1298–1 as follows:

§ 1.1298–0 Table of contents.

[The text of the proposed amendments to § 1.1298–0 is the same as the text of § 1.1298–0T published elsewhere in this issue of the **Federal Register**].

■ **Par. 6.** Section 1.1298–1 is added to read as follows:

§ 1.1298–1 Section 1298(f) annual reporting requirements for United States persons that are shareholders of a passive foreign investment company.

[The text of the proposed amendments to § 1.1298–1 is the same as the text of § 1.1298–1T(h) published elsewhere in this issue of the **Federal Register**].

■ **Par. 7.** Section 1.6038–2 is amended by revising paragraph (j)(3) to read as follows:

§ 1.6038–2 Information returns required of United States persons with respect to annual accounting periods of certain foreign corporations beginning after December 31, 1962.

* * * * *

(j) * * *

(3) [The text of the proposed amendments to § 1.6038–2(j)(3) is the same as the text of § 1.6038–2T(j)(3) published elsewhere in this issue of the **Federal Register**].

* * * * *

■ **Par. 8.** Section 1.6046–1 is amended by revising paragraph (e)(5) to read as follows:

§ 1.6046–1 Returns as to organizations or reorganizations of foreign corporations and as to acquisitions of their stock.

* * * * *

(e) * * *

(5) [The text of the proposed amendments to § 1.6046–1(e)(5) is the same as the text of § 1.6046–1T(e)(5) published elsewhere in this issue of the **Federal Register**].

* * * * *

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2013–30845 Filed 12–30–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–113350–13]

RIN 1545–BL56

Taxation of U.S. Persons That Are Shareholders of Section 1291 Funds

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Partial withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws a portion of a proposed rulemaking (INTL–656–87, REG–209054–87) published in the **Federal Register** on April 1, 1992. The withdrawn portion relates to the definitions of the terms pedigreed QEF, section 1291 fund, shareholder, and indirect shareholder, and to annual information reporting requirements applicable to certain shareholders of passive foreign investment companies (PFICs).

DATES: The proposed rule published in the **Federal Register** on April 1, 1992 (57 FR 11024) is withdrawn as of December 31, 2013

FOR FURTHER INFORMATION CONTACT: Susan E. Massey or Barbara E. Rasch, (202) 317–6934 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On April 1, 1992, the IRS and the Department of the Treasury (Treasury Department) published in the **Federal Register** proposed regulations (INTL–656–87, 1992–18 IRB 23, 57 FR 11024), including § 1.1291–1 that provided guidance on the PFIC rules, including definitions of the terms pedigreed QEF, section 1291 fund, shareholder, and indirect shareholder. The proposed regulations also set forth annual reporting requirements for certain shareholders of PFICs. This document withdraws the definitions of the terms pedigreed QEF, section 1291 fund, shareholder, and indirect shareholder. In addition, this document withdraws the annual reporting requirements. The IRS and the Treasury Department are issuing a notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register** on this subject that defines the terms pedigreed QEF, section 1291 fund, shareholder, and indirect shareholder, and that sets forth annual information reporting requirements for certain shareholders of PFICs.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Partial Withdrawal of a Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, § 1.1291–1(b)(2)(ii), (b)(2)(v), (b)(7), (b)(8), and (i) of the notice of proposed rulemaking (INTL–656–87, REG–209054–87) published in the **Federal Register** on April 1, 1992 (57 FR 11024) are withdrawn.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2013–30844 Filed 12–30–13; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2013–0628: FRL–9904–95–Region 10]

Approval and Promulgation of Implementation Plans; Washington: State Implementation Plan Miscellaneous Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve changes to the Washington State Implementation Plan (SIP) submitted by the Washington Department of Ecology (Ecology) dated November 20, 2013. This SIP revision updates ambient air quality standards for carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide.

DATES: Comments must be received on or before January 30, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2013–0628, by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Mail:* Jeff Hunt, EPA, Office of Air, Waste, and Toxics, AWT–107, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101.

C. *Email: R10-Public_Comments@epa.gov.*

D. *Hand Delivery:* EPA, Region 10 Mailroom, 9th Floor, 1200 Sixth Avenue, Seattle, Washington 98101. Attention: Jeff Hunt, Office of Air Waste, and Toxics, AWT–107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R10–OAR–2013–0628. The 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 that is restricted by statute from disclosure. 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 the 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 the 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, the 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 the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the 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 that is restricted by statute from disclosure. 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 at *www.regulations.gov* or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt, (206) 553–0256; or by email at *hunt.jeff@epa.govmailto:body.steve@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Analysis of the State's Submittal
III. Proposed Action
IV. Statutory and Executive Orders Reviews

I. Background

Sections 108 and 109 of the Clean Air Act (CAA or Act) govern the establishment, review, and revision, as appropriate, of the National Ambient Air Quality Standards (NAAQS) to protect public health and welfare. The CAA requires periodic review of the air quality criteria—the science upon which the standards are based—and the standards themselves. The EPA's regulatory provisions that govern the NAAQS are found at 40 CFR Part 50—*National Primary and Secondary Ambient Air Quality Standards.* In this rulemaking, the EPA is proposing to approve the State of Washington's SIP submission, dated November 20, 2013, amending the SIP to include updated ambient air quality standards for carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. These updated standards are found at Chapter 173–476 Washington Administrative Code (WAC) *Ambient Air Quality Standards,* included in the docket for this proposed rulemaking and summarized below.

II. Analysis of the State's Submittal

Effective November 20, 2013, Washington consolidated all existing state ambient air quality standards into a new Chapter 173–476 WAC *Ambient Air Quality Standards.* The new rule has thirteen sections:

- WAC 173–476–010 Purpose.
- WAC 173–476–020 Applicability.
- WAC 173–476–030 Definitions.
- WAC 173–476–100 Ambient Air Quality Standard for PM–10.
- WAC 173–476–110 Ambient Air Quality Standards for PM–2.5.
- WAC 173–476–120 Ambient Air Quality Standard for Lead (Pb).
- WAC 173–476–130 Ambient Air Quality Standards for Sulfur Oxides (Sulfur Dioxide).
- WAC 173–476–140 Ambient Air Quality Standard for Nitrogen Oxides (Nitrogen Dioxide).
- WAC 173–476–150 Ambient Air Quality Standard for Ozone.
- WAC 173–476–160 Ambient Air Quality Standards for Carbon Monoxide.
- WAC 173–476–170 Monitor Siting Criteria.
- WAC 173–476–180 Reference Conditions.
- WAC 173–476–900 Table of Standards.

The EPA's analysis of Washington's submission, organized alphabetically by pollutant, is discussed below.

a. Carbon Monoxide

On September 13, 1985, the EPA promulgated 1-hour and 8-hour average concentration NAAQS for carbon monoxide of 35 parts per million (ppm) and 9 ppm, not to be exceeded more than once per year. See 50 FR 37501. In the November 20, 2013 SIP submission, Washington requested EPA approval of section WAC 173–476–160 *Ambient Air Quality Standards for Carbon Monoxide* consistent with the 1-hour and 8-hour carbon monoxide NAAQS. The EPA has reviewed this revision to the WAC and has made the determination that this change is consistent with federal regulations; thus, the EPA is proposing approval of this change to Washington's SIP.

b. Lead

On November 12, 2008, the EPA revised the lead NAAQS from 1.5 micrograms per cubic meter (μg/m^3) to 0.15 μg/m^3 based on a rolling 3-month average. See 73 FR 66964. Accordingly, in the November 20, 2013 SIP submission, Washington requested EPA approval of section173–476–120 WAC *Ambient Air Quality Standard for Lead (Pb)* to be consistent with the NAAQS that were promulgated in 2008. The EPA has reviewed this revision to the WAC and has made the determination that this change is consistent with federal regulations; thus, the EPA is proposing to approve this change to Washington's SIP.

c. Nitrogen Dioxide

On October 8, 1996, the EPA promulgated an annual nitrogen dioxide NAAQS set at 53 ppb. See 61 FR 52852. On February 9, 2010, the EPA promulgated a 1-hour nitrogen dioxide NAAQS set at 100 ppb. See 75 FR 6474. Accordingly, in the November 20, 2013 SIP submission, Washington requested EPA approval of section 173–476–140 WAC *Ambient Air Quality Standards for Nitrogen Oxides (Nitrogen Dioxide)* to be consistent with the NAAQS that were promulgated in 1996 and 2010. The EPA has reviewed the changes to the WAC for nitrogen dioxide and has made the determination that the changes are consistent with federal regulations; thus, the EPA is proposing to approve the changes to Washington's SIP.

d. Ozone

On March 27, 2008, the EPA promulgated an 8-hour ozone NAAQS set at 75 ppb. See 73 FR 16436. Accordingly, in the November 20, 2013 SIP submission, Washington requested EPA approval of section 173–476–150 WAC *Ambient Air Quality Standard for Ozone* to be consistent with the 8-hour ozone NAAQS promulgated in 2008. The EPA has reviewed this revision to the WAC for ozone and has made the determination that this change is consistent with federal regulations; thus, the EPA is proposing approval of this change to Washington's SIP.

e. Particulate Matter

Effective March 18, 2013, the EPA revised the NAAQS for fine particulate matter ($PM_{2.5}$) to an annual average of 12 μg/m^3 while retaining the 24-hour NAAQS set at 35 μg/m^3. See 78 FR 3277. Accordingly, in the November 20, 2013 SIP submission, Washington requested EPA approval of Chapter 173–476–110 WAC *Ambient Air Quality Standards for Particulate Matter, PM–2.5* to be consistent with the NAAQS

that were promulgated in 2013. Washington State also requested EPA approval of section 173–476–100 WAC *Ambient Air Quality Standard for Particulate Matter, PM–10* consistent with the EPA's 24-hour course particulate matter (PM_{10}) NAAQS contained in 40 CFR 50.6. The EPA has reviewed this revision to the WAC for $PM_{2.5}$ and PM_{10} and has made the determination that these changes are consistent with federal regulations; thus, the EPA is proposing to approve these changes to Washington's SIP.

f. Sulfur Dioxide

In the November 20, 2013 SIP submission, Washington requested EPA approval of section 173–476–130 WAC *Ambient Air Quality Standards for Sulfur Oxides (Sulfur Dioxide)* consistent with the 1-hour sulfur dioxide NAAQS promulgated by the EPA on June 22, 2010, the 3-hour sulfur dioxide NAAQS promulgated by the EPA on May 22, 1996, and the 24-hour sulfur dioxide NAAQS also promulgated by the EPA on May 22, 1996. See 75 FR 35520 and 61 FR 25580. Lastly, Ecology requested EPA approval of the state annual sulfur dioxide air quality standard that is more stringent than the corresponding federal NAAQS. Under the provisions of 40 CFR 50.2(d) states are permitted to establish more stringent standards than the national standards. The EPA has reviewed this revision to the WAC and has made the determination that this change is consistent with federal regulations; thus, the EPA is proposing approval of this change to Washington's SIP.

III. Proposed Action

The EPA is proposing approval of Chapter 173–476 WAC *Ambient Air Quality Standards* into the State of Washington's SIP. These changes are consistent with, or more stringent than, the EPA's standards for carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. Secondly, Ecology repealed Chapter 173–470 WAC that contained outdated standards for particulate matter, previously approved into the SIP on January 15, 1993 (58 FR 4578). Ecology asked the EPA to remove Chapter 173–470 from the SIP because all current particulate matter standards are now consolidated in the newly created Chapter 173–476 WAC. The EPA is proposing to approve this request.

IV. Statutory and Executive Order Reviews

Under the CAA, 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 CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this 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 rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it will not impose substantial direct costs on tribal governments or preempt tribal law. The SIP is not approved to apply in Indian country located in the state, except for non-trust land within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the *Puyallup Tribe of Indians Settlement Act of 1989,* 25 U.S.C. 1773, Congress explicitly provided state and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area and the EPA is therefore approving this SIP on such lands. Consistent with EPA policy, the EPA nonetheless provided a consultation opportunity to the Puyallup Tribe in a letter dated September 3, 2013. The EPA did not receive a request for consultation.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 19, 2013.

Dennis J. McLerran,

Regional Administrator, Region 10.

[FR Doc. 2013–31262 Filed 12–30–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R01–RCRA–2013–0554; FRL–9904–46–Region 1]

Vermont: Proposed Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to grant final authorization to the State of Vermont for changes to its hazardous waste program. In the ''Rules and Regulations'' section of this **Federal Register** we are authorizing the changes to the Vermont hazardous waste program under the Resource Conservation and Recovery Act (RCRA) as a direct final rule without prior proposed rule. EPA has determined that these changes satisfy all requirements needed to qualify for final authorization. If we receive no adverse comment, we will not take further action on this proposed rule.

DATES: Written comments must be received by January 30, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–RCRA–2013–0554, by mail to Sharon Leitch, RCRA Waste Management and UST Section, Office of Site Remediation and Restoration (OSRR07–1), US EPA Region 1, 5 Post Office Square, Suite 100, Boston, MA 02109–3912.

Comments may also be submitted electronically or thorough hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Sharon Leitch, RCRA Waste Management and UST Section, Office of Site Remediation and Restoration (OSRR07–1), US EPA Region 1, 5 Post Office Square, Suite 100, Boston, MA 02109–3912; telephone number: (617) 918–1647; fax number: (617) 918–0647; email address: *leitch.sharon@epa.gov*.

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' section of this **Federal Register**, EPA is authorizing these changes by a direct final rule. EPA did not make a proposal prior to the direct final rule because we believe this action is not controversial and do not expect adverse comments that oppose it. We have explained the reasons for this authorization in the preamble to the direct final rule. Unless we receive written adverse comments which oppose this authorization during the comment period, the direct final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose this action, we will withdraw the direct final rule and it will not take immediate effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you should do so at this time.

Dated: November 5, 2013.

H. Curtis Spalding,

Regional Administrator, EPA Region 1.

[FR Doc. 2013–31125 Filed 12–30–13; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 78, No. 251

Tuesday, December 31, 2013

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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2013–0023]

Notice of Request for Approval of an Information Collection; Approval of Laboratories for Conducting Aquatic Animal Tests for Export Health Certificates

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: New 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 approval of a new information collection for the approval of laboratories for conducting aquatic animal tests for export health certificates.

DATES: We will consider all comments that we receive on or before March 3, 2014.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2013-0023-0001*.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2013–0023, 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-2013-0023* 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 approval of laboratories for conducting aquatic animal tests for export health certificates, contact Dr. Christa Speekmann, Import-Export Specialist-Aquaculture, NAHPP–NCIE, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD, 20737; (301) 851–3365. 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: Approval of Laboratories for Conducting Aquatic Animal Tests for Export Health Certificates.

OMB Control Number: 0579–XXXX.

Type of Request: Approval of a new information collection.

Abstract: The Animal Health Protection Act (AHPA) is the primary Federal law governing the protection of animal health. The AHPA gives the Secretary of Agriculture broad authority to detect, control, or eradicate pests or diseases of livestock or poultry. The Secretary may also prohibit or restrict import or export of any animal or related material if necessary to prevent the spread of any livestock or poultry pest or disease.

The export of agricultural commodities, including animals and animal products, is a major business in the United States and contributes to a favorable balance of trade. To facilitate the export of U.S. animals and animal products, the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture maintains information regarding the import health requirements of other countries for animals and animal products, including aquaculture animals, exported from the United States.

Some countries that import aquaculture animals from the United States require these animals to be tested for certain diseases and the test results recorded on the export certificates. In addition, the test results must originate from a laboratory approved by the competent authority of the exporting country, which is APHIS in this case. State, university, and private laboratories can voluntarily seek APHIS approval of individual diagnostic methods. Though APHIS does not have regulations for the approval or certification of laboratories that conduct tests for the export of aquaculture animals, APHIS provides this approval as a service to U.S. exporters who export aquaculture animals to countries that require this certification.

As part of the approval process, APHIS evaluates diagnostic methods for aquatic animal pathogens listed by the World Organization for Animal Health (OIE) according to international standards in the OIE diagnostic manual and other supporting scientific literature. APHIS maintains a list of approved laboratories [1] and inspects each approved laboratory every 2 years.

The approval of laboratories to conduct tests for the export of aquaculture animals requires the use of certain information collection activities, including notification of intent to request approval, application for APHIS approval, protocol statement, submission and recordkeeping of sample copies of diagnostic reports, quality assurance/control plans and their recordkeeping, notification of proposed changes to assay protocols, recordkeeping of supporting assay documentation, and request for removal of approved status.

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

[1] To view the list of APHIS-approved laboratories, go to *http://www.aphis.usda.gov/animal_health/lab_info_services/downloads/ApprovedLabs_Aquaculture.pdf*.

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 37.04 hours per response.

Respondents: State, university, and private laboratories.

Estimated annual number of respondents: 12.

Estimated annual number of responses per respondent: 41.25.

Estimated annual number of responses: 495.

Estimated total annual burden on respondents: 18,336 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 20th day of December 2013.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–31245 Filed 12–30–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2013–0093]

Availability of an Environmental Assessment for Issuance of a Permit for Distribution and Sale of an Infectious Hematopoietic Necrosis Virus Vaccine, DNA

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment concerning authorization to import under permit, for distribution and sale, an Infectious Hematopoietic Necrosis Virus Vaccine, DNA. The environmental assessment, which is based on a risk analysis prepared to assess the risks associated with the use of this vaccine, examines the potential effects that this veterinary vaccine could have on the quality of the human environment. Based on the risk analysis and other relevant data, we have reached a preliminary determination that use of this veterinary vaccine will not have a significant impact on the quality of the human environment and that an environmental impact statement need not be prepared. We intend to authorize shipment of this vaccine under permit for distribution and sale in the United States following the close of the comment period for this notice unless new substantial issues bearing on the effects of this action are brought to our attention and provided the product meets all requirements for approval.

DATES: We will consider all comments that we receive on or before January 30, 2014.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2013-0093-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2013–0093, 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-2013-0093* 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: Dr. Donna Malloy, Operational Support Section, Center for Veterinary Biologics, Policy, Evaluation, and Licensing, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1231; phone (301) 851–3426, fax (301) 734–4314.

For information regarding the environmental assessment or the risk analysis, or to request a copy of the environmental assessment (as well as the risk analysis with confidential business information removed), contact Dr. Patricia L. Foley, Risk Manager, Center for Veterinary Biologics, Policy, Evaluation, and Licensing, VS, APHIS, 1920 Dayton Avenue, P.O. Box 844, Ames, IA 50010; phone (515) 337–6100, fax (515) 337–6120.

SUPPLEMENTARY INFORMATION: Under the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*), a veterinary biological product must be shown to be pure, safe, potent, and efficacious before a veterinary biological product license may be issued. Prior to importing an unlicensed product, an applicant must obtain approval from the Animal and Plant Health Inspection Service (APHIS) to ship the product under permit for distribution and sale.

To determine whether to authorize shipment and approval for the use of the imported product referenced in this notice, APHIS has considered the potential effects of this product on the safety of animals, public health, and the environment. Using a risk analysis and other relevant data, APHIS has prepared an environmental assessment (EA) concerning the use of the following imported veterinary biological product:

Requester: Novartis Animal Health US, Inc.

Product: Infectious Hematopoietic Necrosis Virus Vaccine, DNA.

The above-mentioned product is a replication-incompetent DNA vaccine consisting of a plasmid vector with an inserted immunogenic gene. The vaccine is intended for the immunization of salmonids as an aid in the prevention of disease due to infectious hematopoietic necrosis virus.

The EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Unless substantial issues with adverse environmental impacts are raised in response to this notice, APHIS intends to issue a finding of no significant impact based on the EA and authorize shipment of the above product for distribution and sale following the close of the comment period for this notice, provided the product meets all other requirements for approval.

Authority: 21 U.S.C. 151–159.

Done in Washington, DC, this 20th day of December 2013.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–31191 Filed 12–30–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2013–0044]

Environmental Impact Statement; Animal Carcass Management

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement and proposed scope of study; reopening of comment period.

SUMMARY: We are reopening the comment period for our notice of intent to prepare an environmental impact statement to examine the potential environmental effects of animal carcass management options used throughout the United States. This action will allow interested persons additional time to prepare and submit comments.

DATES: We will consider all comments that we receive on or before January 30, 2014.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2013-0044-0001*.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2013–0044, 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-2013-0044* or in our reading room, located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. 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) 7997039 before coming.

FOR FURTHER INFORMATION CONTACT: For questions related to the carcass management program, contact Ms. Lori P. Miller, PE, Senior Staff Officer, National Center for Animal Health Emergency Management, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737; (301) 851–3512. For questions related to the environmental impact statement, contact Ms. Samantha Floyd, Environmental Protection Specialist, Environmental and Risk Analysis Services, PPD, APHIS, 4700 River Road Unit 149, Riverdale, MD 20737; (301) 851–3053.

SUPPLEMENTARY INFORMATION:

Background

On October 25, 2013, the Animal and Plant Health Inspection Service published in the **Federal Register** (78 FR 63959–63960, Docket No. APHIS–2013–0044) a notice [1] stating our intent to prepare an environmental impact statement (EIS) to examine the potential environmental effects of animal carcass management options used throughout the United States. The EIS will analyze and compare all major and readily available mass carcass management options that may be utilized during an animal health emergency.

Comments on the notice were required to be received on or before November 25, 2013. We are reopening the comment period on Docket No. APHIS–2013–0044 for an additional 30 days. This action will allow interested persons additional time to prepare and submit comments. We will also consider all comments received between November 26, 2013 and the date of this notice.

All comments received during the scoping period will be carefully considered in developing the final scope of the EIS. Upon completion of the draft EIS, a notice announcing its availability and an opportunity to comment on it will be published in the **Federal Register**.

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 20th day of December 2013 .

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–31194 Filed 12–30–13; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the notice, supporting documents, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0044*.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0025]

Okanagan Specialty Fruits, Inc.; Availability of Plant Pest Risk Assessment and Environmental Assessment for Determination of Nonregulated Status of Apples Genetically Engineered To Resist Browning

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice; reopening of comment period.

SUMMARY: We are reopening the comment period for our plant pest risk assessment and draft environmental assessment regarding a request from Okanagan Specialty Fruits, Inc., seeking a determination of nonregulated status of apple events designated as events GD743 and GS784, which have been genetically engineered to resist browning. This action will allow interested persons additional time to prepare and submit comments.

DATES: The comment period for the notice published November 8, 2013 (78 FR 67100) is reopened. We will consider all comments that we receive on or before January 30, 2014.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0025*.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0025, 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-2012-0025* 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.

Supporting documents are also available on the APHIS Web site at *http://www.aphis.usda.gov/biotechnology/petitions_table_pending.shtml* under APHIS Petition Number 10–161–01p.

FOR FURTHER INFORMATION CONTACT: Dr. John Turner, Director, Environmental Risk Analysis Programs, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 851–3954, email: *john.t.turner@aphis.usda.gov*. To obtain copies of the supporting documents for this petition, contact Ms. Cindy Eck at (301) 851–3892, email: *cynthia.a.eck@aphis.usda.gov*.

SUPPLEMENTARY INFORMATION: On November 8, 2013, we published in the **Federal Register** (78 FR 67100–67101, Docket No. APHIS–2012–0025) a notice making available for public comment our plant pest risk assessment and our

draft environmental assessment regarding a request from Okanagan Specialty Fruits, Inc., seeking a determination of nonregulated status of apple events designated as events GD743 and GS784, which have been genetically engineered to resist browning.

Comments on the PPRA and draft EA were required to be received on or before December 9, 2013. We are reopening the comment period on Docket No. APHIS–2012–0025 for an additional 30 days. This action will allow interested persons additional time to prepare and submit comments. We will also consider all comments received between December 10, 2013, (the day after the close of the original comment period) and the date of this notice.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 20th day of December 2013.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–31145 Filed 12–30–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 00–108–10]

Chronic Wasting Disease Herd Certification Program and Interstate Movement of Farmed or Captive Deer, Elk, and Moose; Program Standards

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: We are giving notice of changes to the Program Standards for the chronic wasting disease (CWD) herd certification program. The CWD herd certification program is a voluntary, cooperative program that establishes minimum requirements for the interstate movement of farmed or captive cervids, provisions for participating States to administer Approved State CWD Herd Certification Programs, and provisions for participating herds to become certified as having a low risk of being infected with CWD. The Program Standards provide optional guidance, explanation, and clarification on how to meet the requirements for interstate movement and for the Herd Certification Programs. Recently, we convened a group of State, laboratory, and industry representatives to discuss possible changes to the current Program Standards. The revised Program Standards reflect these discussions, and we believe the revised version will improve understanding of the program among State and industry cooperators. We are making the revised version of the Program Standards available for review and comment.

DATES: We will consider all comments that we receive on or before March 31, 2014.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2006-0118-0401*.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. 00–108–10, 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-2006-0118* 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: Dr. Patrice Klein, Senior Staff Veterinarian, National Center for Animal Health Programs, Veterinary Services, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 851–3435.

SUPPLEMENTARY INFORMATION: Chronic wasting disease (CWD) is a transmissible spongiform encephalopathy of cervids (members of Cervidae, the deer family) that, as of May 2011, has been found only in wild and captive animals in North America and in captive animals in the Republic of Korea. First recognized as a clinical ''wasting'' syndrome in 1967, the disease is typified by chronic weight loss leading to death. Species currently known to be susceptible to CWD via natural routes of transmission include Rocky Mountain elk, mule deer, white-tailed deer, black-tailed deer, sika deer, and moose.

On June 13, 2012, we published in the **Federal Register** (77 FR 35542–35571, Docket No. 00–108–8) an interim final rule [1] that made effective on August 13, 2012, a final rule published on July 21, 2006 (71 FR 41682–41707, Docket No. 00–108–3), with changes to the final rule as discussed in a previous proposal and in the interim final rule itself. This action established a voluntary herd certification program in 9 CFR part 55 for CWD in farmed or captive cervids. States that choose to participate must establish State Approved Herd Certification Programs in which States agree to perform tasks and meet requirements to ensure that the program is being effectively administered. Owners of deer, elk, and moose herds who choose to participate in the approved State programs must follow the program requirements for animal identification, testing, herd management, and movement of animals into and from herds.

The interim final rule also established a new part 81 containing interstate movement requirements designed to prevent the spread of CWD through the movement of farmed or captive deer, elk, or moose. The interim final rule set a compliance date of December 10, 2012, for the interstate movement provisions in 9 CFR part 81, to give States and producers time to come into compliance with the herd certification program requirements in 9 CFR part 55.

The regulations for the voluntary CWD herd certification program in 9 CFR part 55 establish minimum requirements for State and herd owner participation and allow States and herd owners to use any effective means to comply with those requirements. For example, participating States are required in § 55.23(a)(6) to effectively monitor and enforce State quarantines and State reporting laws and regulations for CWD. Each State may have different means of meeting that requirement. Similarly, herd owners participating in the voluntary program must, under § 55.23(b)(2), have fencing around their premises that is adequate to prevent ingress or egress of cervids; the regulations do not specify what type of fencing is necessary to meet this requirement, allowing our guidance to change based on scientific information and experience.

To facilitate State and herd owner participation in the voluntary herd certification program, the Animal and Plant Health Inspection Service (APHIS) made available in July 2012 a document titled ''Chronic Wasting Disease Program Standards.'' This document provided detailed descriptions of

[1] To view the interim final rule and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2006-0118*.

suggested methods for complying with the requirements in 9 CFR parts 55 and 81.

During the October 2012 U.S. Animal Health Association meeting, a resolution was passed asking APHIS to work with cervid industry stakeholders to revise the CWD Program Standards. Accordingly, we convened a group of State, laboratory, and industry representatives to receive their input on potential revisions. The group met from November 2012 to June 2013 to completely review the CWD Program Standards. The revised draft, which is based on those discussions, is intended to provide more detailed guidance to States and herd owners who are seeking to participate in the Federal CWD herd certification program. As we believe the collaborative process has been helpful in revising the CWD Program Standards, we plan to work with State, laboratory, and industry representatives to review the standards at least once a year.

The new draft of the CWD Program Standards can be viewed at the CWD Web site, *http://www.aphis.usda.gov/animal_health/animal_diseases/cwd/*, or on Regulations.gov (see the **ADDRESSES** section earlier in this document for instructions on how to access Regulations.gov).

We welcome public comment on this notice and the proposed revisions to the CWD Program Standards. After considering all comments, if no substantive changes to the CWD Program Standards are deemed necessary by the APHIS Administrator, the revised CWD Program Standards will be adopted as final 30 days after the close of the comment period for this notice. If substantive changes are deemed necessary, we will publish an additional document in the **Federal Register** to discuss them; otherwise, the final version of the revised CWD Program Standards will be announced and made available on the CWD Web site.

Done in Washington, DC, this 20th day of December 2013.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–31143 Filed 12–30–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2013–0047]

Enhancing Agricultural Coexistence; Extension of Comment Period

ACTION: Notice; extension of comment period.

SUMMARY: We are extending the comment period for a request for information soliciting comments on ways to foster communication and collaboration among those involved in diverse agricultural production systems in order to further agricultural coexistence. This action will allow interested persons additional time to prepare and submit comments.

DATES: The comment period for the notice published on November 4, 2013 (78 FR 65960) is extended. We will consider all comments that we receive on or before March 4, 2014.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2013-0047-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2013–0047, 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-2013-0047* 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: Ms. Meghan Klingel, Acting Advisor for State and Stakeholder Relations, Office of the Deputy Administrator, LPA, APHIS, 4700 River Road Unit 51, Riverdale, MD 20737–1231; (301) 851–4055, email: *meghan.k.klingel@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION: On November 4, 2013, we published in the **Federal Register** (78 FR 65960–65962, Docket No. APHIS–2013–0047) a notice seeking comment on how the U.S. Department of Agriculture (USDA) can best foster communication and collaboration among those involved in diverse agricultural systems on the topic of coexistence as well as how USDA can best communicate and collaborate with those entities.

Comments on the notice were required to be received on or before January 3, 2014. We are extending the comment period on Docket No. APHIS–2013–0047 for an additional 60 days. This action will allow interested persons additional time to prepare and submit comments.

Done in Washington, DC, this 23rd day of December 2013.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–31192 Filed 12–30–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Child Nutrition Database

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This is an extension, without change, of a currently approved collection. This collection is the voluntary submission of data including nutrient data from the food service industry to update and expand the Child Nutrition Database in support of the Healthy Hunger Free Kids Act.

DATES: Written comments on this notice must be received by March 3, 2014 to be assured of consideration.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information 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 collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological

collection techniques or other forms of information technology.

Comments may be sent to: Angela Leone, Nutritionist, Nutrition Promotion and Technical Assistance Division, Child Nutrition Programs, Room 630, Food and Nutrition Service, United States Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Angela Leone at 703–305–2549 or via email to *CNDINTERNET@fns.usda.gov* with, ''Leone/CN Database'' in the subject line. Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov* and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Room 630, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instruction should be directed to Angela Leone at (703) 305–2609.

SUPPLEMENTARY INFORMATION:

Title: Child Nutrition Database.

Form Number: FNS–710.

OMB Number: 0584–0494.

Expiration Date: July 31, 2014.

Type of Request: Extension, without change, of currently approved collection.

Abstract: The development of the Child Nutrition (CN) Database is regulated by the United States Department of Agriculture (USDA), Food and Nutrition Service. This database is designed to be incorporated in USDA-approved nutrient analysis software programs and provide an accurate source of nutrient data. The software allows schools participating in the National School Lunch Program (NSLP) and School Breakfast Program (SBP) to analyze meals and measure the compliance of the menus to established nutrition goals and standards specified in 7 CFR 210.10 for the NSLP and 7 CFR 220.8 for the SBP. The information collection for the CN Database is conducted using an outside contractor. The CN Database is updated annually with brand name or manufactured foods commonly used in school food service. The Food and Nutrition Service's contractor collects this data from the food industry to update and expand the CN Database. The submission of data from the food industry will be strictly voluntary, and based on analytical, calculated, or nutrition facts label sources. Collection of this information is accomplished by form FNS–710, *CN Database Qualification Report.*

Affected Public: Business for-profit (Manufacturers of food produced for schools.)

Form: FNS–710.

Estimated Number of Respondents: 32.

Estimated Number of Responses per Respondent: 35.

Estimated Total Annual Responses: 1,120.

Estimated Time per Response: 2.0 Hours.

Total Annual Burden: 2,240 Hours.

Dated: December 24, 2013.

Yvette S. Jackson,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 2013–31355 Filed 12–30–13; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Gallatin County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Gallatin County Resource Advisory Committee (RAC) will meet in Bozeman, Montana. The RAC is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) (Pub. L. 110–343) and operates in compliance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. II). Additional information concerning the RAC can be found by visiting the Act's Web site at *www.fs.usda.gov/gallatin* and clicking on the right-hand highlight that denotes Gallatin County RAC.

DATES: The meeting will be held Friday, February 21, 2014, at 2:00 p.m.

ADDRESSES: The meeting will be held at the Bozeman Public Library, 626 E Main Street, Bozeman, Montana in the Large Conference Room located in the foyer on the North side of the building. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses, when provided, are placed in the record and available for public inspection and copying. The public may inspect comments received at the Custer and Gallatin National Forests Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Mariah Leuschen, Public Affairs Specialist and RAC Coordinator, by phone at 406–255–1411, or by email at *mdleuschen@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 meeting is open to the public. The purpose of the meeting is to provide:

(1) Review project submissions, and

(2) vote and recommend projects to Forest Supervisor.

The agenda will include time for people to make oral statements of five minutes or less. Individuals wishing to make an oral statement should submit a request in writing by February 10, 2014 to be scheduled on the agenda. 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. Written comments and time requests for oral comments must be sent to Mariah Leuschen, Custer and Gallatin National Forests Supervisor's Office, 1310 Main Street, Billings, Montana 59105; by email to *mdleuschen@fs.fed.us,* or via fascimile to 406–255–1499. A summary of the meeting will be posted on the Web site listed above within 21 days after the meeting.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings 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: December 19, 2013.

Mary C Erickson,

Forest Supervisor.

[FR Doc. 2013–31295 Filed 12–30–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–136–2013]

Approval of Subzone Status; VF Jeanswear; Hackleburg, Alabama

On September 19, 2013, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the Huntsville-Madison County Airport Authority, grantee of FTZ 83, requesting subzone status subject to the existing activation limit of FTZ 83 on behalf of VF Jeanswear in Hackleburg, Alabama.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (78 FR 59469, 9/27/2013). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval.

Pursuant to the authority delegated to the FTZ Board's Executive Secretary (15 CFR 400.36(f)), the application to establish Subzone 83C is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13 and further subject to FTZ 83's 2,000-acre activation limit.

Dated: December 19, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–31352 Filed 12–30–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–808]

Stainless Steel Plate in Coils From Belgium: Final Results of Antidumping Duty Administrative Review; 2011–2012

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: On June 10, 2013, the Department of Commerce (the Department) published the preliminary results of the antidumping duty administrative review on stainless steel plate in coils (steel plate) from Belgium.[1] This review covers one manufacturer/exporter of the subject merchandise: Aperam Stainless Belgium N.V. (ASB). The period of review (POR) is May 1, 2011, through April 30, 2012.

Based on our analysis of the comments received, we determined that ASB made sales at less than normal value. For the final weighted-average dumping margin, *see* the ''Final Results of Review'' section below.

DATES: *Effective Date:* December 31, 2013.

FOR FURTHER INFORMATION CONTACT: Jolanta Lawska at 202–482–8362; AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On June 10, 2013, the Department published in the **Federal Register** the *Preliminary Results.* We invited interested parties to comment on the *Preliminary Results.* On July 10, 2013, the Department received a case brief from ASB. On July 18, 2013, the Department received a rebuttal brief from the petitioners.[2] No party requested a hearing.

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.[3] Therefore, all deadlines in this segment of the proceeding were extended by 16 days. If the new deadline falls on a non-business day, in accordance with the Department's practice, the deadline will become the next business day. Pursuant to the Tolling Memorandum, on October 21, 2013, the Department issued a memorandum extending the time period for issuing the final results to October 24, 2013.[4]

On October 23, 2013, the Department issued a memorandum extending the time period for issuing the final results of this administrative review from October 24, 2013 to November 25, 2013.[5] On November 22, 2013, the Department issued a memorandum extending the time period for issuing the final results of this administrative review from November 25, 2013, to December 10, 2013.[6] On December 9, 2013, the Department issued a memorandum extending the time period for issuing the final results of this administrative review from December 10, 2013, to December 23, 2013.[7]

Scope of the Order

The merchandise subject to the *Order*[8] is certain stainless steel plate in coils. Stainless steel is alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The product is currently classified under the

[1] *See Stainless Steel Plate in Coils From Belgium: Preliminary Results of Antidumping Duty Administrative Review; 2011–2012,* 78 FR 34644 (June 10, 2013) *(Preliminary Results).*

[2] Petitioners are Allegheny Ludlum Corporation, North American Stainless, United Auto Workers Local 3303, Zanesville Armco Independent Organization, and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (AFL–CIO/CLC).

[3] *See* Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Shutdown of the Federal Government'' (Tolling Memorandum), dated October 18, 2013.

[4] *See* Memorandum to Eric Greynolds, Program Manager, Antidumping and Duty Operations, Office 8, from Jolanta Lawska, Trade Analyst, Antidumping and Countervailing Duty Operations, Office 8 regarding extension of deadline for final results dated October 21, 2013.

[5] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary, for Antidumping and Countervailing Duty Operations, through Melissa Skinner, Director, Office III Antidumping and Countervailing Duty Operations from Eric Greynolds, Program Manager, Office III Antidumping and Countervailing Duty Operations regarding Stainless Steel Plate in Coils from Belgium: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review; 2011–2012 (October 22, 2013).

[6] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary, for Antidumping and Countervailing Duty Operations, through Melissa Skinner, Director, Office III Antidumping and Countervailing Duty Operations from Eric Greynolds, Program Manager, Office III Antidumping and Countervailing Duty Operations regarding Stainless Steel Plate in Coils from Belgium: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review; 2011–2012 (November 22, 2013).

[7] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary, for Antidumping and Countervailing Duty Operations, through Melissa Skinner, Director, Office III Antidumping and Countervailing Duty Operations from Eric Greynolds, Program Manager, Office III Antidumping and Countervailing Duty Operations regarding Stainless Steel Plate in Coils from Belgium: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review; 2011–2012 (December 9, 2013)

[8] *See Antidumping Duty Orders; Certain Stainless Steel Plate in Coils From Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan,* 64 FR 27756 (May 21, 1999); *Notice of Amended Antidumping Duty Orders; Certain Stainless Steel Plate in Coils From Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan,* 68 FR 11520 (March 11, 2003); *Notice of Amended Antidumping Duty Orders; Certain Stainless Steel Plate in Coils From Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan,* 68 FR 16117 (April 2, 2003); *Notice of Correction to the Amended Antidumping Duty Orders; Certain Stainless Steel Plate in Coils From Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan,* 68 FR 20114 (April 24, 2003) (collectively, Antidumping Order).

Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7219.11.00.30, 7219.11.00.60, 7219.12.00.02, 7219.12.00.06, 7219.12.00.21, 7219.12.00.26, 7219.12.00.51, 7219.12.00.56, 7219.12.00.66, 7219.12.00.71, 7219.12.00.81, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60 and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and customs purposes, the written product description remains dispositive.[9]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Issues and Decision Memorandum.

The Issues and Decision Memorandum is a public document and is on file in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building, as well as electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the CRU. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://enforcement.ita.doc.gov/frn/index.html.* The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Final Results of Review

As a result of our review, we determined that the following weighted-average dumping margin exists for the period May 1, 2011, through April 30, 2012:

Manufacturer/exporter	Weighted-average dumping margin
Aperam Stainless Belgium N.V.	0.63%

Assessment Rates

The Department shall determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. Since the weighted-average dumping margin is above *de minimis,* we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1). We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review since the importer-specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.,* 0.50 percent). Where either a respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003.[10] This clarification will apply to entries of subject merchandise during the POR produced by the respondent for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Assessment Policy Notice.*

Cash Deposit Requirements

The following antidumping duty deposit rates will be effective upon publication of the final results of this administrative review for all shipments of steel plate from Belgium entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided for by section 751(a)(1) of the Tariff Act of 1930, as amended (the Act): (1) For ASB, the cash deposit rate will be the rate established in the final results of this review; (2) if the exporter is not a firm covered in this review, but was covered in a previous review or the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the company-specific rate established for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered by this review, a prior review, or the LTFV investigation, the cash deposit rate will be 8.54 percent *ad valorem,* the ''all-others'' rate established in the LTFV investigation.[11] These deposit rates, when imposed, shall remain in effect until further notice.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.[12]

Notification to Interested Parties

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

These final results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h).

[9] For a full description of the scope of the order, *see* the Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review of Stainless Steel Plate in Coils from Belgium; 2011–2012 from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, dated concurrent with and hereby adopted by this notice (Issues and Decision Memorandum).

[10] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*).

[11] *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Belgium,* 64 FR 15476 (March 31, 1999), as amended by *Implementation of the Findings of the WTO Panel in U.S.—Zeroing (EC): Notice of Determinations Under Section 129 of the Uruguay Round Agreements Act and Revocations and Partial Revocations of Certain Antidumping Duty Orders,* 72 FR 25261 (May 4, 2007).

[12] *See* 19 CFR 351.402(f)(3).

Dated: December 23, 2013.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Comments in the Accompanying Issues and Decision Memorandum

Comment 1: Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Less-Than-Fair-Value Investigations
Comment 2: Use of the Average-to-Average Comparison Method in Administrative Reviews
Comment 3: Use of an Alternative Comparison Method in Administrative Reviews
Comment 4: Denial of Offsets with the Average-to-Transaction Comparison Method
Comment 5: Differential Pricing Analysis

[FR Doc. 2013–31345 Filed 12–30–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–805]

Certain Circular Welded Non-Alloy Steel Pipe From Mexico: Final Results of the 2011–2012 Antidumping Duty Administrative Review

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 9, 2013, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain circular welded non-alloy steel pipe from Mexico for the period November 1, 2011 through October 31, 2012.[1] For the final results, we continue to find that Lamina y Placa Comercial, S.A. de C.V. (Lamina), Mueller Comercial de Mexico, S. de R.L. de C.V. (Mueller), Regiomontana de Perfiles y Tubos, S.A. de C.V. (Regiopytsa), and Tuberia Nacional, S.A. de C. V. (TUNA) made no shipments of subject merchandise during the period of review (POR). We made no changes to the *Preliminary Results.*

DATES: *Effective Date:* December 31, 2013.

FOR FURTHER INFORMATION CONTACT: Mark Flessner or Robert James, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6312 and (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 9, 2013, the Department published the *Preliminary Results* in the **Federal Register**.[2] In the *Preliminary Results,* the Department rescinded this administrative review with respect to four respondents for which reviews had been initiated but subsequently timely withdrawn (*i.e.,* Conduit S.A. de C.V., PYTCO, S.A. de C.V., Southland Pipe Nipples Co., Inc., and Ternium Mexico, S.A. de C.V.). We also preliminarily determined that Lamina, Mueller, Regiopysta, and TUNA made no shipments during the POR. We invited parties to comment on the *Preliminary Results.* We received no comments.

Scope of the Order

The products covered by this order are circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled).[3] The merchandise covered by the order and subject to this review is currently classified in the *Harmonized Tariff Schedule of the United States* (HTSUS) at subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these proceedings is dispositive.

Determination of No Shipments

As noted in the *Preliminary Results,* we received no-shipment claims from Lamina, Mueller, Regiopytsa, and TUNA, and we confirmed these claims with U.S. Customs and Border Protection (CBP). Because we continue to find that the record indicates that Lamina, Mueller, Regiopytsa, and TUNA did not export subject merchandise to the United States during the POR, we determine that they had no reviewable transactions during the POR.

Assessment

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries, pursuant to section 751(a)(1) of the Act and 19 CFR 351.212(b). We will issue appraisement instructions directly to CBP to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. Pursuant to 19 CFR 356.8(a), the Department intends to issue assessment instructions to CBP 41 days after the date of publication of these final results of review.

On May 6, 2003, the Department clarified its ''automatic assessment'' regulation.[4] This clarification will apply to entries of subject merchandise during the POR for which the reviewed company did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

For all entries by Lamina, Mueller, Regiopytsa, and TUNA, we will instruct CBP to assess antidumping duties in accordance with the reseller policy.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption, on or after the publication date of these final results of administrative review, consistent with section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the reviewed companies will continue to be the company-specific rates published for the most recently completed segment in which the company participated; (2) for merchandise exported by producers or exporters not covered in this review, but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in a prior segment of this proceeding, but the manufacturer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the manufacturer of the subject

[1] *See Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2011–2012,* 78 FR 48647 (August 9, 2013) (*Preliminary Results*).

[2] *Id.*

[3] For the complete scope of this order, *see Notice of Antidumping Duty Orders: Certain Circular Welded Non-Alloy Steel Pipe from Brazil, the Republic of Korea (Korea), Mexico, and Venezuela and Amendment to Final Determination of Sales at Less Than Fair Value: Certain Welded Non-Alloy Steel Pipe from Korea,* 57 FR 49453 (November 2, 1992).

[4] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (reseller policy).

merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 32.62 percent, the all-others rate established in the original antidumping investigation.[5] These deposit requirements, when imposed, shall remain in effect until further notice.

Notifications

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: December 20, 2013.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2013–31343 Filed 12–30–13; 8:45 am]

BILLING CODE 3510–DS–P

[5] *See Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From Mexico,* 57 FR 42953 (September 17, 1992).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–501]

Welded Carbon Steel Standard Pipe and Tube Products From Turkey: Final Results of Antidumping Duty Administrative Review; 2011–2012

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On June 7, 2013, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on welded carbon steel standard pipe and tube products (welded pipe and tube) from Turkey.[1] The period of review (POR) is May 1, 2011, through April 30, 2012. Based on our analysis of the comments received, we have made certain changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled ''Final Results of the Review.'' Further, we find that two companies had no shipments of subject merchandise during the POR.[2]

DATES: *Effective Date:* December 31, 2013.

FOR FURTHER INFORMATION CONTACT: Victoria Cho, Fred Baker, or Robert James, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–5075, (202) 482–2924, or (202) 482–0649, respectively.

Background

On June 7, 2013, the Department published the *Preliminary Results,* and invited interested parties to comment.[3] On July 22, 2013, we received case briefs from domestic producers Wheatland Tube Company (Wheatland) and United States Steel Corporation (U.S. Steel), as well as from respondent Borusan. On August 1, 2013, we received rebuttal briefs from Borusan and Erbosan. On August 2, 2013, we received rebuttal briefs from Wheatland and U.S. Steel.

The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise subject to the order is welded pipe and tube. The welded pipe and tube subject to the order is currently classifiable under subheading 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes. A full written description of the scope of the Order is contained in the memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Issues and Decision Memorandum for Final Results of the Antidumping Duty Administrative Review: Welded Carbon Steel Standard Pipe and Tube Products from Turkey; 2011–2012'' (Issues and Decision Memorandum), which is hereby adopted by this notice and incorporated herein by reference. The written description is dispositive.

Final Determination of No Shipments

As noted in the *Preliminary Results,* we received no-shipment claims from two companies under review—Yucel and Toscelik.[4] These companies reported that they made no shipments of subject merchandise to the United States during the POR.[5] U.S. Customs and Border Protection (CBP) confirmed that it did not identify evidence of shipments from either company. Following publication of the *Preliminary Results,* we received no comments from interested parties regarding these companies. As a consequence, and because the record contains no evidence to the contrary, we continue to find that neither company made any shipments during the POR. Accordingly, consistent with the

[1] *See Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Preliminary Results of Antidumping Duty Administrative Review; 2011–2012,* 78 FR 34340 (June 7, 2013) (*Preliminary Results*).

[2] The Department initiated a review on the Borusan Group, Borusan Mannesmann Boru Sanayi ve Ticaret A.S., Borusan Istikbal Ticaret T.A.S., Borusan Holding A.S., and Borusan Lojistik Dagitim Depolama Tasimacilik ve Tic A.S. (collectively, Borusan); ERBOSAN Erciyas Boru Sanayi ve Ticaret A.S. (Erbosan); Toscelik Profil ve Sac Endustrisi A.S., Toscelik Metal Ticaret A.S., and Tosyali Dis Ticaret A.S. (collectively, Toscelik); the Yucel Group, Cayirova Boru Sanayi ve Ticaret A.S., Yucel Boru ve Profil Endustrisi A.S., and Yucelboru Ihracat Ithalat ve Pazarlama A.S. (collectively, Yucel). As noted in the preliminary results, with respect to the Borusan entities, only Borusan Mannesmann Boru Sanayi ve Ticaret A.S. had reviewable sales during the POR. *See Preliminary Results,* 78 FR at 34340 n. 4. Furthermore, as we stated in the draft cash deposit instructions accompanying the preliminary results, several of the Borusan entities no longer exist. *See* draft cash deposit instructions in Attachment 2 of the memorandum entitled ''Preliminary Results of the 2011–2012 Administrative Review of Welded Carbon Steel Standard Pipe and Tube Products from Turkey,'' dated June 3, 2013. Erbosan also had reviewable sales. As noted below, we have determined that neither Toscelik nor Yucel had reviewable entries during the POR.

[3] *See Preliminary Results,* 78 FR at 34341.

[4] *See Preliminary Results,* 78 FR at 34340–41.

[5] For a full explanation of the Department's analysis, see the *Preliminary Results* and accompanying Preliminary Decision Memorandum at 3.

Department's practice, we intend to instruct CBP to liquidate any existing entries of merchandise produced by Yucel or Toscelik, but exported by other parties, at the all-others rate.[6]

Analysis of Comments Received

All issues raised in the case briefs by parties are addressed in the Issues and Decision Memorandum. A list of the issues which parties raised and to which we respond in the Issues and Decision Memorandum is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov,* and it is available to all parties in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on a review of the record and our analysis of the comments received from interested parties on the *Preliminary Results,* we made changes to the margin calculations for Borusan. Specifically, we have used costs for the six-month period immediately preceding the POR for the sales during the seven month sales reporting window prior to the POR; revised the calculation of home market direct selling expenses to include certain factoring costs in that adjustment; revised Borusan's duty drawback adjustment to exclude amounts related to scrap and second-quality pipe which were not re-exported; and removed Borusan's non-VAT home market sales from the calculations. For detailed information, see the Issues and Decision Memorandum.

Final Results of the Review

As a result of this review, we determine that the following weighted-average dumping margins exist for the period May 1, 2011, through April 30, 2012:

Manufacturer/exporter	Weighted-average dumping margin (percent)
Borusan Mannesmann Boru Sanayi ve Ticaret A.S.	1.79
ERBOSAN Erciyas Boru Sanayi ve Ticaret A.S.	0.0

Disclosure

We intend to disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b). The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

For Borusan, because its weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent), the Department has calculated importer-specific antidumping duty assessment rates. We calculated importer-specific *ad valorem* antidumping duty assessment rates by aggregating the total amount of dumping calculated for the examined sales of each importer and dividing each of these amounts by the total entered value associated with those sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review where an importer-specific assessment rate is not zero or *de minimis.* Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the importer-specific assessment rate is zero or *de minimis.*

For Erbosan, we will instruct CBP to liquidate all entries during the POR without regard to antidumping duties because its weighted-average dumping margin in these final results is zero.[7]

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). This clarification applies to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to an intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate established in the less-than-fair-value (LTFV) investigation[8] if there is no rate for the intermediate company(ies) involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

For Yucel and Toscelik, because the Department has determined that each of these respondents had no shipments during the POR for which they had knowledge, all entries entered under each of their cash deposit rates will be liquidated at the all-others rate established in the LTFV investigation.[9]

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for Borusan and Erbosan will be equal to the weighted-average dumping margins established in the final results of this review; (2) for previously reviewed or investigated companies not participating in this review, as well as for Yucel and Toscelik, the cash deposit rate will continue to be the company-specific rate established from a completed segment of this proceeding for the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established from a completed segment of this proceeding for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 14.74 percent, the all-others rate established in the LTFV investigation.[10] These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their

[6] *See, e.g., Magnesium Metal From the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 26922, 26923 (May 13, 2010), unchanged in *Magnesium Metal From the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 75 FR 56989 (September 17, 2010).

[7] *See Antidumping Proceeding: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8103 (February 14, 2012).

[8] *See Antidumping Duty Order; Welded Carbon Steel Standard Pipe and Tube Products From Turkey,* 51 FR 17784, 17784 (May 15, 1986).

[9] *Id.*

[10] *Id.*

responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred, and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

In accordance with 19 CFR 351.305(a)(3), this notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO. Timely written notification of return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These final results of review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 23, 2013.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

Issues

Borusan

Comment 1: Significance of Cost Changes
Comment 2: Date of Sale for U.S. Sales
Comment 3: Home Market Direct Selling Expenses and Factoring Costs
Comment 4: Duty Drawback for U.S. Sales
Comment 5: Whether to Remove the Non-VAT Sales from the Home Market Sales Data Prior to Making Sales Comparisons
Comment 6: Withdraw of the Regulatory Provisions Governing Targeted Dumping in Less-Than-Fair-Value Investigations
Comment 7: Consideration of an Alternative Comparison Method in Administrative Reviews
Comment 8: The Average-to-Transaction Method and the Denial of Offsets for Non-Dumped Comparisons
Comment 9: Differential Pricing Issues

Erbosan

Comment 10: Differential Pricing Issues

[FR Doc. 2013–31344 Filed 12–30–13; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–845]

Stainless Steel Sheet and Strip in Coils From Japan: Initiation of Expedited Changed Circumstances Review, and Preliminary Results of Changed Circumstances Review

AGENCY: Enforcement and Compliance (formerly Import Administration), International Trade Administration, Department of Commerce.

DATES: *Effective Date:* December 31, 2013.

SUMMARY: In response to a request from Hitachi Metals, Ltd. (Hitachi Metals), a producer/exporter of stainless steel sheet and strip in coils (SSSSC) from Japan, and pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act), 19 CFR 351.216 and 351.221(c)(3)(ii), the Department is initiating a changed circumstances review and issuing this notice of preliminary results. We have preliminarily determined that Hitachi Metals is the successor-in-interest to the merger of Hitachi Metals and Hitachi Cable Ltd. (Hitachi Cable).

FOR FURTHER INFORMATION CONTACT: Terre Keaton Stefanova or Rebecca Trainor, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1280 and (202) 482–4007, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 27, 1999, the Department published an antidumping duty order on SSSSC from Japan.[1]

On November 13, 2013,[2] Hitachi Metals informed the Department that effective July 1, 2013, it had merged with Hitachi Cable,[3] and requested that: (1) The Department conduct an expedited changed circumstances review under 19 CFR 351.211(c)(3)(ii) to determine that it is the successor-in-interest to Hitachi Cable for purposes of determining antidumping duty cash deposits and liabilities; and (2) the Department's successor-in-interest determination be retroactively effective as of July 1, 2013, the date on which the merger was completed. We received no comments from any other interested party.

Scope of the Order

The products covered by the order are certain SSSSC. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.,* cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this order are the following: (1) Sheet and strip

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils from Japan,* 64 Fed. Reg. 40565 (July 27, 1999).

[2] *See* Stainless Steel Sheet and Strip from Japan: Request for a Changed Circumstances Review (November 13, 2013) (CCR Request).

[3] Hitachi Cable was a respondent in the 2007–2008 administrative review of the antidumping duty order on SSSSC from Japan and received a zero percent dumping margin. *See Stainless Steel Sheet and Strip in Coils from Japan: Final Results of Antidumping Duty Administrative Review,* 75 FR 6631, 6633 (February 10, 2010).

that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.,* flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.,* cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTS, ''Additional U.S. Note'' 1(d).

Flapper valve steel is also excluded from the scope of the order. This product is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.''[4]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.''[5]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.''[6]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.,* carpet knives).[7] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6.''[8]

Initiation and Preliminary Results

Pursuant to section 751(b)(1) of the Act, the Department will conduct a changed circumstance review upon receipt of a request from an interested party or receipt of information concerning an antidumping duty order

[4] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[5] ''Gilphy 36'' is a trademark of Imphy, S.A.

[6] ''Durphynox 17'' is a trademark of Imphy, S.A.

[7] This list of uses is illustrative and provided for descriptive purposes only.

[8] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

which shows changed circumstances sufficient to warrant a review of the order.

As noted above in the ''Background'' section, we have received information indicating that on July 1, 2013, Hitachi Metals merged with Hitachi Cable, and assumed all operations for the production and sale of the subject merchandise. This constitutes changed circumstances warranting a review of this order.[9] Therefore, in accordance with section 751(b)(1) of the Act, we are initiating a changed circumstances review based upon the information contained in Hitachi Metals' submission.[10]

Section 351.221(c)(3)(ii) of the Department's regulations permits the Department to combine the notice of initiation of a changed circumstances review and the notice of preliminary results if the Department concludes that expedited action is warranted. In this instance, because we have on the record the information necessary to make a preliminary finding, we find that expedited action is warranted, and have combined the notice of initiation and the notice of preliminary results.

In making a successor-in-interest determination, the Department examines several factors, including but not limited to, changes in: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base.[11] While no single factor or combination of these factors will necessarily provide a dispositive indication of a successor-in-interest relationship, the Department will generally consider the new company to be the successor to the previous company if the new company's resulting operation is not materially dissimilar to that of its predecessor.[12] Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the former company, the Department will accord the new company the same antidumping treatment as its predecessor.

In its submission, Hitachi Metals explained that effective July 1, 2013, it merged with Hitachi Cable. Hitachi Metals stated that the merger was conducted on an equal basis, but procedurally took the form of an absorption-type merger through which Hitachi Metals became the surviving company and Hitachi Cable became extinct.[13] Hitachi Metals claimed that since the merger took effect, it is operating essentially the same business as the former Hitachi Cable, and there has been no significant change in management, production facilities, supplier relationships, or customer base with respect to the production and sale of the subject merchandise.[14] Hitachi Metals submitted detailed documentation relating to the merger of the two companies (*e.g.,* shareholder meeting report, articles of incorporation, and a copy of the merger agreement).[15]

With respect to management, Hitachi Metals explained that one of the objectives of the merger was to improve business efficiency through the effective use of management resources.[16] Therefore, its management team does not include all of the former Hitachi Cable managers. Hitachi Metals stated that many of the individuals who were responsible for making decisions regarding the pricing and production practices of Hitachi Cable joined the management team of Hitachi Metals, including the former Chairman of the Board of Directors and the former Chief Executive Officer of Hitachi Cable. Additionally, Hitachi Metals provided lists of directors and officers in both companies to support its claim that there are six former Hitachi Cable managers employed as officers at Hitachi Metals, making major decisions regarding the production and sale of the subject merchandise.[17]

Hitachi Metals further explained that its current organizational structure is substantially similar to that of Hitachi Cable, the only difference being that the management team of the former company is now integrated into the larger management structure of Hitachi Metals.[18] The documentation submitted in the CCR Request shows that the former executive director of Hitachi Cable now serves as vice president of Hitachi Metals and president of the company's cable materials business, which includes the production and sale of SSSSC.[19]

Based on this information, and in particular, based on the fact that Hitachi Metals' management team included several Hitachi Cable managers, we preliminarily find that the reorganization resulting from the merger of the two companies did not result in management that was materially dissimilar with respect to the subject merchandise.

With respect to production facilities, Hitachi Metals stated that it did not produce the subject merchandise prior to the merger, and that the only facility producing the subject merchandise is the one formerly operated by Hitachi Cable.[20] In addition to production capacity, Hitachi Metals provided the name and address of this factory, which is the same as the factory in which Hitachi Cable produced the subject merchandise during the period of the 2007–2008 administrative review, the most recent review of the antidumping duty order of SSSSC from Japan.[21] Based on this information, we preliminarily find that the merger did not result in material changes to the production of the subject merchandise.

With respect to suppliers and customers, Hitachi Metals provided charts showing no difference between suppliers and customers before and after the merger.[22] Hitachi Metals explained that the merger had no effect on the customers or sales practices in either the U.S. or Japanese markets, as Hitachi Metals sells the subject merchandise to the same customers in exactly the same manner as Hitachi Cable did. The only difference cited by Hitachi Metals is that Hitachi Cable's U.S. subsidiary, Hitachi Cable America Inc., became a subsidiary of Hitachi Metals after the merger.[23]

Based on the evidence reviewed, we preliminarily determine that Hitachi Metals is the successor-in-interest to the merger of Hitachi Metals and Hitachi Cable. Specifically, we find that the merger of these two companies resulted in no significant changes to management, production facilities, supplier relationships, and customers with respect to the production and sale of the subject merchandise. Thus, Hitachi Metals operates as the same business entity as Hitachi Cable with respect to the subject merchandise. If the Department upholds this preliminary determination in the final

[9] *See* 19 CFR 351.216(d).

[10] *See* the CCR Request.

[11] *See, e.g., Pressure Sensitive Plastic Tape from Italy: Preliminary Results of Antidumping Duty Changed Circumstances Review,* 75 FR 8925 (Feb. 26, 2010), unchanged in *Pressure Sensitive Plastic Tape From Italy: Final Results of Antidumping Duty Changed Circumstances Review,* 75 FR 27706 (May 18, 2010); *Brake Rotors From the People's Republic of China: Final Results of Changed Circumstances Antidumping Duty Administrative Review,* 70 FR 69941 (November 18, 2005) (*Brake Rotors*), citing *Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review,* 57 FR 2460 (May 13, 1992); and *Structural Steel Beams from Korea: Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review,* 66 FR 15834 (March 21, 2001).

[12] *See e.g., Brake Rotors.*

[13] *See* CCR Request at 3.

[14] *See* CCR Request at 4.

[15] *See* CCR Request at 3 and Exhibits 1a through 1d.

[16] *See* CCR Request at 5.

[17] *See* CCR Request at 5–6 and Exhibits 2–3.

[18] *See* CCR Request at 6–7.

[19] *See* CCR Request at Exhibits 4–5.

[20] *See* CCR Request at 2 and 7.

[21] *See* CCR Request at Exhibit 6.

[22] *See* CCR Request at Exhibits 7–9.

[23] *See* CCR Request at 8–9.

results, Hitachi Metals will retain the antidumping duty deposit rate currently assigned to Hitachi Cable with respect to the subject merchandise (*i.e.,* 0.00 percent). However, because cash deposits are only estimates of the amount of antidumping duties to be assessed, changes in cash deposit rates are not made retroactively.[24] Therefore, no retroactive change will be made to Hitachi Metals' cash deposit rate, as Hitachi Metals requested. If these preliminary results are adopted in the final results of this changed circumstances review, we will instruct U.S. Customs and Border Protection not to suspend liquidation of entries of SSSSC made by Hitachi Metals, effective on the publication date of the final results.

Public Comment

Interested parties may submit case briefs and/or written comments not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, which must be limited to issues raised in such briefs or comments, may be filed not later than 37 days after the date of publication of this notice. Parties who submit case or rebuttal briefs are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. All comments are to be filed electronically using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS) available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit, Room 7046 of the main Department of Commerce building, and must also be served on interested parties.[25] An electronically filed document must be received successfully in its entirety by IA ACCESS by 5:00 p.m. Eastern Standard Time on the day it is due.[26]

Consistent with 19 CFR 351.216(e), we will issue the final results of this changed circumstances review no later than 270 days after the date on which this review was initiated, or within 45 days if all parties agree to our preliminary finding. We are issuing and publishing this finding and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216.

Dated: December 24, 2013.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2013–31342 Filed 12–30–13; 8:45 am]

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[24] *See Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Frozen Warmwater Shrimp from India,* 77 FR 64953 (October 24, 2012); *see also Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom: Final Results of Changed-Circumstances Antidumping and Countervailing Duty Administrative Reviews,* 64 FR 66880 (November 30, 1999).

[25] *See* 19 CFR 351.303(f).

[26] *See* 19 CFR 351.303(b).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–831]

Steel Threaded Rod From Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the ''Department'') preliminarily determines that steel threaded rod from Thailand is being, or is likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733(b) of the Tariff Act of 1930, as amended (the ''Act''). The period of investigation (''POI'') is April 1, 2012, through March 31, 2013. The estimated weighted-average dumping margins of sales at LTFV are listed in the ''Preliminary Determination'' section of this notice. Interested parties are invited to comment on this preliminary determination.

DATES: *Effective Date:* December 31, 2013.

FOR FURTHER INFORMATION CONTACT: Raquel Silva or Laurel LaCivita, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6475 or (202) 482–4243.

SUPPLEMENTARY INFORMATION:

Scope of the Investigation

The merchandise covered by this investigation is steel threaded rod. Steel threaded rod is certain threaded rod, bar, or studs, of carbon quality steel, having a solid, circular cross section, of any diameter, in any straight length, that have been forged, turned, cold-drawn, cold-rolled, machine straightened, or otherwise cold-finished, and into which threaded grooves have been applied. In addition, the steel threaded rod, bar, or studs subject to this investigation are non-headed and threaded along greater than 25 percent of their total length. A variety of finishes or coatings, such as plain oil finish as a temporary rust protectant, zinc coating (*i.e.,* galvanized, whether by electroplating or hot-dipping), paint, and other similar finishes and coatings, may be applied to the merchandise. For a complete description of the scope of the investigation, *see* Appendix 1 to this notice.

Tolling of Deadlines for Preliminary Determination

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.[1] Therefore, all deadlines in this segment of the proceeding have been extended by 16 days. If the new deadline falls on a non-business day, in accordance with the Department's practice, the deadline will become the next business day.[2] The revised deadline for the preliminary determination of this investigation is now December 20, 2013.

Methodology

The Department has conducted this investigation in accordance with section 731 of the Act. Because the only selected mandatory respondent, Tycoons Worldwide Group (Thailand) Public Co., Ltd. (''Tycoons''), failed to respond to the Department's questionnaire, we have preliminarily determined to apply adverse facts available to this respondent, in accordance with section 776 if the Act and 19 CFR 351.308. The critical circumstances allegation has been analyzed in accordance with section 733(e)(1) of the Act and 19 CFR 351.206.

For a full description of the methodology underlying our conclusions, *see* the Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations entitled ''Decision Memorandum for the Preliminary Determination of the Antidumping Duty Investigation of Steel Threaded Rod from Thailand,'' dated concurrently with and hereby adopted by this notice

[1] *See* Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Shutdown of the Federal Government'' (October 18, 2013).

[2] *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

(''Preliminary Decision Memorandum''). The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). IA ACCESS is available to registered users at *http://iaaccess.trade.gov,* and is available to all parties in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Affirmative Determination of Critical Circumstances

On November 22, 2013, Petitioners [3] filed a timely critical circumstances allegation, pursuant to section 773(e)(1) of the Act and 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of the merchandise under consideration.[4] In accordance with 19 CFR 351.206(c)(2)(i), when a critical circumstances allegation is submitted more than 20 days before the scheduled date of the preliminary determination, the Department must issue a preliminary finding whether there is a reasonable basis to believe or suspect that critical circumstances exist no later than the date of the preliminary determination. We have conducted an analysis of critical circumstances in accordance with section 733(c) of the Act and 19 CFR 351.206, and have preliminarily determined that: (1) Importers knew or should have known that the exporter was selling the merchandise under consideration at LTFV and that there was likely to be material injury in accordance with section 733(e)(1)(A)(ii) of the Act; and (2) imports of the subject merchandise have been massive over a relatively short period in accordance with section 733(e)(1)(B) of the Act. For a full description of the methodology and results of our analysis, please *see* the Preliminary Decision Memorandum.

All Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated ''all others'' rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely under section 776 of the Act. Tycoons is the only company being individually examined in this investigation, but its margin was determined entirely under section 776 of the Act. In cases where no weighted-average dumping margins besides zero *de minimis,* or determined entirely under section 776 of the Act have been established for individually investigated entities, the Department averages the margins calculated by the Petitioner in the petition and applies the result to all other entities not individually examined.[5]

Preliminary Determination

We preliminary determine the weighted-average dumping margins are as follows:

Producer or exporter	Weighted-average dumping margin (percent)
Tycoons Worldwide Group (Thailand) Public Co., Ltd.	74.90
All Others	68.41

Disclosure

The Department intends to disclose to parties the calculations performed in connection with this preliminary determination within five days of the date of publication of this notice.[6]

Public Comment

Interested parties are invited to comment on the preliminary determination. Interested parties may submit case briefs to the Department no later 30 days after the date of publication of the preliminary determination.[7] Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days from the deadline date for the submission of case briefs.[8] A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department.[9] Executive summaries should be limited to five pages total, including footnotes. Interested parties who wish to comment on the preliminary determination must file briefs electronically using IA ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Standard Time on the date the document is due.

In accordance with section 774 of the Act, the Department will hold a hearing, if timely requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party.[10] Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically using IA ACCESS, as noted above. An electronically filed request must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Standard Time within 30 days after the date of publication of this notice.[11] Requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed.[12] If a request for a hearing is made, we will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.[13] Parties should confirm by telephone the date, time, and location of the hearing.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we normally will direct U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all entries of steel threaded rod from Thailand, as described in the ''Scope of the Investigation'' section, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. However, because we have preliminarily found critical circumstances exist with regard to

[3] The petition was filed by All America Threaded Products Inc., Bay Standard Manufacturing Inc., and Vulcan Threaded Products Inc. (''Petitioners'').

[4] *See* letter from Petitioners, ''Antidumping Investigation of Steel Threaded Rod from Thailand: Petitioners' Allegation of Critical Circumstances,'' date November 22, 2013.

[5] *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany,* 73 FR 21909 (April 23, 2008); unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany,* 73 FR 38986 (July 8, 2008).

[6] *See* 19 CFR 351.224(b).

[7] *See* 19 CFR 351.309(c)(1)(i).

[8] *See* 19 CFR 351.309(d)(1) and 19 CFR 351.309(d)(2).

[9] *See* 19 CFR 351.309(c)(2).

[10] *See also* 19 CFR 351.310.

[11] *See* 19 CFR 351.310(c).

[12] *See id.*

[13] *See* 19 CFR 351.310.

exports by Tycoons and All Others, we will instruct CBP to suspend liquidation of covered entries entered, or withdrawn from warehouse, for consumption up to 90 days prior to the date of publication of this notice in the **Federal Register**.[14]

Pursuant to 19 CFR 351.205(d), the Department will instruct CBP to require a cash deposit[15] equal to the preliminary weighted-average amount by which normal value exceeds U.S. price, as indicated in the chart above, as follows: (1) The rate for the firm listed above will be the rate we have determined in this preliminary determination; (2) if the exporter is not a firm identified in this investigation, but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 68.41 percent. These suspension of liquidation instructions will remain in effect until further notice.

U.S. International Trade Commission (''ITC'') Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our preliminary affirmative determination of sales at LTFV. If our final determination in this proceeding is affirmative, section 735(b)(2) of the Act requires that the ITC make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of steel threaded rod from Thailand before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: December 20, 2013.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The merchandise covered by this investigation is steel threaded rod. Steel threaded rod is certain threaded rod, bar, or studs, of carbon quality steel, having a solid, circular cross section, of any diameter, in any straight length, that have been forged, turned, cold-drawn, cold-rolled, machine straightened, or otherwise cold-finished, and into which threaded grooves have been applied. In addition, the steel threaded rod, bar, or studs subject to this investigation are nonheaded and threaded along greater than 25 percent of their total length. A variety of finishes or coatings, such as plain oil finish as a temporary rust protectant, zinc coating (*i.e.,* galvanized, whether by electroplating or hot-dipping), paint, and other similar finishes and coatings, may be applied to the merchandise.

Included in the scope of this investigation are steel threaded rod, bar, or studs, in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 1.80 percent of manganese, or
- 1.50 percent of silicon, or
- 1.00 percent of copper, or
- 0.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 1.25 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.012 percent of boron, or
- 0.10 percent of molybdenum, or
- 0.10 percent of niobium, or
- 0.41 percent of titanium, or
- 0.15 percent of vanadium, or
- 0.15 percent of zirconium.

Steel threaded rod is currently classifiable under subheadings 7318.15.5051, 7318.15.5056, 7318.15.5090 and 7318.15.2095 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Excluded from the scope of this investigation are: (a) Threaded rod, bar, or studs which are threaded only on one or both ends and the threading covers 25 percent or less of the total length; and (b) threaded rod, bar, or studs made to American Society for Testing and Materials (''ASTM'') A193 Grade B7, ASTM A193 Grade B7M, ASTM A193 Grade B16, and ASTM A320 Grade L7.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

1. Background
2. Scope of the Investigation
3. Respondent Selection
4. Application of Facts Available and Adverse Facts Available
5. All Others Rate
6. Critical Circumstances
7. Recommendation

[FR Doc. 2013–31341 Filed 12–30–13; 8:45 am]

BILLING CODE 3510–DS–P

[14] *See* section 733(e)(2) of the Act.

[15] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD044

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Herring Advisory Panel to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Wednesday, January 22, 2014 at 10 a.m.

ADDRESSES: The meeting will be held at the DoubleTree by Hilton Hotel, 50 Ferncroft Road, Danvers, MA 01923; telephone: (978) 777–2500; fax: (978) 750–7959.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Advisory Panel will discuss development of a range of alternatives for Framework 4 to the Atlantic Herring FMP. Framework 4 will address the disapproved elements of Amendment 5, including provisions related to net slippage and dealer weighing requirements. The Advisory Panel will review the January 14 Herring Committee discussion/recommendations and develop related Herring AP recommendations. The Advisory Panel will also discuss development of the NMFS-led Omnibus Amendment to address industry-funded monitoring as well as the timeline for Framework 4, the omnibus industry-funded amendment, and other 2014 herring management priorities. Other business may be discussed as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. 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.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: December 26, 2013.

Tracey L. Thompson,

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

[FR Doc. 2013–31310 Filed 12–30–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD041

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public hearing and scoping meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a series of public hearings and scoping meetings in January. Public hearings will be held on Amendment 29 to the Snapper Grouper Fishery Management Plan (FMP) and South Atlantic Coastal Migratory Pelagic Framework Action. Public scoping will be held on Regulatory Amendment 16 to the Snapper Grouper FMP, Amendment 24 to the Coastal Migratory Pelagic FMP for the South Atlantic and Gulf of Mexico and Amendment 26 to the Coastal Migratory FMP for the South Atlantic and Gulf of Mexico. The Council will hold a separate public scoping meeting via webinar for the Generic Accountability Measure and Dolphin Allocation Amendment. See **SUPPLEMENTARY INFORMATION**.

Dates and Location: The series of public hearings and scoping meetings will be held January 21, 2014 through January 30, 2014. The hearings/scoping meetings will be held from 4 p.m. until 7 p.m. Council staff will present an overview of the amendments and will be available for informal discussions and to answer questions. Members of the public will have an opportunity to go on record at any time during the meeting hours to record their comments on the public hearing and scoping topics for consideration by the Council. Local Council representatives will attend the meetings and take public comment. Written comments will be accepted from January 10, 2014 until 5 p.m. on February 3, 2014. In addition, the Council will hold a separate public scoping meeting via webinar on February 3, 2014 at 6 p.m. for the Generic Accountability Measure and Dolphin Allocation Amendment. Public comment will be accepted on the Generic Amendment from January 17, 2014 until 5 p.m. on February 14, 2014. See **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Written comments should be sent to Bob Mahood, Executive Director, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405, or via email to: *SGAmend29Comments@safmc.net* for Amendment 29 to the Snapper Grouper FMP; *SpanishMackFrameworkComments@safmc.net* for the Joint Coastal Migratory Pelagics Framework Amendment for 2014; *SGRegAmend16Comments@safmc.net* for Regulatory Amendment 16 to the Snapper Grouper FMP; *CMPAmend24Comments@safmc.net* for Joint Amendment 24 to the Coastal Migratory Pelagics FMP; *CMPAmend26Comments@safmc.net* for Joint Amendment 26 to the Coastal Migratory Pelagics FMP; and to *AMDolphinAllocAmendC@safmc.net* for the Generic Accountability Measure and Dolphin Allocation Amendment.

Copies of the public hearing and scoping documents are available by contacting Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366 or toll free at (866) SAFMC–10. Copies will also be available online at *www.safmc.net* as they become available.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366; fax: (843) 769–4520; email address: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION:

Public hearings: Amendment 29 to the Snapper Grouper FMP includes actions that would update the Acceptable Biological Catch (ABC) Control Rule to incorporate methodology for determining the ABC of ''Only Reliable Catch Stocks'' (ORCS), adjust the ABCs for the affected species, and establish management measures for gray triggerfish in federal waters of the South Atlantic region. The Joint South Atlantic and Gulf of Mexico Coastal Migratory Pelagics Framework Amendment for 2014 would adjust the annual catch limits (ACLs) for both South Atlantic and Gulf of Mexico Spanish mackerel stocks.

Scoping: Regulatory Amendment 16 to the Snapper Grouper FMP includes alternatives to remove or modify the current seasonal closure for black sea bass commercial pots. Joint Amendment 24 to the Coastal Migratory Pelagics FMP includes actions to consider changes in the recreational and commercial allocation for coastal migratory pelagic stocks with current sector allocations. Joint Amendment 26 to the Coastal Migratory Pelagics FMP will include actions to separate the commercial permits for king and Spanish mackerel into designated permits for each region.

Scoping via webinar: The Generic Accountability Measure and Dolphin Allocation Amendment would adjust Accountability Measures for species in the snapper grouper management complex and golden crab. The amendment also addresses allocations for dolphin (mahi mahi). Information on how to register for the webinar will be posted on the Council's Web site at *www.safmc.net.*

Public Hearing and Scoping Meeting Schedule

January 21, 2014—Bay Watch Resort & Conference Center, 2701 S. Ocean Boulevard, North Myrtle Beach, SC 29582; Phone: 843–272–4600.

January 22, 2014—DoubleTree by Hilton Atlantic Beach Oceanfront, 2717 West Fort Macon Road, Atlantic Beach, NC 28512; Phone: 252–240–1155.

January 27, 2014—Key West Marriott Beachside, 3841 N. Roosevelt Boulevard, Key West, FL 33040; Phone: 305–296–8100.

January 28, 2014—DoubleTree by Hilton Cocoa Beach Oceanfront, 2080 N. Atlantic Avenue, Cocoa Beach, FL 32931; Phone: 321–783–9222.

January 29, 2014—Wyndham Jacksonville Riverwalk, 1515 Prudential Drive, Jacksonville, FL 32207; Phone: 904–396–5100.

January 30, 2014—Mighty Eighth Air Force Museum, 175 Bourne Avenue, Pooler, GA 31322 Phone: 912–743–8888.

February 3, 2014—Public scoping via webinar for the Generic Accountability Measure and Dolphin Allocation Amendment, beginning at 6 p.m.

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**) 3 days prior to the start of each meeting.

Dated: December 26, 2013.

Tracey L. Thompson,

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

[FR Doc. 2013–31309 Filed 12–30–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD054

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice; public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold a meeting of the ABC Control Rule Working Group (Working Group) and Standing and Special Reef Fish Scientific and Statistical Committees (SSC).

DATES: The meetings will be held from 1 p.m. on Wednesday, January 22 until 3 p.m. on Friday, January 24, 2014.

ADDRESSES: The meetings will be held at the Gulf of Fishery Management Council office, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Atran, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630; fax: (813) 348–1711; email: *steven.atran@gulfcouncil.org.*

SUPPLEMENTARY INFORMATION: The items of discussion in the individual meeting agendas are as follows:

ABC Control Rule Working Group Agenda, Wednesday, January 22, 2014, 1 p.m. Until 5 p.m.

The Working Group is a subset of the SSC that also includes members from the NMFS Southeast Fisheries Science Center. Its function is to develop and evaluate potential revisions to the ABC control rule that was implemented in 2012. Agenda items for the working group include:

1. Review of Alternative Approaches To Setting ABC To Account for Scientific Uncertainty

a. Impose a pre-specified coefficient of variation into the pdf based on expert judgment of the SSC
b. Establish a buffer below OFL of 0% to 25%, based on species life history (e.g., longer-lived species get a larger buffer)
c. Modify the Tier 1 spreadsheet to develop a score that would be used to determine the number of standard deviations to add to the pdf
d. SEFSC approaches based on Ralton et al. (2011)
e. Expand the range of potential P* values in the Tier 1 spreadsheet from 30%–50% to 1%–50%
f. Other approaches
g. Working Group recommendations

2. Other ABC Control Rule Business

a. Recommendation on whether to proceed with a separate action to revise the method for determining P*
b. Other Business

Standing and Special Reef Fish SSC Agenda, Thursday, January 23, 2014, 8:30 a.m. Until 5 p.m.; Friday, January 24, 2014, 8:30 a.m. Until 3 p.m.

1. Approval of August 6–8, 2013 Standing and Special Reef Fish SSC summary minutes
2. Review of Red Snapper MRIP Issues
3. Review of Other Reef Fish MRIP Issues
4. Annual Catch Limits Monitoring Overview
5. Red Snapper Slot Limit Analysis
6. Alternative Red Snapper ABCs
   a. based on FSPR 26% (constant catch and constant F)
   b. based on FMAX (constant catch and constant F)
7. Pros and Cons of Setting Recreational Red Snapper Quota in Numbers
8. East and West Regional ABC Recommendations for Red Snapper
   a. With Mississippi in the East region
   b. With Mississippi in the West region
9. ABC Control Rule Revisions and Report of the ABC Control Rule Working Group
10. Update on SEDAR Assessment Schedule
11. SEDAR 40—Red Grouper Benchmark Assessment—preliminaries
    a. Review and approval of terms of reference
    b. Review of schedule and selection of panel participants
12. Tentative Dates for 2014 SSC Meetings
13. Selection of SSC representative at February 3–7, 2014 Council meeting (Houston)
14. Other business

Although other non-emergency issues not on the agenda may come before the Scientific and Statistical Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the Scientific and Statistical Committees will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Council Office (see **ADDRESSES**), at least 5 working days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: December 26, 2013.

Tracey L. Thompson,

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

[FR Doc. 2013–31311 Filed 12–30–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD057

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice of receipt of application for a new scientific research and enhancement permit and request for comment.

SUMMARY: Notice is hereby given that NMFS has received an application for a scientific research and enhancement permit (permit 17781) relating to salmon listed under the Endangered Species Act (ESA). This document serves to notify the public of the availability of the permit application for review and comment. The applications and related

documents may be viewed online at: *http://swr.nmfs.noaa.gov/sjrrestorationprogram/salmonreintroduction.htm.* These documents are also available upon written request or by appointment by contacting NMFS by phone 916–930–3600.

DATES: Written comments on the permit application must be received at the appropriate address (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on January 30, 2014.

ADDRESSES: Written comments on this application should be submitted to the Assistant Regional Administrator, California Central Valley Area Office, West Coast Region, NMFS, 650 Capitol Mall, Suite 5–100, Sacramento, CA 95814. Comments may also be submitted by email to *SRJspring.salmon@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Elif Fehm-Sullivan, Sacramento, CA, ph: 916–930–3723.

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

This notice is relevant to federally threatened CV spring-run Chinook salmon (*Oncorhynchus tshawytscha*) and California Central Valley steelhead (*Oncorhynchus mykiss*).

Authority

Scientific research and enhancement permits are issued in accordance with section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et seq.*) and regulations governing listed fish and wildlife permits (50 CFR parts 222–226). NMFS issues permits based on findings that such permits: (1) Are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). Such hearings are held at the discretion of the Assistant Administrator for Fisheries, NMFS.

Application Received

On December 5, 2013, the U.S. Fish and Wildlife Service (USFWS) submitted an application and supporting documents to NMFS for a section 10(a)(1)(A) permit (permit 17781). USFWS is requesting a 5-year permit to collect, transport, and release Central Valley (CV) spring-run Chinook salmon, for the purposes of reintroduction into the San Joaquin River. The USFWS, under the auspices of the San Joaquin River Restoration Program (SJRRP), is requesting over a period of five years: (1) The annual collection of juvenile CV spring-run Chinook salmon and eggs from the Feather River Fish Hatchery (FRFH) and their release into the San Joaquin River or Salmon Conservation and Research Facility (SCARF); (2) the collection of CV spring-run Chinook salmon and eggs produced or reared at either the interim facility or the permanent SCARF (from broodstock collected under ESA Section 10(a)(1)(A) permit 14868) and their release into the San Joaquin River.

Up to 54,400 CV spring-run Chinook salmon juveniles or 80,000 CV spring-run Chinook salmon eggs originating from the FRFH will be collected annually for translocation. The translocation will follow protocols to minimize impacts to both fish and the existing environment. Quarantine requirements, as defined by California Department of Fish and Wildlife (CDFW) pathologists, will be followed for juveniles. If quarantine is required, juveniles may be transported to a quarantine facility at either the Silverado Fisheries Base (Silverado) located in Yountville, California or the Center for Aquatic Biology and Aquaculture (CABA) located in Davis, California. The collected juveniles will be trucked from the FRFH (or the quarantine facility) to translocation sites in the San Joaquin River. The collected eggs will be trucked to stream side incubators, where they will hatch and rear until they are large enough for marking and release into the San Joaquin River. Short-term confinement is required for sufficient imprinting of juveniles, which may occur either in or alongside the San Joaquin River or at SCARF. All fish will be adipose fin clipped, coded wire tagged, and may be Calcein marked prior to release. Starting in year two, approximately 200 yearlings are expected to be released, annually, for each of the first three brood years from the interim or permanent SCARF. Also in the fourth and fifth year of the permit, up to 100 adult broodstock and 50,000 eggs from the interim or permanent SCARF may be released to the river.

The USFWS will collect CV spring run Chinook juveniles from the FRFH between January and March, unless the FRFH is able to segregate and hold juveniles on site prior to coded wire tagging procedures. In this case, the USFWS would collect juveniles as late as April for translocation. Any juveniles requiring transport directly to the San Joaquin River, or another facility (i.e. SCARF), would be moved between January and April. Juveniles will be released between October and April. Adult release will typically take place between April and October. The release of CV spring-run Chinook salmon will be monitored annually through rotary screw trapping, snorkel surveys and escapement surveys. California Central Valley steelhead may be incidentally captured during these activities.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of section 10(a)(1)(A) of the ESA. If it is determined that the requirements are met, a permit will be issued to USFWS for the purpose of collecting ESA-listed spring-run Chinook salmon and carrying out the research and enhancement program.

NMFS will publish a notice of its final action in the **Federal Register**.

Dated: December 24, 2013.

Perry F. Gayaldo,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–31330 Filed 12–30–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons

AGENCY: Department of Defense.

ACTION: Final guidance.

SUMMARY: The Department of Defense (DoD) publishes this Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (DoD Recipient LEP Guidance). The DoD Recipient LEP Guidance derives from the prohibition against national origin discrimination in Title VI of the Civil Rights Act of 1964 in the context of individuals with limited English proficiency.

FOR FURTHER INFORMATION CONTACT: Ms. Beatrice Bernfeld at *Beatrice.m.bernfeld.civ@mail.mil* or (703) 571–9336. Arrangements to receive the policy in an alternative format may be made by contacting the named individual.

SUPPLEMENTARY INFORMATION: Under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, et seq. (Title VI), and DoD regulations implementing Title VI, recipients of Federal financial assistance from DoD (''recipients'') have a responsibility to ensure that individuals are not unlawfully discriminated against on the basis of race, color or national origin, which includes are requirement to provide for meaningful access by persons with limited English proficiency (LEP) to their programs and activities. See 32 CFR Part 195. Executive Order 13166, signed August 11, 2000 and published at 65 FR 50121 (August 16, 2000), directs each Federal agency that extends assistance subject to the requirements of Title VI to publish, after review and approval by the Department of Justice (DOJ), guidance for its recipients clarifying that obligation. The Executive Order also directs that all such guidance be consistent with the compliance standards and framework set forth by DOJ.

On March 14, 2002, the Office of Management and Budget (OMB) issued a Report to Congress titled ''Assessment of the Total Benefits and Costs of Implementing Executive Order No. 13166: Improving Access to Services for Persons with Limited English Proficiency.'' Among other things, the Report recommended the adoption of uniform guidance across all Federal agencies, with flexibility to permit tailoring to each agency's specific recipients. Consistent with this OMB recommendation, the DOJ published LEP Guidance for DOJ recipients which was drafted and organized to also function as a model for similar guidance by other Federal grant agencies. See 67 FR 41455 (June 18, 2002). This final DoD Guidance is based upon of the model June 18, 2002, DOJ LEP Guidance for Recipients.

The primary focus of this Guidance is on entities that receive Federal financial assistance from DoD, either directly or indirectly, through a grant, cooperative agreement, contract or subcontract, and operate programs or activities or portions of programs or activities in the United States and its territories.

In connection with the issuance of this Guidance, each DoD component is encouraged to review their current programs and activities to determine whether they provide the type of external assistance to a recipient which is subject to Title VI. If Title VI is determined to be applicable to one or more program or activity, the administering component should consider developing a program-specific Appendix to this Guidance. The Appendix should explain how the component's recipients may ensure meaningful linguistic access consistent with the principles and compliance standards set out in DoD's LEP Guidance for Recipients below. Any future Appendix must be submitted to DOJ for review and approval prior to publication in the **Federal Register**.

It has been determined that the Guidance does not constitute a regulation subject to the rulemaking requirements of the Administrative Procedures Act, 5 U.S.C § 533. It has also been determined that this Guidance is not subject to the requirements of Executive Order 12866.

A. Response to Comments

DoD interim final guidance on DoD recipients' obligations to take reasonable steps to ensure access by LEP persons was published on February 15, 2012. See 77 FR 8828. The comment period was open until March 16, 2012. DoD received one comment representing one organization in response to its publication of draft guidance on DoD recipients' obligations to take reasonable steps to ensure access to programs and activities by LEP persons. The comment expressed concern about use of the disparate impact approach to enforce Title VI of the Civil Right Acts of 1964. DoD addresses this issue in section II, Legal Authority, of this guidance.

The text of the complete proposed Guidance document appears below.

Dated: December 24, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

I. Introduction

Most individuals living in the United States read, write, speak and understand English. There are many individuals, however, for whom English is not their primary language. For instance, based on the 2000 census, over 26 million individuals speak Spanish and almost 7 million individuals speak an Asian or Pacific Island language at home. If these individuals have a limited ability to read, write, speak, or understand English, they are limited English proficient, or ''LEP.'' The 2000 census indicates that 28.1% of all Spanish-speakers, 28.2% of all speakers of Chinese languages, and 32.3% of all Vietnamese-speakers reported that they spoke English ''not well'' or ''not at all.''

Language for LEP individuals can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by federally funded programs and activities. The Federal Government funds an array of services that can be made accessible to otherwise eligible LEP persons. The Federal Government is committed to improving the accessibility of these programs and activities to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English. Recipients should not overlook the long-term positive impacts of incorporating or offering English as a Second Language (ESL) programs in parallel with language assistance services. ESL courses can serve as an important adjunct to a proper LEP plan. However, the fact that ESL classes are made available does not obviate the statutory and regulatory requirement to provide meaningful access for those who are not yet English proficient. Recipients of Federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important government services.[1]

This policy Guidance clarifies existing legal requirements for LEP persons by providing a description of the factors recipients should consider in fulfilling their responsibilities to LEP persons.[2] These are the same criteria DoD has been and will continue to use in evaluating whether recipients are in compliance with Title VI and Title VI regulations.

In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and Title VI regulations against national origin discrimination. The purpose of this policy Guidance is to assist recipients in fulfilling their responsibility to provide meaningful access to LEP persons under existing law.

[1] DoD recognizes that many recipients had language assistance programs in place prior to the issuance of Executive Order 13166. This Guidance provides a uniform framework for a recipient to integrate, formalize, and assess the continued vitality of these existing and possibly additional reasonable efforts based on the nature of its program or activity, the current needs of the LEP population it encounters, and its prior experience in providing language services in the community it serves.

[2] This policy guidance is not a regulation but rather a guide. Title VI and its implementing regulations require that recipients take responsible steps to ensure meaningful access by LEP persons. This Guidance provides an analytical framework that recipients may use to determine how best to comply with statutory and regulatory obligations to provide meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals who are limited English proficient.

As with most government initiatives, this policy Guidance requires balancing several principles. While this Guidance discusses that balance in some detail, it is important to note the basic principles behind that balance. First, we must ensure that federally assisted programs aimed at the American public do not leave some behind simply because they face challenges communicating in English. This is of particular importance because, in many cases, LEP individuals form a substantial portion of those encountered in federally assisted programs. Second, we must achieve this goal while finding constructive methods to reduce the costs of LEP requirements on small businesses, small local governments, or small non-profits that receive Federal financial assistance.

In addition, many DoD recipients also receive Federal financial assistance from other Federal agencies, such as the Department of Education or the Department of Health and Human Services. While guidance from those Federal agencies is consistent with this Guidance, recipients receiving assistance from multiple agencies should review those agencies' guidance documents at *http://www.lep.gov* for a more focused explanation of how the standards apply in portions of programs or activities that are the focus of funding from those agencies.

There are many productive steps that the Federal government, either collectively or as individual grant agencies, can take to help recipients reduce the costs of language services without sacrificing meaningful access for LEP persons. Without these steps, certain smaller grantees may well choose not to participate in federally assisted programs, threatening the critical functions that the programs strive to provide. To that end, DoD plans to continue to provide assistance and guidance in this important area. In addition, DoD plans to work with representatives of research and defense-related institutions, grant organizations, administrative agencies, other Federal entities, and LEP persons to identify and share model plans, examples of best practices, and cost-saving approaches. Moreover, DoD intends to explore how language assistance measures, resources and cost-containment approaches developed with respect to its own Federally conducted programs and activities can be effectively shared or otherwise made available to recipients, particularly small businesses, small local governments, and small non-profits. An interagency working group on LEP developed a Web site, *www.lep.gov,* to assist in disseminating this information to recipients, Federal agencies, and the communities being served.

II. Legal Authority

Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, provides that no person shall ''on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.'' Section 602 of Title VI, 42 U.S.C. § 2000d-1, authorizes and directs Federal agencies that are empowered to extend Federal financial assistance to any program or activity ''to effectuate the provisions of [section 601] . . . by issuing rules, regulations, or orders of general applicability.''

DoD regulations promulgated pursuant to section 602 forbid recipients from ''utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.'' 32 CFR § 195.4(b)(2).

The Supreme Court, in *Lau* v. *Nichols,* 414 U.S. 563 (1974), interpreted regulations promulgated by the former Department of Health, Education, and Welfare, including a regulation similar to that of DoD, 45 CFR 80.3(b)(2), to hold that Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes national-origin discrimination. In *Lau,* a San Francisco school district that had a significant number of non-English speaking students of Chinese origin was required to take reasonable steps to provide them with a meaningful opportunity to participate in federally funded educational programs.

Executive Order 13166, ''Improving Access to Services for Persons with Limited English Proficiency,'' 65 FR 50121 (August 16, 2000) was issued on August 11, 2000. Under that Executive Order, every Federal agency that provides financial assistance to non-Federal entities must publish guidance on how their recipients can provide meaningful access to LEP persons and thus comply with Title VI regulations forbidding funding recipients from ''restrict[ing] an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program'' or from ''utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.''

On that same day, DOJ issued a general guidance document addressed to ''Executive Agency Civil Rights Officers'' setting forth general principles for agencies to apply in developing guidance documents for recipients pursuant to the Executive Order. ''Enforcement of Title VI of the Civil Rights Act of 1964 National Origin Discrimination Against Persons With Limited English Proficiency,'' 65 FR 50123 (August 16, 2000) (''DOJ LEP Guidance'').

Subsequently, Federal agencies raised questions regarding the requirements of the Executive Order, especially in light of the Supreme Court's decision in Alexander v. Sandoval, 532 U.S. 275 (2001). On October 26, 2001, the Civil Rights Division of DOJ issued a memorandum clarifying and reaffirming the DOJ LEP Guidance in light of Sandoval.[1] The Assistant Attorney General stated that because Sandoval did not invalidate any Title VI regulations that proscribe conduct that has a disparate impact on covered groups—the types of regulations that form the legal basis for the part of Executive Order 13166 that applies to federally assisted programs and activities—the Executive Order remains in force. Mindful of the limitations on bringing a private action to enforce Title VI regulations addressing disparate impact, DoD is committed to vigorously enforcing the requirements of Title VI and its implementing regulations on behalf of LEP beneficiaries and other LEP persons encountered by DoD assisted agencies and entities.

This Guidance document is therefore published at the direction of Executive Order 13166 and pursuant to Title VI and the Title VI regulations. It is consistent with the relevant DOJ Guidance. 67 FR 41455 (June 18, 2002) (also available at *www.lep.gov*).

III. Who is covered?

All entities that receive Federal financial assistance from DoD, either directly or indirectly, through a grant, cooperative agreement, contract or subcontract, and operate programs or activities or portions thereof in the United States and its territories, are covered by this Guidance. Title VI applies to all Federal financial assistance, which includes but is not limited to awards and loans of Federal funds, awards or donations of Federal

land or property, details of Federal or Federally funded personnel, or any agreement, arrangement or other contract that has as one of its purposes the provision of assistance.

Examples of recipients of DoD assistance covered by this Guidance include, but are not limited to:

—State and local government agencies and any other entities that receive DoD-donated land or land that is sold at or below-market rate; and
—Organizations and institutions, such as nonprofit organizations or educational institutions, receiving grants to conduct scientific, medical, environmental or other research.

Title VI prohibits discrimination in any program or activity that receives Federal financial assistance. In most cases, when a recipient receives Federal financial assistance for a particular program or activity, all operations of the recipient are covered by Title VI, not just the part of the program that uses the Federal assistance. Thus, all parts of the recipient's operations would be covered by Title VI, even if the Federal assistance were used only by one part.[3] Sub-recipients likewise are covered when Federal funds are passed through from one recipient to a sub-recipient.

Finally, some recipients operate in jurisdictions in which English has been declared the official language. Nonetheless, these recipients continue to be subject to Federal non-discrimination requirements, including those applicable to the provision of federally assisted services to persons with limited English proficiency.

IV. Who is a limited English proficient individual?

Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English can be limited English proficient, or ''LEP,'' entitled to language assistance with respect to a particular type of service, benefit, or encounter.

Examples of populations likely to include LEP persons who are encountered and/or served by DoD recipients and should be considered when planning language services include, but are not limited to:

—Persons who are included in DoD-funded medical studies;
—Persons who participate in support groups that are funded by DoD;
—Persons who encounter or who are eligible to receive benefits or services from a state or local agency that is a recipient of DoD assistance;
—Persons who encounter or are eligible to participate in portions of programs or activities of an institution of higher learning that receives DoD assistance;
—Persons who are served by programs or activities run by recipients of DoD-donated land;
—Persons who attend community meetings or other public meetings organized by DoD recipients;[4]
—Other LEP persons who encounter or are eligible to receive benefits or services from DoD recipients; and
—Parents and family members of the above.

V. How does a recipient determine the extent of its obligation to provide LEP services?

Recipients are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. While designed to be a flexible and fact-dependent standard, the starting point is an individualized assessment that balances the following four factors: (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or activity or portion thereof; (2) the frequency with which LEP individuals come in contact with the program or activity or portion thereof; (3) the nature and importance of the program, activity, service, benefit, or information provided by the recipient to people's lives; and (4) the resources available to the grantee/recipient and costs. As indicated above, the intent of this Guidance is to suggest a balance that ensures meaningful access by LEP persons to critical services while not imposing undue burdens on small business, small local governments, or small nonprofits.

After applying the above four-factor analysis, a recipient may conclude that different language assistance measures are sufficient for the different types of encounters. For instance, some portions of a recipient's program or activity will be more important than others and/or have greater impact on or contact with LEP persons, and thus may require more in the way of language assistance. The flexibility that recipients have in addressing the needs of the LEP populations they serve does not diminish, and should not be used to minimize, the obligation that those needs be addressed. DoD recipients should apply the following four factors to the various kinds of contacts that they have with the public to assess language needs and decide what reasonable steps they should take to ensure meaningful access for LEP persons.

(1) The Number or Proportion of LEP Persons Served or Encountered in the Eligible Service Population

One factor in determining what language services recipients should provide is the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population. The greater the number or proportion of these LEP persons, the more likely language services are needed. Ordinarily, persons ''eligible to be served or likely to be encountered by'' a recipient's program or activity are those who are served or encountered in the eligible service population. This population will be program-specific, and includes persons who are in the geographic area that has been approved by a Federal grant agency as the recipient's service area. However, where, for instance, a regional office of a nonprofit that provides support services for cancer survivors serves a large LEP population, the appropriate service area is most likely the regional office of the nonprofit organization, and not the entire population served by the non-profit. Where no service area has previously been approved, the relevant service area may be that which is approved by state or local authorities or designated by the recipient itself, provided that these designations do not themselves discriminatorily exclude certain populations. In addition, there may be circumstances in which recipients appropriately identify English language skills as an eligibility criterion, such as in the case of a university English language masters program. But other portions of the program, such as a university daycare or clinic open to the public, or various public community events, cultural exchanges, campus security, or other portions of a recipient's operations, may have a more significant LEP population that may be encountered or is eligible to participate. When considering the number or proportion of LEP individuals in a service area, recipients should consider LEP parent(s) when their English-proficient or LEP minor children and dependents encounter the recipient's program or activity.

[3] However, if a Federal agency were to decide to terminate Federal funds based on noncompliance with Title VI or its regulations, only funds directed to the particular program or activity that is out of compliance would be terminated. 42 U.S.C. 2000d–1.

[4] For additional guidance on providing meaningful access to LEP individuals at public hearings or meetings, *see* Department of Housing and Urban Development Notice of Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 68 FR 70980 (Dec. 19, 2003) (available at *http://www.lep.gov*).

Recipients should first examine their prior experiences with LEP encounters and determine the breadth and scope of language services that were needed. In conducting this analysis, it is important to include language minority populations that are eligible for their programs or activities but may be underserved because of existing language barriers.

Other data in addition to prior experiences should be consulted to refine or validate a recipient's prior experience, including the latest census data for the area served, data from school systems and from community organizations, and data from state and local governments.[5] Community agencies, school systems, religious organizations, legal aid entities, and others can often assist in identifying populations for whom outreach is needed and who would benefit from the recipients' programs and activities were language services provided.

(2) The Frequency With Which LEP Individuals Come in Contact With the Program

Recipients should assess, as accurately as possible, the frequency with which they have or should have contact with an LEP individual from different language groups seeking assistance. The more frequent the contact with a particular language group, the more likely that enhanced language services in that language are needed. The steps that are reasonable for a recipient that serves an LEP person on a one-time basis will be very different than those expected from a recipient that serves LEP persons daily. It is also advisable to consider the frequency of different types of language contacts. For example, frequent contacts with Spanish-speaking people who are LEP may require certain assistance in Spanish. Less frequent contact with different language groups may suggest a different and less intensified solution. If an LEP individual accesses a program or service on a daily basis, a recipient has greater duties than if the same individual's program or activity contact is unpredictable or infrequent. But even recipients that serve LEP persons on an unpredictable or infrequent basis should use this balancing analysis to determine what to do if an LEP individual seeks services under the program in question. This plan need not be intricate. It may be as simple as being prepared to use one of the commercially-available telephonic interpretation services to obtain immediate interpreter services. In applying this standard, recipients should take care to consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups.

(3) The Nature and Importance of the Program, Activity, or Service Provided by the Program

The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed. A recipient needs to determine whether denial or delay of access to services or information could have serious, economic, safety, education or even life-threatening implications for the LEP individual. For instance, the obligations of a federally assisted entity providing medical advice or services differ from those of a federally assisted program providing purely recreational activities (however, if a language barrier could result in denial or delay of access to important benefits, services, or information, or have a serious implication for a LEP person who participates in the recreational activity, the legal obligation to provide language services in that circumstance would be higher). Decisions by a Federal, state, or local entity to make an activity compulsory or required in order to maintain or receive an important benefit or service or preserve a right, such as access to medical care, appeals procedures, or compliance with rules and responsibilities, can serve as strong evidence of the program's importance.

(4) The Resources Available to the Recipient and Costs

A recipient's level of resources and the costs that would be imposed on it may have an impact on the nature of the steps it should take. Smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets. In addition, ''reasonable steps'' may cease to be reasonable where the costs imposed substantially exceed the benefits.

Resource and cost issues, however, can often be reduced by technological advances; the sharing of language assistance materials and services among and between recipients, advocacy groups, and Federal grant agencies; and reasonable business practices. Where appropriate, training bilingual staff to act as interpreters and translators, information sharing through industry groups, telephonic and video conferencing interpretation services, pooling resources and standardizing documents to reduce translation needs, using qualified translators and interpreters to ensure that documents need not be ''fixed'' later and that inaccurate interpretations do not cause delay or other costs, centralizing interpreter and translator services to achieve economies of scale, or the formalized use of qualified community volunteers, for example, may help reduce costs.[6]

Recipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns. Large entities and those entities serving a significant number or proportion of LEP persons should ensure that their resource limitations are well-substantiated before using this factor as a reason to limit language assistance. Such recipients may find it useful to be able to articulate, through documentation or in some other reasonable manner, their process for determining that language services would be limited based on resources or costs.

This four-factor analysis necessarily implicates the ''mix'' of LEP services required. Recipients have two main ways to provide language services: Oral interpretation either in person or via telephone interpretation service (hereinafter ''interpretation'') and written translation (hereinafter ''translation''). Oral interpretation can range from on-site interpreters for critical services provided to a high volume of LEP persons to access through commercially-available telephonic interpretation services. Written translation, likewise, can range from translation of an entire document to translation of a short description of the document. In some cases, language services should be made available on an expedited basis while in others the LEP individual may be referred to another office of the recipient for language assistance.

The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. For instance, a job training center that was

[5] The focus of the analysis is on lack of English proficiency, not the ability to speak more than one language. Note that demographic data may indicate the most frequently spoken languages other than English and the percentage of people who speak that language who speak or understand English less than well. Some of the most commonly spoken languages other than English may be spoken by people who are also overwhelmingly proficient in English. Thus, they may not be the languages spoken most frequently by limited English proficient individuals. When using demographic data, it is important to focus in on the languages spoken by those who are not proficient in English.

[6] Small recipients with limited resources may find that entering into a telephonic interpretation service contract will prove cost effective.

created three years ago after DoD donated land from a former military base serves a large Hispanic population. The job training center may need immediate oral interpreters to be available and should give serious consideration to hiring some bilingual staff if they have not done so already. By contrast, the center may be able to rely on a telephonic interpretation service to assist those LEP individuals who speak a language that is not commonly encountered by the center. Regardless of the type of language service provided, quality and accuracy of those services can be critical in order to avoid serious consequences to the LEP person and to the recipient. Recipients have substantial flexibility in determining the appropriate mix.

VI. Selecting Language Assistance Services

Academic institutions, nonprofit organizations, and other recipients of DoD funds have a long history of interacting with people with varying language backgrounds and capabilities. In fact, many DoD recipients choose not only to provide interpretation and translation services, but also to provide English-language training for LEP individuals. This approach is consistent with the purpose of Executive Order 13166. DoD's goal is to continue to encourage these efforts and to encourage the sharing of such promising practices among recipients, as well as to ensure meaningful linguistic access for LEP individuals.

Recipients have two main ways to provide language services: Oral and written language services. Quality and accuracy of the language service is critical in order to avoid serious consequences to the LEP person and to the recipient.

A. Oral Language Services (Interpretation)

Interpretation is the act of listening to something in one language (source language) and orally translating it into another language (target language). Where interpretation is needed and is reasonable, recipients should consider some or all of the following options for providing competent interpreters in a timely manner:

—When providing oral assistance, recipients should ensure competency of the language service provider, no matter which of the strategies outlined below are used. Competency requires more than self-identification as bilingual. Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a different language when communicating information directly in that language, but not be competent to interpret in and out of English. Likewise, they may not be able to do written translations.

—Competency to interpret, however, does not necessarily mean formal certification as an interpreter, although certification is helpful. When using interpreters, recipients should ensure that they:

—Demonstrate proficiency in and ability to communicate information accurately in both English and in the other language and identify and employ the appropriate mode of interpreting (*e.g.,* consecutive, simultaneous, summarization, or sight translation);

—Have knowledge in both languages of any specialized terms or concepts peculiar to the entity's program or activity and of any particularized vocabulary and phraseology used by the LEP person;[7] and understand and follow confidentiality and impartiality rules to the same extent the recipient employee for whom they are interpreting and/or to the extent their position requires;

—Understand and adhere to their role as interpreters without deviating into a role as counselor, legal advisor, or other roles, particularly in a formal context such as a hearing.

While quality and accuracy of language services is critical, the quality and accuracy of language services is nonetheless part of the appropriate mix of LEP services required. The quality and accuracy of language services provided during the medical screening of a LEP individual must be extraordinarily high, while the quality and accuracy of language services provided at a university's social program need not meet the same exacting standards.

Finally, when interpretation is needed and is reasonable, it should be provided in a timely manner. To be meaningfully effective, language assistance should be timely. While there is no single definition for ''timely'' applicable to all types of interactions at all times by all types of recipients, one clear guide is that the language assistance should be provided at a time and place that avoids the effective denial of the service, benefit, or right at issue or the imposition of an undue burden on or delay in important rights, benefits, or services to the LEP person. For example, when the timeliness of services is important, such as with certain activities of DoD recipients providing health, economic, educational, and safety services on DoD-donated land, a recipient would likely not be providing meaningful access if it had one bilingual staffer available one day a week to provide the service. Such conduct would likely result in delays for LEP persons that would be significantly greater than those for English proficient persons. Conversely, where access to or exercise of a service, benefit, or right is not effectively precluded by a reasonable delay, language assistance can likely be delayed for a reasonable period.

Hiring Bilingual Staff. When particular languages are encountered often, hiring bilingual staff offers one of the best and often most economical, options. Recipients can, for example, fill public contact positions, such as receptionists, guards, or social workers, with staff who are bilingual and competent to communicate directly with LEP persons in their language. If bilingual staff are also used to interpret between English speakers and LEP persons, or to orally interpret written documents from English into another language, they should be competent in the skill of interpreting. Being bilingual does not necessarily mean that a person has the ability to interpret. In addition, there may be times when the role of the bilingual employee may conflict with the role of an interpreter. Effective management strategies, including any appropriate adjustments in assignments and protocols for using bilingual staff, can ensure that bilingual staff are fully and appropriately utilized. When bilingual staff cannot meet all of the language service obligations of the recipient, the recipient should turn to other options.

Hiring Staff Interpreters. Hiring interpreters may be most helpful where there is a frequent need for interpreting services in one or more languages. Depending on the facts, sometimes it may be necessary and reasonable to provide on-site interpreters to provide accurate and meaningful communication with an LEP person.

Contracting for Interpreters. Contract interpreters may be a cost-effective option when there is no regular need for a particular language skill. In addition to commercial and other private

[7] Many languages have ''regionalisms,'' or differences in usage. For instance, a word that may be understood to mean something in Spanish for someone from Cuba may not be so understood by someone from Mexico. In addition, because there may be languages which do not have an appropriate direct interpretation of some terms, the interpreter or translator should be so aware and be able to provide the most appropriate interpretation. The interpreter should make the recipient aware of the issue and the interpreter and recipient can then work to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate.

providers, many community-based organizations and mutual assistance associations provide interpretation services for particular languages. Contracting with and providing training regarding the recipient's programs and processes to these organizations can be a cost-effective option for providing language services to LEP persons from those language groups.

Using Telephone Interpreter Lines. Telephone interpreter service lines often offer speedy interpreting assistance in many different languages. They may be particularly appropriate where the mode of communicating with an English proficient person would also be over the phone. Although telephonic interpretation services are useful in many situations, it is important to ensure that, when using such services, the interpreters used are competent to interpret any technical or legal terms specific to a particular program that may be important parts of the conversation. Nuances in language and non-verbal communication can often assist an interpreter and cannot be recognized over the phone. Video teleconferencing may sometimes help to resolve this issue where appropriate or necessary. In addition, where documents are being discussed, it is important to give telephonic interpreters adequate opportunity to review the document prior to the discussion and any logistical problems should be addressed.

Using Community Volunteers. In addition to consideration of bilingual staff, staff interpreters, or contract interpreters (either in-person or by telephone) as options to ensure meaningful access by LEP persons, use of recipient-coordinated community volunteers, working with, for instance, community-based organizations may provide a cost-effective supplemental language assistance strategy under appropriate circumstances. They may be particularly useful in providing language access for a recipient's less critical programs and activities. To the extent the recipient relies on community volunteers, it is often best to use volunteers who are trained in the information or services of the program and can communicate directly with LEP persons in their language. Just as with all interpreters, community volunteers used to interpret between English speakers and LEP persons, or to orally translate documents, should be competent in the skill of interpreting and knowledgeable about applicable confidentiality and impartiality rules. Recipients should consider formal arrangements with community-based organizations that provide volunteers to address these concerns and to help ensure that services are available more regularly.

Use of Family and Friends and Informal Interpreters. Although recipients should not plan to rely on an LEP person's family members, friends, or other informal interpreters to provide meaningful access to important programs and activities, where LEP persons so desire, they should be permitted to use, at their own expense, an interpreter of their own choosing (whether a professional interpreter, family member, friend, or other person) in place of or as a supplement to the free language services expressly offered by the recipient. LEP persons may feel more comfortable when a trusted family member or friend acts as an interpreter. The recipient should take care to ensure that the LEP person's choice is voluntary, that the LEP person is aware of the possible problems if the preferred interpreter is a minor child, and that the LEP person knows that a competent interpreter could be provided by the recipient at no cost. In addition, in exigent circumstances that are not reasonably foreseeable, temporary use of interpreters not provided by the recipient may be necessary. However, with proper planning and implementation, recipients should be able to avoid most such situations.

Recipients, however, should take special care to ensure that informal interpreters are appropriate in light of the circumstances and subject matter of the program, service or activity, including protection of the recipient's own administrative or enforcement interest in accurate interpretation. In many circumstances, family members (especially children), friends, or other informal interpreters are not competent to provide quality and accurate interpretations. Issues of confidentiality, privacy, or conflict of interest may also arise. LEP individuals may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing information to a family member, friend, or member of the local community. In addition, such informal interpreters may have a personal connection to the LEP person or an undisclosed conflict of interest. For these reasons, when oral language services are necessary, recipients should generally offer competent interpreter services free of cost to the LEP person. For DoD recipient programs and activities, this is particularly true in situations in which health, safety, economic livelihood, or access to important benefits and services are at stake, or when mistakes in interpretation or translation could have other serious consequences to the LEP person.

While issues of competency, confidentiality, and conflict of interest in the use of family members, friends, or other informal interpreters often make their use inappropriate, the use of these individuals as interpreters may be an appropriate option where proper application of the four factors would lead to a conclusion that recipient-provided services are not necessary. An example of this is a voluntary educational tour of a DoD facility offered to the public. There, the importance and nature of the activity may be relatively low and unlikely to implicate issues of confidentiality, conflict of interest, or the need for accuracy. In addition, the resources needed and costs of providing language services may be high, and the number or proportion and frequency of LEP encounters may be quite low. In such a setting, an LEP person's use of family, friends, or others to interpret may be appropriate. However, children should not be used as interpreters.

B. Written Language Services (Translation)

Translation is the replacement of a written text from one language (source language) into an equivalent written text in another language (target language).

What Documents Should Be Translated? After applying the four-factor analysis, a recipient may determine that an effective LEP plan for its particular program or activity includes the translation of vital written materials into the language of each frequently-encountered LEP group eligible to be served and/or likely to be affected by the recipient's program.

Such written materials could include, for example:

—Consent, application, and complaint forms.
—Intake forms with the potential for important consequences.
—Written notices of rights, denial, loss, or decreases in benefits or services, and other hearings.
—Notices advising LEP persons of free language assistance.
—Written tests that do not assess English language competency, but test competency for a particular license, job, or skill for which knowing English is not required.
—Applications to participate in a recipient's program or activity or to receive recipient benefits or services.

Whether or not a document (or the information it solicits) is ''vital'' may depend upon the importance of the program, information, encounter, or

service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner. For instance, a flyer announcing a soccer program run by a city agency at a former military base that was donated to that agency would not generally be considered vital, whereas written information about the application process for new affordable housing provided by the agency at that same base should likely be considered vital. Where appropriate, recipients are encouraged to create a plan for consistently determining, over time and across its various activities, what documents are ''vital'' to the meaningful access of the LEP populations they serve.

Categorizing a document as vital or non-vital is sometimes difficult, especially in the case of outreach materials like brochures or other information on rights and services. Awareness of rights or services is an important part of ''meaningful access.'' Lack of awareness that a particular program, right, or service exists may effectively deny LEP individuals meaningful access. Thus, where a recipient is engaged in community outreach activities in furtherance of its activities, it should regularly assess the needs of the populations frequently encountered or affected by the program or activity to determine whether certain critical outreach materials should be translated. Community organizations may be helpful in determining what outreach materials may be most helpful to translate. In addition, the recipient should consider whether translations of outreach material may be made more effective when done in tandem with other outreach methods, including utilizing the ethnic media, schools, and religious and community organizations to spread a message.

Sometimes a document includes both vital and non-vital information. This may be the case when the document is very large. It may also be the case when the title and a phone number for obtaining more information on the contents of the document in frequently-encountered languages other than English is critical, but the document is sent out to the general public and cannot reasonably be translated into many languages and/or the language of the recipient is not known. Thus, vital information may include, for instance, the provision of information in appropriate languages other than English regarding where a LEP person might obtain an interpretation or translation of the document.

Into What Languages Should Documents be Translated? The languages spoken by the LEP individuals with whom the recipient has contact determine the languages into which vital documents should be translated. A distinction should be made, however, between languages that are frequently encountered by a recipient and less commonly-encountered languages. Many recipients serve communities in large cities or across the country. They regularly serve LEP persons who speak dozens and sometimes over 100 different languages. To translate all written materials into all of those languages is unrealistic, for although recent technological advances have made it easier for recipients to store and share translated documents, such an undertaking could incur substantial costs and require substantial resources. Nevertheless, well-substantiated claims of lack of resources to translate all vital documents into dozens of languages do not necessarily relieve the recipient of the obligation to translate those documents into at least several of the more frequently-encountered languages and to set benchmarks for continued translations into the remaining languages over time. As a result, the extent of the recipient's obligation to provide written translations of documents should be determined by the recipient on a case-by-case basis, looking at the totality of the circumstances in light of the four-factor analysis. Because translation is a one-time expense, consideration should be given to whether the upfront cost of translating a document (as opposed to oral interpretation) should be amortized over the likely lifespan of the document when applying this four-factor analysis.

Safe Harbor. Many recipients would like to ensure with greater certainty that they comply with their obligations to provide written translations in languages other than English. Paragraphs (a) and (b) below outline the circumstances that can provide a ''safe harbor'' for recipients regarding the requirements for translation of written materials. A ''safe harbor'' means that if a recipient provides written translations under these circumstances, such action will be considered strong evidence of compliance with the recipient's written-translation obligations.

The failure to provide written translations under the circumstances outlined in paragraphs (a) and (b) does not mean there is non-compliance. Rather, they provide a common starting point for recipients to consider whether and at what point the importance of the service, benefit, or activity involved; the nature of the information sought; and the number or proportion of LEP persons served call for written translations of commonly-used forms into frequently-encountered languages other than English. Thus, these paragraphs merely provide a guide for recipients that would like greater certainty of compliance than can be provided by a fact-intensive, four-factor analysis.

Example: Even if the safe harbors are not used, if written translation of a certain document(s) would be so burdensome as to defeat the legitimate objectives of its program, the translation of the written materials is not necessary. Other ways of providing meaningful access, such as effective oral interpretation of certain vital documents, might be acceptable under such circumstances.

When determining whether to provide translated documents or oral language services, recipients should consider the literacy rates of the LEP communities they serve. For example, certain languages (e.g., Hmong) until recently have been oral and not written, thus a high percentage of such LEP speakers may be unable to read translated documents or written instructions. Data analysis, utilizing information from a range of community groups and other sources, may provide a recipient with insight into whether translation of vital documents meets the goal of providing meaningful access, or whether it makes more sense to focus those resources on oral, and, where appropriate, graphics- or visually-based information exchange.

Safe Harbor. The following actions will be considered strong evidence of compliance with the recipient's written-translation obligations:

(a) DoD recipient provides written translations of vital documents for each eligible LEP language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or

(b) If there are fewer than 50 persons in a language group that reaches the five percent trigger in (a), the recipient does not translate vital written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

These safe harbor provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP individuals through competent oral interpreters where oral language services are needed and are reasonable. For example, even when there is only one LEP individual who is participating

in a medical study, vital information should be provided orally in a language that person understands, even if it is not translated in writing.

Competence of Translators. As with oral interpreters, translators of written documents should be competent. Many of the same considerations apply. However, the skill of translating is very different from the skill of interpreting, and a person who is a competent interpreter may or may not be competent to translate.

Particularly where legal or other vital documents are being translated, competence can often be achieved by use of certified translators. Certification or accreditation may not always be possible or necessary.[8] Competence can often be ensured by having a second, independent translator ''check'' the work of the primary translator. Alternatively, one translator can translate the document, and a second, independent translator could translate it back into English to check that the appropriate meaning has been conveyed. This is called ''back translation.''

Translators should understand the expected reading level of the audience and, where appropriate, have fundamental knowledge about the target language group's vocabulary and phraseology. Sometimes direct translation of materials results in a translation that is written at a much more difficult level than the English language version or has no relevant equivalent meaning. Community organizations may be able to help consider whether a document is written at an appropriate level for the audience. Also, there may be languages which do not have an appropriate direct translation of some terms. The translator should make the recipient aware of this. Recipients can then work with translators to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate. Likewise, consistency in the words and phrases used to translate terms of art, legal, or other technical concepts helps avoid confusion by LEP individuals and may reduce costs. Creating or using already-created glossaries of commonly-used terms may be useful for LEP persons and translators and cost effective for the recipient. Providing translators with examples of previous accurate translations of similar material by the recipient, other recipients, or Federal agencies may be helpful.

While quality and accuracy of translation services is critical, the quality and accuracy of translation services is nonetheless part of the appropriate mix of LEP services required. For instance, documents that are simple and have no legal or other consequence for LEP persons who rely on them may call for translators that are less skilled than important documents with legal or other information upon which reliance has important consequences (including, e.g., information or documents of DoD recipients regarding certain health, economic, education, and safety services). The permanent nature of written translations, however, imposes additional responsibility on the recipient to ensure that the quality and accuracy permit meaningful access by LEP persons.

VII. Elements of Effective Plan on Language Assistance for LEP Persons

After completing the four-factor analysis and deciding what language assistance services are appropriate, a recipient should develop an implementation plan to address the identified needs of the LEP populations they serve. Recipients have considerable flexibility in developing this plan. The development and maintenance of a periodically-updated written plan on language assistance for LEP persons (''LEP plan'') for use by recipient employees serving the public will likely be the most appropriate and cost-effective means of documenting compliance and providing a framework for the provision of timely and reasonable language assistance. Moreover, such written plans would likely provide additional benefits to a recipient's managers in the areas of training, administration, planning, and budgeting. These benefits should lead most recipients to document in a written LEP plan their language assistance services, and how staff and LEP persons can access those services. Despite these benefits, certain DoD recipients, such as recipients serving very few LEP persons and recipients with very limited resources, may choose not to develop a written LEP plan. However, the absence of a written LEP plan does not obviate the underlying obligation to ensure meaningful access by LEP persons to a recipient's program or activities. Accordingly, in the event that a recipient elects not to develop a written plan, it should consider alternative ways to articulate in some other reasonable manner a plan for providing meaningful access. Entities having significant contact with LEP persons, such as schools, religious organizations, community groups, and groups working with new immigrants can be very helpful in providing important input into this planning process from the beginning.

The following five steps may be helpful in designing an LEP plan and are typically part of effective implementation plans.

(1) Identifying LEP Individuals Who Need Language Assistance

The first two factors in the four-factor analysis require an assessment of the number or proportion of LEP individuals eligible to be served or encountered and the frequency of encounters. This requires recipients to identify LEP persons with whom it has contact.

One way to determine the language of communication is to use language identification cards (or ''I speak cards''), which invite LEP persons to identify their language needs to staff. Such cards, for instance, might say ''I speak Spanish'' in both Spanish and English, ''I speak Vietnamese'' in both English and Vietnamese, etc. To reduce costs of compliance, the Federal government has made a set of these cards available on the Internet. The Census Bureau ''I speak card'' can be found and downloaded at *http://www.usdoj.gov/crt/cor/13166.htm* and *www.lep.gov*. When records are normally kept of past interactions with members of the public, the language of the LEP person can be included as part of the record. In addition to helping employees identify the language of LEP persons they encounter, this process will help in future applications of the first two factors of the four-factor analysis. In addition, posting notices in commonly encountered languages notifying LEP persons of language assistance will encourage them to self-identify.

(2) Language Assistance Measures

An effective LEP plan would likely include information about the ways in which language assistance will be provided. For instance, recipients may want to include information on at least the following:

—Types of language services available.
—How staff can obtain those services.
—How to respond to LEP callers.
—How to respond to written communications from LEP persons.
—How to respond to LEP individuals who have in-person contact with recipient staff.
—How to ensure competency of interpreters and translation services.

[8] For those languages in which no formal accreditation currently exists, a particular level of membership in a professional translation association can provide some indicator of professionalism.

(3) Training Staff

Staff should know their obligations to provide meaningful access to information and services for LEP persons. An effective LEP plan would likely include training to ensure that:

—Staff know about LEP policies and procedures.

—Staff having contact with the public (or those in a recipient's custody) are trained to work effectively with in-person and telephone interpreters.

Recipients may want to include this training as part of the orientation for new employees. It is important to ensure that all employees in public contact positions (or having contact with those in a recipient's custody) are properly trained. Recipients have flexibility in deciding the manner in which the training is provided. The more frequent the contact with LEP persons, the greater the need will be for in-depth training. Staff with little or no contact with LEP persons may only have to be aware of an LEP plan. However, management staff, even if they do not interact regularly with LEP persons, should be fully aware of and understand the plan so they can reinforce its importance and ensure its implementation by staff.

(4) Providing Notice to LEP Persons

Once an agency has decided, based on the four factors, that it will provide language services, it is important for the recipient to let LEP persons know that those services are available and that they are free of charge. Recipients should provide this notice in a language LEP persons will understand. Examples of notification that recipients should consider include:

Posting signs in intake areas and other entry points. When language assistance is needed to ensure meaningful access to information and services, it is important to provide notice in appropriate languages in intake areas or initial points of contact so that LEP persons can learn how to access those language services. This is particularly true in areas with high volumes of LEP persons seeking access to certain health, educational, safety, or economic services or activities run by DoD recipients. For instance, signs in intake offices could state that free language assistance is available. The signs should be translated into the most common languages encountered. They should explain how to get the language help.[9]

—Stating in outreach documents that language services are available from the agency. Announcements could be in, for instance, brochures, booklets, and in outreach and recruitment information. These statements should be translated into the most common languages and could be ''tagged'' onto the front of common documents.

—Working with community-based organizations and other stakeholders to inform LEP individuals of the recipients' services, including the availability of language assistance services.

—Using a telephone voice mail menu. The menu could be in the most common languages encountered. It should provide information about available language assistance services and how to get them.

—Including notices in local newspapers in languages other than English.

—Providing notices on non-English-language radio and television stations about the available language assistance services and how to get them.

—Presentations and/or notices at schools and religious organizations.

(5) Monitoring and Updating the LEP Plan

Recipients should, where appropriate, have a process for determining, on an ongoing basis, whether new documents, programs, services, and activities need to be made accessible for LEP individuals, and they may want to provide notice of any changes in services to the LEP public and to employees. In addition, recipients should consider whether changes in demographics, types of services, or other needs require annual reevaluation of their LEP plan. Less frequent reevaluation may be more appropriate where demographics, services, and needs are more static. One good way to evaluate the LEP plan is to seek feedback from the community.

In their reviews, recipients may want to consider assessing changes in:

—Current LEP populations in service area or population affected or encountered.

—Frequency of encounters with LEP language groups.

—Nature and importance of activities to LEP persons.

—Availability of resources, including technological advances and sources of additional resources, and the costs imposed.

—Whether existing assistance is meeting the needs of LEP persons.

—Whether staff knows and understands the LEP plan and how to implement it.

—Whether identified sources for assistance are still available and viable.

In addition to these five elements, effective plans set clear goals, management accountability, and opportunities for community input and planning throughout the process.

VIII. Voluntary Compliance Effort

The goal for Title VI and Title VI regulatory enforcement is to achieve voluntary compliance. The requirement to provide meaningful access to LEP persons is enforced and implemented by DoD through the procedures identified in the Title VI regulations. These procedures include complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance.

The Title VI regulations provide that DoD will investigate whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI or its regulations. If the investigation results in a finding of compliance, DoD will inform the recipient in writing of this determination, including the basis for the determination. DoD uses voluntary mediation to resolve most complaints. However, if a case is fully investigated and results in a finding of noncompliance, DoD must inform the recipient of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance. It must attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, DoD must secure compliance through the termination of Federal assistance after DoD recipient has been given an opportunity for an administrative hearing and/or by referring the matter to a DOJ litigation section to seek injunctive relief or pursue other enforcement proceedings. DoD engages in voluntary compliance efforts and provides technical assistance to recipients at all stages of an investigation. During these efforts, DoD proposes reasonable timetables for achieving compliance and consults with and assists recipients in exploring cost-effective ways of coming into compliance. In determining a recipient's compliance with the Title VI regulations, DoD's primary concern is to ensure that the recipient's policies and procedures provide meaningful access for LEP persons to the recipient's programs and activities.

While all recipients must work toward building systems that will ensure access for LEP individuals, DoD

[9] The Social Security Administration has made such signs available at *http://www.ssa.gov/multilanguage/langlist1.htm.* These signs could, for example, be modified for recipient use.

acknowledges that the implementation of a comprehensive system to serve LEP individuals is a process and that a system will evolve over time as it is implemented and periodically reevaluated. As recipients take reasonable steps to provide meaningful access to federally assisted programs and activities for LEP persons, DoD will look favorably on intermediate steps recipients take that are consistent with this Guidance, and that, as part of a broader implementation plan or schedule, move their service delivery system toward providing full access to LEP persons. This does not excuse noncompliance but instead recognizes that full compliance in all areas of a recipient's activities and for all potential language minority groups may reasonably require a series of implementing actions over a period of time. However, in developing any phased implementation schedule, DoD recipients should ensure that the provision of appropriate assistance for significant LEP populations or with respect to activities having a significant impact on the health, safety, legal rights, education, economic status, or livelihood of beneficiaries is addressed first. Recipients are encouraged to document their efforts to provide LEP persons with meaningful access to federally assisted programs and activities.

[FR Doc. 2013–31302 Filed 12–30–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. CR–002]

Decision and Order Granting a Waiver to Hussmann From the Department of Energy Commercial Refrigerator, Freezer and Refrigerator-Freezer Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: The U.S. Department of Energy (DOE) gives notice of the decision and order (Case No. CR–002) that grants to Hussmann Corporation (Hussmann) a waiver from the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of its commercial refrigerators for the basic models set forth in its petition for waiver (petition). Hussmann claims in its petition that the specified basic models cannot be tested in accordance with the DOE test procedure for commercial refrigeration equipment because the equipment cannot operate at the specified integrated average product temperature of 38 °F ± 2 °F. Under today's decision and order, Hussmann shall be required to test and rate the commercial refrigerators specified in the petition at the lowest integrated average temperature at which the refrigerators can operate of 41 °F ± 2 °F, which is consistent with the lowest application product temperature provision in the DOE test procedure.

DATES: This Decision and Order is effective December 31, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Office, Mail Stop EE–5B, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *Bryan.Berringer@ee.doe.gov.*

Ms. Jennifer Tiedeman, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0103. Telephone: (202) 287–6111. Email: *mailto:Jennifer.Tiedeman@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE issues notice of this Decision and Order in accordance with Title 10 of the Code of Federal Regulations (10 CFR) 431.401(f)(4). In this Decision and Order, DOE grants Hussmann a waiver for the commercial refrigerators specified in its petition submitted on December 7, 2011. Hussmann must test and rate this equipment at the lowest integrated average temperature at which the commercial refrigerators can operate, which is consistent with the lowest application product temperature provision in the DOE test procedure at 10 CFR 431.64(b)(3)(A).

Today's decision requires Hussmann to make representations concerning the energy efficiency of this equipment consistent with the provisions and restrictions of the alternate test procedure in the Decision and Order below, and the representations must fairly disclose the test results. (42 U.S.C. 6314(d)) The same standard applies to distributors, retailers, and private labelers when making representations of the energy efficiency of this equipment.

Issued in Washington, DC, on December 23, 2013.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: Hussmann Corporation (Hussmann) (Case No. CR–002).

I. Background and Authority

Title III, Part C of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6311–6317), established the Energy Conservation Program for certain industrial equipment, which includes commercial refrigeration equipment, the focus of this notice.[1] Part C specifically includes definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers. (42 U.S.C. 6316) With respect to test procedures, Part C authorizes the Secretary of Energy (the Secretary) to prescribe test procedures that are reasonably designed to produce results that measure energy efficiency, energy use, and estimated annual operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

Section 343(a)(6)(C) of EPCA directs DOE to develop test procedures to establish the appropriate rating temperatures for products for which standards will be established under section 343(a)(6), including (1) ice-cream freezers; (2) commercial refrigerators, freezers, and refrigerator-freezers with a self-contained condensing unit without doors; and (3) commercial refrigerators, freezers, and refrigerator-freezers with a remote condensing unit. Other provisions of section 343(a)(6) provide DOE with additional authority to establish and amend test procedures for commercial refrigeration equipment. (42 U.S.C. 6314(a)(6)(C)) On December 8, 2006, DOE published a final rule adopting test procedures for commercial refrigeration equipment. 71 FR 71340. Title 10 of the *Code of Federal Regulations* (10 CFR) 431.64 directs manufacturers of commercial refrigerators, freezers and refrigerator-freezers to use certain sections of Air-Conditioning and Refrigeration Institute (ARI) Standard 1200–2006, ''Performance Rating of Commercial Refrigerated Display

[1] For editorial reasons, upon codification in the U.S. Code, Part C was re-designated Part A–1.

Merchandisers and Storage Cabinets'' when measuring the energy consumption of this equipment. On January 9, 2009, DOE established energy conservation standards for certain classes of commercial refrigerators, effective January 1, 2012, and provided that the test procedures at 10 CFR 431.64 apply to that equipment. 74 FR 1092, 96. The basic models included in Hussmann's petition are subject to the applicable standards established in that rulemaking and are therefore required to be tested and rated according to the prescribed DOE test procedure as of January 1, 2012.

DOE's regulations for covered products and equipment permit a person to seek a waiver from the test procedure requirements for covered commercial equipment if at least one of the following conditions is met: (1) The petitioner's basic model contains one or more design characteristics that prevent testing according to the prescribed test procedures; or (2) the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. 10 CFR 431.401(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. The Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 431.401(f)(4). Waivers remain in effect according to the provisions of 10 CFR 431.401(g).

II. Hussmann's Petition for Waiver: Assertions and Determinations

On December 7, 2011, Hussmann submitted a petition for waiver from the DOE test procedure applicable to commercial refrigerators, freezers and refrigerator-freezers set forth in 10 CFR 431.64. Hussmann requested the waiver for its commercial refrigerators intended to hold and display bulk produce (whole, uncut fresh fruits and/or vegetables). These refrigerators are manufactured in both ''remote'' and ''self-contained'' versions. This equipment is classified as either ''commercial refrigerator, freezer, and refrigerator-freezer with a self-contained condensing unit and without doors'' (category (viii) in the table listing some of the applicable test procedure requirements at 10 CFR 431.64(b)(2)) or ''commercial refrigerator, freezer, and refrigerator-freezer with a remote condensing unit'' (category (ix) of the above table). The applicable test procedure for this equipment is specified in 10 CFR 431.64(b), which incorporates by reference ARI Standard 1200–2006.

Hussmann seeks a waiver from the applicable test procedure under 10 CFR 431.64 on the grounds that its commercial refrigerators contain design characteristics that prevent testing according to the current DOE test procedure. Specifically, Hussmann asserts that the refrigerators are not able to operate at the specified integrated average temperature of 38 °F for medium temperature applications. Consequently, Hussmann requested that DOE grant a waiver from the applicable test procedure, allowing the specified products to be tested at 49 °F.

The Department articulated its position regarding basic models of commercial refrigeration equipment that are not capable of operating at the required integrated average temperature specified by the DOE test procedure in a test procedure final rule published on February 21, 2012. 77 FR 10292. Specifically, to qualify to use the lowest application product temperature for a certain piece of equipment, a manufacturer should be confident that any case tested under that equipment rating could achieve the specified lowest application product temperature within +/− 2 °F and could not be tested at the rating temperature (i.e., integrated average temperature specified by the DOE test procedure) for the given equipment class. Further, in the final rule, DOE clarified that, for many pieces of equipment, the lowest application product temperature that should be used for testing will be the lowest temperature setting on the unit's thermostat. 77 FR 10292, 10303 (Feb. 21, 2012).

DOE agrees with Hussmann's assertion that the basic models identified in its petition cannot be operated at the associated rating conditions currently specified for commercial refrigerators in the DOE test procedures given the available data. DOE has confirmed with Hussmann that the lowest temperature these basic models are capable of operating would be 41 °F, however (not the 49 °F requested by Hussmann). In light of this, DOE has determined that the basic models of commercial refrigerators listed in Hussmann's petition should be tested at their lowest application product temperature as defined at 10 CFR 431.62, which corresponds to an integrated average temperature of 41 °F.

DOE notes that use of the amended test procedure set forth in the aforementioned final rule will be required on the compliance date of any amended standards for this equipment. (77 FR 10292, Feb. 21, 2012)

III. Conclusion

After careful consideration of all the material that was submitted by Hussmann, *it is ordered that:*

(1) The petition for waiver submitted by the Hussmann (Case No. CR–002) *is hereby granted* as set forth in paragraphs (2), (3), (4) and (5).

(2) Hussmann *shall be* required to test and rate the following basic models according to the alternate test procedure set forth in paragraph (3) of this section.

DBRP–03–4–R, DBRP–03–6–R, DBRP–03–8–R, DBRP–03–10–R, DBRP–03–12–R, DBRP–03–14–R, DBRP–03–16–R, DBRP–03–18–R, DBRP–03–20–R, DBRP–03–22–R, DBRP–03–24–R, DBRP–03–26–R, DBRP–03–28–R, DBRP–03–30–R, DBRP–03–32–R, DBRP–03–34–R, DBRP–03–36–R

DSRP–03–5–R, DSRP–03–6–R, DSRP–03–8–R, DSRP–03–10–R, DSRP–03–12–R, DSRP–03–14–R, DSRP–03–16–R, DSRP–03–18–R, DSRP–03–20–R, DSRP–03–22–R, DSRP–03–24–R, DSRP–03–26–R, DSRP–03–28–R, DSRP–03–30–R, DSRP–03–32–R, DSRP–03–34–R, DSRP–03–36–R

DSRPI–03–5–R, DSRPI–03–6–R, DSRPI–03–8–R, DSRPI–03–10–R, DSRPI–03–12–R, DSRPI–03–14–R, DSRPI–03–16–R, DSRPI–03–18–R, DSRPI–03–20–R, DSRPI–03–22–R, DSRPI–03–24–R, DSRPI–03–26–R, DSRPI–03–28–R, DSRPI–03–30–R, DSRPI–03–32–R, DSRPI–03–34–R, DSRPI–03–36–R

(3) Alternate Test Procedure. Hussmann *shall* test the equipment listed in paragraph (2) per the DOE test procedure set forth in 10 CFR 431.64, except that instead of testing at 38 °F ± 2 °F (as set forth in the table at 10 CFR 431.64(b)(3)), DOE requires Hussmann to test the commercial refrigerators specified in its January 12, 2012 petition and listed above at an integrated average temperature of 41 ± 2 °F, which Hussmann confirmed is the lowest temperature at which those models can operate and which is consistent with the lowest application product temperature provision in the DOE test procedure.

DOE notes that it has published an amended test procedure for commercial refrigeration equipment. (77 FR 10292, Feb. 21, 2012). The amended test procedure addresses the testing issue addressed in this waiver, requiring products to be tested at their lowest application product temperature. *Id.* Use of the amended test procedure will be required on the compliance date of any amended standards for this equipment.

(4) *Representations.* In making representations about the energy efficiency of its refrigerated display merchandisers listed in paragraph (2), for compliance, marketing, or other purposes, Hussmann *must* fairly disclose the results of testing under the alternate test procedure specified in this waiver.

(5) This waiver amendment *shall* remain in effect from the date this Decision and Order is issued, consistent with the provisions of 10 CFR 431.401(g). DOE notes that it has published an amended test procedure for commercial refrigeration equipment. (77 FR 10292, Feb. 21, 2012). The amended test procedure addresses the testing issue addressed in this waiver, requiring products to be tested at their lowest application product temperature. *Id.* Use of the amended test procedure will be required on the compliance date of any amended standards for this equipment.

(6) This waiver is granted for *only* those models specifically set out in Hussmann's petition, *not* future models that may be manufactured by Hussmann. Hussmann *may* submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional models for which it seeks a waiver from the DOE test procedure. Grant of this waiver also *does not* release Hussmann from the certification requirements set forth at 10 CFR part 431.

(7) This waiver *is issued* on the condition that the statements, representations, and documentary materials provided by the petitioner are valid. DOE *may* revoke or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

Issued in Washington, DC, on December 23, 2013.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2013–31316 Filed 12–30–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP14–29–000]

Texas Eastern Transmission, LP; Notice of Application

Take notice that on December 10, 2013 Texas Eastern Transmission, LP (Texas Eastern), at 5400 Westheimer Court, Houston, Texas 77056, filed an application in Docket No. CP14–29–000 pursuant to section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations to abandon in place and by sale certain pipeline facilities located in offshore Gulf of Mexico. Specifically, Texas Eastern proposes to abandon 29.82 miles of 20-inch diameter offshore lateral pipeline, designated as Line 41–A–6, consisting of 14.39 miles proposed for abandonment in place and 15.43 miles proposed for abandonment by sale. Texas Eastern states that there will be no termination or reduction in firm service to any existing customers after the proposed abandonment, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

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(s). 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.

Any questions regarding this application should be directed to Berk Donaldson, Director, Rates & Certificates, Texas Eastern Transmission, LP, P.O. Box 1642, Houston, Texas 77251, or by calling (713) 627- 4488 (telephone), or fax (713) 627- 5947, or email *bdonaldson@spectraenergy.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be

required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, 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 5 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE., Washington, DC 20426.

Comment Date: January 13, 2014.

Dated: December 23, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–31252 Filed 12–30–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL14–16–000]

Newmont Nevada Energy Investment LLC v. Sierra Pacific Power Company; Notice of Complaints

Take notice that on December 23, 2013, pursuant to sections 206 and 306 of the Federal Power Act (FPA), 16 U.S.C. 824e, and 825e and Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206, Newmont Nevada Energy Investment LLC (NNEI or Complainant) filed a formal complaint against Sierra Pacific Power Company (SPPC or Respondent), alleging that SPPC failed to comply with the terms, conditions, and implied covenants of the Interconnection and Operating Agreement; as amended between NNEI and SPPC, and has failed to pay for costs caused by changes made by SPPC, as more fully described in the complaint.

The Complainant certifies that copies of the Complaint were served on the contacts for the Respondents.

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, 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 and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

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 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible online 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(s). 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 January 13, 2014.

Dated: December 24, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–31334 Filed 12–30–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF14–4–000]

Paiute Pipeline Company; Notice of Intent To Prepare an Environmental Assessment for the Planned 2015 Elko Area Expansion Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the 2015 Elko Area Expansion Project (Elko Expansion Project or Project) involving construction and operation of facilities by Paiute Pipeline Company (Paiute) in Elko County, Nevada. The Commission will use this EA in its decision-making process to determine whether the Project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the Project. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Please note that the scoping period will close on January 22, 2014.

You may submit comments in written form or verbally. Further details on how to submit written comments are in the Public Participation section of this notice. In lieu of or in addition to sending written comments, the Commission invites you to attend the public scoping meeting scheduled as follows: FERC Public Scoping Meeting, 2015 Elko Area Expansion Project, January 14, 2014 at 6:00 p.m. Pacific Standard Time, Elko Convention Center, 700 Moren Way, Elko, Nevada 89801.

This public meeting is designed to provide you with more detailed information and another opportunity to offer your comments on the Project. Paiute representatives will be present one hour before the meeting (starting at 5:00 p.m.) to describe the Project, present maps, and answer questions. Interested groups and individuals are encouraged to attend the meeting and present comments on the issues they believe should be addressed in the EA. A transcript of the meeting will be made so that your comments will be accurately recorded.

This notice is being sent to the Commission's current environmental mailing list for this Project. State and local government representatives should notify their constituents of this planned Project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the Project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' is available for viewing on the FERC Web site (*www.ferc.gov*). This

fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Summary of the Planned Project

Paiute plans to construct and operate approximately 35 miles of new underground natural gas pipeline and appurtenant facilities in Elko County, Nevada, extending from the Ruby Pipeline, LLC (Ruby) Wieland Flat Compressor Station facility to Paiute's existing Elko Lateral at its Elko City Gate. The purpose of the Project is to provide about 21,994 dekatherms per day to the Elko area to meet the growth requirements of existing shippers served by Paiute's transmission system.

The planned Elko Expansion Project would consist of the following facilities:

- Approximately 35 miles of 8-inch-diameter lateral natural gas pipeline;
- The Ruby Interconnect Station, at Ruby's Wieland Flat Compressor Station;
- A pressure limiting station (PLS) to be tied into Paiute's existing Elko 6-inch-diameter pipeline lateral; and
- Valves and various appurtenances.

The general location of the project facilities is shown in Appendix 1.[1]

Construction work is scheduled to start in the 2nd Quarter of 2015 and the projected in-service date of the Project is November 2015.

Land Requirements for Construction

Construction of the planned facilities would disturb about 419.2 acres of land for the aboveground facilities and the pipeline. Following construction, Paiute would maintain about 209.5 acres for permanent operation of the Project's facilities; the remaining acreage would be restored and revert to former uses. About 62 percent of the planned pipeline route parallels existing road rights-of-way. Approximately 57 percent of the planned pipeline route traverses federal land managed by the U.S. Department of Interior, Bureau of Land Management (BLM) Elko District Office.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [2] to discover and address concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA, we will discuss impacts that could occur as a result of the construction and operation of the planned Project under these general headings:

- Geology, paleontology, and soils;
- Water resources, fisheries, and wetlands;
- Vegetation and wildlife;
- Endangered and threatened species;
- Land use;
- Cultural resources;
- Visual resources;
- Recreation;
- Air quality and noise;
- Public safety; and,
- Cumulative impacts.

We will also evaluate possible alternatives to the planned Project or portions of the Project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before the FERC receives an application. As part of our pre-filing review, we have begun to contact some federal and state agencies to discuss their involvement in the scoping process and the preparation of the EA.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section beginning on page 5.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues related to this project to formally cooperate with us in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice. The BLM indicated that it plans to be a cooperating agency in the preparation of the EA because the Project would cross federally administered lands in Nevada. As a cooperating agency, the BLM intends to adopt the EA per Title 40 of the Code of Federal Regulations, Part 1506.3 to meet its responsibilities under NEPA regarding Paiute's application for a Right-of-Way Grant and Temporary Use Permit for crossing federally administered lands. Impacts on resources and programs, and the proposed Project's conformance with land use plans, will be considered in the BLM's decision.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for Section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the Nevada State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the Project's potential effects on historic properties.[4] We will define the Project-specific Area of Potential Effects (APE) in consultation with the SHPO as the Project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, interconnection stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under Section 106.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, part 1501.6.

[4] The Advisory Council on Historic Preservation regulations are at Title 36, *Code of Federal Regulations,* part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

planned facilities and the environmental information provided by Paiute. This preliminary list of issues may change based on your comments and our analysis.

- *Geology*—Effects as a result of blasting to remove existing surface and bedrock during Project construction.
- *Biological Resources*—Effects on threatened and endangered species and sensitive habitats potentially occurring within or adjacent to the Project right-of-way.
- *Land Use*—Effects on private lands, public lands managed by the BLM, and traffic and transportation corridors from construction of Project facilities.
- *Cultural Resources*—Effects on archaeological sites and historic resources.
- *Reliability and Safety*—The assessment of hazards associated with natural gas pipelines and aboveground facilities.
- *Recreation*—Effects of establishing a new right-of-way and new access roads thereby potentially opening up a new area to recreational use.
- *Vegetation Management*—Effects related to the potential of an increase in invasive and noxious weeds resulting from establishing a new right-of-way.
- *Visual Resources*—Effects on visual resources during the construction and operation of the planned Project.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the Project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before January 22, 2014.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the Project docket number (PF14–4–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You can file your comments electronically using the *eComment* feature located on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You can file your comments electronically using the *eFiling* feature located on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.''* You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for Project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the Project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project.

If we publish and distribute the EA, copies of completed EA will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (Appendix 2).

Becoming an Intervenor

Once Paiute files its application with the Commission, you may want to become an ''intervenor,'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the User's Guide under the ''e-filing'' link on the Commission's Web site. Please note that the Commission will not accept requests for intervenor status at this time. You must wait until the Commission receives a formal application for the project.

Additional Information

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (i.e., PF14–4). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: December 23, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–31255 Filed 12–30–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–146–008]

California Independent System Operator Corporation; Notice of Filing

Take notice that on December 20, 2013, the California Independent System Operator Corporation (CAISO) filed a refund report to be made by the CAISO consistent with the Order on Remand (Order) dated August 18, 2009, 128 FERC ¶ 61,165 (2009), issued by the Commission.

Any person desiring to participate in this rate 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. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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 5copies of the protest or intervention 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(s). 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 Friday, January 10, 2014.

Dated: December 23, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–31254 Filed 12–30–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP14–30–000]

Trunkline Gas Company, LLC; Notice of Request Under Blanket Authorization

Take notice that on December 13, 2013, Trunkline Gas Company, LLC (Trunkline), PO Box 4967, Houston, Texas 77210–4967, filed in Docket No. CP14–30–000, a prior notice request pursuant to sections 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act (NGA) as amended, requesting authorization to abandon in place one 2,000 horsepower (HP) compressor unit (Unit #4103) at its Beeville Compressor Station, located in Bee County, Texas. Trunkline states that Unit #4103 is no longer required to perform the bi-directional services offered at the Beeville Compressor Station, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Stephen T. Veatch, Senior Director of Certificates, Trunkline Gas Company, LLC, 1300 Main Street, Houston, Texas 77002, by telephone at (713) 989–2024, by facsimile at (713) 989–1205, or by email at *stephen.veatch@energytransfer.com.*

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, 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 five copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: December 23, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–31253 Filed 12–30–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–0069; FRL–9905–01–OAR]

Proposed Information Collection Request; Comment Request; The SunWise Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR) for

''The SunWise Program'' (EPA ICR No. 1904.08, OMB Control No. 2060–0439) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through June 30, 2014. 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.

DATES: Comments must be submitted on or before March 3, 2014.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–OAR–2007–0069 online using *www.regulations.gov* (our preferred method), by email to *a-and-rdocket@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Robert Burchard, Stratospheric Protection Division, Office of Atmospheric Programs (6205J), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number (202) 343–9126; fax number: (202) 343–2338; email address: *burchard.robert@epa.gov*.

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets*.

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: The SunWise Program is a school and community-based sun safety education program for children grades K–8. The Program's objective is to reduce the incidence of, and morbidity and mortality from skin cancer, cataracts, and other UV-related health effects in the United States. The following collection of information will be used for both program material distribution and determining program effectiveness and participant satisfaction:

- A SunWise Program participant registration form;
- A participating-teacher survey, measuring experience with the Program;
- A participating-student survey identifying sun safety knowledge before and after participation in the Program;
- Follow-up phone interviews with teachers who complete the survey;
- A SunWise *Don't Fry Day* pledge form;
- Sun Safety Certification Tutorial questions (for community organizations participating in the SunWise program); and a
- Pretest of a SunWise partner survey

Form Numbers: None.

Respondents/affected entities: Elementary and middle school students and educators, recreation workers, and health educators.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 8,980.

Frequency of response: Annual.

Total estimated burden: 1,632 hours per year. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $107,172.45 per year, which includes no annualized capital or operation & maintenance costs.

Changes in Estimates: There is no change in the average annual burden hours currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: December 18, 2013.

Drusilla Hufford,

Director, Stratospheric Protection Division.

[FR Doc. 2013–31349 Filed 12–30–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9904–94–OW]

Clean Water Act; Contractor Access to Confidential Business Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Intended Transfer of Confidential Business Information to Contractor, Subcontractors, and Consultants.

SUMMARY: The Environmental Protection Agency (EPA's) has authorized Abt Associates, Inc. (Abt), its subcontractors, and its consultants to access confidential business information (CBI) collected from numerous industries. Transfer of this information is necessary for Abt to assist EPA in the preparation of effluent guidelines and standards for certain industries.

In accordance with 40 CFR § 2.302(h), we have determined that the contractors listed below require access to CBI submitted to EPA under Section 308 of the Clean Water Act (CWA) and in connection with other programs listed below. Therefore, we are providing notice and an opportunity to comment to the affected submitters of information. The nature of the work and its necessity, and the type of access granted, is described below for each contractor. Information has been provided to this contractor under a previous agreement since May 30, 2007.

Transfer of the information to Abt will allow the contractor and subcontractors to support EPA in the planning, development, and review of effluent limitations guidelines and standards under the CWA. The information being transferred was or will be collected under the authority of Section 308 of the CWA. Some information being transferred from the pulp, paper, and paperboard industry was collected under the additional authorities of Section 114 of the Clean Air Act and Section 3007 of the Resource Conservation and Recovery Act. Interested persons may submit

comments on this intended transfer of information to the address noted below.

DATES: Comments on the transfer of data are due January 6, 2014.

ADDRESSES: Comments may be sent to Mr. M. Ahmar Siddiqui, Document Control Officer, Engineering and Analysis Division (4303T), Room 6231S WJC West, U.S. EPA, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. M. Ahmar Siddiqui, Document Control Officer, at (202) 566–1044, or via email at *siddiqui.ahmar@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has transferred CBI to various contractors and subcontractors over the history of the effluent guidelines program. EPA determined that this transfer was necessary to enable the contractors and subcontractors to perform their work in supporting EPA in planning, developing, and reviewing effluent guidelines and standards for certain industries.

Today, EPA is giving notice that it has entered into a contract with Abt, contract number EP–C–13–039, located in Cambridge, Massachusetts. The purpose of this contract is to secure economic and environmental analysis support for EPA in its development, review, implementation, and defense of water-related initiatives for a variety of industries. To obtain assistance in responding to this contract, Abt has entered into contracts with the following subcontractors: Aqua Terra Consultants (located in Mountain View, California), Avanti Corporation (located in Alexandria, Virginia), Great Lakes Environmental Center (located in Traverse City, Michigan), Horizon Systems Corporation (located in Herndon, Virginia), ICF International (located in Fairfax, Virginia), PG Environmental (located in Herndon, Virginia), RPS ASA dba Applied Science Associates (located in South Kingstown, Rhode Island), and RTI International (located in Research Triangle Park, North Carolina). Abt has also entered into contracts with the following consultants: Robert J. Johnston, Ph.D. (located in Millville, Massachusetts) and R. Srinivasan, Ph.D. (located in College Station, Texas).

All EPA contractor, subcontractor, and consultant personnel are bound by the requirements and sanctions contained in their contracts with EPA and in EPA's confidentiality regulations found at 40 CFR Part 2, Subpart B. Abt will adhere to EPA-approved security plans which describe procedures to protect CBI. Abt will apply the procedures in these plans to CBI previously gathered by EPA and to CBI that may be gathered in the future. The security plans specify that contractor personnel are required to sign non-disclosure agreements and are briefed on appropriate security procedures before they are permitted access to CBI. No person is automatically granted access to CBI: A need to know must exist.

The information that will be transferred to Abt consists of information previously collected by EPA to support the development and review of effluent limitations guidelines and standards under the CWA. In particular, information, including CBI, collected for the planning, development, and review of effluent limitations guidelines and standards for the following industries may be transferred: airport deicing; aquaculture; centralized waste treatment; coalbed methane; concentrated animal feeding operations; coal mining; construction and development; drinking water treatment; industrial container and drum cleaning; industrial laundries; industrial waste combustors; iron and steel manufacturing; landfills; meat and poultry products; metal finishing; metal products and machinery; nonferrous metals manufacturing; oil and gas extraction (including coalbed methane); ore mining and dressing; organic chemicals, plastics, and synthetic fibers; pesticide chemicals; petroleum refining; pharmaceutical manufacturing; pulp, paper, and paperboard manufacturing; unconventional oil and gas extraction; steam electric power generation; textile mills; timber products processing; tobacco; and transportation equipment cleaning.

EPA also intends to transfer to Abt all information listed in this notice, of the type described above (including CBI) that may be collected in the future under the authority of Section 308 of the CWA or voluntarily submitted (e.g., in comments in response to a **Federal Register** notice), as is necessary to enable Abt to carry out the work required by its contract to support EPA's effluent guidelines planning process and the development of effluent limitations guidelines and standards.

Dated: December 13, 2013.

Elizabeth Southerland,

Director, Office of Science and Technology.

[FR Doc. 2013–31353 Filed 12–30–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9905–00–OECA]

National Environmental Justice Advisory Council; Notification of Public Teleconference Meeting and Public Comment

AGENCY: Environmental Protection Agency.

ACTION: Notification of public teleconference meeting and public comment.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92–463, the U.S. Environmental Protection Agency (EPA) hereby provides notice that the National Environmental Justice Advisory Council (NEJAC) will host a public teleconference meeting on Wednesday, January 15, 2014, from 2:00 p.m. to 4:00 p.m. Eastern Time. The primary topics of discussion will be (1) recommendations for integrating environmental justice into EPA's research enterprise and (2) a preliminary discussion about chemical management issues.

There will be a public comment period from 3:30 p.m. to 4:00 p.m. Eastern Time. Members of the public are encouraged to provide comments relevant to the topics of the meeting.

For additional information about registering to attend the meeting or to provide public comment, please see the *Registration* and **SUPPLEMENTARY INFORMATION** sections below. Due to a limited number of telephone lines, attendance will be on a first-come, first served basis. Pre-registration is required. Registration for the teleconference meeting closes at Noon Eastern Time on Friday January 10, 2014. The deadline to sign up to speak during the public comment period, or to submit written public comments, is also Noon, Friday January 10, 2014.

DATES: The NEJAC teleconference meeting on Wednesday, January 15, 2014, will begin promptly at 2:00 p.m. Eastern Time.

Registration: Registrations will primarily be processed at *http://nejac-jan2014.eventbrite.com.* Registrations can also be submitted by email to *Muriel.Jasmin@EPA.gov* with ''Register for the NEJAC January 2014 Teleconference Mtg'' in the subject line; or by fax to 202–564–1624. When registering, please provide your name, organization, city and state, email address, and telephone number for follow up. Please also state whether you would like to be put on the list to

provide public comment, and whether you are submitting written comments before the Friday January 10, 2014, noon deadline. Non-English speaking attendees wishing to arrange for a foreign language interpreter may also make appropriate arrangements using the email address or telephone/fax number.

FOR FURTHER INFORMATION CONTACT: Questions or correspondence concerning the teleconference meeting should be directed to Jasmin Muriel, U.S. Environmental Protection Agency, by mail at 1200 Pennsylvania Avenue NW (MC2201A), Washington, DC 20460; by telephone at 202–564–4287; via email at *Muriel.Jasmin@epa.gov;* or by fax at 202–564–1624. Additional information about the NEJAC is available at: *www.epa.gov/environmentaljustice/nejac.*

SUPPLEMENTARY INFORMATION: The Charter of the NEJAC states that the advisory committee shall provide independent advice to the Administrator on areas that may include, among other things, ''advice about broad, cross-cutting issues related to environmental justice, including environment-related strategic, scientific, technological, regulatory, and economic issues related to environmental justice.''

A. *Public Comment:* Members of the public who wish to provide public comment during the Wednesday, January 15, 2014, public teleconference meeting must pre-register by Noon Eastern Time on Friday January 10, 2014. Individuals or groups making remarks during the public comment period will be limited to five minutes. To accommodate the number of people who want to address the NEJAC, only one representative of a particular community, organization, or group will be allowed to speak. Written comments can also be submitted for the record. The suggested format for individuals providing public comments is as follows: Name of speaker; name of organization/community; city and state; and email address; brief description of the concern, and what you want the NEJAC to advise EPA to do. Written comments received by Noon Eastern Time on Friday January 10, 2014, will be included in the materials distributed to the NEJAC prior to the teleconference. Written comments received after that time will be provided to the NEJAC as time allows. All written comments should be sent to Jasmin Muriel, EPA, via email or fax as listed in the **FOR FURTHER INFORMATION, CONTACT** section above.

B. *Information about Services for Individuals with Disabilities:* For information about access or services for individuals with disabilities, please contact Jasmin Muriel, at (202) 564–4287 or via email at *Muriel.Jasmin@EPA.gov.* To request special accommodations for a disability, please contact Ms. Muriel at least four working days prior to the meeting, to give EPA sufficient time to process your request. All requests should be sent to the address, email, or phone/fax number listed in the **FOR FURTHER INFORMATION, CONTACT** section above.

Dated: December 24, 2013.

Victoria J. Robinson,

Designated Federal Officer, Office of Environmental Justice, U.S. EPA.

[FR Doc. 2013–31348 Filed 12–30–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[IB Docket No. 04–286; DA 13–2406]

Fifth Meeting of the Advisory Committee for the 2015 World Radiocommunication Conference

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the fifth meeting of the WRC–15 Advisory Committee will be held on January 27, 2014, at the Federal Communications Commission. The Advisory Committee will consider recommendations from its Informal Working Groups.

DATES: January 27, 2014; 11:00 a.m.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Room TW–C305, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alexander Roytblat, Designated Federal Official, WRC–15 Advisory Committee, FCC International Bureau, Strategic Analysis and Negotiations Division, at (202) 418–7501.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission (FCC) established the WRC–15 Advisory Committee to provide advice, technical support and recommendations relating to the preparation for the 2015 World Radiocommunication Conference (WRC–15).

In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the fifth meeting of the WRC–15 Advisory Committee. Additional information regarding the WRC–15 Advisory Committee is available on the Advisory Committee's Web site, *http://www.fcc.gov/wrc-15.* The meeting is open to the public. The meeting will be broadcast live with open captioning over the Internet from the FCC Live Web page at *www.fcc.gov/live.* Comments may be presented at the WRC–15 Advisory Committee meeting or in advance of the meeting by email to: *WRC–15@fcc.gov.*

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Such requests should include a detailed description of the accommodation needed. In addition, please include a way for the FCC to contact the requester if more information is needed to fill the request. Please allow at least five days' advance notice; last minute requests will be accepted, but may not be possible to accommodate.

The proposed agenda for the fifth meeting is as follows:

Agenda

Fifth Meeting of the WRC–15 Advisory Committee, Federal Communications Commission, 445 12th Street SW., Room TW–C305, Washington, DC 20554, January 27, 2014; 11:00 a.m.

1. Opening Remarks.
2. Approval of Agenda.
3. Approval of the Minutes of the Fourth Meeting.
4. IWG Reports and Documents Relating to Preliminary Views and Draft Proposals.
5. Future Meetings.
6. Other Business.

Federal Communications Commission.

Thomas P. Sullivan,

Acting Chief, International Bureau.

[FR Doc. 2013–31198 Filed 12–30–13; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–CIB–2013–08; Docket No. 2013–0002; Sequence No. 35]

Privacy Act of 1974; Notice of an Updated System of Records

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: GSA reviewed its Privacy Act systems to ensure that they are relevant, necessary, accurate, up-to-date, and covered by the appropriate legal or regulatory authority.

DATES: *Effective:* January 30, 2014.

ADDRESSES: GSA Privacy Act Officer (ISP), U.S. General Services Administration, 1800 F Street NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Call or email the GSA Privacy Act Officer: Telephone 202–208–1317; email *gsa.privacyact@gsa.gov.*

SUPPLEMENTARY INFORMATION: GSA completed an agency-wide review of its Privacy Act systems of records. As a result of the review, GSA is publishing an updated Privacy Act system of records notice. A new routine use was added under the Routine Use Section (Item e) to allow GSA to send reports, data, and information directly to a client agency's contract employees.

Nothing in the revised system notice indicates a change in authorities or practices regarding the collection and maintenance of information, nor does the changes impact individuals' rights to access or amend their records in the system of records.

Dated: December 19, 2013.

James L. Atwater,

Director, Human Resources Information Technology (HRIT) Services Division (IBH).

GSA/PPFM–11

SYSTEM NAME:

Pegasys.

SYSTEM LOCATION:

Pegasys records and files are maintained in the Phoenix Data Center (PDC), with records also stored in the Washington, DC, Central Office; Ft. Worth regional office; and Kansas City regional office.

INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by Pegasys include GSA vendors and Federal employees.

RECORDS IN THE SYSTEM:

Pegasys contains records and files pertaining to financial information; therefore, these files and records contain the following privacy data: Social Security Number (SSN); Employee address; Banking information; Credit card number.

AUTHORITY FOR MAINTAINING THE SYSTEM:

The Chief Financial Officers Act of 1990 (Pub. L. 101–576), as amended.

PURPOSE:

Pegasys is the GSA core financial management system of records to make payments and record accounting transactions. This includes funds management (budget execution and purchasing), credit cards, accounts payable, disbursements, standard general ledger, and reporting. It is part of a shared-services financial operation providing a commercial off-the-shelf (COTS) financial system (in a private-vendor hosted environment), financial transaction processing, and financial analysis for its main business lines of Federal supplies and technology, public buildings, and general management and administration offices. GSA also utilizes this shared-service operation to cross-service multiple external client agencies.

ROUTINE USES OF THE SYSTEM RECORDS, INCLUDING CATEGORIES OF USERS AND THEIR PURPOSE FOR USING THE SYSTEM:

System information accessed by Pegasys may be used by designated finance center employees and their supervisors, along with designated analysts and managers. System information also may be used:

a. In any legal proceeding, where pertinent, to which GSA is a party before a court or administrative body.

b. To conduct investigations, by authorized officials, that are investigating or settling a grievance, complaint, or appeal filed by an individual who is the subject of the record.

c. To a Federal agency in connection with the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation; the letting of a contract; or the issuance of a grant, license, or other benefit to the extent that the information is relevant and necessary to a decision.

d. To the U.S. Office of Personnel Management (OPM), the Office of Management and Budget (OMB), or the U.S. Government Accountability Office (GAO) when the information is required for program evaluation purposes.

e. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant; to a board, committee, commission, or small agency receiving administrative services from GSA to which the information relates; or an expert, consultant, or contractor of a board, committee, commission, or small agency receiving administrative services from GSA to which the information relates in the performance of a Federal duty to which the information is relevant.

f. To the National Archives and Records Administration (NARA) for records management purposes.

g. To appropriate agencies, entities, and persons when (1) the Agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by GSA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with GSA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF SYSTEM RECORDS:

STORAGE:

All records and files in Pegasys are stored electronically in a password-protected database format.

RETRIEVAL:

Information on individuals contained in Pegasys records and files are retrievable by name or vendor number.

SAFEGUARDS:

Pegasys records and files are safeguarded in accordance with the requirements of the Privacy Act. Access is limited to authorized individuals with passwords, and the database is maintained behind a certified firewall. Information on individuals is released only to authorized persons on a need-to-know basis and in accordance with the provisions of the purpose or a routine use. This system undergoes frequent testing and is certified and accredited for operation. Periodic Privacy Impact Assessments are performed as well to ensure the adequacy of security controls to protect personally identifiable information.

RETENTION AND DISPOSAL:

Pegasys records and files are retained and disposed of according to GSA records maintenance and disposition schedules and the requirements of the National Archives and Records Administration (NARA).

SYSTEM MANAGER AND ADDRESS:

Director, Financial Management Systems Operations and Maintenance Division (IBA), U.S. General Services Administration, 1800 F Street NW., Washington, DC 20405.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire if the system contains information about them should contact the Pegasys system manager.

RECORD ACCESS PROCEDURE:

Requests for access may be directed to the Pegasys system manager.

RECORD CONTESTING PROCEDURE:

GSA rules for accessing records, for contesting the contents, and appealing initial decisions are in 41 CFR part 105–64, published in the **Federal Register**.

RECORD SOURCES:

The sources for information in Pegasys are the individuals about whom the records are maintained, the supervisors of those individuals, and existing agency systems.

[FR Doc. 2013–31308 Filed 12–30–13; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[60Day-14–14FA]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 or send comments to LeRoy Richardson, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (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. Written comments should be received within 60 days of this notice.

Proposed Project

State Surveillance under the National Toxic Substance Incidents Program (NTSIP)—NEW—Agency for Toxic Substances and Disease Registry (ATSDR).

Background and Brief Description

The Agency for Toxic Substances and Disease Registry (ATSDR) is sponsoring the National Toxic Substance Incidents Program (NTSIP) to gather information from many resources to protect people from harm caused by spills and leaks of toxic substances. The NTSIP information will be used to help prevent or reduce the harm caused by toxic substance incidents. The NTSIP is modeled partially after the Hazardous Substances Emergency Events Surveillance (HSEES) Program which ran from 1992 to 2012 [OMB number: 0923–0008; expiration date 01/31/2012], with additions suggested by stakeholders to have a more complete program. The NTSIP has three components: A national database, state surveillance, and the response team. This information collection request is focused on the state surveillance component.

The NTSIP is the only federal public health-based surveillance system to coordinate the collection, collation, analysis, and distribution of acute toxic substance incidents data to public health and safety practitioners. Because thousands of acute spills occur annually around the country, it is necessary to establish this surveillance system to describe the public health impacts on the population of the United States. The ATSDR is seeking a three-year approval for the ongoing collection of information for the state surveillance system.

The main objectives of this information collection are to:

1. describe toxic substance releases and the public health consequences associated with such releases within the participating states,

2. identify and prioritize vulnerabilities in industry, transportation, and communities as they relate to toxic substance releases, and

3. identify, develop, and promote strategies that could prevent ongoing and future exposures and resultant health effects from toxic substance releases.

The NTSIP surveillance system will be incident-driven and all acute toxic substance incidents occurring within the participating states will be included. Upon Office of Management and Budget (OMB) approval, participating states will include Alaska, California, Louisiana, Michigan, Missouri, New York, North Carolina, Oregon, Tennessee, Utah, and Wisconsin.

A standardized set of data will be collected by the NTSIP coordinator for each incident. The NTSIP coordinator may be a federal employee assigned to the state or an employee of the state health department. State, but not federal, NTSIP coordinators will incur recordkeeping burden during two phases.

During the first phase, the NTSIP coordinators will rapidly collect and enter data from a variety of existing data sources. Examples of existing data sources include, but are not limited to, reports from the media, the National Response Center, the U.S. Department of Transportation Hazardous Materials Information Reporting System, and state environmental protection agencies. Approximately 65% of the information is expected to be obtained from existing data sources.

The second phase of the information collection will require the NTSIP coordinators to alert other entities of the incident when appropriate and to request additional information to complete the remaining unanswered data fields. Approximately 35% of the information is expected to be obtained from calling, emailing, or faxing additional types of respondents by the NTSIP coordinators.

These additional respondents will incur reporting burden and include, but are not limited to, the on-scene commander of the incident, emergency government services (e.g., state divisions of emergency management, local emergency planning committees, fire or Hazmat units, police, and emergency medical services), the responsible party (i.e., the ''spiller''), other state and local government agencies, hospitals and local poison control centers.

The NTSIP coordinator will enter data directly into an ATSDR internet-based data system. NTSIP materials, including a public use data set, annual report, and published articles will be made available on the ATSDR NTSIP Web page at *http://www.atsdr.cdc.gov/ntsip/.*

There are no costs to respondents besides their time. The total burden hours requested is 1,821.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Avg. burden per response (in hrs.)	Total burden (in hrs.)
State NTSIP Coordinators	NTSIP State Data Collection Form	3	426	1	1,278
On-scene commanders	NTSIP State Data Collection Form	110	1	30/60	55
Emergency government services	NTSIP State Data Collection Form	810	1	30/60	405
Responsible party	NTSIP State Data Collection Form	15	1	30/60	8
Other state and local governments	NTSIP State Data Collection Form	60	1	30/60	30
Hospitals	NTSIP State Data Collection Form	10	1	30/60	5
Poison Control Centers	NTSIP State Data Collection Form	80	1	30/60	40
Total					1,821

LeRoy Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2013–31290 Filed 12–30–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 78 FR 73543–73545, dated December 6, 2013) is amended to reflect the reorganization for the staff offices within the Office of the Director, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows:

After the functional statement for the Office of the Director (CA), insert the following:

Program Performance and Evaluation Office (CA1). The mission of the Program Performance and Evaluation Office (PPEO) is to increase the impact and effectiveness of public health programs through innovation and sound program design and the use of performance and evaluation data for continuous improvement. In carrying out this mission, PPEO: (1) Provides agency-wide direction, standards, and technical assistance for program planning, performance and accountability, and program evaluation and effectiveness; (2) serves as advisor to the CDC Principal Deputy Director and the CDC Director's Office on key programmatic activities; (3) provides intensive analytic and advisory assistance to enable effective redesign of select program priorities; (4) represents the CDC vision, mission, and program strategy internally and externally; (5) develops and promotes new initiatives based on emerging issues, science, and policy; (6) supports the harmonization and integration of performance measurement, accountability, and program evaluation; (7) provides agency-wide direction, standards, and technical assistance to support and guide program evaluation, monitoring, and performance measurement by programs; (8) guides the collection and analysis of performance and accountability data, including Healthy People 2020, the Program Assessment Rating Tool and the Government Performance and Results Act; (9) supports assessment of program effectiveness to guide further science, policy, and programmatic efforts; (10) manages evaluation fellowship; (11) guides performance-based strategic planning; (12) drives short-term and long-term program planning; (13) establishes routine, continuous improvement based on effective program evaluation, and performance measurement; (14) supports evidence-driven program redesign; (15) coordinates action planning for high impact initiatives; and (16) develops, promotes and coordinates new initiatives.

CDC-Washington Office (CAB). (1) Directs and manages CDC interactions with Congress; (2) develops and executes legislative strategies; (3) collaborates with the Office of the Chief Operating Officer on the development and execution of strategies in Congress that advance CDC appropriations priorities; (4) builds Congressional relations; (5) tracks and analyzes legislation; (6) develops strategy and leads response efforts for Congressional oversight; (7) builds relations with government agencies and other organizations to advance policy agendas, with an emphasis on federal agencies; (8) protects and advances the agency's reputation, scientific credibility, and interests; (9) informs CDC leadership of current developments and provides insight into the Washington policy environment; (10) coordinates District of Columbia-area assignees and helps maximize their impact in supporting the agency's strategies and priorities; and (11) coordinates CDC's partnership activities as they relate to Washington-based, or Washington-focused organizations, and works across the agency to advance Washington relationships.

Delete in its entirety the mission and functional statements for the Office of the Associate Director for Program (CAF), within the Office of the Director (CA).

Delete in its entirety the mission statement for the Management Analysis and Services Office (CAJRC), within the Office of the Chief Information Officer (CAJR), Office of the Chief Operating Officer (CAJ), and insert the following:

Management Analysis and Services Office (CAJRC). The Management Analysis and Services Office (MASO) mission is supporting the functioning and integrity of CDC's administrative functions. MASO supports the CDC mission through professional services in high impact areas across the agency. Customer-centered services are delivered by MASO in the areas of records management; federal advisory committee management; internal controls and risk management; and policy management. The scope of MASO's services also encompass oversight, regulatory interpretation, policy guidance, technical advice, and coordination in the areas of delegations of authority, organizations and functions, and electronic forms management.

Delete in its entirety the functional statement for the Information Services Branch (CAJRCC), within the

Management Analysis and Services Office (CAJRC), and insert the following:

Information Services Branch (CAJRCC). (1) Develops and manages appropriate technology architecture and methodology for innovative and leading edge applications, databases, and systems that broaden and expand CDC's electronic resource toolbox; (2) provides CDC-wide electronic forms management services, including development, coordination of clearances, and inventory management; and (3) manages the agency Resource Index to support CDC call management services and hotlines.

Delete in its entirety the title for the Office of Prevention through Healthcare (CAQ12), within the Office of the Director (CAQ1), Office of the Associate Director for Policy (CAQ), and insert the title Office of Health System Collaboration (CAQ12).

Delete in their entirety the mission and functional statements for the Division of Communication Service (CAUD), and the Office of the Director (CAUD1), within the Office of the Associate Director for Communication (CAUD), and insert the following:

Division of Communication Services (CAUD). The Division of Communication Services (DCS) provides agency-wide CDC graphics, broadcast, photography, translation, interpretation and sign language, public information, and communication consultation/analysis leadership and support. To carry out its mission, the division performs the following functions: (1) Ensures broadcast functionality/broadcast engineering support including connectivity among physical assets such as the Global Communications Center, Emergency Operations Center, and continuity of operations for CDC; (2) develops and disseminates video and audio production; (3) manages CDC graphic design and production services including CDC branding and identity standards; (4) supports new broadcast communication mechanisms (e.g. HHS TV, CDC TV, radio/TV broadcast, podcast, webcast, and videos-on-demand) for CDC programs; (5) provides support for broadcast delivery press conferences and media interviews; (6) provides scientific and events photography; (7) provides multilingual translation and interpretation, sign language support, and cross cultural communication assistance to CIOs across CDC; (8) provides consultation and analysis of consumer research data to Centers/Institute/Offices (CIOs) used for developing and evaluating health communication and marketing to specific audiences; (9) manages day-to-day operations of meeting space within CDC's meeting center, the Global Communications Center; (10) manages CDC–INFO (CDC's telephone, email, and publications fulfillment services center); (11) oversees the agency-wide print management program; and (12) manages CDC-wide information services including electronic and postal distribution lists, and electronic announcements.

Office of the Director (CAUD1). (1) Develops the strategic priorities and manages the program activities of the division; (2) provides leadership for ensuring all DCS products are of the highest quality; (3) helps CIOs use existing or develop new mechanisms for communicating with the public and CDC partners; (4) coordinates support for meetings held in the Global Communications Center with internal and external customers; (5) coordinates the use of the CDC exhibit for public health conferences; (6) manages overall IT-related functions for the division, including Create-IT (DCS' online internal tracking and triage system), Trados SDL (translation memory application), and CDC–INFO IT applications; (7) provides and manages multi-year, multi-vendor CDC-wide communication contracts mechanism for use by CIO clients; (8) updates and manages Create-IT system for tracking and triage of work requests including associated customer satisfaction and other performance metrics for internal and external (CIO) use; (9) oversees the agency-wide print management program; (10) liaisons with contract suppliers, the Government Printing Office, HHS, and other agencies on matters pertaining to print and publication procurement; and (11) manages CDC-wide information services including electronic distribution lists, and electronic announcements.

Delete in its entirety the title and functional statement for the CDC Washington Office (CAQC), within the Office of the Associate Director for Policy (CAQ).

Delete in its entirety the title and functional statement for the Office of Diversity Management and Equal Employment Opportunity (CAV) and insert the following:

Office of Equal Employment Opportunity (CAV). The Office of Equal Employment Opportunity (OEEO) is located in the Office of the Director, Centers for Disease Control and Prevention (CDC). The Director, OEEO, serves as the principal advisor to the Director, CDC, on all equal employment opportunity matters. The mission of OEEO is to ensure an environment that promotes equal employment opportunity for all individuals, eradicates discrimination and harassment in all forms, and promotes an inclusive environment that empowers employees to participate and support CDC's global health mission. In carrying out its mission, OEEO: (1) Develops and recommends for adoption CDC-wide equal employment opportunity policies, goals, and priorities to carry out the directives of the U.S. Office of Personnel Management, U.S. Equal Employment Opportunity Commission, and Department of Health and Human Services (HHS) equal employment opportunity policies and requirements that are mandated by Title VII, Civil Rights Act of 1964; Age Discrimination in Employment Act (ADEA); Rehabilitation Act of 1973; Civil Service Reform Act; 29 CFR 1614, Federal Sector Equal Employment Opportunity; Executive Order 11478, Equal Employment Opportunity in the Federal Government; (2) provides leadership, direction, and technical guidance to CDC managers and staff for the development of comprehensive programs and plans; (3) coordinates and evaluates agency equal employment opportunity operations and plans, including affirmative action; (4) develops plans, programs, and procedures to assure the prompt receipt, investigation, and resolution of complaints of alleged discrimination by reason of race, sex, age, religion, national origin, handicap, or by reason of reprisal or retaliation; (5) coordinates the development of comprehensive special emphasis programs to assure full recognition of the needs of women, Hispanics, other minorities and the handicapped in hiring and employment; (6) identifies needs for OEEO functions within CDC and assures the development of a training curriculum for all CDC supervisory personnel; (7) prepares or coordinates the preparation of, reports and analyses designed to reflect the status of employment of women and minorities at CDC and maintains liaison with HHS and other organizations concerned with equal employment opportunity; (8) ensures effective coordination of OEEO activities with CDC personnel and training programs, and with CDC national centers manpower planning and support programs in the health professions; (9) develops a system of structured reviews and evaluations of CDC OEEO activities to assure effective operations and accountability; (10) assists in assuring the adequate allocation of resources for OEEO including the establishment of

guidelines for recruiting, selection, and training of agency personnel; (11) develops and directs research and evaluation studies to focus on, and improve the effectiveness of, OEEO program activities; (12) provides direction for the agency's alternative dispute resolution activities; and (13) provides direct support for OEEO program activities in CDC.

Delete in its entirety the functional statement for the Office of Minority Health and Health Equity (CAW), and insert the following:

Office of Minority Health and Health Equity (CAW). In carrying out its mission, the Office of Minority Health and Health Equity: (1) Accelerates the work of CDC and its partners in improving health by eliminating health disparities, promoting conditions conducive to health, and achieving health equity; (2) provides leadership and support for the agency's research, policy, and prevention initiatives to promote and improve the health of women and girls; and (3) ensures CDC's diversity policies, procedures and practices support employees in reaching their full potential so that they may better accomplish CDC's mission and be effective guardians of public health.

Minority Health and Health Equity Activity (CAW12). (1) Reframes eliminating health disparities as achievable; (2) facilitates the implementation of policies across CDC that promote the elimination of health disparities; (3) assures implementation of proven strategies across CDC programs that reduce health disparities in communities of highest risk; (4) advances the science and practice of health equity; and (5) collaborates with national and global partners to promote the reduction of health inequalities.

Office of Women's Health (CAWB). The mission of the Office of Women's Health (OWH) is to provide leadership, advocacy, and support for the agency's research, policy, and prevention initiatives to promote and improve the health of women and girls. As the agency's leader for women's health issues, OWH: (1) Advises the CDC Director and leads the Women's Health Workgroup in the advancement of research, policies, and programs related to the health of women and girls; (2) provides leadership, assistance, and consultation to the agency's centers, offices, and programs to address women's health issues; (3) advances sound scientific knowledge, promotes the role of prevention, and works to improve the communication and understanding of women's health priorities for public health action by CDC and a diverse group of state and local programs, providers, consumers, and organizations; (4) creates, publishes, and disseminates communicative products and materials that highlight CDC priorities, opportunities, and strategies to improve health; (5) establishes and fosters relationships with others (i.e., government agencies, professional groups, academic institutions, organizations and small businesses) to increase awareness and strengthen implementation of women's health programs and practices; (6) represents the agency and serves as a liaison on women's health issues within and outside the Department of Health and Human Services; and (7) coordinates and manages efforts through dialogues, meetings, and other activities to increase awareness of public health and women's health issues.

Diversity and Inclusion Management Program (CAWC). In carrying out its mission, the Diversity Management Program (DMP): (1) Provides and coordinates leadership for diversity issues CDC-wide; (2) ensures CDC's diversity policies, procedures and practices support employees in reaching their full potential so that they may better accomplish CDC's mission and be effective guardians of public health.

Dated: December 16, 2013.

Sherri A. Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2013–30850 Filed 12–30–13; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0001]

Cellular, Tissue, and Gene Therapies Advisory Committee; 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: Cellular, Tissue, and Gene Therapies Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on February 25, 2014, from 8 a.m. to approximately 5:30 p.m. and February 26, 2014, from 8 a.m. to approximately 5 p.m.

Location: Hilton Washington, DC North/Gaithersburg, 620 Perry Pkwy., Grand Ballroom, Gaithersburg, MD 20877. The hotel's phone number is 301–977–8700.

Contact Person: Gail Dapolito or Rosanna Harvey, Food and Drug Administration, Center for Biologics Evaluation and Research, 1401 Rockville Pike, HFM–71, Rockville, MD 20852, 301–827–1289 or 301–827–1297, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). 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/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: On February 25, 2014, from 8 a.m. to 5:30 p.m. and on February 26, 2014, from 8 a.m. to approximately 11:15 a.m., the committee will discuss oocyte modification in assisted reproduction for the prevention of transmission of mitochondrial disease or treatment of infertility. On February 26, 2014, from approximately 11:15 a.m. to 11:30 a.m., the committee will hear updates on guidance documents issued from the Office of Cellular, Tissue, and Gene Therapies, Center for Biologics Evaluation and Research (CBER), FDA. On February 26, 2014, from 1 p.m. to approximately 5 p.m., the committee will discuss considerations for the design of early-phase clinical trials of cellular and gene therapy products. CBER published guidance on this topic in July 2013 (*http://www.fda.gov/BiologicsBloodVaccines/GuidanceCompliance RegulatoryInformation/Guidances/CellularandGeneTherapy/default.htm*).

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 February 18, 2014. Oral presentations from the public will be scheduled between approximately 2:15 p.m. and 3:15 p.m. on February 25, 2014 and between approximately 1:45 p.m. and 2:15 p.m. on February 26, 2014. 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 February 10, 2014. 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 February 11, 2014.

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 Gail Dapolito 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: December 26, 2013.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2013–31320 Filed 12–30–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–1634]

Request for Notification From Industry Organizations Interested in Participating in Selection Process for a Nonvoting Industry Representative on the Food Advisory Committee and Request for Nominations for a Nonvoting Industry Representative on the Food Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting that any industry organizations interested in participating in the selection of a nonvoting industry representative to serve on the Food Advisory Committee for the Center for Food Safety and Applied Nutrition (CFSAN) notify FDA in writing. FDA is also requesting nominations for nonvoting industry representatives to serve on the Food Advisory Committee. A nominee may either be self-nominated or nominated by an organization to serve as a nonvoting industry representative. Nominations will be accepted for current vacancies effective with this notice.

DATES: Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests must send a letter stating that interest to FDA by *January 30, 2014,* for the vacancy listed in this notice. Concurrently, nomination materials for prospective candidates should be sent to FDA by *January 30, 2014.*

ADDRESSES: All letters of interest and nominations should be submitted in writing to Karen Strambler (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Karen Strambler, Center of Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1913, FAX: 301–436–2657, email: *Karen.Strambler@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: The Agency intends to add nonvoting industry representatives to the following advisory committee:

I. CFSAN Food Advisory Committee

The Food Advisory Committee (the Committee) provides advice to the Commissioner of Food and Drugs (the Commissioner) and other appropriate officials, on emerging food safety, food science, nutrition, and other food-related health issues that FDA considers of primary importance for its food and cosmetics programs. The Committee may be charged with reviewing and evaluating available data and making recommendations on matters such as those relating to: (1) Broad scientific and technical food or cosmetic related issues; (2) the safety of new foods and food ingredients; (3) labeling of foods and cosmetics; (4) nutrient needs and nutritional adequacy; and (5) safe exposure limits for food contaminants.

The Committee may also be asked to provide advice and make recommendations on ways of communicating to the public the potential risks associated with these issues and on approaches that might be considered for addressing the issues.

II. Selection Procedure

Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests should send a letter stating that interest to the FDA contact (see **FOR FURTHER INFORMATION CONTACT**) within 30 days of publication of this document (see **DATES**). Within the subsequent 30 days, FDA will send a letter to each organization that has expressed an interest, attaching a complete list of all such organizations; and a list of all nominees along with their current resumes. The letter will also state that it is the responsibility of the interested organizations to confer with one another and to select a candidate, within 60 days after the receipt of the FDA letter, to serve as the nonvoting member to represent industry interests for the committee. The interested organizations are not bound by the list of nominees in selecting a candidate. However, if no individual is selected within 60 days, the Commissioner will select the nonvoting member to represent industry interests.

III. Application Procedure

Individuals may self nominate and/or an organization may nominate one or more individuals to serve as a nonvoting industry representative. Contact information, a current curriculum vitae, and the name of the committee of interest should be sent to the FDA contact person (see **FOR FURTHER INFORMATION CONTACT**) within 30 days of publication of this document (see **DATES**). FDA will forward all nominations to the organizations expressing interest in participating in the selection process for the committee. (Persons who nominate themselves as

nonvoting industry representatives will not participate in the selection process).

FDA seeks to include the views of women and men, members of all racial and ethnic groups, and individuals with and without disabilities on its advisory committees, and therefore encourages nominations of appropriately qualified candidates from these groups. Specifically, in this document, nominations for nonvoting representatives of industry interests are encouraged from food manufacturing industry.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: December 26, 2013.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2013–31321 Filed 12–30–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–1317]

Tentative Determination Regarding Partially Hydrogenated Oils; Request for Comments and for Scientific Data and Information; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA or we) is extending the comment period for the notice that appeared in the **Federal Register** of November 8, 2013 (78 FR 67169). In the notice, we requested comments on our tentative determination that partially hydrogenated oils (PHOs) are not generally recognized as safe (GRAS) for any use in food based on current scientific evidence, and therefore are subject to regulation as food additives. We are taking this action in response to multiple requests for an extension to allow interested persons additional time to submit comments.

DATES: FDA is extending the comment period on the notice. Submit either electronic or written comments by March 8, 2014.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2013–N–1317 by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Written Submissions

Submit written submissions in the following ways:

• Mail/Hand delivery/Courier (for paper or CD–ROM submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and Docket No. FDA–2013–N–1317 for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number(s), found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Mical Honigfort, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1278, FAX: 301–436–2972, email: *mical.honigfort@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of November 8, 2013 (78 FR 67169), FDA published a notice announcing our tentative determination that PHOs, which are the primary dietary source of industrially-produced *trans* fatty acids, or *trans* fat, are not GRAS for any use in food based on current scientific evidence establishing the health risks associated with the consumption of *trans* fat with a 60-day comment period ending on January 7, 2014. The notice also invited comments and additional scientific data and information related to this tentative determination and, in particular, requested comment on a number of specific questions (78 FR 67169 at 67174).

We have received multiple requests for a 60-day extension of the comment period for the notice. Each request conveyed concern that the current 60-day comment period does not allow sufficient time to collect data and information and develop a comprehensive and thoughtful response to the notice.

FDA has considered the requests and is extending the comment period for the notice for 60 days, until March 8, 2014. We believe that a 60-day extension allows adequate time for interested persons to submit comments without significantly delaying our final determination on this important issue.

II. Request for Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Dated: December 24, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–31294 Filed 12–30–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the Program), as required by Section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in

general, contact the Clerk, United States Court of Federal Claims, 717 Madison Place NW., Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 11C–26, Rockville, MD 20857; (301) 443–6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.,* provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at Section 2114 of the PHS Act or as set forth at 42 CFR 100.3, as applicable. This Table lists for each covered childhood vaccine the conditions which may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that ''[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**.'' Set forth below is a list of petitions received by HRSA on November 1, 2013, through November 30, 2013. This list provides the name of petitioner, city and state of vaccination (if unknown then city and state of person or attorney filing claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

(a) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by'' one of the vaccines referred to in the Table, or

(b) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

In accordance with Section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading ''For Further Information Contact''), with a copy to HRSA addressed to Director, Division of Vaccine Injury Compensation Program, Healthcare Systems Bureau, 5600 Fishers Lane, Room 11C–26, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Dated: December 19, 2013.

Mary K. Wakefield,

Administrator.

List of Petitions Filed

1. Ronda Odom, Weatherford, Texas, Court of Federal Claims No: 13–0865V
2. Kendy Sue Wilson, Sterling Heights, Michigan, Court of Federal Claims No: 13–0866V
3. Bernard Zyk, Vienna, Virginia, Court of Federal Claims No: 13–0868V
4. Matthew Rupert, Scarsdale, Connecticut, Court of Federal Claims No: 13–0869V
5. Karen Schuler, Mesa, Arizona, Court of Federal Claims No: 13–0872V
6. Cynthia Winward on behalf of James Winward, Yuba City, California, Court of Federal Claims No: 13–0873V
7. Elaine S. Tito, Saco, Maine, Court of Federal Claims No: 13–0878V
8. Samuel Gray, Lewiston, Maine, Court of Federal Claims No: 13–0880V
9. Douglas D. Nichols, Sarasota, Florida, Court of Federal Claims No: 13–0883V
10. James and Valerie Myers on behalf of Malakai Myers, Phoenix, Arizona, Court of Federal Claims No: 13–0885V
11. Valerie Cozbey, Columbus, Georgia, Court of Federal Claims No: 13–0886V
12. Harry McCarter on behalf of Lillie Mae McCarter, Deceased, Birmingham, Alabama, Court of Federal Claims No: 13–0887V
13. Meryl Thibodeaux, Houma, Louisiana, Court of Federal Claims No: 13–0891V
14. Melanie A. Frampton, Pittsburgh, Pennsylvania, Court of Federal Claims No: 13–0892V
15. Ketleen Dormeus and Duranton Dormeus, Philadelphia, Pennsylvania, Court of Federal Claims No: 13–0893V
16. Jaime Renee Brunkan, Linwood, New Jersey, Court of Federal Claims No: 13–0894V
17. Laura J. Lebel, Hartford, Connecticut, Court of Federal Claims No: 13–0897V
18. Melva Mooneyham, Fort Smith, Arizona, Court of Federal Claims No: 13–0899V
19. Lisa N. Button, Fort Myers, Florida, Court of Federal Claims No: 13–0900V
20. Steve Lehrman, Homestead, Pennsylvania, Court of Federal Claims No: 13–0901V
21. Patricia K. Patterson, Rochester, New York, Court of Federal Claims No: 13–0902V
22. Patricia Huhmann, Fishers, Indiana, Court of Federal Claims No: 13–0903V
23. James D. Saffold, Brandon, Florida, Court of Federal Claims No: 13–0905V
24. Mary-Lou A. Green, Syracuse, New York, Court of Federal Claims No: 13–0911V
25. Courtney Miller and Bernard Miller on behalf of Ella Mae Miller, Spokane, Washington, Court of Federal Claims No: 13–0914V
26. Dorothy Dickinson, Sarasota, Florida, Court of Federal Claims No: 13–0915V
27. Sharon Bosco, New Haven, Connecticut, Court of Federal Claims No: 13–0916V
28. Kiona Warren, Fort Lauderdale, Florida, Court of Federal Claims No: 13–0919V
29. Roberta Green, Hurricane, West Virginia, Court of Federal Claims No: 13–0920V
30. Kevin Thompson, Brooklyn, New York, Court of Federal Claims No: 13–0921V
31. Charles W. Brown on behalf of Kathryn C. Brown, Deceased, Wichita, Kansas, Court of Federal Claims No: 13–0922V
32. David W. Crippen, Pittsburgh, Pennsylvania, Court of Federal Claims No: 13–0923V
33. Maria and Joel Gonzalez on behalf of Joel Gonzalez, Jr., San Jose, California, Court of Federal Claims No: 13–0927V
34. Michael Swann, Leeds, Massachusetts, Court of Federal Claims No: 13–0928V
35. Debbie Bretag, Chicago, Illinois, Court of Federal Claims No: 13–0930V

36. Lise Marquis, Phoenix, Arizona, Court of Federal Claims No: 13–0932V
37. Linda G. Kimbell, Atlanta, Georgia, Court of Federal Claims No: 13–0936V
38. John Jastisan, Philadelphia, Pennsylvania, Court of Federal Claims No: 13–0937V
39. Caroline Courbois, Washington, District of Columbia, Court of Federal Claims No: 13–0939V
40. Louis R. Brockington, Florence, South Carolina, Court of Federal Claims No: 13–0941V
41. Estate of Raul Torres, Sr. on behalf of Raul Torres, Sr., Deceased, San Antonio, Texas, Court of Federal Claims No: 13–0943V

[FR Doc. 2013–31283 Filed 12–30–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request: Application Process for Clinical Research Training and Medical Education at the Clinical Center and Its Impact on Course and Training Program Enrollment and Effectiveness

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on October 2, 2013, page 60885 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The Clinical Center (CC), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: NIH Desk Officer.

DATES: *Comment Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments or request more information on the proposed project contact: Robert M. Lembo, MD, Deputy Director, Office of Clinical Research Training and Medical Education, NIH Clinical Center, 10 Center Drive, MSC 1158, Bethesda, MD 20892–1352, or call non-toll-free number (301)-594–4193, or Email your request, including your address to: *lembor@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Proposed Collection: Application Process for Clinical Research Training and Medical Education at the Clinical Center and its Impact on Course and Training Program Enrollment and Effectiveness—Existing collection in use without OMB control number—Clinical Center, National Institutes of Health (CC), National Institutes of Health (NIH).

Need and Use of Information Collection: The primary objective of the application process is to allow OCRTME to evaluate applicants' qualifications to determine applicants' eligibility for courses and training programs managed by the office. Applicants must provide the required information requested in the respective applications to be considered a candidate for participation. Information submitted by candidates for training programs is reviewed initially by OCRTME administrative staff to establish eligibility for participation. Eligible candidates are then referred to the designated training program director or training program selection committee for review and decisions regarding acceptance for participation. A secondary objective of the application process is to track enrollment in courses and training programs over time.

OMB approval is requested for 3 years. There are additional costs to the respondents other than their time. The total estimated annualized burden hours are 2,210.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of applicants	Estimated number of applicants	Estimated number of applications per applicant	Burden per application (in hours)	Total annual burden hours requested
Doctoral Level	6,488	1	20/60	2,163
Students	82	1	20/60	27
Other	59	1	20/60	20

Dated: December 18, 2013.

Laura Lee,

Project Clearance Liaison, Clinical Center, National Institutes of Health.

[FR Doc. 2013–31365 Filed 12–30–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of meetings of the National Advisory Allergy and Infectious Diseases Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed belowin advance of the meeting.

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 Advisory Allergy and Infectious Diseases Council.
Date: January 27, 2014.
Open: 10:30 a.m. to 11:40 a.m.
Agenda: Report from the Institute Director.
Place: National Institutes of Health, Natcher Building, Conference Rooms E1/E2, 45 Center Drive, Bethesda, MD 20892.
Closed: 11:40 a.m. to 12:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Natcher Building, Conference Rooms E1/E2, 45 Center Drive, Bethesda, MD 20892.
Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, 6700B Rockledge Drive, Room 2142, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council; Allergy, Immunology and Transplantation Subcommittee.
Date: January 27, 2014.
Closed: 8:30 a.m. to 10:15 a.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.
Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, 6700B Rockledge Drive, Room 2142, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council; Microbiology and Infectious Diseases Subcommittee.
Date: January 27, 2014.
Closed: 8:30 a.m. to 10:15 a.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Natcher Building, Conference Rooms F1/F2, 45 Center Drive, Bethesda, MD 20892.
Open: 1:00 p.m. to adjournment.
Agenda: Reports from the Division Director and other staff.
Place: National Institutes of Health, Natcher Building, Conference Rooms F1/F2, 45 Center Drive, Bethesda, MD 20892.
Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, 6700B Rockledge Drive, Room 2142, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council; Acquired Immunodeficiency Syndrome Subcommittee.
Date: January 27, 2014.
Closed: 8:30 a.m. to 10:15 a.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Natcher Building, Conference Room A, 45 Center Drive, Bethesda, MD 20892.
Open: 1:00 p.m. to adjournment.
Agenda: Program advisory discussions and reports from division staff.
Place: National Institutes of Health, Natcher Building, Conference Rooms E1/E2, 45 Center Drive, Bethesda, MD 20892.
Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, 6700B Rockledge Drive, Room 2142, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council; Acquired Immunodeficiency Syndrome Subcommittee.
Date: June 2, 2014.
Closed: 8:30 a.m. to 10:15 a.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Natcher Building, Conference Room A, 45 Center Drive, Bethesda, MD 20892
Open: 1:00 p.m. to adjournment.
Agenda: Program advisory discussions and reports from division staff.
Place: National Institutes of Health, Natcher Building, Conference Rooms E1/E2, 45 Center Drive, Bethesda, MD 20892.
Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, 6700B Rockledge Drive, Room 2142, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council; Microbiology and Infectious Diseases Subcommittee.
Date: June 2, 2014.
Closed: 8:30 a.m. to 10:15 a.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Natcher Building, Conference Rooms F1/F2, 45 Center Drive, Bethesda, MD 20892.
Open: 1:00 p.m. to adjournment.
Agenda: Reports from the Division Director and other staff.
Place: National Institutes of Health, Natcher Building, Conference Rooms F1/F2, 45 Center Drive, Bethesda, MD 20892.
Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities , National Institute of Allergy and Infectious Diseases, 6700B Rockledge Drive, Room 2142, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council; Allergy, Immunology and Transplantation Subcommittee.
Date: June 2, 2014.
Closed: 8:30 a.m. to 10:15 a.m.
*Agenda:*To review and evaluate grant applications.
Place: National Institutes of Health, Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.
Open: 1:00 p.m. to adjournment.
Agenda: Reports from the Division Director and other staff.
Place: National Institutes of Health, Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.
Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, 6700B Rockledge Drive, Room 2142, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council.
Date: June 2, 2014.
Open: 10:30 a.m. to 11:40 a.m.
Agenda: Report from the Institute Director.
Place: National Institutes of Health, Natcher Building, Conference Rooms E1/E2, 45 Center Drive, Bethesda, MD 20892.
Closed: 11:40 a.m. to 12:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Natcher Building, Conference Rooms E1/E2, 45 Center Drive, Bethesda, MD 20892.
Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, 6700B Rockledge Drive, Room 2142, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council; Microbiology and Infectious Diseases Subcommittee.
Date: September 15, 2014.
Closed: 8:30 a.m. to 10:15 a.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Natcher BuildingConference Rooms F1/F2, 45 Center Drive, Bethesda, MD 20892.
Open: 1:00 p.m. to adjournment.
Agenda: Reports from the Division Director and other staff.
Place: National Institutes of Health, Natcher Building, Conference Rooms F1/F2, 45 Center Drive, Bethesda, MD 20892.
Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, 6700B Rockledge Drive, Room 2142, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council; Allergy, Immunology and Transplantation Subcommittee.
Date: September 15, 2014.
Closed: 8:30 a.m. to 10:15 a.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.
Open: 1:00 p.m. to adjournment.
Agenda: Reports from the Division Director and other staff.
Place: National Institutes of Health, Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.
Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, 6700B Rockledge Drive, Room 2142, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council; Acquired Immunodeficiency Syndrome Subcommittee.
Date: September 15, 2014.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Room A, 45 Center Drive, Bethesda, MD 20892.

Open: 1:00 p.m. to adjournment.

Agenda: Program advisory discussions and reports from division staff.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1/E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, 6700B Rockledge Drive, Room 2142, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council.

Date: September 15, 2014.

Open: 10:30 a.m. to 11:40 a.m.

Agenda: Report from the Institute Director, National Institutes of Health, Natcher Building, Conference Rooms E1/E2, 45 Center Drive, Bethesda, MD 20892.

Closed: 11:40 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1/E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, 6700B Rockledge Drive, Room 2142, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interestedperson.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page:*www.niaid.nih.gov/facts/facts.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 24, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–31288 Filed 12–30–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Development of Vaccine Formulations Effective Against NIAID Priority Pathogens.

Date: January 27–28, 2014.

Time: 8:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Eleazar Cohen, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health, NIAID, 6700 B Rockledge Drive, Room 3129, Bethesda, MD 20892, 301–435–3564, *ec17w@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 24, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–31289 Filed 12–30–13; 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: Integrative Neuroscience.

Date: January 7, 2014.

Time: 100 p.m. to 3:00 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: Nicholas Gaiano, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892–7844, 301–435–1033 *gaianonr@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.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Biological Chemistry and Macromolecular Biophysics.

Date: January 16, 2014.

Time: 11:00 a.m. to 3:00 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: Michael Eissenstat, Ph.D., Scientific Review Officer, BCMB IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4166, Bethesda, MD 20892, 301–435–1722, *eissenstatma@csr.nih.gov.*

Name of Committee: Emerging Technologies and Training Neurosciences Integrated Review Group; Bioengineering of Neuroscience, Vision and Low Vision Technologies Study Section.

Date: January 30–31, 2014.

Time: 8:00 a.m. to 9:00 a.m.

Agenda: To review and evaluate grant applications.

Place: DoubleTree Santa Monica, 1707 Fourth Street, Santa Monica, CA 90401.

Contact Person: Robert C Elliott, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5190, MSC 7846, Bethesda, MD 20892, 301–435–3009, *elliotro@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Neurotechnology and Low Vision Technology Bioengineering Research Partnerships.

Date: January 31, 2014.

Time: 9:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: DoubleTree Santa Monica, 1707 Fourth Street, Santa Monica, CA 90401.

Contact Person: Robert C Elliott, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892, 301–435–3009, *elliotro@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Advanced Neural Prosthetics.

Date: January 31, 2014.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: DoubleTree Santa Monica, 1707 Fourth Street, Santa Monica, CA 90401.

Contact Person: Robert C Elliott, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892, 301–435–3009, *elliotro@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Neurotechnology and Low Vision Technology Bioengineering Research Grants.

Date: January 31, 2014.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: DoubleTree Santa Monica, 1707 Fourth Street, Santa Monica, CA 90401.

Contact Person: Robert C Elliott, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892, 301–435–3009, *elliotro@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: December 23, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–31286 Filed 12–30–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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: National Institute on Aging Special Emphasis Panel; GEMSSTAR.

Date: January 27, 2014.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Rebecca J. Ferrell, Ph.D., Scientific Review Officer, National Institute on Aging, Gateway Building Rm. 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7703, *ferrellrj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 24, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–31287 Filed 12–30–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; 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 Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Fellowships in Digestive Diseases and Nutrition.

Date: February 13, 2014.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue NW, Washington, DC 20009.

Contact Person: Thomas A. Tatham, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 760, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–3993, *tathamt@mail.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; DDK–C Conflicts.

Date: February 13, 2014.

Time: 4:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue NW, Washington, DC 20009.

Contact Person: Thomas A. Tatham, Ph.D, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 760, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–3993, *tathamt@mail.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR–13–305: Collaborative Interdisciplinary Team Science in NIDDK Research Areas (R24).

Date: March 7, 2014.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Najma Begum, Ph.D, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 749, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 5942–8894, *begumn@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 24, 2013

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–31285 Filed 12–30–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

[133R0680R1, RR.17549897.1000000.01, RC0ZCUPCA0]

Office of the Assistant Secretary—Water and Science; Draft Environmental Assessment of the Proposed Increase in Operation, Maintenance and Replacement Activities Associated With the Wasatch County Water Efficiency Project

AGENCY: Central Utah Project Completion Act Completion Office, Interior.

ACTION: Notice of availability.

SUMMARY: The Department of the Interior (Department), the Utah Reclamation Mitigation and Conservation Commission (Mitigation Commission), and the Central Utah Water Conservancy District (CUWCD),

as joint leads, are evaluating the impacts of a proposed increase in operation, maintenance and replacement activities associated with the Wasatch County Water Efficiency Project (WCWEP) and have prepared a Draft Environmental Assessment.

DATES: Submit written comments on the Draft Environmental Assessment by January 31, 2014.

ADDRESSES: Send written comments on the Draft Environmental Assessment to Ms. Sarah Johnson, 355 W. University Parkway, Orem, UT 84058–7303, by email to *sarah@cuwcd.com,* by facsimile to 801–226–7171, or through the project Web site at *www.wcwepea.com.*

Copies of the Draft Environmental Assessment are available for inspection at:

- Central Utah Water Conservancy District, 355 West University Parkway, Orem, Utah 84058–7303
- Central Utah Water Conservancy District, WCWEP Office, 626 East 1200 South, Heber City, Utah 84032
- Department of the Interior, Central Utah Project Completion Act Office, 302 East 1860 South, Provo, Utah 84606
- Utah Reclamation Mitigation and Conservation Commission, 230 South 500 East #230, Salt Lake City, Utah 84102–3146

In addition, the document is available at *www.cuwcd.com* and *www.cupcao.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Lee Baxter, Central Utah Project Completion Act Office, 302 East 1860 South, Provo, Utah 84606; by calling 801–379–1174; or email at *lbaxter@usbr.gov.*

SUPPLEMENTARY INFORMATION: The Department, CUWCD, and the Mitigation Commission are publishing this notice pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, as amended. The Draft Environmental Assessment presents analysis of the anticipated environmental effects of a proposed increase in operation, maintenance and replacement activities associated with WCWEP. The WCWEP Operation, Maintenance, and Replacement Proposed Action in the Draft Environmental Assessment includes: Stabilizing canal banks; lining, piping, or enclosing the canals for safety and continued efficiency; improving access; and updating pump stations and regulating ponds to accommodate the changing pattern of water demand and increased urbanization.

We are requesting public comment on the Draft Environmental Assessment. 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.

Dated: December 24, 2013.

Reed R. Murray,

Program Director, Central Utah Project Completion Act, Department of the Interior.

[FR Doc. 2013–31306 Filed 12–30–13; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

[133R0680R1, RR.17549897.1000000.01, RC0ZCUPCA0]

Office of the Assistant Secretary—Water and Science; Environmental Assessment of the Olmsted Hydroelectric Power Plant Replacement Project

AGENCY: Central Utah Project Completion Act Completion Office, Interior.

ACTION: Notice of intent.

SUMMARY: The Department of the Interior and the Central Utah Water Conservancy District (District), as joint leads, are preparing an Environmental Assessment (EA) to evaluate the impacts of a proposed project to replace the Olmsted Hydroelectric Power Plant.

DATES: Please submit scoping comments by January 31, 2014.

ADDRESSES: A Scoping Document associated with this effort is available at *www.cuwcd.com* and *www.cupcao.gov.* Send written comments to Mr. Chris Elison, 355 W. University Parkway, Orem, UT 84058–7303; by email to *chrise@cuwcd.com;* or by facsimile to the attention of Mr. Chris Elison at 801–226–7171.

FOR FURTHER INFORMATION CONTACT: Mr. Lee Baxter, Central Utah Project Completion Act Office, 302 East 1860 South, Provo, Utah 84606; by calling 801–379–1174; or email at *lbaxter@usbr.gov.*

SUPPLEMENTARY INFORMATION: The proposed project is located in Orem, Utah near the mouth of Provo Canyon. In October 2015, the District will assume the responsibility for operation and maintenance of the Olmsted power plant as a component of the Bonneville Unit of the Central Utah Project. The EA will provide the necessary analysis for determining potential environmental impacts associated with replacement of the Olmsted power plant and its continued operation. Principal components of the proposed project include construction of a new powerhouse; replacement of existing penstocks; incorporating the existing 10 million gallon equalization reservoir into the power plant configuration with potential impacts to the existing pressure box, raising the existing spillway, and lining a portion of the Olmsted Flowline tunnel.

Dated: December 24, 2013.

Reed R. Murray,

Program Director, Central Utah Project Completion Act, Department of the Interior.

[FR Doc. 2013–31304 Filed 12–30–13; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[14X LLIDB00100 LF1000000.HT0000 LXSS024D0000 241A 4500060956]

Notice of Public Meeting, Gateway West Project Subcommittee of the Boise District Resource Advisory Council

AGENCY: Bureau of Land Management, U.S. Department of the Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Gateway West Project Subcommittee of the Boise District Resource Advisory Council (RAC), will hold a work session as indicated below.

DATES: The work session will be held on January 14, 2014, at the Boise District Office located at 3948 Development Avenue, Boise, ID 83705, beginning at 12:30 p.m. and adjourning at 5:00 p.m. Members of the public are invited to attend. A public comment period will be held.

FOR FURTHER INFORMATION CONTACT: Marsha Buchanan, Supervisory Administrative Specialist and RAC Coordinator, BLM Boise District, 3948 Development Ave., Boise, ID 83705, Telephone (208) 384–3364.

SUPPLEMENTARY INFORMATION: The Gateway West Project Subcommittee advises the Boise District Resource Advisory Council on matters of planning and management of the Gateway West Project (sections 8 and 9). The Boise District Resource Advisory

Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in southwestern Idaho. The subcommittee will be discussing proposed routes of the Gateway West transmission line sections 8 and 9. Agenda items and location may change due to changing circumstances. The public may present written or oral comments to members of the Subcommittee. Individuals who plan to attend and need special assistance should contact the BLM Coordinator as provided above. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

Terry A. Humphrey,

Acting District Manager.

[FR Doc. 2013–31297 Filed 12–30–13; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[14X LLIDB00100 LF1000000.HT0000 LXSS024D0000 241A 4500060864]

Notice of Public Meeting, Boise District Resource Advisory Council

AGENCY: Bureau of Land Management, U.S. Department of the Interior.

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Boise District Resource Advisory Council (RAC), will hold a meeting as indicated below.

DATES: The meeting will be held January 28, 2014, at the Boise District Office, located at 3948 S. Development Avenue, Boise, Idaho, beginning at 9:00 a.m. and adjourn at 2:00 p.m. Members of the public are invited to attend. A public comment period will be held.

FOR FURTHER INFORMATION CONTACT: Marsha Buchanan, Supervisory Administrative Specialist and RAC Coordinator, BLM Boise District, 3948 S. Development Ave., Boise, ID 83705; telephone (208) 384–3364.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in southwestern Idaho. During the January meeting new RAC members will be introduced. The Gateway West project RAC subcommittee will present the information they have gathered and report on progress to date. Agenda items and location may change due to changing circumstances. The public may present written or oral comments to members of the Council. At each full RAC meeting, time is provided in the agenda for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance should contact the BLM Coordinator as provided above. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

Terry A. Humphrey,

Acting District Manager.

[FR Doc. 2013–31303 Filed 12–30–13; 8:45 am]

BILLING CODE 4310–GG–P

INTERNATIONAL TRADE COMMISSION

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 Soft-Edged Trampolines and Components Thereof,* DN 2995; 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 Document Information System (EDIS) at EDIS,[1] 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 at United States International Trade Commission (USITC) at USITC.[2] The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at EDIS.[3] 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 Springfree Trampoline, Inc., Springfree Trampoline USA, Inc. and Spring Free Limited Partnership on December 24, 2013. 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 standard cell libraries, products containing or made using the same, integrated circuits made using the same, and products containing such integrated circuits. The complaint name as respondent Vuly Trampolines Pty. Ltd., Australia. The complainant requests that the Commission issue a limited exclusion order and a permanent cease and desist order.

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.

[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov.*

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

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. 2995'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [4]). 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.[5]

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: December 24, 2013.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2013–31282 Filed 12–30–13; 8:45 am]

BILLING CODE 7020–02–P

[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.*

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302; NRC–2013–0283]

Duke Energy Florida, Inc., Crystal River Unit 3 Nuclear Generating Plant Post-Shutdown Decommissioning Activities Report

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of receipt; availability; public meeting; and request for public comment.

SUMMARY: On December 5, 2013, the NRC received the Post-Shutdown Decommissioning Activities Report (PSDAR), dated December 2, 2013 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML13340A009), for the Crystal River Unit 3 Nuclear Generating Plant (CR–3). The PSDAR provides an overview of Duke Energy Florida, Inc.'s (DEF's, the licensee's) proposed decommissioning activities, schedule, and costs for CR–3. The NRC will hold a public meeting to discuss the PSDAR and receive comments.

DATES: Submit comments by March 5, 2014. Comments after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received before this date.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *NRC Public Meeting:* The NRC will conduct a public meeting to discuss and accept comments on the CR–3 PSDAR on Thursday, January 16, 2014, from 7 p.m. until 9 p.m., EST, at the Crystal River Nuclear Plant Training Center/Emergency Operations Facility, Room 150, 8200 West Venable Street, Crystal River, FL 34429. The NRC requests that comments that are not addressed during the meeting be submitted in writing.
- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0283. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch, Office of Administration, Mail Stop: 3WFN–06–A44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Christopher Gratton, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1055; or email: *Christopher.Gratton@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2013–0283 when contacting the NRC about the availability of information regarding this document. You may access publically-available information by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0283.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at

the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2013–0283 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in you comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Discussion

CR–3 began commercial operation in March 1977. On February 20, 2013, Florida Power Corporation (FPC), which was renamed DEF in October 2013, provided to the NRC its certification of permanent cessation of operations (Cert1) and permanent removal of fuel from the reactor vessel (Cert2), as required by 10 CFR 50.82(a)(1)(i) and (ii), respectively. FPC stated in its February 20, 2013, letter that it had safely shut down the reactor on September 26, 2009, and had completed the transfer all fuel from the reactor vessel to the spent fuel pool on May 28, 2011. The letter documenting the licensee's certifications may be viewed in ADAMS at Accession No. ML13056A005.

With the docketing of Cert1 and Cert2 on February 20, 2013, pursuant to 10 CFR 50.82(a)(2), the 10 CFR Part 50 facility operating license for CR–3 no longer authorizes operation of the reactor or emplacement or retention of fuel in the reactor vessel. In addition, pursuant to 10 CFR 50.51, ''Continuation of license,'' Subpart (b), the facility license remains in effect until the NRC notifies the licensee that the license has been terminated.

On December 2, 2013, DEF submitted the PSDAR for CR–3 in accordance with 10 CFR 50.82(a)(4)(i). The PSDAR includes a description of the planned decommissioning activities, a proposed schedule for their accomplishment, a site-specific decommissioning cost estimate, and a discussion that provides the basis for concluding that the environmental impacts associated with decommissioning activities will be bounded by appropriate, previously issued environmental impact statements.

III. Request for Comment

The NRC is requesting public comments on the PSDAR for CR–3.

Dated at Rockville, Maryland, this 22nd day of December, 2013.

For The U.S. Nuclear Regulatory Commission.

Douglas A. Broaddus,

Chief, Plant Licensing IV–2 and Decommissioning Transition Branch, Division of Operator Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2013–31317 Filed 12–30–13; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2014–20; Order No. 1925]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an additional Global Expedited Package Services (GEPS) 3 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* January 2, 2014.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Background
III. Contents of Filing
IV. Commission Action
V. Ordering Paragraphs

I. Introduction

On December 23, 2013, the Postal Service filed Notice that it has entered into an additional Global Expedited Package Services (GEPS) 3 negotiated service agreement (Agreement).[1] The Postal Service seeks inclusion of the Agreement within the GEPS 3 product. *Id.* at 2.

II. Background

The Commission approved the addition of the GEPS Contracts product to the competitive product list following consideration of a Postal Service filing in Docket No. CP2008–5 based on Governors' Decision No. 08–7.[2] The Commission later added GEPS 3 to the competitive product list and authorized the agreement filed in Docket No. CP2010–71 to serve as the baseline agreement for comparison of potentially functionally equivalent agreements.[3]

Effective date; term. The Postal Service will notify its contracting partner of the effective date no later than 30 days after receiving approval from oversight entities. Notice, Attachment 1 at 7 (Article 12). The term of the Agreement is for one calendar year from the effective date or the last day of the month which falls one calendar year from the effective date, unless terminated sooner pursuant to contractual terms. *Id.*

III. Contents of Filing

The Notice includes a public Excel file consisting of financial workpapers and the following attachments:

- Attachment 1—a redacted copy of the Agreement;
- Attachment 2—a redacted copy of the certified statement required by 39 CFR 3015.5(c)(2);
- Attachment 3—a redacted copy of Governors' Decision No. 08–7, which establishes prices and classifications for GEPS Contracts; and
- Attachment 4—an application for non-public treatment of materials to be filed under seal.

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[1] Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, December 23, 2013 (Notice).

[2] See Docket No. CP2008–5, Order No. 86, Order Concerning Global Expedited Package Services Contracts, June 27, 2008.

[3] See Docket Nos. MC2010–28 and CP2010–71, Order No. 503, Order Approving Global Expedited Package Services 3 Negotiated Service Agreement, July 29, 2010.

Unredacted versions of Attachments 1 and 2 and the Excel file were also filed under seal. Notice at 2.

The Notice lists and summarizes differences between the Agreement and the baseline agreement. These include differences in two of the introductory paragraphs of the Agreement; revisions to numerous existing articles; and new, deleted, and renumbered articles. *Id.* at 4–6. The Postal Service states that these differences affect neither the fundamental service being offered under the Agreement nor the Agreement's fundamental structure, and that nothing detracts from the conclusion that the Agreement is ''functionally equivalent in all pertinent respects'' to the baseline agreement. *Id.* at 7. It therefore seeks the inclusion of the Agreement within the GEPS 3 product. *Id.*

IV. Commission Action

The Commission establishes Docket No. CP2014–20 for consideration of matters raised by the Notice. Interested persons may submit comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and subpart B of 39 CFR part 3020. Comments are due no later than January 2, 2014. The public portions of the Postal Service's filing can be accessed via the Commission's Web site, *http://www.prc.gov.* Information concerning access to non-public material is located in 39 CFR part 3007.

The Commission appoints Curtis E. Kidd to serve as Public Representative in this proceeding.

V. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2014–20 for consideration of the matters raised by the Postal Service's Notice.

2. Comments by interested persons in this proceeding are due no later than January 2, 2014.

3. Pursuant to 39 U.S.C. 505, the Commission appoints Curtis E. Kidd to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2013–31284 Filed 12–30–13; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17f–7, OMB Control No. 3235–0529, SEC File No. 270–470.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (''Paperwork Reduction Act''), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 17f–7 (17 CFR 270.17f–7) permits a fund under certain conditions to maintain its foreign assets with an eligible securities depository, which has to meet minimum standards for a depository. The fund or its investment adviser generally determines whether the depository complies with those requirements based on information provided by the fund's primary custodian (a bank that acts as global custodian). The depository custody arrangement also must meet certain conditions. The fund or its adviser must receive from the primary custodian (or its agent) an initial risk analysis of the depository arrangements, and the fund's contract with its primary custodian must state that the custodian will monitor risks and promptly notify the fund or its adviser of material changes in risks. The primary custodian and other custodians also are required to agree to exercise at least reasonable care, prudence, and diligence.

The collection of information requirements in rule 17f–7 are intended to provide workable standards that protect funds from the risks of using foreign securities depositories while assigning appropriate responsibilities to the fund's primary custodian and investment adviser based on their capabilities. The requirement that the foreign securities depository meet specified minimum standards is intended to ensure that the depository is subject to basic safeguards deemed appropriate for all depositories. The requirement that the fund or its adviser must receive from the primary custodian (or its agent) an initial risk analysis of the depository arrangements, and that the fund's contract with its primary custodian must state that the custodian will monitor risks and promptly notify the fund or its adviser of material changes in risks, is intended to provide essential information about custody risks to the fund's investment adviser as necessary for it to approve the continued use of the depository. The requirement that the primary custodian agree to exercise reasonable care is intended to provide assurances that its services and the information it provides will meet an appropriate standard of care.

The staff estimates that each of approximately 938 investment advisers [1] will make an average of 8 responses annually under the rule to address depository compliance with minimum requirements, any indemnification or insurance arrangements, and reviews of risk analyses or notifications. The staff estimates each response will take 6 hours, requiring a total of approximately 48 hours for each adviser.[2] Thus the total annual burden associated with these requirements of the rule is approximately 45,024 hours.[3] The staff further estimates that during each year, each of approximately 15 global custodians will make an average of 4 responses to analyze custody risks and provide notice of any material changes to custody risk under the rule. The staff estimates that each response will take 260 hours, requiring approximately 1,040 hours annually per global custodian.[4] Thus the total annual burden associated with these requirements is approximately 15,600 hours.[5] The staff estimates that the total annual hour burden associated with all collection of information requirements of the rule is therefore 60,624 hours.[6]

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. Compliance with the collection of information requirements of the rule is necessary to obtain the benefit of relying on the rule's permission for funds to maintain their assets in foreign custodians. The information provided

[1] As of October 2013, 938 investment advisers managed or sponsored open-end registered funds (including exchange-traded funds) and closed-end registered funds.

[2] 8 responses per adviser × 6 hours per response = 48 hours per adviser.

[3] 938 hours × 48 hours per adviser = 45,024 hours.

[4] 260 hours per response × 4 responses per global custodian = 1,040 hours per global custodian.

[5] 15 global custodians × 1,040 hours per global custodian = 15,600 hours.

[6] 45,024 hours + 15,600 hours = 60,624 hours.

under rule 17f–7 will not be kept confidential. 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.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an email to: *PRA_Mailbox@sec.gov*.

Dated: December 24, 2013.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–31241 Filed 12–30–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form N–8B–4.

OMB Control No.: 3235–0247, SEC File No. 270–180.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The

Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Form N–8B–4 (17 CFR 274.14) is the form used by face-amount certificate companies to comply with the filing and disclosure requirements imposed by Section 8(b) of the Investment Company Act of 1940 (15 U.S.C. 80a–8(b)). Among other items, Form N–8B–4 requires disclosure of the following information about the face-amount certificate company: Date and form of organization; controlling persons; current business and contemplated changes to the company's business; investment, borrowing, and lending policies, as well as other fundamental policies; securities issued by the company; investment adviser; depositaries; management personnel; compensation paid to directors, officers, and certain employees; and financial statements. The Commission uses the information provided in the collection of information to determine compliance with Section 8(b) of the Investment Company Act of 1940.

Form N–8B–4 and the burden of compliance have not changed since the last approval. Each registrant files Form N–8B–4 for its initial filing and does not file post-effective amendments to Form N–8B–4.[1] Commission staff estimates that no respondents will file Form N–8B–4 each year. There are currently only four existing face-amount certificate companies, and none have filed a Form N–8B–4 in many years. No new face-amount certificate companies have been established since the last OMB information collection approval for this form, which occurred in 2011. Accordingly, the staff estimates that, each year, zero face-amount certificate companies will file Form N–8B–4, and that the total burden for the information collection is zero hours. Although Commission staff estimates that there is no hour burden associated with Form N–8B–4, the staff is requesting an hour burden of one hour for administrative purposes. Estimates of the burden hours are made solely for the purposes of the PRA and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

The information provided on Form N–8B–4 is mandatory. The information provided on Form N–8B–4 will not be kept confidential. 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.

[1] Pursuant to Section 30(b)(1) of the Act, each respondent keeps its registration statement current through the filing of periodic reports as required by Section 13 of the Securities Exchange Act of 1934 and the rules thereunder. Post-effective amendments are filed with the Commission on the face-amount certificate company's Form S–1. Hence, respondents only file Form N–8B–4 for their initial registration statement and not for post-effective amendments.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: December 24, 2013.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–31243 Filed 12–30–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 19b–1, OMB Control No. 3235–0354, SEC File No. 270–312.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Section 19(b) of the Investment Company Act of 1940 (the ''Act'') (15 U.S.C. 80a–19(b)) authorizes the Commission to regulate registered investment company (''fund'') distributions of long-term capital gains made more frequently than once every twelve months. Accordingly, rule 19b–1 under the Act (17 CFR 270.19b–1) regulates the frequency of fund

distributions of capital gains. Rule 19b–1(c) states that the rule does not apply to a unit investment trust (''UIT'') if it is engaged exclusively in the business of investing in certain eligible securities (generally, fixed-income securities), provided that: (i) The capital gains distribution falls within one of five categories specified in the rule [1] and (ii) the distribution is accompanied by a report to the unitholder that clearly describes the distribution as a capital gains distribution (the ''notice requirement'').[2] Rule 19b–1(e) permits a fund to apply to the Commission for permission to distribute long-term capital gains that would otherwise be prohibited by the rule if the fund did not foresee the circumstances that created the need for the distribution. The application must set forth the pertinent facts and explain the circumstances that justify the distribution.[3] An application that meets those requirements is deemed to be granted unless the Commission denies the request within 15 days after the Commission receives the application.

Commission staff estimates that zero funds will file an application under rule 19b–1(e) each year. The staff understands that if a fund files an application it generally uses outside counsel to prepare the application. The cost burden of using outside counsel is discussed below. The staff estimates that, on average, a fund's investment adviser would spend approximately 4 hours to review an application, including 3.5 hours by an assistant general counsel at a cost of $467 per hour and 0.5 hours by an administrative assistant at a cost of $72 per hour, and the fund's board of directors would spend an additional 1 hour at a cost of $4,500 per hour, for a total of 5 hours.[4] Thus, the staff estimates that the annual hour burden of the collection of information imposed by rule 19b–1(e) would be approximately five hours per fund, at a cost of $6173.50.[5] Because the staff estimates that, each year, zero funds will file an application pursuant to rule 19b–1(e), the total burden for the information collection is 0 hours at a cost of $0.[6]

Commission staff estimates that there is no hour burden associated with complying with the collection of information component of rule 19b–1(c). Although Commission staff estimates that there is no hour burden associated with rule 19b–1, the staff is requesting an hour burden of one hour for administrative purposes.

As noted above, Commission staff understands that funds that file an application under rule 19b–1(e) generally use outside counsel to prepare the application.[7] The staff estimates that, on average, outside counsel spends 10 hours preparing a rule 19b–1(e) application, including eight hours by an associate and two hours by a partner. Outside counsel billing arrangements and rates vary based on numerous factors, but the staff has estimated the average cost of outside counsel as $450 per hour, based on information received from funds, intermediaries, and their counsel. The staff therefore estimates that the average cost of outside counsel preparation of the rule 19b–1(e) exemptive application is $4,500.[8] Because the staff estimates that, each year, zero funds will file an application pursuant to rule 19b–1(e), the total annual cost burden imposed by the exemptive application requirements of rule 19b–1(e) is estimated to be $0.[9]

The Commission staff estimates that there are approximately 3,361 UITs [10] that may rely on rule 19b–1(c) to make capital gains distributions. The staff estimates that, on average, these UITs rely on rule 19b–1(c) once a year to make a capital gains distribution.[11] In most cases, the trustee of the UIT is responsible for preparing and sending the notices that must accompany a capital gains distribution under rule 19b–1(c)(2). These notices require limited preparation, the cost of which accounts for only a small, indiscrete portion of the comprehensive fee charged by the trustee for its services to the UIT. The staff believes that as a matter of good business practice, and for tax preparation reasons, UITs would collect and distribute the capital gains information required to be sent to unitholders under rule 19b–1(c) even in the absence of the rule. The staff estimates that the cost of preparing a notice for a capital gains distribution under rule 19b–1(c)(2) is approximately $50. There is no separate cost to mail the notices because they are mailed with the capital gains distribution. Thus, the staff estimates that the capital gains distribution notice requirement imposes an annual cost on UITs of approximately $168,050.[12] The staff therefore estimates that the total cost imposed by rule 19b–1 is $168,050 ($168,050 plus $0 (total cost associated with rule 19b–1(e)) equals $168,050).

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.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Chief Information

[1] 17 CFR 270.19b–1(c)(1).

[2] The notice requirement in rule 19b–1(c)(2) supplements the notice requirement of section 19(a) [15 U.S.C. 80a–19(a)], which requires any distribution in the nature of a dividend payment to be accompanied by a notice disclosing the source of the distribution.

[3] Rule 19b–1(e) also requires that the application comply with rule 0–2 [17 CFR 270.02] under the Act, which sets forth the general requirements for papers and applications filed with the Commission pursuant to the Act and rules thereunder.

[4] The estimate for assistant general counsels is from SIFMA's Management & Professional Earnings in the Securities Industry 2012, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead. The estimate for administrative assistants is from SIFMA's Office Salaries in the Securities Industry 2012, modified by Commission staff to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead. The estimate for the board of directors as a whole is derived from estimates made by the staff regarding typical board size and compensation that is based on information received from fund representatives and publicly available sources.

[5] This estimate is based on the following calculations: $1634.50 (3.5 hours × $467 = $1634.50) plus $36 (0.5 hours × $72 = $36) plus $4500 equals $6173.50 (cost of one application).

[6] This estimate is based on the following calculation: $6173.50 (cost of one application) multiplied by 0 applications = $0 total cost.

[7] This understanding is based on conversations with representatives from the fund industry.

[8] This estimate is based on the following calculation: 10 hours multiplied by $450 per hour equals $4,500.

[9] This estimate is based on the following calculation: $4,500 multiplied by 0 (funds) equals $0.

[10] *See* 2013 Investment Company Fact Book, Investment Company Institute, *available at http://www.ici.org/pdf/2013_factbook.pdf.*

[11] The number of times UITs rely on the rule to make capital gains distributions depends on a wide range of factors and, thus, can vary greatly across years and UITs. UITs may distribute capital gains biannually, annually, quarterly, or at other intervals. Additionally, a number of UITs are organized as grantor trusts, and therefore do not generally make capital gains distributions under rule 19b–1(c), or may not rely on rule 19b–1(c) as they do not meet the rule's requirements.

[12] This estimate is based on the following calculation: 3361 UITs multiplied by $50 equals $168,050.

Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: December 24, 2013.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–31239 Filed 12–30–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 425, OMB Control No. 3235–0521, SEC File No. 270–462.

Notice is hereby given, that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 425 (17 CFR 230.425) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) requires the filing of certain prospectuses and communications under Rule 135 (17 CFR 230.135) and Rule 165 (17 CFR 230.165) in connection with business combination transactions. The purpose of the rule is to permit more oral and written communications with shareholders about tender offers, mergers and other business combination transactions on a more timely basis, so long as the written communications are filed on the date of first use. Approximately 1,680 issuers file communications under Rule 425 at an estimated 0.25 hours per response for a total of 420 annual burden hours (0.25 hours per response × 1,680 responses).

Written comments are invited on: (a) 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; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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.

Please direct your written comment to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: December 24, 2013.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–31238 Filed 12–30–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 701, OMB Control No. 3235–0522, SEC File No. 270–306.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 701(17 CFR 230.701) under the Securities Act of 1933 (''Securities Act'') (15 U.S.C. 77a *et seq.*) provides an exemption for certain issuers from the registration requirements of the Securities Act for limited offerings and sales of securities issued under compensatory benefit plans or contracts. The purpose of Rule 701 is to ensure that a basic level of information is available to employees and others when substantial amounts of securities are issued in compensatory arrangements. Approximately 300 companies annually rely on the Rule 701 exemption. The Rule 701 disclosure takes an estimated 2 hours per response to prepare for a total annual burden of 600 hours. We estimate that 25% of the 2 hours per response (0.5 hours) is prepared by the company for a total annual reporting burden of 150 hours (0.5 hours per response × 300 responses).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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.

Please direct your written comment to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: December 24, 2013.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–31240 Filed 12–30–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17f–5 *OMB Control No.:* 3235–0269, SEC File No. 270–259

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 350l–3520), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit the existing collection of information to the Office of

Management and Budget for extension and approval.

Rule 17f–5 (17 CFR 270.17f–5) under the Investment Company Act of 1940 [15 U.S.C. 80a] (the ''Act'') governs the custody of the assets of registered management investment companies (''funds'') with custodians outside the United States. Under rule 17f–5, a fund or its foreign custody manager (as delegated by the fund's board) may maintain the fund's foreign assets in the care of an eligible fund custodian under certain conditions. If the fund's board delegates to a foreign custody manager authority to place foreign assets, the fund's board must find that it is reasonable to rely on each delegate the board selects to act as the fund's foreign custody manager. The delegate must agree to provide written reports that notify the board when the fund's assets are placed with a foreign custodian and when any material change occurs in the fund's custody arrangements. The delegate must agree to exercise reasonable care, prudence, and diligence, or to adhere to a higher standard of care. When the foreign custody manager selects an eligible foreign custodian, it must determine that the fund's assets will be subject to reasonable care if maintained with that custodian, and that the written contract that governs each custody arrangement will provide reasonable care for fund assets. The contract must contain certain specified provisions or others that provide at least equivalent care. The foreign custody manager must establish a system to monitor the performance of the contract and the appropriateness of continuing to maintain assets with the eligible foreign custodian.

The collection of information requirements in rule 17f–5 are intended to provide protection for fund assets maintained with a foreign bank custodian whose use is not authorized by statutory provisions that govern fund custody arrangements,[1] and that is not subject to regulation and examination by U.S. regulators. The requirement that the fund board determine that it is reasonable to rely on each delegate is intended to ensure that the board carefully considers each delegate's qualifications to perform its responsibilities. The requirement that the delegate provide written reports to the board is intended to ensure that the delegate notifies the board of important developments concerning custody arrangements so that the board may exercise effective oversight. The requirement that the delegate agree to exercise reasonable care is intended to provide assurances to the fund that the delegate will properly perform its duties.

The requirements that the foreign custody manager determine that fund assets will be subject to reasonable care with the eligible foreign custodian and under the custody contract, and that each contract contain specified provisions or equivalent provisions, are intended to ensure that the delegate has evaluated the level of care provided by the custodian, that it weighs the adequacy of contractual provisions, and that fund assets are protected by minimal contractual safeguards. The requirement that the foreign custody manager establish a monitoring system is intended to ensure that the manager periodically reviews each custody arrangement and takes appropriate action if developing custody risks may threaten fund assets.[2]

Commission staff estimates that each year, approximately 130 registrants [3] could be required to make an average of one response per registrant under rule 17f–5, requiring approximately 2.5 hours of board of director time per response, to make the necessary findings concerning foreign custody managers. The total annual burden associated with these requirements of the rule is up to approximately 325 hours (130 registrants × 2.5 hours per registrant). The staff further estimates that during each year, approximately 15 global custodians [4] are required to make an average of 4 responses per custodian concerning the use of foreign custodians other than depositories. The staff estimates that each response will take approximately 270 hours, requiring approximately 1080 total hours annually per custodian. The total annual burden associated with these requirements of the rule is approximately 16,200 hours (15 global custodians × 1080 hours per custodian). Therefore, the total annual burden of all collection of information requirements of rule 17f–5 is estimated to be up to 16,525 hours (325 + 16,200). The total annual cost of burden hours is estimated to be $5,609,200 (325 hours × $4000/hour for board of director's time, plus 16,200 hours × $266/hour for a trust administrator's time).[5] Compliance with the collection of information requirements of the rule is necessary to obtain the benefit of relying on the rule's permission for funds to maintain their assets in foreign custodians.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: December 24, 2013.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–31242 Filed 12–30–13; 8:45 am]

BILLING CODE 8011–01–P

[1] *See* section 17(f) of the Act. 15 U.S.C. 80a–17(f).

[2] The staff believes that subcustodian monitoring does not involve ''collection of information'' within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501—3520) (''Paperwork Reduction Act'').

[3] This figure is an estimate of the number of new funds each year, based on data reported by funds in 2012 on Forms N–1A, N–2, N–4, N–6, and S–6. In practice, not all funds will use foreign custody managers, and the actual figure may be smaller.

[4] This estimate is based on staff research.

[5] The board hourly rate is based on fund industry representations. The $266/hour figure for a trust administrator is from SIFMA's Management & Professional Earnings in the Securities Industry 2012, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71180; File No. SR–FINRA–2013–039]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc; Order Instituting Proceedings To Determine Whether To Disapprove Proposed Rule Change To Clarify the Classification and Reporting of Certain Securities to FINRA

December 24, 2013.

I. *Introduction*

On September 16, 2013, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to clarify the classification and reporting of certain securities to FINRA. The proposed rule change was published for comment in the **Federal Register** on September 30, 2013.[3] The Commission received two comments on the proposal.[4] On November 12, 2013, FINRA granted the Commission an extension of time to act on the proposal until December 29, 2013. This order institutes proceedings under Section 19(b)(2)(B) of the Act [5] to determine whether to disapprove the proposed rule change.

II. Description of the Proposal

FINRA employs trade reporting rules that generally require that members report over-the-counter (''OTC'') transactions in eligible debt and equity securities to FINRA.[6] FINRA Rule 6622 requires that members report transactions in ''OTC Equity Securities'' to ORF [7] and the Rule 6700 Series requires members to report transactions in ''TRACE-Eligible Securities'' to TRACE.[8]

The current proposal would clarify how members would be required to report two classes of securities—''depositary shares'' and ''capital trust'' (or ''trust preferred'') securities—under these rules. Both classes are ''hybrid'' securities, in that each has debt- and equity-like features. According to FINRA, such hybrid securities are frequently designed to straddle both classifications for a variety of purposes, including the tax treatment applicable to issuers and recipients when distributions are made (or not made) to holders of the security, and the treatment of the principal as capital for issuers subject to capital requirements.[9] FINRA states that it has received requests for guidance whether such hybrid securities should appropriately be classified as equities, and thus reported to ORF, or debt securities, and thus reported to TRACE.

FINRA has proposed to classify depositary shares, when not listed on an equity facility of a national securities exchange,[10] as OTC Equity Securities under FINRA Rule 6420(f).[11] As such, depositary shares would be equity securities reportable to ORF. According to FINRA, depositary shares generally are securities that represent a fractional interest in a share of preferred stock, and preferred stocks are considered equity securities. FINRA notes further that depositary shares generally entitle the holder, through the depositary, to a proportional fractional interest in the rights, powers, and preferences of the preferred stock represented by the depositary share.[12]

Under the proposal, FINRA members would be required to request a symbol for a depository share, if one had not already been assigned, and to report transactions in depositary shares in accordance with ORF requirements. Thus, the price of the transaction would be reported as the dollar price per share and volume should be reported as the number of depositary shares traded.[13]

With respect to capital trust (or trust preferred) securities, FINRA has proposed to include such securities within the definition of ''TRACE-Eligible Security'' under FINRA Rule 6710(a).[14] Thus, members would be required to report transactions in such securities to TRACE according to applicable TRACE reporting requirements. For example, members would be required to report price as a percentage of par value and volume as the total par value of the transaction (not the number of bonds traded).[15]

In explaining its proposed classification of capital trust securities, FINRA noted that, historically, many of these securities—particularly those issued with $1,000 par value and not listed on an equity facility of a national securities exchange—were reported to Fixed Income Pricing System (''FIPS'') prior to the implementation of TRACE.[16] When TRACE was proposed, reporting of FIPS securities was to be transferred to TRACE.[17] FINRA also noted that, as part of the original TRACE proposal, FINRA (then NASD) specifically identified capital trust securities in a list of instruments that NASD considered TRACE-Eligible Securities, which would be reported to

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 70482 (September 23, 2013), 78 FR 59995 (September 30, 2013) (''Notice'').

[4] *See* Letters to the Commission from Sean Davy, Managing Director, Capital Markets, SIFMA, dated October 21, 2013 (''SIFMA Letter''); and Manisha Kimmel, Executive Director, Financial Information Forum, dated October 31, 2013 (''FIF Letter'').

[5] 15 U.S.C. 78s(b)(2)(B).

[6] *See* FINRA Rules 6282 (relating to the Alternative Display Facility (''ADF'')), 6380A (relating to the FINRA/Nasdaq Trade Reporting Facility), 6380B (relating to the FINRA/NYSE Trade Reporting Facility), 6622 (relating to the OTC Reporting Facility (''ORF'')), and 6730 (relating to the Trade Reporting and Compliance Engine (''TRACE'')).

[7] FINRA Rule 6420(f) defines ''OTC Equity Security'' to include ''any equity security that is not an 'NMS stock' as that term is defined in Rule 600(b)(47) of SEC Regulation NMS; provided, however, that the term 'OTC Equity Security' shall not include any Restricted Equity Security.'' FINRA Rule 6420(k) defines ''Restricted Equity Security'' to mean ''any equity security that meets the definition of 'restricted security' as contained in Securities Act Rule 144(a)(3).''

[8] FINRA Rule 6710(a) defines ''TRACE-Eligible Security'' to include ''a debt security that is United States ('U.S.') dollar-denominated and issued by a U.S. or foreign private issuer, and, if a 'restricted security' as defined in Securities Act Rule 144(a)(3), sold pursuant to Securities Act Rule 144A.''

[9] *See* Notice, 78 FR at 59996.

[10] FINRA's proposed interpretation would apply solely to a hybrid security that is not listed on an equity facility of a national securities exchange. *See, e.g., FINRA Trade Reporting Notice,* February 22, 2008 (applying TRACE reporting requirements, distinguishing between listed and unlisted securities, and required members to report transactions in unlisted convertible debt and unlisted equity-linked notes to TRACE, and OTC transactions in convertible debt and equity-linked notes listed on an equity facility of a national securities exchange to an appropriate FINRA equity trade reporting facility for NMS stocks (the ADF or a trade reporting facility (''TRF'')). For purposes of FINRA's proposed rule change, the term ''listed on an equity facility of a national securities exchange'' would mean a security that qualifies as an NMS stock (as defined in Rule 600(b)(47) of Regulation NMS) as distinguished from a security that is listed on a bond facility of a national securities exchange.

[11] *See supra* note 7.

[12] *See* Notice, 78 FR at 59996.

[13] *See* FINRA Rule 6622; *see also* Trade Reporting FAQ 101.6, available at *www.finra.org/Industry/Regulation/Guidance/p038942#101.*

[14] *See supra* note 8.

[15] *See* FINRA Rule 6730.

[16] FINRA (formerly, the National Association of Securities Dealers, Inc. (''NASD'')) operated FIPS through its then-subsidiary, NASDAQ. FIPS commenced operation in April 1994 and collected transaction and quotation information on domestic, registered, non-convertible high-yield corporate bonds. OTC capital trust securities and trust preferred securities were treated as FIPS securities and often included in the regularly published lists of the most actively-traded FIPS securities, referred to as the ''FIPS 50.'' *See* Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131 (January 29, 2001) (Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 4, Relating to the Creation of a Corporate Bond Trade Reporting and Transaction Dissemination Facility and the Elimination of Nasdaq's Fixed Income Pricing System) (File No. SR–NASD–99–65) (''TRACE Approval Order'').

[17] *See, e.g.,* TRACE Approval Order, 66 FR at 8132–8133, nn. 13 and 16.

TRACE and otherwise subject to the Rule 6700 Series requirements.[18]

FINRA stated that the proposed rule change would apply only on a prospective basis. It would not require FINRA members to review old trades and cancel and re-report those trades if they were reported contrary to the terms of the proposal. If the proposal became effective, however, it would require FINRA members to cancel and re-report trades that occurred after the date of the proposal's effectiveness if those trades were reported incorrectly.[19]

III. Comment Letters

As noted above, the Commission received two comment letters concerning the proposal.[20] Both comment letters express concern with FINRA's proposed guidance regarding trade reporting of hybrid preferred securities, such as depositary shares, and contend that hybrid securities currently being reported to TRACE should continue to be reported to TRACE. FINRA has not yet submitted a response to the comments.

The commenters make several arguments as to why depositary shares should continue to be reported to TRACE, rather than to ORF, as the proposal would require. According to the commenters, it is longstanding market practice to treat depositary shares more like debt than equity securities. The commenters also claim that it would be overly burdensome for market participants to make the technological changes required to report trades in depositary shares to ORF rather than TRACE.

One of the commenters states that investors evaluate hybrid securities, including depositary shares, based upon their fixed income attributes. According to this commenter, depositary shares with a par value of $1,000 have historically been traded and settled with a debt convention, meaning on the basis of yield and credit quality rather than on the potential for capital appreciation.[21] As a result, the commenter states, investors in hybrid securities, often institutional investors, make portfolio allocations based on yield, time to first call, and credit rating among other debt-like characteristics.[22] The commenter acknowledges, however, that hybrid securities, including depositary shares, may also be issued with par values less than $1,000, and that such smaller par value securities most often trade as equity securities in an equity format.[23]

This commenter takes the position that there is justification to support the current market practice of treating depositary shares with $1,000 par value or greater as debt securities. For instance, the commenter notes that hybrid securities, including depositary shares, generally hold a similar priority in the capital structure, meaning they are paid after all other debt and prior to common equity.[24] Additionally, according to the commenter, hybrid securities tend to share core characteristics such as a fixed coupon or dividend and a lack of voting rights beyond statutory requirements, similar to the voting rights associated with debt indentures. Hybrid securities also may or may not be callable, and they may have a specific maturity date.[25] Finally, the commenter cites a number of cases where it believes the Commission has suggested that preferred securities may properly be classified as debt securities.[26]

Furthermore, this commenter also identifies what it believes may be a significant harmful consequence of changing market practice with respect to the classification of depositary shares. The commenter notes that hybrid preferred securities, including depositary shares, are often issued by banks because of how the securities are treated for purposes of calculating a bank's regulatory capital. The commenter states that such securities are likely to become more important to banks as new, stricter standards concerning banks' capital ratios take effect. Absent a robust secondary market, the commenter contends, banks may be limited in their ability to issue hybrid preferred securities, which could impact their ability to comply with regulatory capital requirements. The commenter believes that, to the extent the proposal would change the way depositary shares are traded, it could dampen the secondary market by creating investor confusion or rendering the securities ineligible for inclusion in fixed income indices.[27]

Both commenters question the ability of market participants to adapt their systems to comply with the proposed reclassification of depositary shares. As one commenter notes, the data fields captured by FINRA's ORF are different than those captured by TRACE. For example, ORF collects for each transaction the price per share and number of shares traded. It does not have a data field for an accrued coupon or dividend, information captured as part of debt transactions reported to TRACE.[28] Along the same lines, the second commenter notes that investors may prefer to receive confirmations of their depositary share trades with the additional data fields that TRACE collects but ORF does not.[29] Furthermore, the second commenter points out, many firms have bifurcated trading, operations, and technology architecture for equities and debt that is tailored to the order lifecycle needs of each type of instrument, including order entry, market data, trade reporting, and settlement.[30] In this commenter's view, the costs of altering such architecture are not warranted.[31] The first commenter expressed similar sentiment, and it also urged FINRA to allow sufficient implementation time should it proceed with the proposal.[32]

Aside from arguing for a particular treatment for depositary shares, the first commenter expressed its belief that the proposal does not contain sufficient guidance to clearly apply to the range of hybrid securities traded throughout the marketplace. This commenter offered several alternative formulations of the guidance that it believes would more thoroughly define the criteria by which a security would be classified as reportable to ORF or TRACE.[33]

IV. Proceedings to Determine Whether to Disapprove SR–FINRA–2013–039 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[34] to determine whether the proposals should be disapproved. Institution of such

[18] In SR–NASD–99–65, FINRA (then NASD) indicated that capital trust securities would be TRACE-Eligible Securities. *See* Securities Exchange Act Release No. 42201 (December 3, 1999), 64 FR 69305, 69309 (December 10, 1999) (Notice of Filing of Proposed Rule Change Relating to the Creation of a Corporate Bond Trade Reporting and Transaction Dissemination Facility and the Elimination of Nasdaq's Fixed Income Pricing System (''FIPS'')).

[19] *See* Notice, 78 FR at 59996–97.

[20] *See supra* note 4.

[21] *See* SIFMA Letter at 6. *See also* FIF Letter at 1 (stating generally that the depositary shares ''are traded as fixed income securities'').

[22] *See* SIFMA Letter at 6.

[23] *See id.* at 7, n. 14.

[24] *See id.* at 6.

[25] *See id.*

[26] *See id.* at 8–9.

[27] *See id.* at 5.

[28] *See id.* at 7.

[29] *See* FIF Letter at 4.

[30] *See id.* at 1.

[31] *See id.* at 3–4. This commenter also lists a number of other potential downstream impacts that it believes FINRA should consider at greater length before proceeding with the proposal. *See id.* at 2–3.

[32] *See* SIFMA Letter at 12–14.

[33] *See id.* at 11–12.

[34] 15 U.S.C. 78s(b)(2)(B).

proceedings is appropriate at this time in view of the legal and policy issues raised by the proposals. Institution of disapproval proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described in greater detail below, the Commission seeks and encourages interested persons to provide additional comment on the proposals.

Pursuant to Section 19(b)(2)(B),[35] the Commission is providing notice of the grounds for disapproval under consideration. The Commission notes that Section 15A(b)(9) of the Act[36] requires that FINRA's rules be designed to, among other things, promote just and equitable principles of trade, 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. Commenters have raised concerns about whether the proposed reclassification of depositary shares for trade reporting purposes could cause harm to the market for hybrid preferred securities. They have also questioned whether the proposal could cause investor confusion, and whether it is sufficiently detailed to provide adequate guidance to market participants.

The Commission believes that these concerns raise questions as to whether the proposed rule change is consistent with the requirements of the Section 15A(b)(9) of the Act, including whether they would promote just and equitable principles of trade, perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. As of the date of this order, FINRA had not yet addressed the comments by, for example, amending the proposal to respond to comments or arguing that the proposal should be approved by the Commission in its present form notwithstanding the comments. The self-regulatory organization submitting the proposal bears the burden of demonstrating that it is consistent with the Act, and given the outstanding comments, FINRA has not at this time satisfied that burden.[37] Accordingly, the Commission believes that it is appropriate at this time to issue this order to institute proceedings under Section 19(b)(2)(B) of the Act to determine whether to disapprove the proposed rule change.

[35] *See id.*

[36] 15 U.S.C. 78o–3(b)(6).

[37] *See* 17 CFR 201.700(b)(3).

V. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the concerns identified above, as well as any others they may have with the proposed rule change. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is inconsistent with Section 15A(b)(9) or any other provision of the Act, or the rules and regulation thereunder. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[38]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule changes should be [approved or] disapproved by January 21, 2014. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by February 4, 2014.

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–FINRA–2013–039 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–FINRA–2013–039. 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. 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 publicly available. All submissions should refer to File Number SR–FINRA–2013–039 and should be submitted on or before January 21, 2014. Rebuttal comments should be submitted by February 4, 2014.

[38] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[39]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–31226 Filed 12–30–13; 8:45 am]

BILLING CODE 8011–01–P

[39] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71181; File No. SR–Topaz–2013–19]

Self-Regulatory Organizations; Topaz Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to More Specifically Address the Number and Size of Contra-parties to a Qualified Contingent Cross Order

December 24, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 18, 2013, Topaz Exchange, LLC (d/b/a ISE Gemini) (the ''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 self-regulatory organization. The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 is proposing to amend Rule 715 (Types of Orders) to more specifically address the number and size of contra-parties to a Qualified Contingent Cross Order (''QCC Order''). The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 this proposal is to expand the availability of QCC Orders by permitting multiple contra-parties on a QCC Order. Under the proposal, multiple contra-parties would be allowed, so long as each contra-party order consists of an order for at least 1,000 contracts; provided however, that the originating QCC Order must also be for at least 1,000 contracts (in addition to meeting the other requirements of a QCC Order). This is intended to accommodate multiple contra-parties, as explained further below.

A QCC Order must be comprised of an order to buy or sell at least 1,000 contracts [3] that is identified as being part of a qualified contingent trade,[4] coupled with a contra-side order to buy or sell an equal number or contracts. QCC Orders are automatically executed upon entry provided that the execution (i) is not at the same price as a Priority Customer Order on the Exchange's limit order book and (ii) is at or between the NBBO. QCC Orders will be automatically canceled if they cannot be executed. QCC Orders may only be entered in the regular trading increments applicable to the options class under Rule 710 (Minimum Trading Increments).

The QCC Order type was approved for the Exchange in its current form on February 24, 2011 [sic].[5] It was always the Exchange's intent and understanding when drafting the rule text that a QCC Order could involve multiple contra-parties of the QCC trade when the originating QCC Order consisted of at least 1,000 contracts. However, the rule language addressing the contra-side of a QCC Order is drafted from the perspective of how the QCC Order gets entered into the Exchange system. Specifically, the contra-side order to a QCC Order will always be entered as a single order, even if that order consists of multiple contra-parties who are allocated their portion of the trade in a post-trade allocation. Notwithstanding the foregoing, the literal wording of the current QCC Order rule could result in a more limited interpretation of the rule. Therefore, the Exchange now proposes to make it clear that a QCC Order must involve a single order for at least 1,000 contracts on the originating side, but that it may consist of multiple orders on the opposite, contra-side, so long as each of the contra-side orders is for at least 1,000 contracts.

For instance, a 5,000 contract originating QCC Order to buy could, under this proposal, be coupled with two contra-side orders to sell 2,500 contracts each. Similarly, a 5,000 contract originating QCC Order to buy could, under this proposal, be coupled with a [sic] two contra-side orders to sell, one for 4,000 contracts and one for 1,000 contracts. In the above examples, each sell (contra-side) order needs to be for a minimum of 1,000 contracts, provided that the total of all sell (contra-side) orders equals the size of the originating order and that originating order is at least 1,000 contracts.

Accordingly, the Exchange is proposing to amend the definition of QCC Order to clarify that an originating order to buy or sell at least 1,000 contracts coupled with a contra-side order or orders totaling an equal number of contracts is permitted, so long as each contra-side order is for at least 1,000 contracts.

2. Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [6] 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 for a free and open market and a national market system, and, in general, to protect investors and the public interest by amending the rule text to more clearly defining the QCC Order. Specifically, because the proposal clarifies that a QCC Order permits multiple contra-parties, it should therefore provide members and participants with certainty as to what is allowed and, therefore, provide more opportunity to participate in QCC trades, consistent with the key principles behind the QCC Order.

In approving QCC Orders, the Commission has stated that ''. . . qualified contingent trades are of benefit to the market as a whole and a contribution to the efficient functioning of the securities markets and the price discovery process.'' [7] The Commission ''also has recognized that contingent trades can be useful trading tools for investors and other market participants, particularly those who trade the securities of issuers involved in mergers, different classes of shares of the same issuer, convertible securities, and equity derivatives such as options [emphasis added].'' [8] In light of these benefits, the Exchange believes that the proposal should improve the usefulness of the QCC Order without raising novel regulatory issues, because the proposal does not impact the fundamental aspects of this order type—it merely

[3] In the case of Mini Options, the minimum size is 10,000 contracts.

[4] A ''qualified contingent trade'' is a transaction consisting of two or more component orders, executed as agent or principal, where: (a) At least one component is an NMS Stock, as defined in Rule 600 of Regulation NMS under the Exchange Act; (b) all components are effected with a product or price contingency that either has been agreed to by all the respective counterparties or arranged for by a broker-dealer as principal or agent; (c) the execution of one component is contingent upon the execution of all other components at or near the same time; (d) the specific relationship between the component orders (e.g., the spread between the prices of the component orders) is determined by the time the contingent order is placed; (e) the component orders bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or cancelled; and (f) the transaction is fully hedged (without regard to any prior existing position) as a result of other components of the contingent trade.

[5] *See* Securities Exchange Act Release No. 70050 (July 26, 2013), 78 FR 46622 (August 1, 2013) (File No. 10–209).

[6] 15 U.S.C. 78f(b)(5).

[7] QCC Approval Order at text accompanying footnote 115.

[8] QCC Approval Order at Section III.A. citing Securities Exchange Act Release No. 54389 (August 31, 2006), 71 FR 52829 (September 7, 2006) (Original QCT Exemption).

permits multiple contra-parties, while preserving the 1,000 contract minimum.

Consistent with Section 6(b)(8) of the Act, the Exchange seeks to compete with other options exchanges for QCC Orders involving multiple parties, including where there are multiple contra-parties. The Exchange believes that this will be beneficial to participants because allowing multiple contra-parties of at least 1,000 contracts should foster competition for filling one side of a QCC Order and thereby result in potentially better prices, as opposed to only allowing one contra-party and, thereby requiring that contra-party to do a larger size order which could result in a worse price for the trade.

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. In fact, the proposal is intended to relieve a burden on competition, which results from different exchanges interpreting their rules differently. Among the options exchanges, the Exchange believes that the proposal to allow multiple contra-parties of at least 1,000 contracts should foster competition for filling the contra-side of a QCC order and thereby result in potentially better prices for such orders.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not 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) [9] of the Act and Rule 19b–4(f)(6) [10] thereunder. The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the proposed rule change.

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 investors, or otherwise in furtherance of the purposes of the 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 No. SR–Topaz–2013–19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Topaz–2013–19. 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 Commissions 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 such 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–Topaz–2013–19 and should be submitted by January 21,2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–31227 Filed 12–30–13; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR. 240.19b–4(f)(6).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71183; File No. SR–NYSEMKT–2013–86]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Adopt Commentary .03 to Rule 980NY To Limit the Volume of Complex Orders by a Single ATP Holder During the Trading Day

December 24, 2013.

On October 28, 2013, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt Commentary .03 to NYSE MKT Rule 980NY to limit the volume of complex orders that may be entered by a single ATP Holder during the trading day. On November 5, 2013, the Exchange submitted Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1 thereto, was published for comment in the **Federal Register** on November 13, 2013.[3] The Commission received no comments on the proposed rule change.

Section 19(b)(2) of the Act [4] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 70816 (November 6, 2013), 78 FR 68111.

[4] 15 U.S.C. 78s(b)(2).

proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is December 28, 2013. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Therefore, the Commission is extending this 45-day time period.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates January 3, 2014, as the date by which the Commission should either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–31230 Filed 12–30–13; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71184; File No. SR–NYSEArca–2013–115]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Adopt Commentary .03 to Rule 6.91 To Limit the Volume of Complex Orders by a Single OTP Holder or OTP Firm During the Trading Day

December 24, 2013.

On October 28, 2013, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt Commentary .03 to NYSE Arca Rule 6.91 to limit the volume of complex orders that may be entered by a single OTP Holder or OTP Firm during the trading day. On November 5, 2013, the Exchange submitted Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1 thereto, was published for comment in the **Federal Register** on November 13, 2013.[3] The Commission received no comments on the proposed rule change.

Section 19(b)(2) of the Act[4] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is December 28, 2013. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Therefore, the Commission is extending this 45-day time period.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates January 3, 2014, as the date by which the Commission should either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–31237 Filed 12–30–13; 8:45 am]

BILLING CODE 8011–01–P

[3] *See* Securities Exchange Act Release No. 70817 (November 6, 2013), 78 FR 68113.

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71182; File No. SR–ISE–2013–71]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To More Specifically Address the Number and Size of Contra-Parties to a Qualified Contingent Cross Order

December 24, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 18, 2013, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') 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 self-regulatory organization. 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 is proposing to amend Rules 504 (Series of Options Contracts Open for Trading) and 715 (Types of Orders) to more specifically address the number and size of contra-parties to a Qualified Contingent Cross Order (''QCC Order''). The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 this proposal is to expand the availability of QCC Orders by permitting multiple contra-parties on a QCC Order. Under the proposal, multiple contra-parties would be allowed, so long as each contra-party order consists of an order for at least 1,000 contracts; provided however, that the originating QCC Order must also be for at least 1,000 contracts (in addition to meeting the other requirements of a QCC Order). This is intended to accommodate multiple contra-parties, as explained further below.

A QCC Order must be comprised of an order to buy or sell at least 1,000

contracts [3] that is identified as being part of a qualified contingent trade,[4] coupled with a contra-side order to buy or sell an equal number or contracts. QCC Orders are automatically executed upon entry provided that the execution (i) is not at the same price as a Priority Customer Order on the Exchange's limit order book and (ii) is at or between the NBBO. QCC Orders will be automatically canceled if they cannot be executed. QCC Orders may only be entered in the regular trading increments applicable to the options class under Rule 710 (Minimum Trading Increments).

The QCC Order type was approved in its current form on February 24, 2011.[5] It was always the Exchange's intent and understanding when drafting the rule text that a QCC Order could involve multiple contra-parties of the QCC trade when the originating QCC Order consisted of at least 1,000 contracts. However, the rule language addressing the contra-side of a QCC Order is drafted from the perspective of how the QCC Order gets entered into the ISE system. Specifically, the contra-side order to a QCC Order will always be entered as a single order, even if that order consists of multiple contra-parties who are allocated their portion of the trade in a post-trade allocation. Notwithstanding the foregoing, the literal wording of the current QCC Order rule could result in a more limited interpretation of the rule. Therefore, the Exchange now proposes to make it clear that a QCC Order must involve a single order for at least 1,000 contracts on the originating side, but that it may consist of multiple orders on the opposite, contra-side, so long as each of the contra-side orders is for at least 1,000 contracts.

For instance, a 5,000 contract originating QCC Order to buy could, under this proposal, be coupled with two contra-side orders to sell 2,500 contracts each. Similarly, a 5,000 contract originating QCC Order to buy could, under this proposal, be coupled with a [sic] two contra-side orders to sell, one for 4,000 contracts and one for 1,000 contracts. In the above examples, each sell (contra-side) order needs to be for a minimum of 1,000 contracts, provided that the total of all sell (contra-side) orders equals the size of the originating order and that originating order is at least 1,000 contracts.

Accordingly, the Exchange is proposing to amend the definition of QCC Order to clarify that an originating order to buy or sell at least 1,000 contracts coupled with a contra-side order or orders totaling an equal number of contracts is permitted, so long as each contra-side order is for at least 1,000 contracts.

2. Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [6] 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 for a free and open market and a national market system, and, in general, to protect investors and the public interest by amending the rule text to more clearly defining the QCC Order. Specifically, because the proposal clarifies that a QCC Order permits multiple contra-parties, it should therefore provide members and participants with certainty as to what is allowed and, therefore, provide more opportunity to participate in QCC trades, consistent with the key principles behind the QCC Order.

In approving QCC Orders, the Commission has stated that ''. . . qualified contingent trades are of benefit to the market as a whole and a contribution to the efficient functioning of the securities markets and the price discovery process.'' [7] The Commission ''also has recognized that contingent trades can be useful trading tools for investors and other market participants, particularly those who trade the securities of issuers involved in mergers, different classes of shares of the same issuer, convertible securities, and equity derivatives such as options [emphasis added].'' [8] In light of these benefits, the Exchange believes that the proposal should improve the usefulness of the QCC Order without raising novel regulatory issues, because the proposal does not impact the fundamental aspects of this order type—it merely permits multiple contra-parties, while preserving the 1,000 contract minimum.

Consistent with Section 6(b)(8) of the Act, the Exchange seeks to compete with other options exchanges for QCC Orders involving multiple parties, including where there are multiple contra-parties. The Exchange believes that this will be beneficial to participants because allowing multiple contra-parties of at least 1,000 contracts should foster competition for filling one side of a QCC Order and thereby result in potentially better prices, as opposed to only allowing one contra-party and, thereby requiring that contra-party to do a larger size order which could result in a worse price for the trade.

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. In fact, the proposal is intended to relieve a burden on competition, which results from different exchanges interpreting their rules differently. Among the options exchanges, the Exchange believes that the proposal to allow multiple contra-parties of at least 1,000 contracts should foster competition for filling the contra-side of a QCC order and thereby result in potentially better prices for such orders.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its

[3] In the case of Mini Options, the minimum size is 10,000 contracts.

[4] A ''qualified contingent trade'' is a transaction consisting of two or more component orders, executed as agent or principal, where: (a) At least one component is an NMS Stock, as defined in Rule 600 of Regulation NMS under the Exchange Act; (b) all components are effected with a product or price contingency that either has been agreed to by all the respective contra-parties [sic] or arranged for by a broker-dealer as principal or agent; (c) the execution of one component is contingent upon the execution of all other components at or near the same time; (d) the specific relationship between the component orders (e.g., the spread between the prices of the component orders) is determined by the time the contingent order is placed; (e) the component orders bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or cancelled; and (f) the transaction is fully hedged (without regard to any prior existing position) as a result of other components of the contingent trade.

[5] *See* Securities Exchange Act Release No. 63955 (February 24, 2011), 76 FR 11533 (March 2, 2011) (SR–ISE–2010–73).

[6] 15 U.S.C. 78f(b)(5).

[7] QCC Approval Order at text accompanying footnote 115.

[8] QCC Approval Order at Section III.A. citing Securities Exchange Act Release No. 54389 (August 31, 2006), 71 FR 52829 (September 7, 2006) (Original QCT Exemption).

terms, does not 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) [9] of the Act and Rule 19b–4(f)(6) [10] thereunder. The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the proposed rule change.

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 investors, or otherwise in furtherance of the purposes of the 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 No. SR–ISE–2013–71 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2013–71. 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 Commissions 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 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. 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–ISE–2013–71 and should be submitted by January 21, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–31229 Filed 12–30–13; 8:45 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions and extensions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

(SSA) Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov.*

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than March 3, 2014. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. *Application for Survivors Benefits—20 CFR 404.611(a) and (c)—0960–0062.* Surviving family members of armed services personnel can file for Social Security and veterans' benefits with SSA or at the Veterans Administration (VA). If applicants file for Title II survivor benefits at the VA, they complete Form SSA–24, which is then forwarded to SSA for processing. SSA uses the information to determine eligibility for benefits. The respondents are survivors of deceased armed services personnel who are applying for benefits at the VA.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–24	3,200	1	15	800

2. *Student Reporting Form—20 CFR 404.352(b)(2); 404.367; 404.368; 404.415; 404.434; 422.135—0960–0088.* To qualify for Social Security Title II student benefits, student beneficiaries must be in full-time attendance status at an educational institution. In addition, SSA requires these beneficiaries to report events that may cause a reduction, termination, or suspension of their benefits. SSA collects such information on Forms SSA–1383 and

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR. 240.19b–4(f)(6).

[11] 17 CFR 200.30–3(a)(12).

SSA–1383–FC to determine if the changes or events the student beneficiaries report will affect their continuing entitlement to SSA benefits. SSA also uses the SSA–1383 and SSA–1383–FC to calculate the correct benefit amounts for student beneficiaries. The respondents are Social Security Title II student beneficiaries.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–1383	74,887	1	6	7,489
SSA–1383–FC	113	1	6	11
Totals	75,000			7,500

3. *Reporting Events—SSI–20 CFR 416.701–416.732—0960—0128.* SSA mails the SSA–8150 to SSI recipients when they allege payment or eligibility-changing events. Either the SSI recipient fills out the paper version of the form, or they complete the form through an in-person or telephone interview with an SSA employee who records the information using the Modernized SSI Claims System. In addition to the SSA–8150, recipients may need to submit supplementary documentation showing the payment or eligibility-changing events (e.g., payment stubs, or rental agreements). SSA uses Form SSA–8150 and the supplementary documentation to determine changes in Supplemental Security Income (SSI) eligibility and amounts. The respondents are current SSI recipients, or their representatives, who experience a payment or eligibility-changing event.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–8150	36,767	1	5	3,064

II. SSA submitted the information collections below to OMB for clearance. Your comments regarding the information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than January 30, 2014. Individuals can obtain copies of the OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov.*

1. *Requests for Self-Employment Information, Employee Information, Employer Information—20 CFR 422.120–0960–0508.* When SSA cannot identify Form W–2 wage data for an individual, we place the data in an earnings suspense file and contact the individual (and in certain instances the employer) to obtain the correct information. If the respondent furnishes the name and Social Security number (SSN) information that agrees with SSA's records, or provides information that resolves the discrepancy, SSA adds the reported earnings to the respondent's Social Security record. We use Forms SSA–L2765, SSA–L3365, and SSA–L4002 for this purpose. The respondents are self-employed individuals and employees whose name and SSN information do not agree with their employer's and SSA's records.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–L2765	12,321	1	10	2,054
SSA–L3365	179,749	1	10	29,958
SSA–L4002	121,679	1	10	20,280
Totals	313,749			52,292

2. *Employer Reports of Special Wage Payments—20 CFR 404.428–404.429–0960–0565.* SSA collects information on the SSA–131 to prevent earnings-related overpayments and to avoid erroneous withholding of benefits. SSA field offices and program service centers also use Form SSA–131 for awards and post-entitlement events requiring special wage payment verification from employers. While we need this information to ensure the correct payment of benefits, we do not require employers to respond. The respondents are large and small businesses that make special wage payments to retirees.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Paper Version: SSA–131 (without #6)	105,000	1	20	35,000

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Paper Version SSA–131 (#6 only)	1,050	1	2	35
Electronic Version: Business Services Online Special Wage Payments	26	1	5	2
Totals	106,076			35,037

3. *Work Activity Report (Self-Employment)—20 CFR 404.1520(b), 20 CFR 404.1571—404.1576, 20 CFR 404.1584—404.1593, and 20 CFR 416.971—416.976—0960–0598.* SSA uses Form SSA–820–U4 to determine initial or continuing eligibility for (1) Title II Social Security disability benefits or (2) Title XVI SSI payments. Under Titles II and XVI of the Social Security Act, recipients receive disability benefits and SSI payments based on their inability to engage in substantial gainful activity (SGA) due to a physical or mental condition. Therefore, when the recipients resume work, they must report their work so SSA can evaluate and determine by law whether they continue to meet the disability requirements. SSA uses Form SSA–820–U4 to obtain information on self-employment activities of Social Security disability applicants and recipients. We use the data we obtain to evaluate disability claims, and to help us determine if the claimant meets current disability provisions under Titles II and XVI. Since applicants for disability benefits must prove an inability to perform any kind of SGA generally available in the national economy for which we expect them to qualify based on age, education, and work experience, any work an applicant performed until, or subsequent to, the date the disability allegedly began, affects our disability determination. The respondents are applicants and claimants for SSI or Social Security disability benefits.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–820–BK	100,000	1	30	50,000

4. *Private Printing and Modification of Prescribed Application and Other Forms—20 CFR 422.527—0960–0663.* 20 CFR 422.527 of the Code of Federal Regulations requires a person, institution, or organization (third-party entities) to obtain approval from SSA prior to reproducing, duplicating, or privately printing any application or other form the agency owns. To obtain SSA's approval, entities must make their requests in writing using their company letterhead, providing the required information set forth in the regulation. SSA uses the information to (1) ensure requests comply with the law and regulations, and (2) process requests from third-party entities who want to reproduce, duplicate, or privately print any SSA application or other SSA form. SSA employees review the requests and provide approval via email or mail to the third-party entities. The respondents are third-party entities who submit a request to SSA to reproduce, duplicate, or privately print an SSA-owned form.

Type of Request: Extension of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
20 CFR 422.527	15	15	8	30

5. *Epidemiological Research Report—20 CFR 401.165—0960–0701.* Section 311 of the Social Security Independence and Program Improvements Act of 1994 directs SSA to support health researchers involved in epidemiological research. Specifically, when we determine a study contributes to a national health interest, SSA furnishes information to determine if a study subject appears in SSA administrative records as alive or deceased (vital status). SSA charges a small fee per request for providing this information. Web posted questions solicit the information SSA needs to provide the data and to collect the fees. The respondents are qualified health and scientific researchers who apply to receive vital status information about individuals from Social Security administrative data records.

Type of Request: Extension of an OMB-approved information collection.

Type of respondent	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
State & Local Government	15	1	120	30
Private Entities	10	1	120	20
Totals	25			50

Cost Burden

Average annual cost per respondent (based on SSA data): $3,500.

Total estimated annual cost burden: $87,500.

Dated: Decdember 26, 2013.

Faye Lipsky,

Reports Clearance Director, Social Security Administration.

[FR Doc. 2013–31293 Filed 12–30–13; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 290 (Sub-No. 339X)]

Norfolk Southern Railway Company—Abandonment Exemption—in Gaston County, NC

Norfolk Southern Railway Company (NSR) has filed a verified notice of exemption under 49 CFR part 1152 subpart F–*Exempt Abandonments* to abandon approximately 0.5 miles of rail line between milepost HG 37.50 (near the line's crossing of Brooks Road) and milepost HG 38.00 (north of Robinson Road), in Crowders (Gastonia), Gaston County, N.C.[1] The line traverses United States Postal Service Zip Code 28052.

NSR 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 and overhead traffic, if there were any, could be rerouted over other lines; (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 January 30, 2014, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by January 10, 2014. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 21, 2014, 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 NSR's representative: Robert A. Wimbish, Baker & Miller PLLC, 2401 Pennsylvania Ave. NW., Suite 300, Washington, DC 20037.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

NSR 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 January 3, 2014. 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), NSR 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 NSR's filing of a notice of consummation by December 31, 2014, 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: December 24, 2013.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2013–31291 Filed 12–30–13; 8:45 am]

BILLING CODE 4915–01–P

[1] NSR states that it is seeking to abandon the line segment to permit removal of a bridge over Robinson Road/SR 2416 to facilitate widening of that state highway, thereby alleviating an existing road clearance restriction and a related roadway safety concern.

[2] 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.

[3] Each OFA must be accompanied by the filing fee, which is currently set at $1,600. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of Four Individuals Pursuant to Executive Order 13581, ''Blocking Property of Transnational Criminal Organizations''

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of four individuals whose property and interests in property are blocked pursuant to Executive Order 13581 of July 24, 2011, ''Blocking Property of Transnational Criminal Organizations.''

DATES: The designations by the Director of OFAC, pursuant to Executive Order 13581, of the four individuals identified in this notice were effective on December 19, 2013.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance and Evaluation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treas.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs is available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

On July 24, 2011, the President issued Executive Order 13581, ''Blocking Property of Transnational Criminal Organizations'' (the ''Order''), pursuant

to, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–06). The Order was effective at 12:01 a.m. eastern daylight time on July 25, 2011. In the Order, the President declared a national emergency to deal with the threat that significant transnational criminal organizations pose to the national security, foreign policy, and economy of the United States.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person, of persons listed in the Annex to the Order and of persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to satisfy certain criteria set forth in the Order.

On December 19, 2003, the Director of OFAC, in consultation with the Attorney General and the Secretary of State, designated, pursuant to one or more of the criteria set forth in subparagraphs (a)(ii)(A) through (a)(ii)(C) of Section 1 of the Order, four individuals whose property and interests in property are blocked pursuant to the Order.

The listings for these individuals on OFAC's List of Specially Designated Nationals and Blocked Persons appear as follows:

Individual(s)

1. HASHIMOTO, Hirofumi (a.k.a. KANG, Hong-Mun; a.k.a. KYO, Hirofumi); DOB 08 Jan 1947 (individual) [TCO].
2. IRIE, Tadashi; DOB 09 Dec 1944; POB Uwajima, Ehime, Japan (individual) [TCO].
3. ISHIDA, Shoroku (a.k.a. BOKU, Taishun; a.k.a. PAK, Tae-Chun; a.k.a. PARK, Tae-joon); DOB 30 Oct 1932 (individual) [TCO].
4. MASAKI, Toshio (a.k.a. PARK, Nyon-Nam); DOB 13 Jan 1947 (individual) [TCO].

Dated: December 19, 2013.

Barbara Hammerle,

Deputy Director, Office of Foreign Assets Control.

[FR Doc. 2013–31299 Filed 12–30–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2004–47

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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 proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning relief from ruling process for making late reverse QTIP election.

DATES: Written comments should be received on or before March 3, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the revenue procedure should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Relief From Ruling Process For Making Late Reverse QTIP Election.

OMB Number: 1545–1898.

Revenue Procedure Number: Revenue Procedure 2004–47.

Abstract: Revenue Procedure 2004–47 provides alternative relief for taxpayers who failed to make a reverse QTIP election on an estate tax return. Instead of requesting a private letter ruling and paying the accompanying user fee the taxpayer may file certain documents with the Cincinnati Service Center directly to request relief.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 6.

Estimated Annual Average Time per Respondent: 9 hours.

Estimated Total Annual Hours: 54.

The following paragraph applies to all of the collections of information covered by this notice:

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.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. *Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 24, 2013.

Allan Hopkins,

IRS Tax Analyst.

[FR Doc. 2013–31328 Filed 12–30–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8453–EX

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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 proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form

8453–EX, Excise Tax Declaration for an IRS e-file Return.

DATES: Written comments should be received on or before March 3, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Excise Tax Declaration for an IRS e-file Return.

OMB Number: 1545–2082.

Form Number: Form 8453–EX.

Abstract: Form 8453–EX, Excise Tax Declaration for an IRS e-file Return, will be used in the Modernized e-File program. This form is necessary to enable the electronic filing of Forms 720, 2290, and 8849. The authority to e-file Form 2290 is Internal Revenue Code section 4481(e), as added by section 867(c) of Public Law 108–357.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, Farms, Business or other for-profit institutions, Federal Government, Not-for-profit institutions, or State, Local or Tribal Government.

Estimated Number of Respondents: 15,000.

Estimated Time per Respondent: 2 hours 50 minutes.

Estimated Total Annual Burden Hours: 42,600.

The following paragraph applies to all of the collections of information covered by this notice:

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. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 24, 2013.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2013–31327 Filed 12–30–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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 proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning communications excise tax; prepared telephone cards.

DATES: Written comments should be received on or before March 3, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Allan Hopkins, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Communications Excise Tax; Prepaid Telephone Cards.

OMB Number: 1545–1628. *Regulation Project Number:* REG–118620–97.

Abstract: Carriers must keep certain information documenting their sales of prepaid telephone cards to other carriers to avoid responsibility for collecting tax. The regulations provide rules for the application of the communications excise tax to prepaid telephone cards.

Current Actions: There are no changes being made to this existing regulation.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 104.

Estimated Time per Respondent: 20 min.

Estimated Total Annual Burden Hours: 34.

The following paragraph applies to all of the collections of information covered by this notice:

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. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 24, 2013.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2013–31346 Filed 12–30–13; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 78 Tuesday,

No. 251 December 31, 2013

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); Final 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: Final rule; official interpretation.

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

DATES: The rule is effective August 1, 2015.

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SUPPLEMENTARY INFORMATION:

I. Summary of the Final Rule

A. Background

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

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) directs the Bureau to integrate the mortgage loan disclosures under TILA and RESPA sections 4 and 5.[1] Section 1032(f) of the Dodd-Frank Act mandated that the Bureau propose for public comment rules and model disclosures that integrate the TILA and RESPA disclosures by July 21, 2012.[2] The Bureau satisfied this statutory mandate and issued a proposed rule and forms on July 9, 2012 (the TILA–RESPA Proposal or the proposal).[3] To accomplish this, the Bureau engaged in extensive consumer and industry research, analysis of public comment, and public outreach for more than a year. After issuing the proposal, the Bureau conducted a large-scale quantitative validation study of its integrated disclosures with 858 consumers, which concluded that the Bureau's integrated disclosures had on average statistically significant better performance than the current disclosures under TILA and RESPA. The Bureau is now finalizing a rule with new, integrated disclosures (the TILA–RESPA Final Rule or the final rule).[4] The final rule also provides a detailed explanation of how the forms should be filled out and used.

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

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

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

B. Scope of the Final Rule

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

C. The Loan Estimate

The Loan Estimate form replaces two current Federal forms. It replaces the Good Faith Estimate designed by the Department of Housing and Urban Development (HUD) under RESPA and

[1] Dodd-Frank Act sections 1098 & 1100A, codified at 12 U.S.C. 2603(a) & 15 U.S.C. 1604(b), respectively.

[2] 12 U.S.C. 5532(f).

[3] *See* Press release, U.S. Bureau of Consumer Fin. Prot., *Consumer Financial Protection Bureau proposes ''Know Before You Owe'' mortgage forms* (July 9, 2012), available at *http://www.consumerfinance.gov/pressreleases/consumer-financial-protection-bureau-proposes-know-before-you-owe-mortgage-forms/; see also* Blog post, U.S. Bureau of Consumer Fin. Prot., *Know Before You Owe: Introducing our proposed mortgage disclosure forms* (July 9, 2012), available at *http://www.consumerfinance.gov/blog/know-before-you-owe-introducing-our-proposed-mortgage-disclosure-forms/*.

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

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

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

the ''early'' Truth in Lending disclosure designed by the Board of Governors of the Federal Reserve System (the Board) under TILA.[7] The final rule and the Official Interpretations (on which creditors and other persons can rely) contain detailed instructions as to how each line on the Loan Estimate form should be completed.[8] There are sample forms for different types of loan products.[9] The Loan Estimate form also incorporates new disclosures required by Congress under the Dodd-Frank Act.[10]

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

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

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

Disclaimer on early estimates. Creditors and other persons may provide consumers with written estimates prior to application. The rule requires that any such written estimates contain a disclaimer to prevent confusion with the Loan Estimate form. This disclaimer is not required for advertisements.[15]

D. The Closing Disclosure

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

Timing. The creditor must give consumers the Closing Disclosure form to consumers so that they receive it at least three business days before the consumer closes on the loan.[18] If the creditor makes certain significant changes between the time the Closing Disclosure form is given and the closing—specifically, if the creditor makes changes to the APR above ⅛ of a percent for most loans (and ¼ of a percent for loans with irregular payments or periods), changes the loan product, or adds a prepayment penalty to the loan—the consumer must be provided a new form and an additional three-business-day waiting period after receipt of the new form. Less significant changes can be disclosed on a revised Closing Disclosure form provided to the consumer at or before closing, without delaying the closing.[19] This is a change from the proposal, which would have required that most changes cause an additional three-business-day waiting period before the consumer could close on the loan. The Bureau received extensive public comment raising concerns about this aspect of the proposal, especially about its impact to cause frequent closing delays in the residential real estate market. In response to the public comments received on this issue, the Bureau decided to limit the types of changes that will result in an additional three-business-day waiting period to the three changes described above. This requirement will provide the important protection to consumers of an additional three-day waiting period for these significant changes, but will not cause closing delays for less significant costs that may frequently change.

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

E. Limits on Closing Cost Increases

Similar to existing law, the final rule restricts the circumstances in which consumers can be required to pay more for settlement services—the various services required to complete a loan, such as appraisals, inspections, etc.—than the amount stated on their Loan Estimate form. Unless an exception applies, charges for the following services cannot increase: (1) The creditor's or mortgage broker's charges for its own services; (2) charges for services provided by an affiliate of the creditor or mortgage broker; and (3) charges for services for which the creditor or mortgage broker does not permit the consumer to shop. Charges for other services can increase, but generally not by more than 10 percent, unless an exception applies.[21]

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

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

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

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

[10] For a discussion of these disclosures, see part V.B below.

[11] This provision is in § 1026.19(e)(1)(ii).

[12] This provision is in § 1026.19(e)(1)(iii).

[13] The definition of ''application'' is in § 1026.2(a)(3).

[14] This provision is in § 1026.19(e)(2)(i).

[15] This provision is in § 1026.19(e)(2)(ii).

[16] These disclosures are available at *http://www.hud.gov/offices/adm/hudclips/forms/files/1.pdf* & *http://ecfr.gpoaccess.gov/graphics/pdfs/ec27se91.024.pdf.*

[17] The requirements for the Closing Disclosure are in § 1026.38(a)(3).

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

[19] This provision is in § 1026.19(f)(2).

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

[21] The limitations and the exceptions discussed below are in § 1026.19(e)(3) and (4).

must provide an updated Loan Estimate form within three business days.

F. Proposals Not Adopted in the Final Rule

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

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

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

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

G. Effective Date

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

II. Background

A. The Mortgage Market

Overview of the Market and the Mortgage Crisis

The mortgage market is the single largest market for consumer financial products and services in the United States, with approximately $9.4 trillion in loans outstanding.[28] During the last decade, the market went through an unprecedented cycle of expansion and contraction that was fueled in part by the securitization of mortgages and creation of increasingly sophisticated derivative products designed to mitigate accompanying risks to investors. So many other parts of the American financial system were drawn into mortgage-related activities that when the bubble collapsed in 2008, it sparked the most severe recession in the United States since the Great Depression.[29] In the last quarter of 2008 and early in 2009, GDP was falling at an annual rate of roughly 6 percent.[30] By the Fall of 2009, unemployment reached a peak of 10 percent.[31] The percentage of loans in the foreclosure process reached its peak of 4.63 in both the first and the fourth quarters of 2010.[32] From peak to trough, the fall in housing prices is estimated to have resulted in about $7 trillion in household wealth losses.[33] Further, five years after the collapse of Lehman Brothers and AIG, the United States continues to grapple with the fallout.

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

In the mid-2000s, the market experienced a steady deterioration of credit standards in mortgage lending, with evidence that loans were made solely against collateral, or even against expected increases in the value of

[22] These proposed revisions are discussed below in part V, in the section-by-section analysis of § 1026.4.

[23] This proposed provision is discussed below in part V, in the section-by-section analysis of § 1026.25.

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

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

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

[27] For additional discussion regarding the effective date of the final rule, see part VI below.

[28] Bd. of Governors of the Fed. Reserve Sys., *Flow of Funds, Balance Sheets, and Integrated Macroeconomic Accounts* (June 2013).

[29] See Thomas F. Siems, *Branding the Great Recession,* Fin. Insights, May 13, 2012, Vol. 1 Issue 1 at 3, available at *http://www.dallasfed.org/assets/documents/banking/firm/fi/fi1201.pdf* (stating that the [great recession] ''was the longest and deepest economic contraction, as measured by the drop in real GDP, since the Great Depression.'').

[30] Bureau of Econ. Analysis, U.S. Dep't of Commerce, *Real Gross Domestic Product* (Nov. 7, 2013), available at *http://research.stlouisfed.org/fred2/series/GDPC1.*

[31] Bureau of Labor Statistics, U.S. Dep't of Labor, *Labor Force Statistics from the Current Population Survey* (Nov. 19, 2013), available at *http://data.bls.gov/timeseries/LNS14000000* (Labor Force Statistics from 2003 through 2013).

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

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

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

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

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

collateral, and without consideration of ability to repay. This deterioration of credit standards was particularly evidenced by the growth of ''subprime'' and ''Alt-A'' products.[37] Subprime products were sold primarily to consumers with poor or no credit history, although there is evidence that some consumers who would have qualified for ''prime'' loans were steered into subprime loans as well.[38] The Alt-A category of loans permitted consumers to take out mortgage loans while providing little or no documentation of income or other evidence of repayment ability. Because these loans involved additional risk, they were typically more expensive to consumers than ''prime'' mortgages, although many of them had very low introductory interest rates. In 2003, subprime and Alt-A origination volume was about $400 billion; in 2006, it had reached $830 billion.[39]

So long as housing prices were continuing to increase, it was relatively easy for consumers to refinance their existing loans into more affordable products to avoid interest rate resets and other adjustments. When housing prices began to decline in 2005, however, refinancing became more difficult and delinquency rates on subprime and Alt-A products increased dramatically.[40] More and more consumers, especially those with subprime and Alt-A loans, were unable or unwilling to make their mortgage payments. An early sign of the mortgage crisis was an upswing in early payment defaults—generally defined as borrowers being 60 or more days delinquent within the first year. Prior to 2006, 1.1 percent of mortgages would end up 60 or more days delinquent within the first two years.[41] Taking a more expansive definition of early payment default to include 60 days delinquent within the first two years, this figure was double the historic average during 2006, 2007 and 2008.[42] First payment defaults—mortgages taken out by consumers who never made a single payment—exceeded 1.5 percent of loans in early 2007.[43] In addition, as the economy worsened, the rates of serious delinquency (90 or more days past due or in foreclosure) for the subprime and Alt-A products began a steep increase from approximately 10 percent in 2006, to 20 percent in 2007, to more than 40 percent in 2010.[44]

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

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

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

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

In the wake of this financial crisis, Congress passed the Dodd-Frank Act to address many of these concerns. In this Act, among other things, Congress created the Bureau and consolidated the rulemaking authority for many consumer financial protection statutes, including the two primary Federal consumer protection statutes governing mortgage origination, the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA), in the Bureau.[50] Congress also provided

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

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

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

[40] FCIC Report at 215–217.

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

[42] *Id.*

[43] *Id.*

[44] *Id.* at 217.

[45] *Id.* at 124.

[46] FCIC Report at 88.

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

[48] *Id.* at 109.

[49] *Id.* at 111.

[50] Sections 1011 and 1021 of the Dodd-Frank Act, 12 U.S.C. 5491, 5511. The Consumer Financial

Continued

the Bureau with supervision authority for certain consumer financial protection statutes over certain entities, including insured depository institutions with total assets of over $10 billion and their affiliates, and certain other non-depository entities, including all companies that offer or provide origination, brokerage, or servicing of consumer mortgages.[51]

At the same time, Congress significantly amended the statutory requirements governing mortgage practices with the intent to restrict the practices that contributed to the crisis. For example, in response to concerns that some lenders made loans to consumers without sufficiently determining their ability to repay, section 1411 of the Dodd-Frank Act amended TILA to require that creditors make a reasonable and good faith determination, based on verified and documented information, that the consumer will have a reasonable ability to repay the loan.[52] Sections 1032(f), 1098, and 1100A of the Dodd-Frank Act address concerns that Federal mortgage disclosures did not adequately explain to consumers the terms of their loans (particularly complex adjustable rate or optional payment loans) by requiring new disclosure forms designed to improve consumer understanding of mortgage transactions (which is the subject of this final rule).[53] In addition, the Dodd-Frank Act established other new standards concerning a wide range of mortgage lending practices, including compensation for mortgage originators[54] and mortgage servicing.[55] For additional information, see the discussion below in part II.F.

Size of the Current Mortgage Origination Market

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

Consumers may obtain mortgage credit to purchase a home, to refinance an existing mortgage, to access home equity, or to finance home improvement. Purchase loans and refinancings together produced 8.6 million new first-lien mortgage loan originations in 2012.[58] The proportion of loans that are for purchases as opposed to refinances varies with the interest rate environment and other market factors. In 2012, 72 percent of the market was refinance transactions and 28 percent was purchase loans, by volume.[59] Historically the distribution has been more even. In 2000, refinances accounted for 44 percent of the market while purchase loans comprised 56 percent; in 2005, the two products were split evenly.[60]

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

Shopping for Mortgage Loans

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

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

The Mortgage Origination Process

Borrowers must go through a mortgage origination process to take out

Protection Act is substantially codified at 12 U.S.C. 5481–5603.

[51] Sections 1024 through 1026 of title X of the Dodd-Frank Act, codified at 12 U.S.C. 5514–5516.

[52] Section 1411 of the Dodd-Frank Act, codified at 15 U.S.C. 1639c.

[53] Section 1032(f) of the Dodd-Frank Act, codified at 12 U.S.C. 5532(f). Sections 1098 and 1100A of the Dodd-Frank Act amend RESPA and TILA, respectively.

[54] Sections 1402 through 1405 of the Dodd-Frank Act, codified at 15 U.S.C. 1639b.

[55] Sections 1418, 1420, 1463, and 1464 of the Dodd-Frank Act, codified at 12 U.S.C. 2605; 15 U.S.C. 1638, 1638a, 1639f, & 1639g.

[56] Moody's Analytics, *Credit Forecast 2013* (2013) (Credit Forecast 2013), available at *http://www.economy.com/default.asp* (reflects first-lien mortgage loans) (data service accessibly only through paid subscription).

[57] Mortgage Markets Daily, *New Houses by Type of Financing,* available at *http://www.mortgagenewsdaily.com/data/financing-type.aspx.*

[58] Credit Forecast 2013.

[59] Inside Mortgage Fin., *Mortgage Originations by Product, in* Inside Mortgage Finance Issue 2013:08 (Mar. 1, 2013) (Inside Mortgage Finance Newsletter).

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

[61] Inside Mortgage Fin. Newsletter.

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

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

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

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

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

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

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

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

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

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

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

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

Mortgage Application Processing. A loan underwriter reviews the application and additional information provided by the borrower, and verifies certain information in connection with regulatory requirements. The

[67] Types of loan products include a fixed rate loan, adjustable rate loan, and interest-only loan.

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

[69] Inside Mortgage Finance Newsletter.

[70] *Compare* Press Release, Mortgage Bankers Assoc., *Mortgage Applications Decrease in Latest Weekly MBA Survey* (Mar. 6, 2013), available at *http://www.mbaa.org/NewsandMedia/PressCenter/83653.htm with* Mortgage Bankers Assoc., *Mortgage Applications Decrease in Latest Weekly MBA Survey* (Aug. 28, 2013), available at *http://www.mbaa.org/NewsandMedia/PressCenter/85466.htm.*

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

underwriter will assess whether the lender should take on the risk of making the mortgage loan. In order to make this decision, the underwriter considers whether the borrower can repay the loan, and whether the home is worth enough to act as collateral for the loan. If the underwriter finds that the borrower and the home qualify, the underwriter will approve the borrower's mortgage application.

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

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

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

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

B. RESPA and Regulation X

Congress enacted the Real Estate Settlement Procedures Act of 1974 based on findings that significant reforms in the real estate settlement process were needed to ensure that consumers are provided with greater and more timely information on the nature and costs of the residential real estate settlement process and are protected from unnecessarily high settlement charges caused by certain abusive practices that Congress found to have developed. 12 U.S.C. 2601(a). With respect to RESPA's disclosure requirements, the Act's purpose is to provide ''more effective advance disclosure to home buyers and sellers of settlement costs.'' 12 U.S.C. 2601(b)(1). In addition to providing consumers with appropriate disclosures, the purposes of RESPA include, but are not limited to, effecting certain changes in the settlement process for residential real estate that will result in (1) the elimination of kickbacks or referral fees that Congress found to increase unnecessarily the costs of certain settlement services; and (2) a reduction in the amounts home buyers are required to place in escrow accounts established to insure the payment of real estate taxes and insurance. 12 U.S.C. 2601(b). In 1990, Congress amended RESPA by adding a new section 6 covering persons responsible for servicing mortgage loans and amending statutory provisions related to mortgage servicers' administration of borrowers' escrow accounts.[72]

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

Section 4 of RESPA requires that, in connection with a ''mortgage loan transaction,'' a disclosure form that includes a ''real estate settlement cost statement'' be prepared and made available to the borrower for inspection at or before settlement.[73] 12 U.S.C. 2603. The law further requires that the form ''conspicuously and clearly itemize all charges imposed upon the borrower and all charges imposed upon the seller in connection with the settlement. . . .'' 12 U.S.C. 2603(a). Section 5 of RESPA provides for a booklet to help consumers applying for federally related mortgage loans to understand the nature and costs of real estate settlement services. 12 U.S.C. 2604(a). Further, each lender must ''include with the booklet a good faith estimate of the amount or range of charges for specific settlement services the borrower is likely to incur in connection with the settlement . . .'' 12 U.S.C. 2604(c). The booklet and the good faith estimate must be provided not later than three business days after the lender receives an application, unless the lender denies the application for credit before the end of the three-business day period. 12 U.S.C. 2604(d).

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

[72] Public Law 101–625, 104 Stat. 4079 (1990), sections 941–42.

[73] Prior to the Dodd-Frank Act, section 4 of RESPA applied to ''all transactions in the United States which involve federally related mortgage loans.'' 12 U.S.C. 2603 (2009). However, section 1098 of the Dodd-Frank Act deleted the reference to ''federally related mortgage loan'' in this section and replaced it with ''mortgage loan transactions.'' The regulation implementing this statutory requirement has historically applied and continues to apply to ''federally related mortgage loans.'' *See* 12 CFR 1024.8; 24 CFR 3500.8 (2010).

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

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

The Dodd-Frank Act (discussed further in part I.D, below) transferred rulemaking authority for RESPA to the Bureau, effective July 21, 2011. *See* sections 1061 and 1098 of the Dodd-Frank Act. Pursuant to the Dodd-Frank Act and RESPA, as amended, the Bureau published for public comment an interim final rule establishing a new Regulation X, 12 CFR part 1024, implementing RESPA. 76 FR 78978 (Dec. 20, 2011). This rule did not impose any new substantive obligations but did make certain technical, conforming, and stylistic changes to reflect the transfer of authority and certain other changes made by the Dodd-Frank Act. The Bureau's Regulation X took effect on December 30, 2011. RESPA section 5's requirements of an information booklet and good faith estimate of settlement costs (RESPA GFE) are implemented in Regulation X by §§ 1024.6 and 1024.7, respectively. RESPA section 4's requirement of a real estate settlement statement (RESPA settlement statement) is implemented by § 1024.8.

C. TILA and Regulation Z

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

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

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

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

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

On July 30, 2008, Congress enacted the Mortgage Disclosure Improvement Act of 2008 (MDIA).[79] MDIA, in part, amended the timing requirements for the early TILA disclosures, requiring that these TILA disclosures be provided within three business days after an application for a dwelling-secured closed-end mortgage loan also subject to RESPA is received and before the consumer has paid any fee (other than a fee for obtaining the consumer's credit history).[80]

Creditors also must mail or deliver these early TILA disclosures at least seven business days before consummation and provide corrected disclosures if the disclosed APR changes in excess of a specified tolerance. The consumer must receive the corrected disclosures no later than three business days before consummation. The Board implemented these MDIA requirements in final rules published May 19, 2009, which became effective July 30, 2009, as required by the statute. 74 FR 23289 (May 19, 2009) (MDIA Final Rule).

MDIA also requires disclosure of payment examples if the loan's interest rate or payments can change, along with a statement that there is no guarantee the consumer will be able to refinance

[75] U.S. Dep't. of Hous. and Urban Dev., *Summary Report: Consumer Testing of the Good Faith Estimate Form (GFE),* prepared by Kleimann Communication Group, Inc. (2008), available at *http://www.huduser.org/publications/pdf/Summary_Report_GFE.pdf.*

[76] *New RESPA Rule FAQs,* available at *http://portal.hud.gov/hudportal/documents/huddoc?id=resparulefaqs422010.pdf.*

[77] *RESPA Roundup Archive,* available at *http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/rmra/res/resroundup.*

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

[79] 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.

[80] MDIA codified some requirements previously adopted by the Board in a July 2008 final rule. 73 FR 44522 (July 30, 2008) (HOEPA Final Rule). To ease discussion, the description of MDIA's disclosure requirements includes the requirements of the 2008 HOEPA Final Rule.

the transaction in the future. Under the statute, these provisions of MDIA became effective on January 30, 2011. The Board worked to implement these provisions of MDIA at the same time that it was completing work on a several year review of Regulation Z's provisions concerning home-secured credit. As a result, the Board issued two sets of proposals approximately one year apart. On August 26, 2009, the Board published proposed amendments to Regulation Z containing comprehensive changes to the disclosures for closed-end credit secured by real property or a consumer's dwelling, including revisions to the format and content of the disclosures implementing MDIA's payment examples and refinance statement requirements, and several new requirements. 74 FR 43232 (Aug. 26, 2009) (2009 Closed-End Proposal).

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

On September 24, 2010, the Board published an interim final rule to implement MDIA's payment example and refinance statement requirements. 75 FR 58470 (Sept. 24, 2010) (MDIA Interim Rule). The Board's MDIA Interim Rule effectively adopted those aspects of the 2009 Closed-End Proposal that implemented these MDIA requirements, without adopting that proposal's other provisions, which were not subject to the same January 30, 2011 statutory effective date. The Board later issued another interim final rule to make certain clarifying changes to the provisions of the MDIA Interim Rule. 75 FR 81836 (Dec. 29, 2010).

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

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

On May 11, 2011, the Board proposed amendments to Regulation Z to implement section 1411 of the Dodd-Frank Act, which amends TILA to prohibit creditors from making mortgage loans without regard to the consumer's repayment ability. 76 FR 27390 (May 11, 2011) (2011 ATR Proposal). Section 1411 of the Dodd-Frank Act adds section 129C to TILA, codified at 15 U.S.C. 1639c, which prohibits a creditor from making a mortgage loan unless the creditor makes a reasonable and good faith determination, based on verified and documented information, that the consumer will have a reasonable ability to repay the loan, including any mortgage-related obligations (such as property taxes).

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

D. The History of Integration Efforts

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

Previous efforts to develop a combined TILA and RESPA disclosure form were fueled by the amount, complexity, and overlap of information in the disclosures. On September 30, 1996, Congress enacted the Economic Growth and Regulatory Paperwork Reduction Act of 1996,[84] which required the Board and HUD to ''simplify and improve the disclosures applicable to the transactions under [TILA and RESPA], including the timing of the disclosures; and to provide a single format for such disclosures which will satisfy the requirements of each such Act with respect to such transactions.''[85] If the agencies found that legislative action might be necessary or appropriate to simplify and unify the disclosures, they were to submit a report to Congress containing recommendations for such action. In the

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

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

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

[84] Public Law 104–208, 110 Stat. 3009 (1996).

[85] *Id.,* section 2101.

same legislation, Congress added exemption authority in TILA section 105(f) for classes of transactions for which, in the determination of the Board (now the Bureau), coverage under all or part of TILA does not provide a meaningful benefit to consumers in the form of useful information or protection.[86]

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

The agencies recommended a number of amendments to TILA and RESPA in the report, such as amendment of TILA's definition of ''finance charge'' to eliminate the ''some fees in, some fees out'' approach and instead include ''all costs the consumer is required to pay in order to close the loan, with limited exceptions''; the amendment of RESPA to require either the guaranteeing of closing costs on the GFE or estimates that are subject to an accuracy standard; and provision of the final TILA disclosure and settlement statement three days before closing, so that consumers would be able to study the disclosures in an unpressured environment.

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

The Board-HUD Joint Report did not result in legislative action. Eleven years later, and four months before the revised RESPA disclosures under HUD's 2008 RESPA Final Rule were to become mandatory, the Board published the 2009 Closed-End Proposal, which proposed significant revisions to the TILA disclosures and stated that the Board would work with HUD towards integrating the two disclosure regimes. The proposal stated that ''the Board anticipates working with [HUD] to ensure that TILA and [RESPA] disclosures are compatible and complementary, including potentially developing a single disclosure form that creditors could use to combine the initial disclosures required under TILA and RESPA.''[89] The proposal stated that consumer testing would be used to ensure consumers could understand and use the combined disclosures. However, only ten months later in July 2010, the Dodd-Frank Act was enacted by Congress, which transferred rulemaking authority under both TILA and RESPA to the Bureau and, as described below in part II.E, under sections 1032(f), 1098, and 1100A, mandated that the Bureau establish a single disclosure scheme under TILA and RESPA and propose for public comment rules and model disclosures that integrate the TILA and RESPA disclosures by July 21, 2012. 12 U.S.C. 2603(a), 5532(f); 15 U.S.C. 1604(b).

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

E. The Dodd-Frank Act

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

The amendments to RESPA and TILA mandating a ''single, integrated disclosure'' are among numerous conforming amendments to existing

[86] *Id.*, section 2102(b).

[87] Bd. of Governors of the Fed. Reserve Sys. And U.S. Dep't of Hous. and Urban Dev., *Joint Report to the Congress Concerning Reform to the Truth in Lending Act and the Real Estate Settlement Procedures Act* (1998), available at *http://www.federalreserve.gov/boarddocs/rptcongress/tila.pdf.*

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

[89] 74 FR 43232, 43233.

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

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

Federal laws found in subtitle H of the Consumer Financial Protection Act of 2010.[92] 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 issued the TILA–RESPA Proposal pursuant to that mandate and the parallel mandates established by the conforming amendments to RESPA and TILA, discussed above.

F. Other Rulemakings

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

HOEPA: On January 10, 2013, the Bureau issued a final rule implementing certain Dodd-Frank Act requirements that expand protections for ''high-cost'' mortgage loans under HOEPA, pursuant to TILA sections 103(bb) and 129, as amended by Dodd-Frank Act sections 1431 through 1433 (2013 HOEPA Final Rule).[93] 15 U.S.C. 1602(bb) and 1639. The rule implements certain Title XIV requirements concerning homeownership counseling, including a requirement that lenders provide lists of homeownership counselors to applicants for federally related mortgage loans, pursuant to RESPA section 5(c), as amended by Dodd-Frank Act section 1450. 12 U.S.C. 2604(c). On November 8, 2013, the Bureau issued a final interpretive rule providing lenders with additional instructions on complying with the 2013 HOEPA Final Rule requirements.[94]

Servicing: On January 17, 2013, the Bureau issued the Real Estate Settlement Procedures Act (Regulation X) and Truth in Lending Act (Regulation Z) Mortgage Servicing Final Rules (2013 Mortgage Servicing Final Rules).[95] These rules implement Dodd-Frank Act requirements regarding force-placed insurance, error resolution, information requests, and payment crediting, as well as requirements for mortgage loan periodic statements and adjustable rate mortgage reset disclosures, pursuant to sections 6 of RESPA and 128, 128A, 129F, and 129G of TILA, as amended or established by Dodd-Frank Act sections 1418, 1420, 1463, and 1464. 12 U.S.C. 2605; 15 U.S.C. 1638, 1638a, 1639f, and 1639g. These rules establish: (1) Early intervention for troubled and delinquent borrowers, and loss mitigation procedures, pursuant to the Bureau's authority under section 6 of RESPA, as amended by Dodd-Frank Act section 1463; (2) obligations for mortgage servicers that the Bureau found to be appropriate to carry out the consumer protection purposes of RESPA, as well as its authority under section 19(a) of RESPA to prescribe rules necessary to achieve the purposes of RESPA; and (3) requirements for general servicing standards, policies, and procedures and continuity of contact, pursuant to the Bureau's authority under section 19(a) of RESPA.

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

Appraisals: On January 18, 2013, the Bureau, jointly with Federal prudential regulators and other Federal agencies (the Agencies), issued a final rule to implement Dodd-Frank Act requirements concerning appraisals for higher-risk mortgages, pursuant to TILA section 129H as established by Dodd-Frank Act section 1471 (2013 Interagency Appraisals Final Rule).[98] 15 U.S.C. 1639h. For mortgages with an annual percentage rate that exceeds the average prime offer rate by a specified percentage, the final rule requires creditors to obtain an appraisal or appraisals meeting certain specified standards, provide applicants with a notification regarding the use of the appraisals, and give applicants a copy of the written appraisals used. On July 10, 2013, the Agencies issued a proposal to amend the final rule to provide exemptions for: (1) Transactions secured by existing manufactured homes and not land; (2) certain ''streamlined'' refinancings; and (3) transactions of $25,000 or less.[99]

On the same day it issued the 2013 Interagency Appraisal Final Rule, the Bureau issued a final rule to implement section 701(e) of the Equal Credit Opportunity Act (ECOA), as amended

[92] 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.

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

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

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

[96] 78 FR 11279 (Feb. 15, 2013), finalizing a proposal issued on August 17, 2012 (77 FR 55271 (Sept. 7, 2012) (2012 Loan Originator Proposal)).

[97] 78 FR 32547 (May 31, 2013), finalizing a proposal to delay the effective date of the prohibition issued May 7, 2013 (78 FR 27308 (May 10, 2013)).

[98] 78 FR 10637 (Feb. 13, 2013), finalizing a proposal issued on September 5, 2012 (77 FR 54721 (Sept. 9, 2012) (2012 Interagency Appraisals Proposal)).

[99] 78 FR 48548 (Aug. 8, 2013).

by Dodd-Frank Act section 1474 (2013 ECOA Appraisals Final Rule). 15 U.S.C. 1691(e). That rule requires that creditors provide applicants with a free copy of written appraisals and valuations developed in connection with applications for loans secured by a first lien on a dwelling and notify applicants in writing that copies of appraisals will be provided to them promptly.

Ability to Repay: On January 10, 2013, the Bureau finalized a proposal issued by the Board to implement provisions of the Dodd-Frank Act (1) requiring creditors to determine that a consumer has a reasonable ability to repay covered mortgage loans and establishing standards for compliance, and (2) establishing certain limitations on prepayment penalties, pursuant to TILA sections 129C as established by Dodd-Frank Act sections 1411, 1412, and 1414 (2013 ATR Final Rule).[100] 15 U.S.C. 1639c. Concurrent with the issuance of the 2013 ATR Final Rule, the Bureau issued a concurrent proposed rule amending certain aspects of the 2013 ATR Final Rule (2013 ATR Concurrent Proposal), which proposal was finalized on May 29, 2013 (May 2013 ATR Final Rule).[101] That rule provides exemptions for certain nonprofit creditors and certain homeownership stabilization programs, provides an additional definition of a ''qualified mortgage'' for certain loans made and held in portfolio by small creditors, and modifies the requirements regarding the inclusion of loan originator compensation in the points and fees calculation.

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

In addition to the foregoing, the Bureau proposed and finalized three additional sets of amendments to the Title XIV Rulemakings. The first set of amendments, proposed in April 2013 and published on July 24, 2013, clarify, correct, or amend provisions on the relation to State law of Regulation X's servicing provisions; implementation dates for adjustable rate mortgage servicing; exclusions from requirements on higher-priced mortgage loans; the small servicer exemption from certain servicing rules; the use of government-sponsored enterprise and Federal agency purchase, guarantee or insurance eligibility for determining qualified mortgage status; and the determination of debt and income for purposes of originating qualified mortgages.[105]

The second set of amendments, proposed on June 21, 2013, was published on October 1, 2013.[106] These amendments focus primarily on clarifying, revising, or amending provisions on loss mitigation procedures under Regulation X's servicing provisions; amounts counted as loan originator compensation to retailers of manufactured homes and their employees for purposes of applying points and fees thresholds under the Home Ownership and Equity Protection Act and the Ability-to-Repay rules in Regulation Z; exemptions available to creditors that operate predominantly in ''rural or underserved'' areas for various purposes under the mortgage regulations; application of the loan originator compensation rules to bank tellers and similar staff; and the prohibition on creditor-financed credit insurance. The amendments also adjusted the effective dates for certain provisions of the loan originator compensation rules, and incorporated technical and wording changes for clarification purposes to Regulations B, X, and Z.

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

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

III. Summary of the Rulemaking Process

As noted above, the Dodd-Frank Act established two goals for this rulemaking: ''to facilitate compliance with the disclosure requirements of [TILA and RESPA]'' and ''to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures.'' Dodd-Frank Act sections 1098, 1100A; 12 U.S.C. 2603(a), 15 U.S.C. 1604(b). Further, the Bureau has a specific mandate and authority from Congress to promote consumer comprehension of financial transactions through clear disclosures. Section 1021(a) of the Dodd-Frank Act directs the Bureau to ''implement . . . Federal consumer financial law consistently for the purpose of ensuring,'' inter alia, that ''markets for consumer financial products and services are fair, transparent, and competitive.'' 12 U.S.C. 5511(a). Section 1021(b) of the Dodd-Frank Act, in turn, authorizes the Bureau as part of its core mission to exercise its authority to ensure that, with respect to consumer financial products and services, ''consumers are provided with timely and understandable information to make responsible decisions about financial transactions.'' 12 U.S.C. 5511(b). Consistent with these goals and in preparation for proposing integrated rules and forms, the Bureau conducted

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

[101] 78 FR 35429 (Jun. 12, 2013), finalizing the concurrent proposal issued on January 10, 2013 (78 FR 6622 (Jan. 30, 2013)).

[102] 78 FR 4726 (Jan. 22, 2013), finalizing a proposal issued by the Board on March 2, 2011 (76 FR 11597 (Mar. 2, 2011)).

[103] 78 FR 23171 (Apr. 18, 2013).

[104] 78 FR 30739 (May 23, 2013).

[105] 78 FR 44685 (July 24, 2013), finalizing a proposal issued on April 19, 2013 (78 FR 25638 (May 2, 2013)).

[106] 78 FR 60382 (Oct. 1, 2013); 78 FR 39902 (Jul. 2, 2013).

[107] 78 FR 62993 (Oct. 23, 2013).

a multifaceted information gathering campaign, including researching how consumers interact with and understand information, testing of prototype forms, developing interactive online tools to gather public feedback, and hosting roundtable discussions, teleconferences, and meetings with consumer advocacy groups, industry stakeholders, and other government agencies.

A. Early Stakeholder Outreach & Prototype Form Design

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

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

The Bureau and Kleimann reviewed relevant research and the work of other Federal financial services regulatory agencies to inform the Bureau's design of the prototype integrated disclosures. One of the findings of this research was that there is a significant risk to consumers of experiencing ''information overload'' when the volume or complexity of information detracts from the consumer decision-making processes. ''Information overload'' has often been cited as a problem with financial disclosures.[110] Researchers suggest that there should be a balance between the types and amount of information in the disclosures, because too much information has the potential to detract from consumers' decision-making processes.[111] In its 2009 Closed-End Proposal, the Board cited a reduction in ''information overload'' as one of the potential benefits of its plan to harmonize the TILA and RESPA disclosures in collaboration with HUD.[112] The Board's consumer testing in connection with its 2009 Closed-End Proposal found that when participants were asked what was most difficult about their mortgage experience, the most frequent answer was the amount of paperwork.[113] HUD also stated that one of its guiding principles for HUD's 2008 RESPA Proposal was that ''the [mortgage loan settlement process] can be improved with simplification of disclosures and better borrower information,'' the complexity of which caused many problems with the process.[114]

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

> During its hearings the Consumer Affairs Subcommittee heard testimony from a leading psychologist who has studied the problem of 'informational overload.' The Subcommittee learned that judging from consumer tests in other areas, the typical disclosure statement utilized today by creditors is not an effective communication device. Most disclosure statements are lengthy, written in legalistic fine print, and have essential Truth in Lending disclosures scattered among various contractual terms. The result is a piece of paper which appears to be 'just another legal document' instead of the simple, concise disclosure form Congress intended.[116]

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

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

[108] 72 FR 14940, 14944 (Mar. 29, 2007); 74 FR 62890, 62893 (Dec. 1, 2009).

[109] 73 FR 14030, 14043 (Mar. 14, 2008); 73 FR 68204, 68265 (Nov. 17, 2008).

[110] *See e.g.,* Debra Pogrund Stark and Jessica M. Choplin, *A Cognitive and Social Psychological Analysis of Disclosure Laws and Call for Mortgage Counseling to Prevent Predatory Lending,* 16 Psych. Pub. Pol. and L. 85, 96 (2010); Paula J. Dalley, *The Use and Misuse of Disclosure as a Regulatory System,* 34 Fla. St. U.L. Rev. 1089, 1115 (2007); Patricia A. McCoy, *The Middle-Class Crunch: Rethinking Disclosure in a World of Risk-Based Pricing,* 44 Harv. J. on Legis. 123, 133 (2007); Lauren E. Willis, *Decisionmaking and The Limits of Disclosure: The Problem of Predatory Lending: Price,* 65 Md. L. Rev. 707, 766 (2006); Troy A. Paredes, *After the Sarbanes-Oxley Act: The Future Disclosure System: Blinded by the Light: Information Overload and its Consequences for Securities Regulation,* 81 Wash. U. L. Q. 417 (2003); William N. Eskridge, Jr., *One Hundred Years of Ineptitude: The Need for Mortgage Rules Consonant with the Economic and Psychological Dynamics of the Home Sale and Loan Transaction,* 70 Va. L. Rev. 1083, 1133 (1984).

[111] John Kozup & Jeanne M. Hogarth, *Financial Literacy, Public Policy, and Consumers' Self-Protection-More Questions, Fewer Answers,* 42 Journal of Consumer Affairs 2, 127 (2008).

[112] 74 FR 43232, 43234.

[113] *See* Macro 2009 Closed-End Report at 19. For additional discussion regarding information overload, see the section-by-section analysis of proposed § 1026.37(l).

[114] 73 FR 14030, 14031.

[115] Public Law 96–221, 94 Stat 132 (1980).

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

would obviate the need to place educational material directly on the disclosures.

The Bureau believed and continues to believe that the design should highlight on the first page the most important loan information that consumers readily understand and use to evaluate and compare loans, placing more detailed and technical information later in the disclosure. With such a design, the first page could potentially be used by some consumers as a one-page mortgage shopping sheet. In addition, the Bureau believed the design should use plain language and limit the use of technical, statutory, or complex financial terms wherever possible.

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

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

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

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

At the same time, to supplement its qualitative testing, the Bureau launched an initiative, which it titled ''Know Before You Owe,'' to obtain additional public feedback on the prototype disclosure forms.[118] The Bureau believed this would provide an opportunity to obtain a large amount of feedback from a broad base of consumers and industry respondents around the country. This initiative consisted of either publishing and obtaining feedback on the prototype designs through an interactive tool on the Bureau's 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/or identifying additional information that should be included.[119]

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

After each round of testing, Kleimann analyzed and reported to the Bureau on the results of the testing. Based on these results and the supplemental feedback received through the KBYO process, the Bureau would revise the prototype disclosure forms for the subsequent rounds of testing. This iterative process helped the Bureau develop forms that better enable consumers to understand and compare mortgage loans and assist industry in complying with the law. For a detailed discussion of this testing, see the report prepared by Kleimann, *Know Before You Owe: Evolution of the Integrated TILA–RESPA Disclosures* (Kleimann Testing Report), which the Bureau posted on its Web site and on Regulations.gov in connection with the TILA–RESPA Proposal.[120]

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

Similar to the qualitative testing of the Loan Estimate, the Bureau revised the prototype Closing Disclosure forms after each round based on the results Kleimann provided to the Bureau and

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

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

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

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

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

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

C. Proposal Stakeholder Outreach

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

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

D. Small Business Review Panel

In February 2012, the Bureau convened a Small Business Review Panel with the Chief Counsel for Advocacy of the Small Business Administration (SBA) and the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB).[121] As part of this process, the Bureau prepared an outline of the proposals then under consideration and the alternatives considered (Small Business Review Panel Outline), which it posted on its Web site for review by the general public as well as the small entities participating in the panel process.[122] The Small Business Review Panel gathered information from representatives of small lenders, mortgage brokers, settlement agents, and not-for-profit organizations and made findings and recommendations regarding the potential compliance costs and other impacts of the proposed rule on those entities. These findings and recommendations are set forth in the Small Business Review Panel Report, which will be made part of the administrative record in this rulemaking.[123] The Bureau considered these findings and recommendations in preparing the TILA–RESPA Proposal and addressed certain specific examples in the proposal, as well as below in this final rule.

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

E. The Bureau's Proposal

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

As discussed above, to accomplish the Dodd-Frank Act's mandate to combine the disclosures required under TILA and RESPA, the Bureau engaged in extensive consumer and industry research and public outreach for more than a year. Based on that input, the Bureau proposed a rule with new, combined forms. The proposed rule also would have provided a detailed explanation of how the forms should be filled out and used. In developing the proposed forms, the Bureau reconciled the differences between the existing forms and combined several other mandated disclosures.

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

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

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

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

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

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

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

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

F. Feedback Provided to the Bureau

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

As discussed in further detail below, the Bureau sought comment in its 2012 HOEPA Proposal on whether to adopt certain adjustments or mitigating measures in its HOEPA implementing regulations if it were to adopt a broader definition of ''finance charge'' under Regulation Z, as proposed in the TILA–RESPA Proposal. Subsequently, the Bureau published a notice in the **Federal Register** making clear that it would defer its decision on whether to adopt the more inclusive finance charge

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

proposal, and therefore any implementation thereof, until it finalized the TILA–RESPA Proposal. 77 FR 54843 (Sept. 6, 2012). Accordingly, the Bureau's 2013 HOEPA Final Rule deferred discussion of comments to the 2012 HOEPA Proposal addressing proposed mitigating measures to account for a more inclusive finance charge under HOEPA. In addition, the Bureau deferred discussion of comments received regarding a more inclusive finance charge definition and potential mitigating measures in connection with the proposals finalized by the 2013 ATR Final Rule, the 2013 Escrows Final Rule, and the 2013 Interagency Appraisals Final Rule, which also would have been affected by a broader definition of the finance charge. Comments regarding such potential mitigating measures and the Bureau's proposal of a more inclusive definition of the finance charge are addressed collectively in the section-by-section analysis of § 1026.4, below.

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

G. Post-Proposal Consumer Testing

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

The Bureau determined that testing the integrated disclosures on actual loans would not be feasible in the course of this rulemaking, nor would it provide the Bureau with significantly better information compared to the information that would be obtained from qualitative and quantitative consumer testing of the integrated disclosures. The length of time that would be necessary to develop and conduct such a study would be extensive. To conduct such a study involving actual loans in the marketplace, the Bureau would need to: develop the methodology of such a study; submit the methodology and any additional information necessary to OMB to obtain prior approval to conduct the study under the Paperwork Reduction Act; recruit and identify industry stakeholders in the lending, title insurance, and settlement industries willing to participate in such a study; assist such industry participants in developing unique systems to produce disclosures in conformity with the TILA–RESPA Proposal; provide sufficient legal protections to such industry participants involved in the study; and collect data from such transactions throughout the application through closing stages, which period of time can last 90 days in many cases. Also, the Bureau had not yet finalized a policy under section 1032(e) of the Dodd-Frank Act during the course of finalizing the proposal, which would set forth standards and safeguards for conducting such a program and providing waivers from Federal disclosure requirements, and thus, formal processes for such a study were not in place.[125] In addition, in a controlled setting in a testing facility, the Bureau was able to conduct a study with a large number of participants (858 participants) in a short period of time (fielded in approximately two months), with a control group using the current disclosures, under which participants in both groups were exposed to the same loans, environment, and minimal level of distractions. The Bureau believes such a controlled setting has enabled the Bureau to obtain data that isolates the performance differences between the current and integrated disclosures. In addition, the Bureau believes that commenters and industry stakeholders suggesting that the Bureau should conduct consumer testing in actual loans in the marketplace are, in part, interested in such testing because of its ability to identify compliance issues with the proposed rule and disclosures. The Bureau believes such compliance issues have been identified through other means, such as through its analysis of the public comments received, review of past disclosure rulemakings (including HUD's 2008 RESPA Final Rule), and extensive outreach prior to issuing the proposal.

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

Spanish Language Testing

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

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

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

[127] Id.

the integrated disclosures would be beneficial to consumers. The Bureau wanted to determine whether there were any structural issues in the prototype designs that could cause differences in performance for speakers of Spanish.

After two rounds of consumer testing in Spanish, the Bureau determined that co-development of a separate Spanish version of the disclosures would likely yield little benefit to consumers, because any differences in performance with the Spanish prototypes during testing were caused more by translation than design and structure issues. The Bureau also believed that the differences in language would not necessitate changes to the design of the disclosure given that the Bureau intentionally pursued a more graphic than textual design for the Loan Estimate, which used as few words as possible. However, the Bureau was still interested in developing Spanish language versions of the integrated disclosures, as it believed consumers who speak only Spanish or speak a limited amount of English would benefit from improved understanding of their mortgage transactions. While the proposed rule only included English-language disclosure sample forms, it would have permitted the translation of these forms. In addition, the Bureau stated in the proposal that it planned to review issues concerning translations of the integrated disclosures after the proposal and solicited comment on whether the final rule should include sample Spanish-language or other non-English language forms.

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

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

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

The Bureau conducted four rounds of testing in Spanish in October 2012, November 2012, December 2012, and July 2013 in Arlington, Virginia; Phoenix, Arizona; Miami, Florida; and Baltimore, Maryland, respectively. This post-proposal Spanish qualitative testing included 29 consumers in total. The first three rounds of Spanish qualitative consumer testing used Spanish translations of the integrated disclosure substantially as proposed, with modifications to the design to accommodate the additional space necessary for the Spanish language text and to revise the order of certain disclosures so that they remain in alphabetical order, as on the English language versions of the integrated disclosures.[128] The fourth round used prototype integrated disclosures that included the potential modifications to the integrated disclosures the Bureau was considering based on the public comments to the proposed rule, including the modifications to the disclosures permitted in this final rule for transactions without sellers, as described in the section-by-section analysis below.

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

In addition, as discussed in the section-by-section analysis of appendix H to Regulation Z below, the Bureau is adopting Spanish language versions of some of the English language versions of the Loan Estimates and Closing Disclosures in forms H–24 and H–25 of appendix H, which are based on the Bureau's consumer testing. Regarding the national title insurance company commenter's concerns regarding the burden associated with a requirement to use non-English language disclosures, the Bureau is not requiring in this final rule that creditors use non-English language versions of the integrated disclosures. The final rule permits creditors to translate the disclosures into other languages, as discussed in the section-by-section analysis of §§ 1026.37(o) and 1026.38(t). The Bureau believes, as suggested by other

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

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

comments, that including in the final rule versions of the integrated disclosures in Spanish that the Bureau has tested with consumers will assist industry in communicating with Spanish-speaking consumers, and facilitate industry compliance with any applicable State laws requiring the use of non-English versions of the integrated disclosures.

Quantitative Study

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

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

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

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

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

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

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

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

public comments,[131] performed better than the current disclosures based on aggregate measures of the data. That data showed a statistically significant performance advantage of around 16 percentage points for the proposed disclosures that was consistent across the variables of the study: experienced as well as inexperienced consumers, relatively easier as well as more challenging loans, and fixed rate as well as adjustable rate loans. The integrated disclosures performed better than the current disclosures with respect to specific tasks in the study as well. The integrated disclosures showed a performance advantage of about 24 percentage points for comparing two loans using the application disclosures; about 10 percentage points for understanding one loan using the application disclosures; about 17 percentage points for comparing the application and closing disclosures; and about 29 percentage points for understanding the final loan terms and costs using the closing disclosures. In addition to measuring the accuracy of responses to questions about particular loans, participants in the Quantitative Study were asked to select between two loans using the application disclosures (either early TILA disclosures and RESPA GFEs or Loan Estimates), and then asked in an open-ended question to provide reasons for their selection. In response to the open-ended question, participants using the integrated disclosures on average provided a greater total number of reasons for their selection of a particular loan, which difference was statistically significant and consistent across the variables of the study. This result suggests that participants using the integrated disclosures were able to articulate and explain more reasons for their choice. For a detailed discussion of this testing, see the report prepared by Kleimann, *Quantitative Study of the Current and Integrated TILA–RESPA Disclosures* (Kleimann Quantitative Study Report), which the Bureau is releasing on its Web site in connection with this final rule.[132]

Qualitative Testing of Revisions to the Proposed Disclosures

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

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

In addition, a joint ex parte letter from three industry trade associations suggested that the Bureau's proposed integrated disclosures do not accommodate certain types of loans, such as loans with buydowns; closed-end second-lien loans originated simultaneously with a first-lien loan; refinances and cash-out refinances; refinances of loans with a co-borrower added or removed; or loans with a guarantor or non-occupant co-borrower. The trade associations also suggested that the Bureau conduct further testing of the disclosures for all loan products available through the GSEs and FHA. The trade associations also suggested that consumers would not be able to identify changed information between an original and revised Loan Estimate. The Bureau believes that consumers can compare two Loan Estimates and identify changes. As described above, in the Bureau's Quantitative Study, the Bureau's integrated disclosures showed a performance advantage of approximately 24 percentage points over the current disclosures for comparing two loans. *See* Kleimann Quantitative Study Report at 43.

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

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

In addition, as also described below in the section-by-section analysis of § 1026.37(d), the Bureau received comments critical of the emphasis placed on the cash to close amount on the first page of the proposed Loan Estimate and Closing Disclosure. Further, although the Bureau learned from the Quantitative Study that the Bureau's integrated disclosures generally performed better than the

[131] Prior to conducting the Quantitative Study, the Bureau made modifications to the proposed integrated disclosures in response to public comments to increase consistency within and between the Loan Estimate and Closing Disclosure. The Bureau revised: The Assumption disclosures under §§ 1026.37(m) and 1026.38(l) so that the language between the two disclosures would match; the reference language in the Loan Terms table under §§ 1026.37(b) and 1026.38(b) so that the reference to the estimated total payment monthly payment used the same term as in the Projected Payments table under §§ 1026.37(c) and 1026.38(c), and to put the language in sentence case to increase readability; the checkboxes in the Escrow Account disclosure on the Closing Disclosure under § 1026.38(l)(7) to delete the ''require or'' from the second checkbox; change the ''Agent'' label on page 1 of the Closing Disclosure under § 1026.38(a) to ''Settlement Agent'' to match the Contact Information table under § 1026.38(r); removed the word ''Borrower'' from the ''Borrower's Loan Amount'' label under § 1026.38(j) to match the term used in the Loan Terms table under §§ 1026.37(b) and 1026.38(b); and changed the labels of the row headings in the Escrow Account disclosure on page 4 of the Closing Disclosure under § 1026.38(l)(7) to include the word ''escrow.'' See the section-by-section analyses of the respective sections for more information regarding these modifications.

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

current disclosure forms, the Bureau also learned that consumer participants performed better at identifying the total estimated closing costs using the RESPA GFE and early TILA disclosure than with the Loan Estimate.[133] Accordingly, the Bureau determined that it would be appropriate to test a modification to the Cash to Close table on the first page of the proposed Loan Estimate to place equal emphasis on the cash to close and total estimated closing costs amounts and to enable easier identification of the total estimated closing costs.

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

H. Delay of Title 14 Disclosures

Title XIV Disclosures

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

The Title XIV Disclosures generally include the following:

- Warning regarding negative amortization features. Dodd-Frank Act section 1414(a); TILA section 129C(f)(1).[136]
- Disclosure of State law anti-deficiency protections. Dodd-Frank Act section 1414(c); TILA section 129C(g)(2) and (3).
- Disclosure regarding creditor's partial payment policy prior to consummation and, for new creditors, after consummation. Dodd-Frank Act section 1414(d); TILA section 129C(h).
- Disclosure regarding mandatory escrow or impound accounts. Dodd-Frank Act section 1461(a); TILA section 129D(h).
- Disclosure prior to consummation regarding waiver of escrow in connection with the transaction. Dodd-Frank Act section 1462; TILA section 129D(j)(1)(A).
- Disclosure regarding cancellation of escrow after consummation. Dodd-Frank Act section 1462; TILA section 129D(j)(1)(B).
- Disclosure of monthly payment, including escrow, at initial and fully-indexed rate for variable-rate residential mortgage loan transactions. Dodd-Frank Act section 1419; TILA section 128(a)(16).
- Repayment analysis disclosure to include amount of escrow payments for taxes and insurance. Dodd-Frank Act section 1465; TILA section 128(b)(4).
- Disclosure of aggregate amount of settlement charges, amount of charges included in the loan and the amount of such charges the borrower must pay at closing, the approximate amount of the wholesale rate of funds, and the aggregate amount of other fees or required payments in connection with a residential mortgage loan. Dodd-Frank Act section 1419; TILA section 128(a)(17).
- Disclosure of aggregate amount of mortgage originator fees and the amount of fees paid by the consumer and the creditor. Dodd-Frank Act section 1419; TILA section 128(a)(18).
- Disclosure of total interest as a percentage of principal. Dodd-Frank Act section 1419; TILA section 128(a)(19).
- Optional disclosure of appraisal management company fees. Dodd-Frank Act section 1475; RESPA section 4(c).
- Disclosure regarding notice of reset of hybrid adjustable rate mortgage. Dodd-Frank Act section 1418(a); TILA section 128A(b).
- Loan originator identifier requirement. Dodd-Frank section 1402(a)(2); TILA section 129B(b)(1)(B).
- Consumer notification regarding appraisals for higher-risk mortgages. Dodd-Frank Act section 1471; TILA section 129H(d).
- Consumer notification regarding the right to receive an appraisal copy. Dodd-Frank Act section 1474; Equal Credit Opportunity Act (ECOA) section 701(e)(5).

As noted in the list above, the Title XIV Disclosures include certain disclosures that may need to be provided to consumers both before and after consummation. For example, the Title XIV Disclosures include disclosures regarding a creditor's policy for acceptance of partial loan payments both before consummation and, for persons who subsequently become creditors for the transaction, after consummation as required by new TILA section 129C(h), added by Dodd-Frank Act section 1414(d).[137] In addition, the Title XIV Disclosures include disclosures for consumers who waive or cancel escrow services both before and after consummation, added by Dodd-Frank Act section 1462. Specifically, new TILA section 129D(j)(1)(A) requires a creditor or servicer to provide a disclosure with the information set forth under TILA section 129D(j)(2) when an impound, trust, or other type of account for the payment of property taxes, insurance premiums, or other purposes relating to real property securing a consumer credit transaction is not established in connection with the transaction (the Pre-Consummation

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

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

[135] Dodd-Frank Act section 1400(c)(3) is codified at 15 U.S.C. 1601 note.

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

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

Escrow Waiver Disclosure). New TILA section 129D(j)(1)(B) requires a creditor or servicer to provide disclosures post-consummation with the information set forth under TILA section 129D(j)(2) when a consumer chooses, and provides written notice of the choice, to close his or her escrow account established in connection with a consumer credit transaction secured by real property in accordance with any statute, regulation, or contractual agreement (the Post-Consummation Escrow Cancellation Disclosure). 15 U.S.C. 1639d(j)(1)(A), 1639d(j)(1)(B). The statute sets forth an identical set of information for both of these disclosures.[138]

Board's 2011 Escrows Proposal

Sections 1461 and 1462 of the Dodd-Frank Act create new TILA section 129D, which substantially codifies requirements that the Board had previously adopted in Regulation Z regarding escrow requirements for higher-priced mortgage loans, but also adds disclosure requirements and lengthens the period for which escrow accounts are required. 15 U.S.C. 1639d. On March 2, 2011, the Board proposed amendments to Regulation Z implementing certain requirements of sections 1461 and 1462 of the Dodd-Frank Act. 76 FR 11598 (Mar. 2, 2011) (Board's 2011 Escrows Proposal). The Board proposed, among other things, to implement the disclosure requirements under TILA section 129D(j)(1) in Regulation Z under a new § 226.19(f)(2)(ii) and § 226.20(d) of the Board's Regulation Z, including both the Pre-Consummation Escrow Waiver Disclosure and the Post-Consummation Escrow Cancellation Disclosure.

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

TILA–RESPA Proposal To Delay Certain Title XIV Disclosures

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

- Warning regarding negative amortization features. Dodd-Frank Act section 1414(a); TILA section 129C(f)(1).
- Disclosure of State law anti-deficiency protections. Dodd-Frank Act section 1414(c); TILA section 129C(g)(2) and (3).
- Disclosure regarding creditor's partial payment policy prior to consummation and, for new creditors, after consummation. Dodd-Frank Act section 1414(d); TILA section 129C(h).
- Disclosure regarding mandatory escrow or impound accounts. Dodd-Frank Act section 1461(a); TILA section 129D(h).
- Disclosure prior to consummation regarding waiver of escrow in connection with the transaction. Dodd-Frank Act section 1462; TILA section 129D(j)(1)(A).
- Disclosure of monthly payment, including escrow, at initial and fully-indexed rate for variable-rate residential mortgage loan transactions. Dodd-Frank Act section 1419; TILA section 128(a)(16).
- Repayment analysis disclosure to include amount of escrow payments for taxes and insurance. Dodd-Frank Act section 1465; TILA section 128(b)(4).
- Disclosure of aggregate amount of settlement charges, amount of charges included in the loan and the amount of such charges the borrower must pay at closing, the approximate amount of the wholesale rate of funds, and the aggregate amount of other fees or required payments in connection with a residential mortgage loan. Dodd-Frank Act section 1419; TILA section 128(a)(17).
- Disclosure of aggregate amount of mortgage originator fees and the amount of fees paid by the consumer and the creditor. Dodd-Frank Act section 1419; TILA section 128(a)(18).
- Disclosure of total interest as a percentage of principal. Dodd-Frank Act section 1419; TILA section 128(a)(19).
- Optional disclosure of appraisal management company fees. Dodd-Frank Act section 1475; RESPA section 4(c).

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

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

The Bureau provided in the TILA–RESPA Proposal that it believed that implementing integrated disclosures that satisfy the applicable sections of TILA and RESPA and the Affected Title XIV Disclosures would benefit consumers and facilitate compliance for industry with TILA and RESPA. The Bureau provided further that consumers would benefit from a consolidated

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

[139] Effective July 21, 2011, the Dodd-Frank Act generally transferred rulemaking authority for TILA to the Bureau (except for certain rulemaking authority over motor vehicle dealers that remains with the Board). *See* sections 1061 and 1100A of the Dodd-Frank Act.

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

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

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

disclosure that conveys loan terms and costs to consumers in a coordinated way, and industry would benefit by integrating two sets of overlapping disclosures into a single form and by avoiding regulatory burden associated with revising systems and practices multiple times. 77 FR 51116, 51133.

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

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

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

Other Title XIV Disclosures. The Bureau proposed to exclude the following Title XIV Disclosures from the list of Affected Title XIV Disclosures in the TILA–RESPA Proposal, stating they would be implemented in separate rulemakings:

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

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

As such, the Bureau proposed, as part of the TILA–RESPA Proposal, to provide a temporary exemption from compliance with the Pre-Consummation Escrow Waiver Disclosure in TILA section 129D(j)(1)(A), but not for the Post-Consummation Escrow Cancellation Disclosure in the TILA–RESPA Proposal. Absent the Bureau's issuance of a final rule implementing TILA section 129D(j)(1)(B) by January 21, 2013, the provision would have gone into effect as of such date by operation of law under the Dodd-Frank Act section 1400(c)(3).[146]

Final Rule Delaying Certain Title XIV Disclosures

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

The Bureau stated in the 2012 Title XIV Delay Final Rule that it believes that the exemption overall provides a benefit to consumers by facilitating a more effective, consolidated disclosure

[143] As the Bureau stated in the TILA–RESPA Proposal, certain of the Affected Title XIV Disclosures indicate that Congress did not intend for those disclosure requirements and the TILA–RESPA integrated disclosures to operate independently. For example, Dodd-Frank Act section 1419 amended paragraphs (a)(16) through (19) of TILA section 128 to require additional content on the disclosure provided to consumers within three days of application and in final form at or before consummation. 15 U.S.C. 1638(a)(16) through (19). Pursuant to TILA section 128(b)(1), for residential mortgage transactions, all disclosures required by TILA section 128(a) must be ''conspicuously segregated'' from all other information provided in connection with the transaction. 15 U.S.C. 1638(b)(1). Therefore, the Bureau stated that these sections are directly implicated by the integrated TILA–RESPA requirement. 77 FR 51116, 51133.

[144] *Id.*

[145] 77 FR 51116, 51134.

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

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

scheme. Absent an exemption, the Affected Title XIV Disclosures and the Post-Consummation Escrow Cancellation Disclosure would have complicated and hindered the mortgage lending process because consumers would have received inconsistent disclosures and, likely, numerous additional pages of Federal disclosures that would not work together in a meaningful, synchronized way. The Bureau also stated it believed that the credit process could be more expensive and complicated if the Affected Title XIV Disclosures and the Post-Consummation Escrow Cancellation Disclosure had taken effect independent of the larger TILA–RESPA integration rulemaking because industry would be required to revise systems and practices multiple times. The Bureau also considered the status of mortgage borrowers in issuing the exemptions, and believes the exemption is appropriate to improve the informed use of credit. The Bureau stated it did not believe that the goal of consumer protection would be undermined by the exemption, because of the risk that layering the Affected Title XIV Disclosures and the Post-Consummation Escrow Cancellation Disclosure on top of existing mandated disclosures would lead to consumer confusion. The Bureau stated in the 2012 Title XIV Delay Final Rule that the exemption allows the Bureau to coordinate the changes in a way that improves overall consumer understanding of the disclosures.

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

As discussed below in the section-by-section analysis of § 1026.1(c), the Bureau is now removing the exemptions for the Affected Title XIV Disclosures and the Post-Consummation Escrow Cancellation Disclosure in § 1026.1(c) for the mortgage transactions for which this final rule implements those disclosures. Because § 1026.1(c)(5), as finalized in the 2012 Title XIV Delay Final Rule, exempts persons from the disclosure requirements of the Affected Title XIV Disclosures and the Post-Consummation Escrow Cancellation Disclosure, and comment 1(c)(5)–1 clarifies that the exemption is intended to be temporary, lasting only until regulations implementing the integrated disclosures required by sections 1032(f), 1098, and 1100A of the Dodd-Frank Act become mandatory, the Bureau is amending § 1026.1(c)(5) to revoke the temporary exemption for transactions subject to the TILA–RESPA Final Rule, but is retaining the exclusion for all other transactions subject to the statutory provisions for which requirements have not yet been implemented.

IV. Legal Authority

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

A. The Integrated Disclosure Mandate

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

[148] *See* Kleimann Testing Report.

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

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

[151] Dodd-Frank Act section 1002(14), 12 U.S.C. 5481(14) (defining ''Federal consumer financial law'' to include the ''enumerated consumer laws'' and the provisions of title X of the Dodd-Frank Act); Dodd-Frank Act section 1002(12), 12 U.S.C. 5481(12) (defining ''enumerated consumer laws'' to include TILA and RESPA); Dodd-Frank section 1400(b), 15 U.S.C. 1601 note (defining ''enumerated consumer laws'' to include certain subtitles and provisions of Title XIV).

by sections 4 and 5 of RESPA.[152] The purpose of the integrated disclosure is to facilitate compliance with the disclosure requirements of TILA and RESPA, and to help the borrower understand the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures. Dodd-Frank Act sections 1098, 1100A. The Dodd-Frank Act did not impose on the Bureau a deadline for issuing a final rule to implement the integrated disclosure requirements.

Although Congress imposed this integrated disclosure requirement, it did not harmonize the underlying statutes. In particular, TILA and RESPA establish different timing requirements for disclosing mortgage credit terms and costs to consumers and require that those disclosures be provided by different parties. TILA generally requires that, within three business days of receiving the consumer's application and at least seven business days before consummation of certain mortgage transactions, creditors must provide consumers a good faith estimate of the costs of credit.[153] TILA section 128(b)(2)(A); 15 U.S.C. 1638(b)(2)(A). If the annual percentage rate that was initially disclosed becomes inaccurate, TILA requires creditors to redisclose the information at least three business days before consummation. TILA section 128(b)(2)(D); 15 U.S.C. 1638(b)(2)(D). These disclosures must be provided in final form at consummation. TILA section 128(b)(2)(B)(ii); 15 U.S.C. 1638(b)(2)(B)(ii). RESPA also requires that the creditor or broker provide consumers with a good faith estimate of settlement charges no later than three business days after receiving the consumer's application. However, unlike TILA, RESPA requires that, at or before settlement, ''the person conducting the settlement'' (which may or may not be the creditor) provide the consumer with a statement that records all charges imposed upon the consumer in connection with the settlement. RESPA sections 4(b), 5(c); 12 U.S.C. 2603(b), 2604(c).

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

B. Other Rulemaking and Exception Authorities

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

Truth in Lending Act

TILA section 105(a). As amended by the Dodd-Frank Act, TILA section 105(a), 15 U.S.C. 1604(a), directs the Bureau to prescribe regulations to carry out the purposes of TILA, and provides that such regulations may contain additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions, that the Bureau judges are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. A purpose of TILA is ''to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit.'' TILA section 102(a); 15 U.S.C. 1601(a). This stated purpose is informed by Congress' finding that ''economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit[.]'' TILA section 102(a). Thus, strengthened competition among financial institutions is a goal of TILA, achieved through the effectuation of TILA's purposes.

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

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

TILA section 105(f). Section 105(f) of TILA, 15 U.S.C. 1604(f), authorizes the Bureau to exempt from all or part of TILA all or part of any class of transactions, other than transactions involving any mortgage described in section 1602(aa) of TILA, for which the Bureau determines that TILA coverage does not provide a meaningful benefit to

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

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

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

consumers in the form of useful information or protection. In exercising this authority, the Bureau must consider the factors identified in section 105(f) of TILA and publish its rationale at the time it proposes an exemption for public comment. Specifically, the Bureau must consider:

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

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

(c) The status of the borrower, including—

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

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

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

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

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

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

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

Real Estate Settlement Procedures Act

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

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

Dodd-Frank Act

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

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

Dodd-Frank Act section 1032. Section 1032(a) of the Dodd-Frank Act provides that the Bureau ''may prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.'' 12 U.S.C. 5532(a). The authority granted to the Bureau in section 1032(a) is broad, and empowers the Bureau to prescribe rules regarding the disclosure of the ''features'' of consumer financial products and services generally.

Accordingly, the Bureau may prescribe rules containing disclosure requirements even if other Federal consumer financial laws do not specifically require disclosure of such features.

Dodd-Frank Act section 1032(c) provides that, in prescribing rules pursuant to section 1032, the Bureau ''shall consider available evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services.'' 12 U.S.C. 5532(c). Accordingly, in developing the final rule under Dodd-Frank Act section 1032(a), the Bureau has considered available studies, reports, and other evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services. *See* parts II and III, above. Moreover, the Bureau has considered the evidence developed through its consumer testing of the integrated disclosures as well as prior testing done by the Board and HUD regarding TILA and RESPA disclosures. See part III for a discussion of the Bureau's consumer testing. For the reasons discussed in this notice, the Bureau is issuing portions of this rule pursuant to its authority under Dodd-Frank Act section 1032(a).

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

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

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

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

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

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

One regional trade association representing credit unions suggested that the Bureau adopt a less prescriptive approach and issue a notice of final rulemaking of a shorter length than the Bureau's notice of proposed rulemaking. One individual industry commenter stated that the Bureau's final rule should only State the regulatory requirements and not include further explanations or guidance; however, the commenter also provided suggestions for specific guidance and clarifications to include in the final rule. Another individual industry commenter stated that the regulations were not well written, and suggested that the final rule should instruct a software programmer or data entry employee on how to complete the disclosures. An individual consumer commenter stated that the proposal had overly extensive guidance.

As noted above, most industry commenters requested additional detail and clarifications in specific provisions of the final rule. In addition, some industry commenters commented generally on the level of detail. Some commenters specifically stated that the level of detail would be beneficial to industry. For example, a title insurance company commenter stated that, while

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

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

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

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

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

While the final regulations and official interpretations do not specify which provisions relate to TILA requirements and which relate to RESPA requirements, the section-by-section analysis of the final rule contains a detailed discussion of the statutory authority for each of the integrated disclosure provisions. As stated in part IV, above, the authority for the integrated disclosure provisions is based on specific disclosure mandates in TILA and RESPA, as well as certain rulemaking and exception authorities granted to the Bureau by TILA, RESPA, and the Dodd-Frank Act. The details of the Bureau's use of such authority are described in the section-by-section analysis. The Bureau believes these detailed discussions of the statutory authority for each of the integrated disclosure provisions provide sufficient guidance for industry, consumers, and the courts regarding the liability issues raised by the commenters.

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

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

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

A. Regulation X

Section 1024.5 Coverage of RESPA

5(a) Applicability

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

5(b) Exemptions

5(b)(1)

Section 1024.5(b)(1) currently exempts from the coverage of RESPA and Regulation X loans on property of 25 acres or more. The Bureau proposed to exercise its authority under RESPA section 19(a) and, for residential mortgage loans, Dodd-Frank Act section 1405(b) to eliminate this Regulation X exemption to render the TILA and RESPA regimes more consistent. The Bureau believed that most loans that fall

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

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

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

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

5(d) Partial Exemptions for Certain Mortgage Loans

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

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

In addition, the Bureau proposed this exemption based on its authority under Dodd-Frank Act section 1405(b) because the Bureau believed the proposed exemption would improve consumer awareness and understanding of residential mortgage loan transactions of the type discussed above and therefore would be in the interest of consumers and the public. These exemptions would have created consistency with the proposed integrated disclosure requirements under Regulation Z and codified a disclosure exemption

previously granted by HUD. However, the exemptions would have retained coverage of affected loans for all other requirements of Regulation X, such as provisions implementing the servicing requirements in RESPA section 6 (other than the application servicing disclosure statement), prohibitions on referral fees and kickbacks in RESPA section 8, and limits on amounts to be deposited in escrow accounts in RESPA section 10.

The Bureau did not receive any comments on proposed § 1024.5(c). However, the Bureau adopted a regulation on July 10, 2013 that added § 1024.5(c) concerning RESPA's relation to State laws. 78 FR 44686 (July 24, 2013).[158] Accordingly, the Bureau adopts proposed § 1024.5(c) without modification but renumbered as § 1024.5(d).

Section 1024.30 Scope

30(c) Scope of Certain Sections

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

Section 1024.33 Mortgage Servicing Transfers

33(a) Servicing Disclosure Statement

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

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

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

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

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

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

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

Appendix B—Illustrations of Requirements of RESPA

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

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

and any other fee or payment received by the mortgage broker from either the lender or the borrower arising from the initial funding transaction, including a servicing release premium or yield spread premium, is to be noted on the RESPA GFE and listed in the 800 series of the RESPA settlement statement.

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

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

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

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

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

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

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

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

B. Regulation Z

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

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

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

1(c) Coverage

The TILA–RESPA Proposal also would have provided a temporary exemption from certain disclosure requirements added to TILA and RESPA by the Dodd-Frank Act. Specifically, the proposal would have exempted persons temporarily from the disclosure requirements of sections 128(a)(16) through (19), 128(b)(4), 129C(f)(1), 129C(g)(2) and (3), 129C(h), 129D(h), and 129D(j)(1)(A) of TILA and section 4(c) of RESPA (collectively the Affected Title XIV Disclosures), until regulations implementing the integrated disclosures required by section 1032(f) of the Dodd-Frank Act take effect.[160] Proposed § 1026.1(c)(5) would have implemented this exemption by stating that no person is required to provide the disclosures required by the statutory provisions listed above. Proposed comment 1(c)(5)–1 would have explained that § 1026.1(c)(5) implements the above-listed provisions of TILA and RESPA

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

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

added by the Dodd-Frank Act by exempting persons from the disclosure requirements of those sections. The comment would have clarified that the exemptions provided in proposed § 1026.1(c)(5) are intended to be temporary and will apply only until compliance with the regulations implementing the integrated disclosures required by section 1032(f) of the Dodd-Frank Act become mandatory. Proposed comment 1(c)(5)–1 also would have clarified that the exemptions in proposed § 1026.1(c)(5) would not exempt any person from any other requirement of Regulation Z, Regulation X, or of TILA or RESPA.

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

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

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

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

The Bureau received several comments from industry objecting to this result. For example, a national trade association representing the reverse mortgages industry commented in support of continuing to exempt reverse mortgages from the Affected Title XIV Disclosures. In addition, a national trade association representing banks and bank holding companies that provide retail financial services commented that the exemption should apply to the fullest extent provided under the statute, and not be limited to loans that are subject to the TILA–RESPA integrated

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

disclosures. The Bureau considered these comments, and was persuaded that the exemption should continue to apply for all other transactions subject to the statutory provisions for which requirements have not yet been implemented. Accordingly, the final rule provides that, except in transactions subject to the integrated disclosure requirements in § 1026.19(e) and (f), no person is required to provide the disclosures required by sections 128(a)(16) through (19), 128(b)(4), 129C(f)(1), 129C(g)(2) and (3), 129D(h), or 129D(j)(1)(A) of TILA, section 4(c) of RESPA, or the disclosure required prior to settlement by section 129C(h) of TILA. Final § 1026.1(c)(5) also provides that, except in transactions subject to the Post-Consummation Escrow Cancellation Disclosure requirements in § 1026.20(e), no person is required to provide the disclosures required by section 129D(j)(1)(B) of TILA. Lastly, the final rule provides that, except in transactions subject to the partial payment disclosure requirements in § 1026.39(d)(5), no person becoming a creditor with respect to an existing residential mortgage loan is required to provide the disclosure required by section 129C(h) of TILA.

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

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

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

1(d) Organization

1(d)(5)

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

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

Section 1026.2 Definitions and Rules of Construction

2(a) Definitions

2(a)(3) Application

The Bureau's Proposal

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

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

The Bureau's proposed definition of application would have consisted of two parts. First, the Bureau proposed to add

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

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

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

Proposed comment 2(a)(3)–3 would have clarified that the creditor's receipt of a credit report fee does not affect whether an application has been received. It would have stated that § 1026.19(a)(1)(iii) permits the imposition of a fee to obtain the consumer's credit history prior to the delivery of the disclosures required under § 1026.19(a)(1)(i), and that § 1026.19(e)(2)(i)(B) permits the imposition of a fee to obtain the consumer's credit report prior to the delivery of the disclosures required under § 1026.19(e)(1)(i). The proposed comment would have also explained that whether, or when, such fees are received is irrelevant for the purposes of the definition in § 1026.2(a)(3) and the timing requirements in § 1026.19(a)(1)(i) and (e)(1)(iii). The proposed comment would also have provided an example of this provision.

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

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

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

specified in § 1026.2(a)(3)(ii), the disclosures provided pursuant to § 1026.19(e) may reflect such information.

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

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

Comments

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

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

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

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

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

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

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

Impact on industry. Many commenters expressed concern about compliance burden and implementation costs. Commenters stated that they would have to change their application process so that they could collect the information they need before, or at the same time as, they collect the six specific pieces of information that would constitute an application under the proposal. Some commenters asserted that even if a creditor could structure its application process to collect the additional information before collecting the six specific pieces of

information that would make up the application, situations might arise, particularly with applications submitted through the internet or applications submitted by mail, where consumers submit the six specific pieces of information, but not the additional information the creditor deems critical to providing accurate and reliable Loan Estimates.

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

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

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

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

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

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

The SBA stated that the Bureau should not remove the catch-all item from the definition of application because the small entity representatives that participated in the Bureau's Small Business Panel Review process had mixed reactions to the proposed removal of the catch-all item. It additionally suggested that the Bureau should remove ''property address'' from the list of six specific items that would make up the definition of application. The SBA asserted that the requirement would be problematic based on its consultation with industry representatives and based on the suggestion made by a national trade association representing community banks in connection with the Small Business Review Panel process. The trade association commenter asserted that the ''property address'' should be an optional item in the definition of application for purchase transactions because the change would enable the consumer to shop for a mortgage loan based on a regulated document, the Loan Estimate, rather than unregulated pre-application worksheets. The commenter made the same assertion in the comment letter it submitted in response to the TILA–RESPA Proposal.

An individual industry commenter echoed SBA's suggestion with respect to the property address. The commenter asserted that the definition of application should be defined as having been received when the creditor has enough information to issue a pre-

approval letter, or submit the loan for pre-approval, but that the pre-approval letter must not bind the creditor.

Final Rule

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

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

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

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

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

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

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

requirements of § 1026.37(o) than that they receive pre-disclosure estimates, which are not subject to those requirements.

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

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

As noted above, a number of commenters expressed concerns about compliance with other regulations. The definition being adopted today does not change the current definitions of application under Regulations B and C. The Bureau recognizes the potential benefits of a single definition of application, including reduced regulatory burden. However, the definition of application in this final rule determines when consumers must be given disclosures that enable them to shop for and compare different loan and settlement cost options. The definition of application in this final rule serves a different purpose than the definition of application in Regulations B and C. ''Application'' as defined by this final rule triggers a creditor's obligation to provide disclosures to aid consumers in shopping for and understanding the cost of credit and settlement. On the other hand, a creditor's receipt of an application under Regulation B triggers a creditor's duty to make a credit decision and notify the borrower within a specified time frame. Under Regulation C, receipt of an application triggers a duty to collect and report information on the disposition of that application and on other aspects of the transaction as well as the applicant's characteristics. Accordingly, the Bureau is not expanding the definition of application adopted in this final rule to regulations that implement ECOA, FCRA, and HMDA, or vice versa. However, the Bureau will continue to consider the comments received on this topic as it evaluates further follow up to the 2011 Streamlining RFI.

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

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

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

application would create consumer confusion and add to regulatory burden.

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

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

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

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

Comments 2(a)(3)–2 and –3 are also adopted as proposed. Comment 2(a)(3)–2 clarifies that if a consumer does not have a social security number, the creditor may instead request a unique identifier the creditor uses to obtain a credit report. For illustrative purposes, the comment provides an example that states that a creditor has obtained a social security number to obtain a credit report for purposes of § 1026.2(a)(3)(ii) if the creditor collects a Tax Identification Number from a consumer who does not have a social security number, such as a foreign national. A national fair housing consumer advocacy group commenter suggested moving this provision into the regulation. However, because the example illustrates how to comply with the requirements of § 1026.2(a)(3) if the consumer does not have a social security number, the Bureau believes that this example's placement should remain in commentary, rather than in the text of the regulation.

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

2(a)(6) Business Day

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

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

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

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

Comments

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

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

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

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

Some commenters supported a specific definition of business day, but did not support the current specific definition of business day in Regulation Z, for the reasons discussed above. Some of these commenters supported applying an alternative definition of business day that excludes all Saturdays, Sundays, and the legal public holidays specified in 5 U.S.C. 6103(a), similar to the definition the two national consumer advocacy groups suggested, to the regulatory provisions that would be impacted by the TILA–RESPA Proposal. Several national trade

associations representing banks, mortgage bankers, and consumer mortgage companies stated that it was important to continue to apply the specific definition of business day to regulatory provisions that prescribe the timeframe a consumer is given to review disclosures, such as the waiting period before consummation, the consumer's right to rescind, and provisions related to when disclosures are considered to be received by the consumer and when fees may be charged, because consumers can receive mail on Saturday and review disclosures on Saturday. Lastly, one national trade association representing mortgage brokers suggested that the Bureau should eliminate the concept of business day with respect to any regulatory provision that contains a timing requirement related to mortgages. The commenter appeared to suggest that a standard based on calendar days would be easiest to understand.

Final Rule

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

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

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

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

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

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

For reasons set forth in the section-by-section analysis of § 1026.19(f)(1)(ii)(A), the Bureau is also adopting the aspect of the proposal that would have applied the specific definition of business day to § 1026.19(f)(1)(ii) and (iii). Further, for reasons discussed in greater detail in the section-by-section analyses of §§ 1026.19(e)(4)(ii) and 1026.20(e)(5), the Bureau is also adopting the application of the specific definition of business day to these sections, which establish timing requirements for,

respectively, the receipt of revised Loan Estimates and the Post-Consummation Escrow Cancellation Disclosure. The Bureau has also made a minor modification to comment 2(a)(6)–2 to refer to real estate-secured loans as well as dwelling-secured loans, as § 1026.19(e) and (f) apply to closed-end credit transactions secured by real property.

2(a)(17) Creditor

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

Comments

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

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

Final Rule

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

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

2(a)(25) Security Interest

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

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

this question is adequately addressed by existing comment 2(a)(25)–1.

Section 1026.3 Exempt Transactions

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

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

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

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

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

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

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

3(h) Partial Exemption for Certain Mortgage Loans

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

The Bureau believed that the proposed exemption created consistency with Regulation X and therefore would facilitate compliance with TILA and RESPA. In addition, the Bureau believed that the special disclosure requirements that covered persons must meet to qualify for the proposed exemption helped ensure that the features of these mortgage transactions were fully, accurately, and effectively disclosed to consumers in a manner that would have permitted consumers to understand the costs, benefits, and risks associated with these mortgage transactions, consistent with Dodd-Frank Act section 1032(a). The proposed exemption would have also improved consumer awareness and

understanding of transactions involving residential mortgage loans, which is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b). The Bureau considered the factors in TILA section 105(f) and believed that, for the reasons discussed above, an exemption was appropriate under that provision. Specifically, the Bureau determined that the proposed exemption is appropriate for all affected borrowers, regardless of their other financial arrangements and financial sophistication and the importance of the loan to them. Similarly, the Bureau determined that the proposed exemption was appropriate for all affected loans, regardless of the amount of the loan and whether the loan is secured by the principal residence of the consumer. Furthermore, the Bureau determined that, on balance, the proposed exemption would have simplified the credit process without undermining the goal of consumer protection or denying important benefits to consumers.

The proposed exemption would have applied only to transactions secured by a subordinate lien. For the same reasons discussed in the section-by-section analysis of proposed § 1024.5(c)(3), the Bureau requested comment on whether the exemption in proposed § 1026.3(h) should extend to first liens. In addition, for the reasons discussed above, the Bureau sought comment on whether requirements and features that may serve as interest substitutes should be considered ''interest'' and, therefore, be impermissible for loans seeking to qualify for this partial exemption. The Bureau also sought comment on the types of loan requirements and features that should be similarly deemed ''interest'' for purposes of this partial exemption. Alternatively, the Bureau sought comment on whether such requirements and features should be permissible within the exemption on the grounds that the disclosure required by proposed § 1026.3(h)(6) is sufficient to inform consumers of such loan terms.

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

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

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

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

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

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

With respect to the comment that creditors be given the option of either complying with the integrated disclosure requirements or § 1026.18, the Bureau declines to provide this option. Because the intent of the exemption is to codify the exemption as provided by HUD, and additionally, decrease the burden of disclosure for creditors involved in the covered transactions, the Bureau declines to amend the proposed rule and its commentary to include the commenters' suggested alternative. For the reasons

described above, the Bureau is adopting § 1026.3(h)(6) and comments 3(h)–1 and –2 substantially as proposed, with minor modifications for clarity.

Section 1026.4 Finance Charge

Background

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

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

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

Following that study, in July 1998, the Board and HUD issued the Board-HUD Joint Report, in which the agencies also noted concerns with the ''some fees in, some fees out'' approach to the finance charge.[166] The Board-HUD Joint Report states that a fundamental problem with the finance charge is that the ''cost of credit'' has different meanings from the perspective of the consumer and the creditor.[167] From the creditor's perspective, the cost of credit may mean the interest and fee income that the creditor receives in exchange for providing credit to the consumer.[168] However, the consumer views the cost of credit as what the consumer pays for the credit, regardless of the persons to whom such amounts are paid.[169] The current ''some fees in, some fees out'' approach to the finance charge largely reflects the creditor's, rather than the consumer's, perspective. The Board-HUD Joint Report recommended that the definition of finance charge be expanded to what it titled the ''Required Cost of Credit Test'' under which the finance charge would include ''the costs the consumer is required to pay to get the credit.'' [170]

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

In light of these concerns about the finance charge, the Board's 2009 Closed-End Proposal would have replaced the ''some fees in, some fees out'' approach to the finance charge for mortgage loans with a more inclusive approach to ensure that the finance charge and corresponding APR disclosed to consumers provide a more complete and useful measure of the cost of credit. The Board did not finalize its proposal prior to the transfer of its TILA rulemaking authority to the Bureau in July 2011.

The Bureau's Proposal

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

[163] Public Law 104–29, 109 Stat. 271 (1995).

[164] *See* Bd. Of Governors of the Fed. Reserve Sys., *Report to the Congress on Finance Charges for Consumer Credit under the Truth in Lending Act* 10–11 (April 1996), available at *http://www.federalreserve.gov/boarddocs/rptcongress/fc_study.pdf.*

[165] *Id.* at 12.

[166] Bd. Of Governors of the Fed. Reserve Sys. & U.S. Dep't of Hous. & Urban Dev., *Joint Report to the Congress Concerning Reform to the Truth in Lending Act and the Real Estate Settlement Procedures Act* (July 1998), available at *http://www.federalreserve.gov/boarddocs/rptcongress/tila.pdf.*

[167] *Id.* at 10.

[168] *Id.*

[169] *Id.*

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

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

Effect on Other Rules

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

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

- Caused more closed-end loans to trigger HOEPA protections for high-cost loans. The protections include special disclosures, restrictions on certain loan features and lender practices, and strengthened consumer remedies. The more inclusive finance charge also would have affected both the points and fees test (which currently uses the finance charge as its starting point) and the APR test (which under the Dodd-Frank Act depends on comparisons to the average prime offer rate (APOR)) for defining what constitutes a high-cost loan.[172]
- Caused more loans to trigger Dodd-Frank Act requirements to maintain escrow accounts for first-lien HPMLs under the Escrows rulemaking. Coverage depends on comparing a transaction's APR to the applicable APOR.
- Caused more loans to trigger Dodd-Frank Act requirements to obtain one or more interior appraisals under the Interagency Appraisals rulemaking. Coverage depends on comparing a transaction's APR to the applicable APOR.
- Reduced the number of loans that would otherwise be ''qualified mortgages'' under the 2013 ATR Final Rule, given that qualified mortgages cannot have points and fees in excess of three percent of the total loan amount. The changes also would have decreased the number of qualified mortgages that receive a safe harbor from liability under the ability-to-repay provisions because the 2013 ATR Final Rule provides that qualified mortgages that are higher-priced receive a rebuttable presumption of compliance with the ability-to-repay requirements, rather than a safe harbor. In addition, more loans would have been required to comply with separate underwriting requirements applicable to higher-priced balloon loans, and been ineligible for certain exceptions authorizing creditors to offer prepayment penalties on fixed rate, non-higher-priced qualified mortgage loans.[173] Again, status as ''higher-priced'' depends on comparing APR to the applicable APOR.

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

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

[172] Under rules implementing provisions of the Dodd-Frank Act, a loan is defined as a high-cost mortgage, subject to HOEPA protections, if the total points and fees payable in connection with the transaction exceed specified thresholds (points and fees coverage test); the transaction's APR exceeds the applicable average prime offer ate (APOR) by a specified threshold (APR coverage test); or the transaction has certain prepayment penalties. First, under the points and fees coverage test, the definition of points and fees includes, as its starting point, all items included in the finance charge. Therefore, a potential consequence of the more inclusive finance charge would have been that more loans might exceed HOEPA's points and fees threshold because new categories of charges would have been included in the calculation of total points and fees for purposes of that coverage test. In addition, under the APR coverage test, the more inclusive finance charge could have resulted in some additional loans being covered as high-cost mortgages because closed-end loans would have had higher APRs. There are currently some differences between APR and APOR, the latter of which is generally calculated using data that includes only contract interest rates and points but not other origination fees. *See* 75 FR 58539, 58660–62 (Sept. 24, 2010). The current APR includes not only discount points and origination fees but also other charges the creditor retains and certain third-party charges. The more inclusive finance charge, which would have also included most third-party charges, would have widened the disparity between the APR and APOR and caused more closed-end loans to qualify as high-cost mortgages. Similar implications would have applied to each respective rulemaking in which coverage depends on comparing a transaction's APR to the applicable APOR. The Bureau notes, however, that the Dodd-Frank Act expands HOEPA to apply to more types of mortgage transactions, including purchase money mortgage loans and open-end credit plans secured by a consumer's principal dwelling. However, the proposed more inclusive finance charge would have applied only to closed-end loans. Therefore, the more inclusive finance charge would not have affected the potential coverage of open-end credit plans under HOEPA.

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

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

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

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

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

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

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

Timing of Implementation

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

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

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

Comments

The Bureau received several hundred comments on this aspect of the TILA–RESPA Proposal. Industry commenters and one large consumer advocacy group commenter generally opposed finalizing the expanded finance charge at this time.[176] While some industry commenters supported the idea of

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

improving the APR to make it a more useful metric for consumers and simplify the calculation, many asserted that the Bureau had not sufficiently considered the impact of the proposed provisions in light of the significant regulatory changes taking place as a result of the Bureau's Title XIV Rulemakings. They also asserted that sweeping changes to the finance charge calculation would be overly burdensome in light of the Bureau's other rulemakings. One large consumer advocacy group commenter, while generally supporting the expanded definition, argued that the Bureau should not adopt the expanded finance charge definition at this time because of complications that would arise due to the Bureau's other rulemakings. That commenter stated also that the Bureau should further study the impact of the expanded finance charge on its other rulemakings.

Industry commenters and one consumer advocacy group commenter also cited the effect that a more inclusive finance charge would have on coverage thresholds under the HOEPA, HPML, and the ATR–QM rulemakings as a significant factor weighing against finalizing the proposal. Such commenters also noted the impact an expanded finance charge would have on State high-cost lending laws. These commenters asserted that, absent adjustments by the Bureau and State legislatures, the proposal could reduce access to mortgage credit, particularly for smaller loans and for borrowers at the lower end of the credit spectrum. For example, a national consumer advocacy group commenter estimated that the expanded finance charge would add approximately 0.9 percent to 3.5 percent to points and fees, depending on loan size and certain settlement cost assumptions, and would cause the APR to rise by roughly 0.10 percent to 0.52 percent, depending on loan size and interest rate. Small entities, including a national trade association of community banks, expressed concern that if the proposal resulted in more loans being classified as HOEPA loans or HPMLs, they may be forced to exit the mortgage market either due to increased compliance costs associated with these loans (such as the requirement to maintain escrow accounts for HPMLs) or because the loans will not be saleable on the secondary market. These concerns were echoed in comment letters from the U.S. House of Representatives Committee on Small Business and the Small Business Administration Office of Advocacy. Some industry commenters questioned whether the Bureau thoroughly considered the implications of the expanded finance charge on coverage thresholds as they would be revised by the Bureau's Title XIV Rulemakings. Similar concerns were expressed by the Small Business Review Panel and industry feedback provided in response to the Small Business Review Panel Outline. *See* Small Business Review Panel Report at 25. Some industry commenters also questioned the Bureau's authority to remove statutory exclusions from the finance charge.

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

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

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

On the other hand, most consumer advocacy group commenters and two State attorneys general supported the proposed changes to the finance charge, generally agreeing with the Board and Bureau analysis that the expanded finance charge would more accurately disclose the cost of credit and enhance consumers' ability to comparison shop, and would therefore benefit consumers. For example, one national non-profit organization focusing on low-income consumer issues noted that eliminating the numerous exclusions from the current definition of finance charge would simplify compliance and

examinations, while discouraging fee manipulation. The State attorneys general likewise agreed that a more inclusive definition of finance charge would make it easier for consumers to compare loans and easier for lenders to calculate the APR.

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

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

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

Final Rule

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

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

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

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

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

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

has fully implemented the new rules and the market has adapted to those changes.

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

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

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

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

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

Further, postponing consideration of any changes to the expanded finance charge definition would allow the Bureau to continue to study the effect of the expanded finance charge on consumer understanding of the APR disclosure. As described in the TILA–RESPA Proposal, the Bureau believes that an expanded finance charge definition could increase consumer understanding of the APR disclosures by more accurately reflecting the cost of credit to consumers. However, the Bureau also recognizes concerns by some commenters that, even under an expanded finance charge definition, the APR is limited in its usefulness as a measure of the cost of credit. For example, it is not always the case that a loan with a lower APR is the ''best'' loan for a consumer because consumers have different time horizons with respect to their financing decisions and because loans with different interest rate-point combinations will have different APRs. A consumer who expects to sell or refinance a property within a short time horizon may benefit from making a different rate-point tradeoff than a consumer who expects to hold the loan long term. For this reason,

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

the Bureau believes that a rule adopting an expanded finance charge definition would likely need to be accompanied by a broader initiative to assist consumer understanding of the APR. Postponing changes to the finance charge definition will allow the Bureau to study consumer understanding of the disclosures further and, if appropriate, develop other measures to aid consumer understanding that could supplement a revised finance charge definition.

In addition, because of consumer testing that shows that consumers do not rely primarily on the APR when shopping for a loan, and the statutory mandate to combine the disclosures required by TILA and RESPA, the TILA–RESPA Final Rule emphasizes on the first page of the Loan Estimate and Closing Disclosure information that consumers more readily understand (such as the interest rate and the cash to close amount). To reduce potential confusion between the APR and the interest rate and to focus on more readily understandable information, the APR is on the final page of the integrated disclosures. *See* the section-by-section analysis of §§ 1026.37(l)(2) and 1026.38(o)(4). The Bureau believes it is appropriate to evaluate consumer benefits of an expanded finance charge in light of these changes to the disclosure. However, the Bureau has not tested the APR disclosure on the integrated forms using an expanded finance charge definition, so the Bureau may determine it is appropriate to conduct additional testing of the integrated disclosures with an expanded finance charge before making a determination as to whether changes to the finance charge definition are appropriate.

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

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

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

Section 1026.17 General Disclosure Requirements

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

17(a) Form of Disclosures

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

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

The Bureau did not receive comments regarding the proposed changes to the introductory language to § 1026.17(a) or

proposed comments 17–1 and 17(a)(1)–7. For the reasons discussed and using the authority described in the proposed rule, the Bureau is finalizing § 1026.17(a) and comments 17–1 and 17(a)(1)–7 substantially as proposed.

17(b) Time of Disclosures

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

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

17(c) Basis of Disclosures and Use of Estimates

17(c)(1)

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

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

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

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

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

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

but only if they are part of the legal obligation between the creditor and the consumer. The Board also proposed a parallel comment under the section requiring disclosure of the amount financed for transactions subject to the proposed, separate disclosure scheme for transactions secured by real property or a dwelling. 74 FR 43417 (proposed comment 38(e)(5)(iii)–2).

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

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

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

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

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

17(c)(2)

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

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

to the disclosure rules in § 1026.19(e) and (f).

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

17(c)(4)

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

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

17(c)(5)

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

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

17(d) Multiple Creditors; Multiple Consumers

Current § 1026.17(d) addresses transactions that involve multiple creditors or consumers. The proposed rule would have revised comment 17(d)–2, regarding multiple consumers, to clarify that the early disclosures required by § 1026.19(a), (e), or (g), as applicable, need be provided to only one consumer who will have primary liability on the obligation. Material disclosures, as defined in § 1026.23(a)(3)(ii), under § 1026.23(a) and the notice of the right to rescind required by § 1026.23(b), however, would have been required to be given before consummation to each consumer who has the right to rescind, including any such consumer who is not an obligor. As stated in the proposal and in the Board's 2010 Mortgage Proposal, the purpose of the TILA section 128 requirement that creditors provide early and final disclosures is to ensure that consumers have information specific to their loan to use while shopping and evaluating their loan. *See* 75 FR 58585. On the other hand, the purpose of the TILA section 121(a) requirement that each consumer with a right to rescind receive disclosures regarding that right is to ensure that each such consumer has the necessary information to decide whether to exercise that right. *Id.* For this reason, the proposed rule would have required creditors to provide all consumers who have the right to rescind with the material disclosures under §§ 1026.18 and 1026.38 and the notice of the right to rescind required by § 1026.23(b), even if such consumer is not an obligor.

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

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

are appended to the disclosure pursuant to § 1026.38(t)(5).

17(e) Effect of Subsequent Events

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

17(f) Early Disclosures

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

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

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

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

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

17(h) Series of Sales—Delay in Disclosures

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

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

Section 1026.18 Content of Disclosures

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

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

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

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

18(b) Amount Financed

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

Several industry commenters requested clarification regarding the definition of ''premium'' or ''rebate'' in proposed comment 17(c)(1)–19. For a discussion of those comments, see the

section-by-section analysis of § 1026.17(c)(1), above. For the reasons discussed in the proposed rule and in the section-by-section analysis of § 1026.17(c)(1), the Bureau is removing comment 18(b)–2 as proposed.

18(b)(2)

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

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

18(c) Itemization of Amount Financed

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

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

18(f) Variable Rate

18(f)(1)

18(f)(1)(iv)

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

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

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

18(g) Payment Schedule

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

payments table disclosure requirement under §§ 1026.37(c) and 1026.38(c), as applicable.

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

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

18(k) Prepayment

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

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

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

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

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

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

The Bureau did not receive comments on the proposed changes to § 1026.18(k). However, the Bureau is finalizing

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

18(r) Required Deposit

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

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

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

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

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

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

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

18(s)(3) Payments for Amortizing Loans

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

Current § 1026.18(s)(3)(i)(C) requires creditors to disclose whether mortgage insurance is included in monthly escrow payments in the interest rate and payment summary. The proposal noted that the Bureau understands that some government loan programs impose annual guarantee fees and that creditors typically collect a monthly escrow for the payment of such amounts. Prior to issuing the proposal, the Bureau learned

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

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

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

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

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

18(t) ''No-Guarantee-To-Refinance'' Statement

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

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

Section 1026.19 Certain Mortgage and Variable-Rate Transactions

The Bureau proposed to amend § 1026.19 to define the scope of the

proposed integrated disclosures and to establish the requirements for provision of those disclosures.

Coverage of Integrated Disclosure Requirements

Background

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

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

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

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

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

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

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

As described above, five types of loans are currently covered by TILA or RESPA, but not both. Under the foregoing provisions, loans to finance home construction that do not finance transfer of title and for which the

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

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

creditor will not extend permanent financing (construction-only loans), loans secured by unimproved land already owned by the consumer and on which a residence will not be constructed within two years (vacant-land loans), and loans secured by land of 25 acres or more (25-acre loans) all are subject to TILA but are currently exempt from RESPA coverage.[182] In addition, loans secured by dwellings that are not real property, such as mobile homes, houseboats, recreational vehicles, and similar dwellings that are not deemed real property under State law, (chattel-dwelling loans) could be considered ''mortgage loan transactions,'' and they also are subject to TILA but not RESPA. On the other hand, federally related mortgage loans made by persons who are not creditors under TILA, because they make five or fewer such loans per year, are subject to RESPA but not TILA. In addition, some types of mortgage loan transactions are covered by both statutes, but may warrant uniquely tailored disclosures because they involve terms or features that are so different from standard closed-end transactions that use of the same form may cause significant consumer confusion and compliance burden for industry.

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

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

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

Comments

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

By contrast, trade associations representing banks, a compliance company, a rural lender, and several community banks explained that many loans on 25 acres or more have more than one purpose and that loans that have a business, commercial, or agricultural purpose should be exempt under Regulation Z. The rural lender also recommended that the Bureau deem in the final rule all loans secured by 25 acres or more to be business, commercial, or agricultural purpose loans. The rural lender commenter explained that its customers often take out consumer-purpose loans on properties of 25 acres or more, and that eliminating the current RESPA exemption for such loans would place a significant burden on rural creditors.[184] The commenter noted that these loans were not subject to abusive mortgage practices in the past, and that the additional disclosures would impose a significant amount of paperwork and compliance burden, which would require it to increase staff. A rural lender commenter argued that covering loans on properties of 25 acres or more would not provide a significant

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

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

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

consumer benefit and could hurt customers because additional disclosure requirements would delay closings, inhibit access to credit, and increase costs for customers. Other industry commenters recommended that, if a loan on 25 acres or more has a business, commercial, or agricultural purpose, then the loan's primary purpose should be deemed as such, which would exempt the loan from the rule's coverage, consistent with the current treatment of such loans under Regulation X.

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

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

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

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

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

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

impede consumers' ability to purchase new homes. The commenter also noted that these loans were not subject to abusive mortgage practices in the past.

Final Rule

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

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

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

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

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

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

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

Construction-only loans. The Bureau believes covering temporary loans secured by real estate will benefit consumers and will facilitate compliance because covering real estate-secured, closed-end consumer credit transactions, other than reverse mortgages, provides a clear compliance rule for industry. The Bureau notes that, while many construction-only loans may not be for a consumer purpose, only those loans made ''primarily'' for personal, family, or household purposes are covered by the final rule, consistent with the definition of ''consumer credit'' in Regulation Z § 1026.2(a)(12). Although the Bureau appreciates that the terms of a construction-only transaction may change based on unforeseen circumstances, these loans are not unique in that respect. Moreover, the Bureau has addressed the need for flexibility with respect to the provision of the Loan Estimate and Closing Disclosure under § 1026.19(e) and (f), such that unforeseen circumstances should not interfere with the provision of those disclosures. For example, the good faith estimate requirement applicable to the Loan Estimate is subject to changed circumstances set forth in § 1026.19(e)(3)(iv)(A). In addition, as discussed in the section-by-section analysis of § 1026.19(f)(2), the final rule revises the redisclosure triggers applicable to the Closing Disclosure to account for unforeseen circumstances that could make previously disclosed settlement costs inaccurate. The Bureau appreciates that temporary loans, such as construction-only loans, may have unique characteristics that require special guidance. In response to

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

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

comments, the final rule provides additional clarity on how to disclose such construction-only loans, as described in the section-by-section analyses of the respective provisions of §§ 1026.37 and 1026.38.

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

Reverse Mortgages, HELOCs, and Chattel-Dwelling Loans

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

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

HELOCs. Open-end transactions secured by real property or a dwelling (home-equity lines of credit, or HELOCs) are within the statutory scope of both TILA and RESPA and also reasonably could be considered ''mortgage loan transactions.'' However, as the Bureau explained in the proposal, HELOCs are, by their nature, fundamentally different from other forms of mortgage credit.

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

Comments

Reverse mortgages. A credit union commenter supported an exemption for reverse mortgage loans because of their uniqueness and because the required disclosures would confuse consumers. A settlement agent commenter stated that if reverse mortgage loans are exempt from the final rule, they also should be exempt from RESPA section 4. The commenter recommended a simple closing statement that would itemize debits and credits to the borrower and seller. By contrast,

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

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

another credit union commenter stated that reverse mortgage loans secured by real estate should be covered because standardizing loan disclosures for all real estate-secured loans would benefit consumers and financial institutions. The commenter recommended that additional disclosures required for reverse mortgages under § 1026.33(b) could be added as an addendum to the integrated disclosures, and that consumers would benefit from the use of standard forms that they could rely on and understand, while financial institutions would benefit from having a single set of rules and disclosures that would apply to similar loans.

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

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

A national trade association commenter representing the recreational vehicle industry expressed concern about language in the proposal's preamble about the treatment of transactions not subject to the final rule but that could arguably fall within Dodd-Frank Act sections 1032(f), 1098, and 1100A. The Bureau explained in the proposal that such transactions will remain subject to the existing disclosure requirements under Regulations X and Z, as applicable, until the Bureau adopts integrated disclosures specifically tailored to their distinct features.[189] The commenter expressed concern that the Bureau intends to regulate recreational vehicle dealers through a future rulemaking by adopting integrated disclosures specifically tailored for such dealers. The commenter asked the Bureau to closely review the recreational vehicle market compared to the market for other chattel property, specifically manufactured homes. The commenter noted that signaling recreational vehicle dealers will be regulated by tailored future mortgage transaction disclosures confuses the motor vehicle sales process and would keep lenders out of that market. This commenter and a trade association representing the recreational boat industry were concerned that the definition of ''dwelling'' in Regulation Z and related commentary would cover types of vessels and vehicles that are generally not included in the definition of dwelling under State laws, and that covering these types of personal property would reduce the availability of credit to individuals living in these structures.

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

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

Final Rule

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

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

Bureau noted in the proposal, the Bureau expects to address disclosures for reverse mortgages in a future rulemaking.

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

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

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

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

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

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

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

With respect to commenters who requested that the Bureau extend RESPA coverage to transactions secured by personal property, the Bureau declines to do so because RESPA and Regulation X apply by their terms to ''federally related mortgage loans,'' which are limited to transactions in which the lender has a lien secured by real property. The Bureau also declines

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

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

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

Loans Extended by TILA ''Creditors''

As noted above, RESPA applies generally to ''federally related mortgage loans,'' which means loans (other than temporary financing such as construction loans) secured by a lien on residential real property designed principally for occupancy by one to four families, and that have a Federal nexus *or* are made by a TILA ''creditor'' that makes or invests in real estate loans aggregating more than $1,000,000 per year, other than a State agency. 12 U.S.C. 2602(1), 2604. TILA generally covers consumer credit transactions of all kinds, including unsecured credit and credit secured by nonresidential property and applies only to transactions made by a person who ''regularly extends'' consumer credit. For transactions secured by a dwelling, other than HOEPA loans, Regulation Z defines a ''creditor'' as a person who extends credit more than five times in the preceding calendar year.[191]

Lenders that do not meet the TILA definition of ''creditor'' generally are subject to RESPA if they make a real property-secured loan with a Federal nexus. The Bureau proposed to exempt from the integrated disclosure requirements loans extended by these lenders who are covered by RESPA but not TILA. The Bureau explained that, if a lender extends five or fewer consumer credit transactions secured by a consumer's dwelling in a year, it should not be subject to TILA or Regulation Z. This treatment would have preserved the status of such transactions under existing Regulation Z. That is, currently, consumers do not receive Regulation Z disclosures from such lenders because they are not considered ''creditors'' pursuant to § 1026.2(a)(17)(v). The Bureau explained that eliminating this exemption could represent a significant expansion of TILA coverage and that it was unaware of any significant problems encountered by consumers obtaining credit from these types of creditors that might justify such an expansion. Further, because such creditors may lack the systems to comply with TILA, the Bureau anticipated they may cease to extend credit if forced to establish compliance systems. Although preserving this exemption means that the integrated disclosures would not be received by consumers in such transactions, the Bureau expected the impact of such an exemption to be limited. The Bureau noted in the proposal, based on data reported for 2010 under HMDA, that 569 creditors (seven percent of all HMDA reporters) reported five or fewer originations and, more significantly, that their combined originations of 1,399 loans equaled only 0.02 percent of all originations reported under HMDA for that year. The Bureau further explained that these transactions would remain subject to the RESPA disclosure requirements under Regulation X.

Comments

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

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

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

individual commenters and settlement agents expressed concern that it would be difficult to identify criteria for a small creditor definition. A law firm commenter also recommended that the Bureau include an exemption for small businesses.

Final Rule

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

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

Other Coverage Issues

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

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

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

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

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

risks associated with the transaction, consistent with Dodd-Frank Act section 1032(a).

Conclusion—Coverage of the Final Rule

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

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

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

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

Finally, the Bureau exempts from these integrated disclosure requirements transactions otherwise covered by TILA, pursuant to TILA section 105(f). The Bureau has considered the factors in TILA section 105(f) and has determined that an exemption is appropriate under that provision. Specifically, the Bureau believes that the exemption is appropriate for all affected borrowers, regardless of their other financial arrangements and financial sophistication and the importance of the loan to them. Similarly, the Bureau believes that the exemption is appropriate for all affected loans, regardless of the amount of the loan and whether the loan is secured by the principal residence of the consumer. Furthermore, the Bureau believes that, on balance, the exemption will simplify the credit process without undermining the goal of consumer protection or denying important benefits to consumers. Based on these considerations, the results of the Bureau's consumer testing, and the analysis discussed elsewhere in this final rule, the Bureau has determined that the exemptions are appropriate.

19(a) Reverse Mortgage Transactions Subject to RESPA

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

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

Provision of the Loan Estimate and Closing Disclosure Under Sections 19(e) and 19(f) Provision of Current Disclosures Under TILA and RESPA

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

§ 1026.40 and mortgage transactions secured by a consumer's interest in a timeshare plan subject to § 1026.19(a)(5).

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

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

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

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

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

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

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

19(e)(1) Provision of Disclosures

19(e)(1)(i) Creditor

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

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

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

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

Currently, neither the disclosure requirements under TILA nor the disclosure requirements under RESPA expressly apply to mortgage brokers. The disclosure requirements of Regulation Z also do not apply to mortgage brokers. Section 1024.7(b) of Regulation X, however, currently permits mortgage brokers to deliver the RESPA GFE, provided that the mortgage broker otherwise complies with the relevant requirements of Regulation X, such as the RESPA GFE delivery requirements and tolerance rules, and that the creditor remains responsible for ensuring the mortgage broker's compliance. The Bureau proposed to carry this concept into the regulations

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

governing the integrated disclosures in recognition of the fact that permitting mortgage brokers to deliver the integrated disclosures could benefit consumers in some cases. The Bureau stated in the proposal that some consumers may have better relationships with their mortgage brokers than with their creditors, and the mortgage brokers may be better able to assist those consumers with understanding the RESPA GFE more effectively and efficiently.

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

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

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

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

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

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

Comments

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

The commenters asserted that the final rule should: (1) Require the mortgage broker to make arrangements with creditors so that either the mortgage broker or at least one of the creditors with which the mortgage broker works issues the Loan Estimate within three business days after the mortgage broker receives an application;

or (2) require the mortgage broker to either issue the Loan Estimate within three business days after it receives the application or forward the application to the creditor, who would then have three business days from receipt of the application from the mortgage broker to issue the Loan Estimate. With respect to the revised Loan Estimate, the commenters asserted that if a mortgage broker receives information supporting the issuance of a revised Loan Estimate and provides it to the creditor, then the three-business-day redisclosure period proposed in § 1026.19(e)(4) should not begin until the creditor has received and evaluated the information.

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

Final Rule

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

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

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

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

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

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

The final rule does not permit the creditor to issue a separate Loan Estimate or revised disclosures to correct a mortgage broker's error. In this respect, the final rule reflects guidance provided by HUD in the HUD RESPA FAQs pp. 8–10, ##16, 26, 29 (''GFE—General''). Additionally, the final rule permits either the creditor or the mortgage broker to provide revised Loan Estimates based on any of the six legitimate reasons for revisions, described in greater detail below in the section-by-section analysis of § 1026.19(e)(3)(iv). The final rule also does not require mortgage brokers to get

authorization from creditors before providing Loan Estimates. Further, creditors are bound by the terms of the Loan Estimate, subject to one of the six legitimate reasons for revisions such as changed circumstances or borrower-requested changes, whether or not the creditor has authorized the mortgage broker to provide the Loan Estimate. In these respects, the final rule reflects current Regulation X, because under current Regulation X, creditors are bound to the terms of the RESPA GFE provided to the consumer by the mortgage broker unless one of the six legitimate reasons for revisions apply (*e.g.,* borrower-requested change, a changed circumstance). Therefore, the Bureau is not persuaded that creditors should only be bound by the terms of a mortgage broker-provided Loan Estimate if the creditor has authorized the mortgage broker to provide the Loan Estimate. Lastly, the final rule does not impose explicit requirements on mortgage brokers with respect to providing application information to the creditor and to establishing additional conditions that mortgage brokers must satisfy before they issue a Loan Estimate. The Bureau believes that the creditor is in the best position to set these requirements contractually.

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

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

The Bureau is also adding to final comment 19(e)(1)(ii)–1 to clarify the meaning of ''mortgage broker'' for purposes of § 1026.19(e)(1)(ii). Comment 19(e)(1)(ii)–1 explains that the term ''mortgage broker,'' as used in § 1026.19(e)(1)(ii), has the same meaning as in § 1026.36(a)(2), and references comment 36(a)(1)–2. Section 1026.36(a)(2) provides that a mortgage broker is any loan originator that is not an employee of the creditor, and comment 36(a)(1)–2 explains that ''mortgage broker'' can include companies that engage in loan originator activities described in § 1026.36(a) and their employees. The Bureau believes clarifying the meaning of ''mortgage broker'' will facilitate compliance with the final rule. The definition of ''mortgage broker,'' as used in § 1026.36(a)(2), is appropriate for § 1026.19(e)(1)(ii) because § 1026.36 applies to mortgage loan transactions that will be covered by § 1026.19(e) and because § 1026.36(a) provides a concise list of activities that are considered ''loan originator'' activities.

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

19(e)(1)(iii) Timing

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

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

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

Proposed comment 19(e)(1)(iii)–3 would have clarified issues related to denied or withdrawn applications, explaining that under § 1026.19(e)(1)(iii)

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

Comments

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

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

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

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

Final Rule

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

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

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

Additionally, comment 17(d)–2 in this final rule provides guidance with respect to the issue of determining to which consumer the creditor must provide the Loan Estimate in situations

where there are two or more consumers. The comment explains that where two consumers are joint obligors with primary liability on an obligation, the Loan Estimate may be provided to any consumer with primary liability on the obligation. Comment 17(d)(2) also provides guidance on distinguishing a consumer who is primarily liable on an obligation from a consumer who is merely a surety or guarantor.

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

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

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

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

Finally, for reasons discussed in greater detail above in the section-by-section analysis of § 1026.2(a)(6), the Bureau is adopting the application of the general definition of ''business day'' to the Loan Estimate delivery requirement in § 1026.19(e)(1)(iii). Accordingly, the Bureau is reorganizing § 1026.19(e)(1)(iii) to reflect that the general definition of ''business day'' applies to the Loan Estimate delivery requirement, but that the specific definition of ''business day'' applies to the seven-business-day waiting period. As adopted, § 1026.19(e)(1)(iii)(A) provides that the creditor shall deliver the disclosures required under § 1026.19(e)(1)(i) not later than the third business day after the creditor receives the consumer's application, as defined in § 1026.2(a)(3). Section 1026.19(e)(1)(iii)(B) provides that except as set forth in § 1026.19(e)(1)(iii)(C), the creditor shall deliver the disclosures required under § 1026.19(e)(1)(i) not later than the seventh business day before consummation of the transaction. Lastly, § 1026.19(e)(1)(iii)(C), added for reasons discussed above, provides that for a transaction secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D), § 1026.19(e)(1)(iii)(B) does not apply. Comments 19(e)(1)(iii)–1 through –3 are adopted substantially as proposed. New comment 19(e)(1)(iii)–4 is adopted to explain that with respect to a transaction secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D), where consummation occurs within three business days after a creditor's receipt of the consumer's application, a creditor complies with § 1026.19(e)(1)(iii) by providing the disclosures required under § 1026.19(f)(1)(i) instead of the disclosures required under § 1026.19(e)(1)(i). The Bureau adopts § 1026.19(e)(1)(iii) and its commentary pursuant to its authority under TILA section 105(a), RESPA section 19(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b).

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

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

§ 1026.19(a)(1)(ii). Regulation X contains a similar provision. *See* § 1024.7(a)(4).

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

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

Comments

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

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

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

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

Final Rule

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

The Bureau is not persuaded by the argument that the Bureau should adjust the final rule to reflect that disclosures provided by electronic delivery should be subject to a different standard. The Bureau believes that it would require more information regarding the many different forms of delivery methods available to creditors, including technical information regarding different forms of electronic delivery, before it issues a rule applying different standards than the standard under TILA section 128(b)(2)(E) to the early TILA disclosure. The Bureau notes that this point is also discussed in the section-by-section analyses of § 1026.19(f)(1)(ii) and (iii). The Bureau additionally believes that applying a consistent standard to all Loan Estimates that are not provided to the consumer in person helps to improve consumer understanding of the mortgage origination process and facilitate compliance.

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

The Bureau adopts § 1026.19(e)(1)(iv) pursuant to its authority under TILA section 105(a), RESPA section 19(a),

Dodd-Frank Act section 1032(a), and, for residential mortgage loans, section 1405(b) of the Dodd-Frank Act. As finalized, § 1026.19(e)(1)(iv) provides that if the disclosures are provided to the consumer by means other than delivery in person, the consumer is considered to have received the disclosures three business days after they are delivered or placed in the mail. As discussed above, the Bureau is modifying proposed § 1026.19(e)(1)(iv) to conform final § 1026.19(e)(1)(iv) to the statutory language under MDIA. The Bureau is also modifying proposed § 1026.19(e)(1)(iv) to harmonize the text of final § 1026.19(e)(1)(iv) with the text of final § 1026.19(f)(1)(iii). Further, as discussed above in the section-by-section analysis of § 1026.19(e)(1)(iii), § 1026.19(e)(1)(iv) sets forth when a consumer is considered to have received the Loan Estimate if it is not provided to the consumer in person. Accordingly, the Bureau is modifying the proposed heading to § 1026.19(e)(1)(iv) to clarify that § 1026.19(e)(1)(iv) addresses the receipt of the Loan Estimate.

The Bureau is modifying proposed comments 19(e)(iv)–1 and –2 to reflect the fact that the Bureau is finalizing the timing currently used under TILA and Regulation Z. Comment 19(e)(1)(iv)–1 explains that § 1026.19(e)(1)(iv) provides that, if any disclosures required under § 1026.19(e)(1)(i) are not provided to the consumer in person, the consumer is considered to have received the disclosures three business days after they are mailed or delivered to the address specified by the consumer. The comment further explains that the creditor may, alternatively, rely on evidence that the consumer received the disclosures earlier than three business days and illustrates this with an example. Comment 19(e)(1)(iv)–2 explains that the three-business-day period provided in § 1026.19(e)(1)(iv) applies to methods of electronic delivery, such as email, and illustrates the requirement with an example. The comment also explains that the creditor may, alternatively, rely on evidence that the consumer received the emailed disclosures earlier, and provides an illustrative example. The comment further explains that creditors using electronic delivery methods, such as email, must also comply with § 1026.37(o)(3)(iii) and illustrates this requirement with an example. As discussed in greater detail below in the section-by-section analysis of § 1026.37(o), § 1026.37(o)(3)(iii) requires a creditor to obtain the consumer's consent pursuant to the E-Sign Act if the creditor provides the disclosures required by § 1026.19(e)(1)(i) in electronic form.

19(e)(1)(v) Consumer's Waiver of Waiting Period Before Consummation

Section 128(b)(2)(F) of TILA provides that the consumer may waive or modify the timing requirements for disclosures to expedite consummation of a transaction, if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency. Section 128(b)(2)(F) further provides that: (1) The term ''bona fide personal financial emergency'' may be further defined in regulations issued by the Bureau; (2) the consumer must provide the creditor with a dated, written statement describing the emergency and specifically waiving or modifying the timing requirements, which bears the signature of all consumers entitled to receive the disclosures; and (3) the creditor must provide, at or before the time of waiver or modification, the final disclosures. 15 U.S.C. 1638(b)(2)(F). This provision is implemented in § 1026.19(a)(3) of Regulation Z. Neither RESPA nor Regulation X contains a similar provision.

The Bureau proposed to incorporate the current rule set forth in § 1026.19(a)(3) in proposed § 1026.19(e)(1)(v), which would have provided that the consumer has the ability to waive the proposed seven-business-day waiting period in § 1026.19(e)(1)(iii)(B) for the Loan Estimate in the case of a ''bona fide personal financial emergency.'' The Bureau stated in the proposal that, although the Bureau understood that waivers based on a bona fide personal financial emergency were rare, this exception served an important purpose: consumers should be able to waive the protection afforded by the waiting period if, in the face of a financial emergency, the waiting period does more harm than good. Accordingly, pursuant to its authority under TILA section 105(a) and RESPA section 19(a) the Bureau proposed § 1026.19(e)(1)(v). Proposed § 1026.19(e)(1)(v) would have reflected the current rule, because it would have allowed a consumer to waive the seven-business-day waiting period that was proposed in § 1026.19(e)(1)(iii) in the event of a bona fide personal financial emergency. In addition, the Bureau requested comment on the nature of waivers based on bona fide personal financial emergencies. The Bureau also requested comment on whether the bona fide personal financial emergency exception is needed more in some contexts than in others (*e.g.,* in refinance transactions or purchase money transactions).

Proposed comment 19(e)(1)(v)–1 would have explained that a consumer may modify or waive the right to the seven-business-day waiting period required by § 1026.19(e)(1)(iii) only after the creditor makes the disclosures required by § 1026.19(e)(1)(i). The proposed comment would have clarified that the consumer must have a bona fide personal financial emergency that necessitates consummating the credit transaction before the end of the waiting period, and that whether these conditions are met would be determined by the individual facts and circumstances. The proposed comment would have explained that the imminent sale of the consumer's home at foreclosure, where the foreclosure sale will proceed unless loan proceeds are made available to the consumer during the waiting period, is one example of a bona fide personal financial emergency. The proposed comment would have also clarified that each consumer who is primarily liable on the legal obligation must sign the written statement for the waiver to be effective. Proposed comment 19(e)(1)(v)–2 would have provided illustrative timing examples.

Comments

A number of industry commenters, including industry trade associations representing Federally-charted credit unions and credit unions generally, regional- and State-based credit union trade associations, a State bankers association, and a large bank, asserted that creditors are hesitant to use the current bona fide personal financial emergency exception because it has been interpreted too narrowly. Commenters recommended that the Bureau broaden the scope of the exception by expanding the list of examples illustrating the exception or allowing creditors to rely on what borrowers represent to the creditor to be a bona fide personal financial emergency.

Final Rule

The Bureau has considered the comments, but is finalizing § 1026.19(e)(1)(v) substantially as proposed, with a change to reflect the revisions made to § 1026.19(e)(1)(iii), which is referenced in § 1026.19(e)(1)(v). The Bureau believes that the current exemption is intentionally narrow and is not persuaded that it should be expanded. For most consumers, a mortgage loan will be the most significant financial obligation of their lives. Accordingly,

the Bureau believes that the consumer must be given a meaningful opportunity to shop for a mortgage loan, compare the different financing options available, and negotiate for favorable terms. The Bureau believes the seven-business-day waiting period established by TILA section 128(b)(2)(F) is the minimum amount of time in which a consumer could meaningfully shop, compare, and negotiate the terms of the mortgage loan, and should only be waived in the most stringent of circumstances. The Bureau is adopting § 1026.19(e)(1)(v) and comments 19(e)(1)(v)–1 and –2 substantially as proposed, pursuant to its authority under TILA section 105(a) and RESPA section 19(a).

19(e)(1)(vi) Shopping for Settlement Service Providers

Neither TILA nor RESPA nor Regulation Z requires creditors to inform consumers about settlement service providers for whom the consumer may shop. However, Regulation X provides that where a creditor or mortgage broker permits a borrower to shop for third party settlement services, the creditor or broker must inform borrowers of that fact and provide them with a written list of settlement service providers at the time the RESPA GFE is provided on a separate sheet of paper. 12 CFR 1024 app. C. This requirement was intended to enable consumers to shop for settlement service providers, thereby enhancing market competition and lowering settlement service costs for consumers. The Bureau proposed to adopt the same basic requirements for purposes of the integrated disclosures in § 1026.19(e)(1)(vi), agreeing with the conclusion that a written list of settlement service providers could benefit consumers by fostering settlement service shopping.

As an initial matter, proposed § 1026.19(e)(1)(vi)(A) would have provided that a creditor permits a consumer to shop for a settlement service if the creditor permits the consumer to select the provider of that service, subject to reasonable minimum requirements regarding the qualifications of the provider. Proposed comment 19(e)(1)(vi)–1 would have provided examples of minimum requirements that are reasonable or unreasonable. This proposed comment would have also clarified that the requirements to provide lists of settlement service providers under § 1026.19(e)(1)(vi)(B) and (C) do not apply if the creditor does not permit the consumer to shop.

Proposed § 1026.19(e)(1)(vi)(B) would have required that the creditor identify the services for which the consumer is permitted to shop in the Loan Estimate. Proposed comment 19(e)(1)(vi)–2 would have clarified that § 1026.37(f)(3) contains the content and format requirements for this disclosure. Proposed § 1026.19(e)(1)(vi)(C) would have provided that, if the creditor permits a consumer to shop for a settlement service, the creditor shall provide the consumer with a written list identifying available providers of that service and stating that the consumer may choose a different provider for that service. It would have also required that the list be provided separately from the Loan Estimate but in accordance with the timing requirements for that disclosure (*i.e.,* within three business days after application). Proposed comment 19(e)(1)(vi)–3 would have explained that the settlement service providers identified on the written list must correspond to the settlement services for which the consumer may shop, as disclosed on the Loan Estimate pursuant to § 1026.37(f)(3). It would have also referred to the model list provided in form H–27 of appendix H to Regulation Z.

Proposed comment 19(e)(1)(vi)–4 would have clarified that a creditor does not comply with the requirement in § 1026.19(e)(1)(vi)(C) to ''identify'' providers unless it provides sufficient information to allow the consumer to contact the provider, such as the name under which the provider does business and the provider's address and telephone number. It would have also clarified that a creditor does not comply with the availability requirement in § 1026.19(e)(1)(vi)(C) if it provides a written list consisting of only settlement service providers that are no longer in business or that do not provide services where the consumer or property is located. The proposed comment would have further clarified that if the creditor determines that there is only one available settlement service provider, the creditor would only need to identify that provider on the written list of providers. The Bureau stated that the guidance regarding availability would be consistent with guidance provided by HUD in the HUD RESPA FAQs p. 15, #7 (''GFE—Written list of providers'').

Proposed comment 19(e)(1)(vi)–5 would have referred to form H–27 of appendix H to Regulation Z for an example of a statement that the consumer may choose a provider that is not included on the written list. Proposed comment 19(e)(1)(vi)–6 would have clarified that the creditor may include a statement on the written list that the listing of a settlement service provider does not constitute an endorsement of that service provider. It would have further clarified that the creditor would also be permitted to identify on the written list providers of services for which the consumer is not permitted to shop, provided that the creditor expressly and clearly distinguishes those services from the services for which the consumer is permitted to shop, and that this could be accomplished by placing the services under different headings.

Finally, proposed comment 19(e)(1)(vi)–7 would have explained how proposed § 1026.19(e)(1)(vi) relates to the requirements of RESPA and Regulation X. The proposed comment would have explained that § 1026.19 does not prohibit creditors from including affiliates on the written list under § 1026.19(e)(1)(vi), but that a creditor that includes affiliates on the written list would also have to comply with § 1024.15 of Regulation X. The Bureau stated that this comment would be consistent with guidance provided by HUD in its RESPA FAQs p. 16, #9 (''GFE—Written list of providers''). The proposed comment would have also explained that the written list is a ''referral'' under § 1024.14(f). The Bureau stated that this comment would be consistent with guidance provided by HUD in the HUD RESPA FAQs p. 14, #4 (''GFE—Written list of providers'').

The Bureau solicited comment regarding whether the final rule should provide more detailed requirements for the written list of providers. The Bureau also solicited comment regarding whether the final rule should include additional guidance regarding the content and format of the written list of providers.

Comments

A number of industry commenters provided comments on proposed § 1026.19(e)(1)(vi). Some of the commenters opposed the general requirement, while others sought clarifications. With respect to the general requirement, a large-bank industry trade association asserted that the proposal would be burdensome to comply with because the information on the written list of providers would require regular updating so that the list would only contain available settlement service providers and reflect the current fees that the providers charge for their services. A large bank commenter stated that it would be a large administrative burden for creditors to maintain current contact information of settlement service providers for various settlement service providers, particular information about street addresses. The same commenter also recommended the

Bureau to consider allowing creditors to provide the consumer with a dedicated toll-free number or Web site to receive information about settlement service providers, in lieu of providing the written list. The commenter asserted that allowing the creditor to provide a phone number instead of the written list would reduce paper disclosures and would allow large lenders to tailor recommendations based on the specific geographical area of the consumer. The commenter additionally stated that providing consumers with a provider list that contains contact information for the creditors may suggest to the consumer that the creditor endorses the provider, even if the lender has little knowledge of the provider's service.

A mortgage broker commenter asserted that providing a list of settlement services that a borrower may shop for, rather than a list of providers of the services, would be a more appropriate requirement because it should not be a creditor's responsibility to provide a borrower with a list of providers. The commenter also expressed concern that the creditor would be subject to tolerance rules if the written list of providers must include more than one provider's contact information for a settlement service, but fee estimates are disclosed for only one provider, and the borrower chooses a different provider on the list for the settlement service. A title company commenter expressed concern that it may be difficult for a creditor to prepare a list identifying available providers if the consumer or the property is located in a geographical area with which it is unfamiliar. It further noted that it believed independent settlement service providers are concerned that consumers would only choose the settlement service providers disclosed on the list. Some commenters, including two State bar associations from states where an attorney is required to conduct real estate closings, asserted that the written lists may limit the right of consumers to select settlement agents.

Industry trade associations representing mortgage brokers and banks asserted that the proposal would harm small settlement service providers. The commenters asserted that creditors would want to manage their liability risk unless they are relatively certain of a provider's availability to perform the service for which it was listed and of the fee the provider charges for the service. Accordingly, the commenters asserted that creditors' likely response would be listing a small number of very large providers that offer services over a wide area to reduce their compliance burden. Some commenters objected to the listing of hazard insurance providers on the written list. The commenters asserted that the final rule should not require creditors to list hazard insurance providers because consumers do not have difficulty finding such providers and the requirement may disadvantage small providers of hazard insurance because banks would want to manage the burden of monitoring their fees and availability by listing large providers.

Industry reaction to whether additional guidance on the content and format of the proposed written list was mixed. A national provider of title insurance and settlement services stated that additional guidance regarding the content and format of the written list of providers is unnecessary. In contrast, a number of industry commenters sought guidance on various aspects of the proposal. An industry trade association representing credit unions generally stated that it supported the Bureau's proposal to include more detailed requirements for the written list of providers. Industry trade associations representing banks and mortgage lenders asked the Bureau to clarify whether the creditor must list more than one provider for a settlement service if more than one provider is available. They also asserted that if the creditor must list some minimum number of providers for a settlement service, then the rule must clarify what that minimum number is. The trade association commenters further asserted that there will be significant compliance burden for creditors to list more than one because the creditor must maintain multiple relationships with providers to track their fees and likely availability. The commenters additionally stated that the burden is difficult to justify because information about settlement service providers is readily available online.

The trade group commenters asserted that the burden may be especially great on creditors that maintain lists of providers with whom they prefer to do business because in some cases, such lists contain multiple providers being listed for the same service. The commenters stated that they recommend that if the creditor lists providers that include providers in which they have a preferred client-vendor relationship, the creditor should not be required to list all such providers because it would likely contain too much information. The commenters also expressed concern about compliance burden because creditors would have to monitor the prices charged by their preferred providers and the providers' availability. The commenters further stated that the compliance burden of having to provide the full list of preferred providers for a settlement service would force creditors to direct consumers to lender-required providers.

The trade association commenters also requested clarification on how much flexibility creditors have when listing title services. The commenters stated that the HUD RESPA FAQs about the written list of providers state that title services may be subdivided into two categories: closing services and lender's title insurance and related services. The commenters stated that title service providers offer different title service packages, and accordingly, they asserted that the Bureau should provide additional flexibility to creditors if they list title services on the written list. The trade association commenters also asserted that the rule should clarify that disclosing an affiliate on the written list would not make the affiliate a required provider as long as the creditor lists unaffiliated providers. The commenters additionally sought clarification whether the written list of providers must be provided again if the creditor provides the consumer with a revised Loan Estimate.

A State trade association representing bankers also sought clarification on how many providers for each settlement service must be listed. It additionally asserted that form H–27(B), which the Bureau proposed as a sample form of the written list of providers, made it unclear whether, with respect to a settlement service for which the creditor lists more than one service provider, the creditor must list the estimated fee that each listed service provider charges for that service, because although two providers are identified on form H–27(B) as providing survey services, the form only displays the fee of one of the service providers. The commenter also asserted that if a creditor lists multiple providers of the same service and the fees charged by those providers vary, then the creditor is likely to list the highest fee unless the creditor can disclose the fees as a range of fees. The commenter stated that listing the most expensive fee does not benefit consumers because they may not realize that the fees for a particular service vary by provider.

A national association representing Federally-chartered credit unions sought clarification on whether the written list can be provided in the same transmittal as the Loan Estimate. If the creditor uses mail to send the Loan Estimate, the commenter asked if the list may be included in the same envelope on a separate piece of paper from the disclosures required by § 1026.19(e)(1). If the creditor sends the Loan Estimate electronically, the commenter asked

whether the creditor may provide the written list on a separate page from the disclosures required by § 1026.19(e)(1). A large bank commenter asked the Bureau to clarify whether a creditor could satisfy the requirement that the creditor must list service providers that perform the service where the consumer or property is located by listing vendor management companies.

An industry trade association representing settlement and escrow agents stated that the Bureau should expand the scope of § 1026.19(e)(1)(vi) to prohibit creditors from imposing background checks or similar requirements on settlement and title service providers before the creditor agrees to use the provider's services if the providers are in good standing to conduct business in the applicable jurisdiction. The commenter referred to these requirements as vetting requirements. The commenter stated that some creditors are relying on a Bureau-issued supervisory bulletin, CFPB 2012–3 (Apr. 12, 2012), as a pretext to impose vetting requirements on independent settlement and escrow agents, even though the agents are in good standing in their State and are often members of State and industry trade associations. Similarly, the Bureau received comments from settlement and title agents that suggested that the Bureau adopt a final rule that would define the term ''third party provider'' and then expressly exempt settlement and title agents from the definition. The Bureau believes that it received these comments because a number of settlement and title agent commenters were also concerned about the above-referenced supervisory bulletin and notes that some commenters expressed the concern that the vetting requirements were included in the proposal.

Final Rule

The Bureau has considered the comments and decided to finalize § 1026.19(e)(1)(vi) largely as proposed. Because § 1026.19(e)(1)(vi) reflects the current requirements, the Bureau does not believe that creditors would be unduly burdened by the requirements in this final rule. The Bureau also believes that information asymmetry is pervasive in the mortgage origination process. Accordingly, the Bureau believes that if the creditor permits a consumer to shop for a settlement service, it is appropriate to require creditors to provide consumers with a written list that identifies available providers of that service. The Bureau recognizes that a creditor originating a loan in a geographical area with which it is unfamiliar may have less familiarity with the mortgage market in that area, but the Bureau believes that the creditor nonetheless has better access to information than the consumer about settlement service providers in the geographical area.

The Bureau believes that providing consumers with a toll-free number or a Web site instead of a written list would be inefficient substitutes because they introduce an extra step into the shopping process. A consumer that receives a written list with the service provider's contact information could directly contact the service provider. Additionally, to comply with the current rule, creditors that permit shopping would already have to monitor the availability of settlement service providers and the fees charged by the providers, and thus they currently are ordinary business activities. Accordingly, the final rule should not impose additional burden.

The Bureau also does not believe that it would be burdensome for the creditor to include a service provider's street address. Comment 19(e)(1)(vi)–4 does not state that § 1026.19(e)(1)(vi) requires the provision of addresses. Rather, it explains that to comply with the identification requirement in § 1026.19(e)(1)(vi)(C), the creditor must provide sufficient information to allow the consumer to contact the service provider, and that a creditor that lists the provider's address, along with its telephone number and the name under which the provider conducts business, would have provided sufficient information. Accordingly, listing an available provider's street address is not required by § 1026.19(e)(1)(iv)(C), but a creditor that does not list the street address must demonstrate that the information it provided is sufficient information that allows the consumer to contact the service provider.

With respect to the argument that small settlement service providers may be harmed because a creditor's likely response to reduce compliance burden would be to list a small number of very large providers that offer services over a wide area, the Bureau believes that the creditor would not comply with the availability requirement in § 1026.19(e)(1)(vi)(C) if the service provider listed does not provide services where the consumer or the property is located. But the Bureau understands that small, independent settlement service providers may be more likely to operate outside of large metropolitan areas than larger settlement service providers. Accordingly, creditors may have to list small, independent settlement service providers in some areas, rather than larger providers, to comply with § 1026.19(e)(1)(vi)(C). For additional reasons, the Bureau does not believe independent settlement service providers will be negatively impacted because of the inclusion of affiliate charges in the points and fees thresholds under the Bureau's ATR and HOEPA rulemakings. The Bureau believes that the motivation to avoid exceeding those points and fees thresholds may deter some creditors from using affiliated service providers for settlement services. Accordingly, the Bureau believes that they will be represented on the list because for a given settlement service, the creditor must list settlement service providers that provide services where the consumer or property is located.

In response to the concern that that the written list of providers may suggest to the consumer that the creditor endorses the provider, the Bureau notes that comment 19(e)(1)(vi)–6 clarifies that the creditor may include a statement on the written list that the listing of a settlement service provider does not constitute an endorsement of that service provider. With respect to the assertion that the written list of providers may limit the right of consumers to select settlement agents, the final rule requires (consistent with the proposal) that if a creditor permits the consumer to shop for a settlement service, then the creditor must state on the written list that the consumer may choose a different provider for that service. This statement is illustrated on form H–27(A) of appendix H to Regulation Z in this final rule.

Additional guidance. The Bureau has considered requests related to additional guidance and is finalizing the proposed rule and commentary with modifications to address questions raised by the commenters. With respect to requests for guidance that did not lead the Bureau to adjust the proposed rule and commentary, the Bureau believes that the adjustments were not needed because the final rule text and commentary are sufficiently clear.

As noted above, some commenters expressed concern about how many available providers of a settlement service a creditor must list. The Bureau is adjusting final § 1026.19(e)(1)(vi)(C) to provide that the creditor must identify at least one available provider for each settlement service for which the consumer is permitted to shop. The Bureau understands that this is consistent with the informal guidance provided by HUD with respect to the requirement to provide the written list under current Regulation X, and thus,

believes that this adjustment will facilitate compliance.

With respect to the request that the Bureau provide creditors with additional flexibility with respect to the listing of title services, the Bureau notes that this final rule permits the creditor to provide a more detailed breakdown of title-related services than what is currently permitted under existing HUD RESPA FAQs. *See* comments 37(f)(2)–3, –4, and 37(f)(3)–3. The Bureau also notes that form H–27(B) of appendix H to Regulation Z in this final rule contains a sample written list that illustrates the listing of title services on the written list. With respect to the request that the final rule should clarify that disclosing an affiliated service provider on the written list would not make the affiliated provider a required provider as long as the creditor lists unaffiliated providers, the Bureau declines. The Bureau does not believe that an affiliated provider is a required provider if the creditor lists the affiliated provider under a heading that clearly states that the consumer can select the provider or shop for different providers, and accordingly, does not believe clarification is necessary.

On the question of listing hazard insurance providers on the written list of providers, hazard insurance would not have been among the services that the creditor would have been required to identify pursuant to § 1026.37(f)(3). Therefore, hazard insurance providers do not need to be listed on the written list of providers. Comment 19(e)(1)(vi)–2, which the Bureau is adopting as proposed, explains that the creditor should look to § 1026.37(f)(3) for guidance on how the creditor must identify the services for which the consumer is permitted to shop. However, the Bureau has noted that passing references to homeowner's insurance in proposed comments 19(e)(1)(vi)–1 and –6 could have caused confusion on this point, so it has removed that language in the final commentary adopted in this final rule. With respect to questions about the creditor's obligation to disclose the fees of the settlement service providers the creditor lists on the written list of providers, the Bureau notes § 1026.19(e)(1)(iv) does not require creditors to list the estimated fees of the service providers, although form H–27(A) of appendix H to Regulation Z adopted in this final rule does provide creditors the space to do so.

Section 1026.37(f)(3), as adopted, requires the creditor to itemize on the Loan Estimate the estimated amount for each of the services for which a consumer can shop. Even if the creditor lists on the written list under § 1026.19(e)(1)(vi)(C) more than one service provider for a settlement service that it permits the consumer to shop for, the creditor must itemize on the Loan Estimate only one estimated cost of that service for one of the service providers listed. This estimated cost would be the amount used for purposes of the good faith analysis under § 1026.19(e)(3). However, nothing in the final rule prohibits a creditor from identifying the estimated fee of each service provider listed for a settlement service on the written list under § 1026.19(e)(1)(vi).

With respect to the question of whether the creditor must provide the consumer with a second written list of providers whenever the creditor provides a revised Loan Estimate to the consumer pursuant to § 1026.19(e)(4), the Bureau believes that § 1026.19(e)(1)(vi)(C), which the Bureau is adopting as proposed for reasons set forth in this section-by-section analysis, clearly explains that the creditor is required to provide the written list only once, in accordance with the timing requirement that applies to the delivery of the original Loan Estimate set forth in § 1026.19(e)(1)(iii). With respect to the question of whether the creditor may provide the written list in the same transmittal as the Loan Estimate and whether the creditor must provide the list on a separate page from the disclosures required by § 1026.19(e)(1)(i), the Bureau notes that § 1026.19(e)(vi)(C) requires the written list to be provided separately from the disclosures required under § 1026.19(e)(1)(i). In addition, the requirements set forth in § 1026.37(o)(1) applies whenever the creditor provides the Loan Estimate with any other documents or disclosures. That provision states that the Loan Estimate must be provided on separate pages that are segregated from other documents or disclosures. This final rule does not prohibit a creditor from providing the written list in the same transmittal as the Loan Estimate.

With respect to the question of whether a creditor may comply with the requirements of § 1026.19(e)(1)(vi)(C) by listing vendor management companies, the availability requirement in proposed § 1026.19(e)(1)(vi)(C) requires that an entity that a creditor lists on the written list of providers for a particular service be available to provide the service. A creditor that lists a vendor management company on the written list for a particular service would not comply with § 1026.19(e)(1)(vi)(C) if the vendor management company cannot ensure that the service for which it is listed can be performed by its employees or contractors in the area where the consumer or property is located, because it would not be available for purposes of § 1026.19(e)(1)(iv)(C). Lastly, with respect to requests to adjust the proposal to prohibit creditors from imposing background checks and similar requirements on settlement, and title agents, the proposal would not have imposed on the creditor an obligation to impose vetting requirements on settlement agents, nor prohibited such vetting, nor sought comment on the issue.

Accordingly, for the reasons stated above, the Bureau is adopting § 1026.19(e)(1)(vi)(A) as proposed, and § 1026.19(e)(1)(vi)(B) substantially as proposed, with revisions to enhance clarity. For the reasons discussed above, the Bureau is adjusting proposed § 1026.19(e)(1)(vi)(C) in response to comments received about how many service providers must a creditor identify on the written list for each settlement service for which a consumer is permitted to shop. As adopted, § 1026.19(e)(1)(vi)(C) provides that if the consumer is permitted to shop for a settlement service, the creditor shall provide the consumer with a written list identifying available providers of that settlement service and stating that the consumer may choose a different provider for that service. It additionally provides that the creditor must identify a minimum of one available provider for each settlement service for which the consumer is permitted to shop. Section 1026.19(e)(1)(vi)(C) further provides that the creditor shall provide this written list of settlement service providers separately from the disclosures required by § 1026.19(e)(1)(i) but in accordance with the timing requirements in § 1026.19(e)(1)(iii).

Comments 19(e)(1)(vi)–1 through –7 are adopted substantially as proposed. As noted, the Bureau modified proposed comments 19(e)(1)(vi)–1 and –6 to address confusion about whether hazard insurance carriers must be listed in the written list of providers required by § 1026.19(e)(1)(vi)(C), and the Bureau is modifying proposed comment 19(e)(1)(vi)–4 because final § 1026.19(e)(1)(vi)(C) states expressly that at least one service provider must be identified for each settlement service for which the consumer is permitted to shop. The Bureau is adopting § 1026.19(e)(1)(vi)(A) through (C), and its commentary, pursuant to the Bureau's authority under sections 105(a) of TILA, 19(a) of RESPA, and, for residential mortgage loans, sections 129B(e) of TILA and 1405(b) of the Dodd-Frank Act, as described in the proposal.

19(e)(2) Predisclosure Activity

To promote the ability of consumers to shop for and evaluate available options for credit, the Bureau proposed several provisions in proposed § 1026.19(e)(2) that would have restricted certain activities by creditors that may occur prior to the receipt by the consumer of the Loan Estimate. These provisions include restrictions on imposing fees on consumers, a requirement to place a statement on written estimates of loan terms or costs specific to the consumer that creditors may provide to the consumer before providing the Loan Estimate to the consumer to differentiate the written estimates from the Loan Estimate, and a prohibition that the creditor may not require the consumer to submit verifying information related to the consumer's application. These provisions are described in detail below in the section-by-section analyses of § 1026.19(e)(2)(i), (ii), and (iii), respectively. In addition, see part VI for a discussion of the specific effective date applicable to § 1026.19(e)(2).

19(e)(2)(i) Imposition of Fees on Consumer

The Bureau proposed § 1026.19(e)(2)(i), which would have prohibited a creditor or any other person from imposing a fee on a consumer in connection with the consumer's application for a mortgage transaction subject to § 1026.19(e)(1)(i) before the consumer has received the Loan Estimate and indicated an intent to proceed with the transaction, except for a bona fide and reasonable fee for obtaining the consumer's credit report. As set forth below, the general fee restriction was set forth in proposed § 1026.19(e)(2)(i)(A), and the exception was set forth in proposed § 1026.19(e)(2)(i)(B). Both provisions are discussed in greater detail below.

19(e)(2)(i)(A) Fee Restriction

Section 128(b)(2)(E) of TILA provides that the ''consumer shall receive the disclosures required under [TILA section 128(b)] before paying any fee to the creditor or other person in connection with the consumer's application for an extension of credit that is secured by the dwelling of a consumer.'' 15 U.S.C. 1638(b)(2)(E). This provision is implemented in § 1026.19(a)(1)(ii). Although RESPA does not contain a similar provision, Regulation X does. *See* § 1024.7(a)(4). However, unlike Regulation Z, Regulation X prohibits a consumer from paying a fee until the consumer indicates an intent to proceed with the transaction after receiving the disclosures. *Id.* As discussed below, both Regulation Z and Regulation X provide an exception only for the cost of obtaining a credit history or credit report, respectively.

Thus, Regulation X requires consumers to take an additional affirmative step before new fees may be charged. In the proposal, the Bureau stated its belief that the goals of the integrated disclosures are best served by adopting the approach under Regulation X. The Bureau explained that the integrated disclosures were designed to facilitate the making of informed financial decisions by consumers, and expressed concern that this goal would be inhibited if fees are imposed on consumers before a consumer indicates an intent to proceed. The Bureau noted that for example, after reviewing the Loan Estimate a consumer may be uncertain that the disclosed terms are in the consumer's best interest or that the disclosed terms are those which the consumer originally requested. However, if fees may be imposed before the consumer decides to proceed with a particular loan, consumers may not take additional time to understand the costs and evaluate the risks of the disclosed loan. The Bureau also stated its intent for consumers to use the integrated disclosures to compare loan products from different creditors. The Bureau expressed concern that if creditors can impose fees on consumers once the Loan Estimate is delivered, but before the consumer indicates intent to proceed, shopping may be inhibited.

The Bureau noted that, for example, after reviewing the Loan Estimate a consumer may be uncertain that the disclosed terms are the most favorable terms the consumer could receive in the market. However, if fees may be imposed before the consumer decides to proceed with a particular loan, consumers may determine that too much cost has been expended on a particular Loan Estimate to continue shopping, even though the consumer believes more favorable terms could be obtained from another creditor. The Bureau also expressed concern that consumers would conclude that obtaining a Loan Estimate from multiple creditors is too costly if each creditor can impose fees for each Loan Estimate.

Accordingly, pursuant to its authority under TILA section 105(a) and 128(b)(2)(E) and RESPA section 19(a), the Bureau proposed § 1026.19(e)(2)(i)(A), which would have provided that neither a creditor nor any other person may impose a fee on a consumer in connection with the consumer's application before the consumer has received the disclosures required by § 1026.19(e)(1)(i) and indicated to the creditor an intent to proceed with the transaction described by those disclosures. Proposed comment 19(e)(2)(i)(A)–1 would have explained that a creditor or other person may not impose any fee, such as for an application, appraisal, or underwriting, until the consumer has received the disclosures required by § 1026.19(e)(1)(i) and indicated an intent to proceed with the transaction. The only exception to the fee restriction would have been to allow the creditor or other person to impose a bona fide and reasonable fee for obtaining a consumer's credit report, pursuant to proposed § 1026.19(e)(2)(i)(B).

Proposed comment 19(e)(2)(i)(A)–2 would have explained that the consumer may indicate an intent to proceed in any manner the consumer chooses, unless a particular manner of communication is required by the creditor, provided that the creditor does not assume silence is indicative of intent. The proposed comment would have clarified that the creditor must document this communication to satisfy the requirements of § 1026.25. The proposed comment would have also included illustrative examples.

Proposed comment 19(e)(2)(i)(A)–3 would have discussed the collection of fees and clarified that at any time prior to delivery of the required disclosures, the creditor may impose a credit report fee as provided in § 1026.19(e)(2)(i)(B), but that the consumer must receive the disclosures required by § 1026.19(e)(1)(i) and indicate an intent to proceed before paying or incurring any other fee in connection with the consumer's application. Proposed comment 19(e)(2)(i)(A)–4 would have provided illustrative examples regarding these requirements.

Proposed comment 19(e)(2)(i)(A)–5 would have clarified that, for purposes of § 1026.19(e), a fee is ''imposed by'' a person if the person requires a consumer to provide a method for payment, even if the payment is not made at that time. The proposed comment would have provided examples that a creditor may not require the consumer to provide a $500 check or a credit card number to pay a ''processing fee'' before the consumer receives the disclosures required by § 1026.19(e)(1)(i) and the consumer subsequently indicates intent to proceed. The proposed comment would have further clarified that the creditor in this example would not comply with § 1026.19(e)(2) even if the creditor did not deposit the check or charge the card until after the disclosures required by

§ 1026.19(e)(1)(i) were received by the consumer and the consumer subsequently indicated intent to proceed. The proposed comment would have further explained that the creditor would have complied with § 1026.19(e)(2) if the creditor required the consumer to provide a credit card number if the consumer's authorization was only to pay for the cost of a credit report. The proposed comment would have clarified that this would comply with § 1026.19(e)(2) even if the creditor maintained the consumer's credit card number on file and charged the consumer a $500 processing fee after the disclosures required by § 1026.19(e)(1)(i) were received and the consumer subsequently indicated an intent to proceed, provided that the creditor requested and received a separate authorization for the processing fee charge from the consumer after the consumer received the disclosures required by § 1026.19(e)(1)(i).

19(e)(2)(i)(B) Exception to Fee Restriction

As noted above, § 1026.19(a)(1)(iii) of Regulation Z currently provides that a person may impose a fee for obtaining a consumer's credit history prior to providing the good faith estimates, which is the lone exception to the general rule established by § 1026.19(a)(1)(ii) that fees may not be imposed prior to the consumer's receipt of the disclosures. Section 1024.7(a)(4) of Regulation X contains a similar exception, but it differs in two important respects. First, Regulation Z provides that the fee may be imposed for a consumer's ''credit history,'' while Regulation X specifies that the fee must be for the consumer's ''credit report.'' The Regulation Z provision could be read as permitting a broader range of activity than just acquiring a consumer's credit report. The Bureau proposed to adopt the terminology used by Regulation X, concluding that the purposes of the integrated disclosures were better served by the more restrictive language. The Bureau stated that consumers should be able to receive a reliable estimate of mortgage loan costs with as little up-front expense and burden as possible, while creditors should be able to receive sufficient information from the credit report alone to develop a reasonably accurate estimate of costs.

Second, existing commentary under Regulation Z provides that the fee charged pursuant to § 1026.19(a)(1)(iii) may be described or referred to as an ''application fee,'' provided the fee meets the other requirements of § 1026.19(a)(1)(iii). The Bureau, however, proposed for purposes of the integrated disclosures to require a fee for a credit report to be disclosed with the more precise label under the theory that consumers may be more likely to understand that a credit report fee is imposed if a fee for the purpose of obtaining a credit report is clearly described as such, and compliance costs are generally reduced when regulatory requirements are standardized. Accordingly, the Bureau proposed § 1026.19(e)(2)(i)(B), which would have provided that a person may impose a bona fide and reasonable fee for obtaining the consumer's credit report before the consumer has received the disclosures required by § 1026.19(e)(1)(i). Proposed comment 19(e)(2)(i)(B)–1 would have clarified that a creditor or other person may impose a fee before the consumer receives the required disclosures if it is for purchasing a credit report on the consumer, provided that such fee is bona fide and reasonable in amount. The proposed comment would have also stated that the creditor must accurately describe or refer to this fee, for example, as a ''credit report fee.''

Comments

A large non-depository lender expressed the concern that if the proposal was finalized as proposed, the practice of requiring a method of payment prior to providing the Loan Estimate would be a violation of the rule. The commenter, along with a number of other commenters that included a large bank commenter and industry trade associations representing banks and mortgage lenders, asserted that creditors should be permitted to obtain the consumer's credit card information before a consumer receives the Loan Estimate and indicates an intent to proceed, regardless of whether the creditor intends to charge the consumer the fee for obtaining the consumer's credit report. The trade association commenters asserted that restricting the creditor's ability to obtain the consumer's credit card information imposes an operational burden on creditors that do not charge a consumer for a credit report fee until the consumer has indicated an intent to proceed. The commenters predicted that adopting the proposed rule would make it likely that creditors will change their current practice and begin charging the credit report fee before the consumer indicates an intent to proceed.

The Bureau also received requests from industry commenters that the Bureau clarify how to determine when a consumer has indicated an intent to proceed. The trade association commenter requested that the Bureau clarify that a lender may require the consumer to indicate the intent to proceed in a specific manner, as long as it is reasonable. The commenters also described specific examples and asked the Bureau to provide guidance on whether each specific example constitutes the consumer's intent to proceed. Similarly, a community bank commenter asserted that the Loan Estimate should contain a signature line, which could be signed by the consumer to indicate the consumer's intent to proceed.

The trade association commenter and the large bank commenter additionally requested that the Bureau clarify what the Bureau meant when it stated in proposed § 1026.19(e)(2)(i)(A)–5 that a creditor must request and receive a separate authorization for a new fee before it charges the consumer the new fee on the credit card the creditor had previously used to charge the consumer for the cost of a credit report. The commenters asserted that it was unclear whether the ''separate authorization'' refers to an authorization from the credit card company or a separate verbal authorization from the consumer to the creditor with respect to charging the consumer's credit card. The trade association commenter further requested clarification on whether the consumer's explicit expression of intent to proceed provides the lender with separate authorization to charge additional fees. Finally, the Bureau also received comments from industry commenters that asserted that the creditor should be able to charge the consumer a ''pre-application fee'' to compensate the creditor for pre-approval activities, such as the issuance of pre-application worksheets.

Final Rule

The Bureau has considered the comments, and for the reasons set forth below, is finalizing § 1026.19(e)(2)(i) substantially as proposed. The Bureau believes that it is important that the consumer takes the affirmative step to indicate an intent to proceed with the mortgage loan transaction before the creditor requests a method of payment from the consumer, other than a method of payment to pay for the cost of a credit report. The Bureau recognizes that requiring a method of payment does not necessarily mean that the consumer will actually be charged. However, the Bureau is concerned that consumers' use of the integrated disclosures to make informed financial decisions and to compare loan products from different creditors may be inhibited if creditors can require that the consumer provide

the consumer's credit card number without a specific, narrowly tailored purpose before the consumer indicates an intent to proceed with the transaction. This may make a consumer feel committed to the creditor even though, after reviewing the Loan Estimate, the consumer may be uncertain that the disclosed terms are in the consumer's best interest or that the disclosed terms are those for which the consumer originally asked. The consumer may also feel uncomfortable providing the consumer's credit card number to multiple creditors, if multiple creditors intend to keep the numbers on file to charge at a later date. In addition, the Bureau understands that some creditors may currently require consumers to provide their credit card numbers at the time of application to provide a ''deposit'' that is either charged after application if the consumer does not consummate the transaction, or is applied towards the consumer's closing costs if the transaction is consummated. Under § 1026.19(e)(2)(i) adopted in this final rule, a creditor is not permitted to require the consumer to provide the consumer's credit card number before the consumer receives the Loan Estimate and indicates an intent to proceed, even if the creditor promises not to charge the card until after such time. *See* comment 19(e)(2)(i)(A)–5.

The Bureau has revised the final regulation text to address commenters' request for additional clarification with respect to determining whether a consumer has indicated an intent to proceed. Proposed comment 19(e)(ii)(A)–2 would have explained, among other things, that a creditor can require a particular method of communication for the consumer to indicate an intent to proceed, as long as the creditor can document this communication to satisfy the requirements of § 1026.25. But in light of the comments requesting additional clarification with respect to determining whether a consumer has indicated an intent to proceed, the Bureau believes incorporating the statement, set forth in proposed comment 19(e)(ii)(A)–2, that the consumer may indicate an intent to proceed in any manner the consumer chooses, unless the creditor requires a particular manner of communication into final § 1026.19(e)(2)(i)(A) as part of the regulatory text would facilitate compliance. As adopted, § 1026.19(e)(2)(i)(A) provides that except as provided in § 1026.19(e)(2)(i)(B), neither a creditor nor any other person may impose a fee on a consumer in connection with the consumer's application for a mortgage transaction subject to § 1026.19(e)(1)(i) before the consumer has received the disclosures required under § 1026.19(e)(1)(i) and indicated to the creditor an intent to proceed with the transaction described by those disclosures. Section 1026.19(e)(2)(i)(A) further provides that a consumer may indicate an intent to proceed with a transaction in any manner the consumer chooses, unless a particular manner of communication is required by the creditor.

The Bureau declines to make other changes to the rule requested by commenters. With respect to the request that the Loan Estimate contain a signature line that could be signed by the consumer to indicate the consumer's intent to proceed, the Bureau believes that allowing the Loan Estimate to be signed by the consumer to document the consumer's intent to proceed is contradictory to the intent of TILA section 128(2)(B)(i). This section of TILA, implemented in this final rule in § 1026.37(n)(1), provides that consumers are not required to proceed with the transaction merely because they have received the Loan Estimate or signed a loan application. Specifically, form H–24 of appendix H to Regulation Z, which illustrates the optional signature line permitted on the Loan Estimate under § 1026.37(n)(1), states that the consumer's signature only documents receipt of the Loan Estimate. The Bureau also does not believe that additional clarification is needed to explain what ''separate authorization'' means in comment 19(e)(2)(i)(A)–5, which is adopted as proposed. The Bureau believes that the term ''separate authorization,'' as used in the comment, clearly means a new authorization, whether verbal or written, from the consumer for the creditor to charge new fees. The Bureau believes that an expression of a consumer's intent to proceed with a transaction is not the same as an authorization to the creditor to charge additional fees.

Lastly, the Bureau does not believe that the creditor should be able to impose on a consumer a ''pre-application fee'' before the consumer has received the Loan Estimate and indicated an intent to proceed. As discussed above, both Regulations X and Z contain provisions that create exceptions to the general prohibition on the creditor's ability to impose fees on a consumer prior to providing the RESPA GFE and early TILA disclosure. The Bureau incorporated the terminology used by Regulation X in the proposal because the Bureau believed that incorporating the more narrow and precise terminology used by Regulation X would better ensure that consumers receive a reliable estimate of mortgage loan costs with as little up-front expense and burden as possible.

The Bureau believes permitting creditors to impose a ''pre-application fee'' on the consumer is problematic. First, although the Bureau recognizes that the creditor uses resources to provide pre-application worksheets or other pre-qualification services, the worksheets are not subject to the good faith requirements of TILA section 128(b)(2)(A) and RESPA section 5 and may be unreliable. Accordingly, expanding the exception to a ''pre-application fee'' would be contrary to the Bureau's intent of ensuring that consumers receive a reliable estimate of mortgage loan costs with as little up-front expense and burden as possible. Second, the Bureau is concerned that the description of a fee as a ''pre-application fee'' is imprecise and that there may not be an industry standard to help determine what the fee is paying for, which does not promote the informed use of credit. The lack of precision and uniformity could also complicate supervision and compliance. Additionally, consumers may not have any information available to them regarding what services are included in the fee.

For the reasons stated above, the Bureau is adopting § 1026.19(e)(2)(i)(A) and (B) largely as proposed, pursuant to its authority under TILA section 105(a) and 129(b)(2)(E), and RESPA section 19(a). The Bureau is also finalizing comments 19(e)(2)(i)(A)–1 through –5, and comment 19(e)(2)(i)(B)–1 substantially as proposed, except for revisions to improve the clarity of the proposed comments. The Bureau believes that it is important that the consumer takes the affirmative step to indicate an intent to proceed with the mortgage loan transaction before the creditor requests a method of payment from the consumer, other than a method of payment to pay for the cost of a credit report. The Bureau recognizes that requiring a method of payment does not necessarily mean that the consumer actually will be charged. However, the Bureau's goals that consumers use the integrated disclosures to make informed financial decisions and that consumers use the disclosure to compare loan products from different creditors may be inhibited if the Bureau permits a creditor to require that the consumer provide the consumer's credit card number without a specific, narrowly-tailored purpose before the consumer indicates an intent to proceed.

19(e)(2)(ii) Written Information Provided to Consumer

The Bureau proposed to require creditors that provide a written estimate of loan terms or costs specific to a consumer, before the consumer has received the Loan Estimate and indicated an intent to proceed, to include a statement on such estimate to distinguish the estimate from the Loan Estimate. The Bureau understands that consumers often request written estimates of loan terms before receiving the RESPA GFE or early TILA disclosure. The Bureau recognizes that these written estimates may be helpful to consumers. However, the Bureau expressed concern in the proposal that consumers could confuse such written estimates, which are not subject to the good faith requirements of TILA section 128(b)(2)(A) and RESPA section 5 and may therefore be unreliable, with the Loan Estimate disclosures proposed under § 1026.19(e)(1)(i), which must be made in good faith. The Bureau was also concerned that unscrupulous creditors may use formatting and language similar to the disclosures that would have been required under § 1026.19(e)(1)(i) to deceive consumers into believing that the creditor's unreliable written estimate is actually the disclosure that would have been required under § 1026.19(e)(1)(i). The Bureau found these concerns to be particularly important in light of section 1405(b) of the Dodd-Frank Act, which places emphasis on improving ''consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures.''

The Bureau believes that creditors may choose to issue, and consumers may want, preliminary written estimates based on less information than is needed to issue the disclosures required under § 1026.19(e)(1)(i). However, mortgage loan costs are often highly sensitive to the information that triggers the disclosures. The Bureau noted that as such, the disclosures that would have been required under proposed § 1026.19(e)(1)(i) may be more accurate indicators of cost than preliminary written estimates. The Bureau stated that consumers may better understand the sensitivity of mortgage loan costs to information about the consumer's creditworthiness and collateral value if consumers are aware of the difference between preliminary written estimates and disclosures required under § 1026.19(e)(1)(i). Additionally, section 1032(a) of the Dodd-Frank Act authorizes the Bureau to prescribe rules to ensure the full, accurate, and effective disclosure of mortgage loan costs in a manner that permits consumers to understand the associated risks. The Bureau sought to foster consumer understanding of the reliability of the cost information provided, while permitting the use of preliminary written estimates, which may be beneficial to consumers.

Accordingly, pursuant to its authority under section 105(a) of TILA, section 1032(a) of the Dodd-Frank Act, and, for residential mortgage loans, sections 129B(e) of TILA and 1405(b) of the Dodd-Frank Act, the Bureau proposed to require creditors to distinguish between preliminary written estimates of mortgage loan costs, which are not subject to the good faith requirements under TILA and RESPA, and the disclosures required under § 1026.19(e)(1)(i), which are subject to these requirements. Proposed § 1026.19(e)(2)(ii) would have required creditors to provide consumers with a disclosure indicating that the preliminary written estimate is not the Loan Estimate required by RESPA and TILA, if a creditor provides a consumer with such written estimate of specific credit terms or costs before the consumer receives the disclosures under § 1026.19(e)(1)(i) and subsequently indicates an intent to proceed with the mortgage loan transaction. The Bureau concluded that the proposed provision is consistent with section 105(a) of TILA in that it would increase consumer awareness of the costs of the transaction by informing consumers of the risk of relying on preliminary written estimates, thereby assuring a meaningful disclosure of credit terms and promoting the informed use of credit. The Bureau also believed the proposal is consistent with section 129B(e) of TILA because permitting creditors to provide borrowers with a preliminary written estimate and the Loan Estimate required by TILA and RESPA without a disclosure indicating the difference between the two is not in the interest of the borrower.

Proposed comment 19(e)(2)(ii)–1 would have explained that § 1026.19(e)(2)(ii) applies only to written information specific to the consumer. It provided examples to illustrate the difference between written information specific to the consumer, such as an estimated monthly payment for a mortgage loan based on the estimated loan amount and the consumer's estimated credit score, and non-individualized information such as a preprinted list of closing costs common in the consumer's area, or an advertisement as defined in § 1026.2(a)(2). This proposed comment would have also included a reference to comment 19(e)(1)(ii)–4 regarding mortgage broker provision of written estimates specific to the consumer.

Comments

The Bureau received largely supportive comments from industry commenters, but largely negative comments from consumer advocacy groups. A number of consumer advocacy groups expressed concerns regarding how non-binding, pre-application estimates have been used by creditors and mortgage brokers to deceive borrowers. They asserted that any creditor or broker using any document that is substantially similar to the Loan Estimate or Closing Disclosure should be subject to the requirements for such forms. The consumer advocacy groups asserted that the proposal would send a message that the Bureau condones the practice of providing consumers with non-binding estimates that have been used to deceive consumers. The commenters asserted that the disclaimer the Bureau proposed is inadequate. In joint comments, two national consumer advocacy groups observed that the Kleimann Testing Report contained a recommendation to design a more noticeable disclaimer, and asserted that the proposed disclaimer is only marginally more noticeable than the one tested. Accordingly, the national consumer advocacy group commenters expressed the belief that creditors would still be able to use pre-application worksheets to circumvent consumer shopping.

As noted, industry commenters generally expressed support for the proposal. For instance, a community bank commenter concluded that the proposed disclaimer would reduce consumer confusion. A national trade association representing credit unions generally expressed support for the proposed disclaimer. The trade association commenter supported the disclaimer, so long as the statement does not require significant redesign of the forms that creditors currently use as pre-application worksheets or the use of additional pages for the disclaimer. A State trade association representing banks commented regarding proposed form H–26(B) that its member banks would prefer to use their own version of a consumer-specific worksheet, rather than proposed form H–26(B).[193]

An industry trade association representing community banks agreed

[193] Proposed form H–26(B) would have illustrated the placement of the disclaimer on a consumer-specific worksheet for which a creditor uses a format similar to the proposed Loan Estimate in form H–24 of appendix H to Regulation Z.

that the unregulated nature of pre-application estimates can cause confusion for consumers, but asserted that the proposed disclaimer would further confuse the consumer. The commenter suggested that the problem lies not with the worksheets, but with the belief by creditors that they must have the property address to issue the RESPA GFE. The commenter expressed concern that creditors are treating this as a requirement, and thus, the creditor must provide worksheets to consumers shopping for a mortgage loan, and then issue the Loan Estimate only after the consumer selects the property. As discussed in greater detail in the section-by-section analysis of § 1026.2(a)(3), the commenter recommended that the Bureau address the issue by making ''property address'' an optional item in the definition of ''application'' for the original Loan Estimate delivery requirement in purchase transactions.

A GSE commenter expressed concern that the proposed disclaimer could confuse consumers if the Bureau were to adopt, pursuant to the Bureau's 2012 Loan Originator Proposal, the requirement that the creditor must first provide the consumer with a quote for a comparable, alternative loan without any discount or origination points and/or fees (zero-zero alternative) before compensating a loan originator with a transaction-specific payment and charging the consumer discount and origination points and fees. The GSE commenter believed that the zero-zero alternative would have been specific to the consumer and would be provided before the Loan Estimate. The GSE commenter argued that providing a disclosure that the consumer is meant to rely on for understanding pricing trade-offs in a document that contains the proposed disclaimer would cast doubt on the document's reliability and cause consumer confusion. An industry trade association representing mortgage bankers suggested that instead of finalizing this aspect of the Bureau's 2012 Loan Originator Proposal, the Bureau should permit creditors to inform the consumer that different loan programs with different mixes of rates and fees are available on the pre-application worksheets.

Final Rule

The Bureau is adopting § 1026.19(e)(2)(ii) and comment 19(e)(2)(ii)–1 largely as proposed, after considering the comments, and pursuant to its authority under section 105(a) of TILA, section 1032(a) of the Dodd-Frank Act, and, for residential mortgage loans, sections 129B(e) of TILA and 1405(b) of the Dodd-Frank Act. As adopted, § 1026.19(e)(2)(ii) provides that if a creditor or other person provides a consumer with a written estimate of terms or costs specific to that consumer before the consumer receives the disclosures required under § 1026.19(e)(1)(i), the creditor or such person shall clearly and conspicuously state at the top of the front of the first page of the estimate in a font size that is no smaller than 12-point font: ''Your actual rate, payment, and costs could be higher. Get an official Loan Estimate before choosing a loan.'' The Bureau is deleting the proposed timing requirement that the written estimate be provided before the consumer has indicated an intent to proceed with the transaction. The Bureau believes that this requirement suggests that a written estimate could be provided even though the Loan Estimate had been provided. The Bureau believes receiving a written estimate after the Loan Estimate has been provided will confuse consumers and create compliance burdens for industry. The Bureau is modifying proposed § 1026.19(e)(2)(ii) in response to consumer advocacy groups' concern that pre-application worksheets formatted in a way that is substantially similar to the Loan Estimate or Closing Disclosure can cause consumer confusion. Section 1026.19(e)(2)(ii) provides that a written estimate of terms or costs may not be made with headings, content, and format substantially similar to form H–24 or H–25 of appendix H to Regulation Z.

With respect to the concerns raised about proposed form H–26(B), which would have provided a sample of the statement required by § 1026.19(e)(2)(ii) on a consumer-specific worksheet, the Bureau intended that the worksheet illustrated by proposed form H–26(B) provide an example of a worksheet that had a similar format as the proposed Loan Estimate. However, as discussed in greater detail in the section-by-section analysis of appendix H, the Bureau is concerned that worksheets similar in format to the Loan Estimate could confuse consumers, which was a concern raised by consumer advocacy group commenters. In addition, the Bureau is concerned that the sample caused confusion for industry commenters, which were concerned that the format of form H–26(B) would be required. As noted above, to address concerns raised by commenters about consumer confusion from worksheets similar in format to the Loan Estimate, the Bureau has modified § 1026.19(e)(2)(ii) to prohibit the use of a consumer-specific worksheet that is substantially similar in format to the Loan Estimate or the Closing Disclosure. Accordingly, the Bureau is not adopting proposed form H–26(B). The Bureau is, however, adopting the model form of the statement required by § 1026.19(e)(2)(ii), renumbered as form H–26. The Bureau believes that a creditor or other person providing consumer-specific written estimates may use forms they have already developed, provided that they add the disclaimer required by § 1026.19(e)(2)(ii) and that their forms are not substantially similar to form H–24 or H–25 of appendix H to Regulation Z.

With respect to the argument that consumers are becoming confused because current regulations prohibit provision of the RESPA GFE until the consumer has a specific property address, the Bureau notes that the final rule permits creditors to provide a consumer with a Loan Estimate without receiving information about the property address. As discussed in more detail above in the section-by-section analysis of § 1026.2(a)(3), the property address is not required to be received before a creditor may issue the Loan Estimate. Finally, with respect to concerns about the interactions between § 1026.19(e)(2)(ii) and the 2012 Loan Originator Proposal, the zero-zero alternative was not adopted in the Bureau's 2013 Loan Originator Final Rule.

19(e)(2)(iii) Verification of Information

The Bureau proposed in § 1026.19(e)(2)(iii) to prohibit creditors from requiring consumers to submit documents verifying information related to the consumer's application before providing the Loan Estimate. Section 1024.7(a)(5) of Regulation X currently provides that a creditor may collect any information from the consumer deemed necessary in connection with an application, but the creditor may not require, as a condition for providing a RESPA GFE, that the consumer provide supplemental documentation to verify the information the consumer provided on the application. HUD stated in its 2008 RESPA Final Rule that the prohibition was to prevent over-burdensome documentation demands on mortgage applicants, and to facilitate shopping by borrowers. 73 FR 68204, 68211 (Nov. 17, 2008).

The Bureau proposed to incorporate language similar to § 1024.7(a)(5) in the integrated disclosures rules in order to minimize the cost to consumers of obtaining Loan Estimates. The Bureau proposed § 1026.19(e)(2)(iii), which

would have provided that a creditor shall not require a consumer to submit documents verifying information related to the consumer's application before providing the disclosures required by § 1026.19(e)(1)(i).

The Bureau made this proposal pursuant to its authority under section 105(a) of TILA, section 19(a) of RESPA, and, for residential mortgage loans, section 129B(e) of TILA. The Bureau stated its belief in the proposal that proposed § 1026.19(e)(2)(iii) would effectuate the purposes of TILA by reducing the burden to consumers associated with obtaining different offers of available credit terms, thereby facilitating consumers' ability to compare credit terms, consistent with section 105(a) of TILA. The Bureau also stated that this proposed provision would be consistent with section 129B(e) of TILA because requiring documentation to verify the information provided in connection with an application increases the burden on borrowers associated with obtaining different offers of available credit terms, which is not in the interest of the borrower.

Proposed comment 19(e)(2)(iii)–1 would have explained that the creditor may collect from the consumer any information that it requires prior to providing the early disclosures, including information not listed in § 1026.2(a)(3)(ii). However, the proposed comment would have clarified that the creditor is not permitted to require, before providing the disclosures required by § 1026.19(e)(1)(i), that the consumer submit documentation to verify the information provided by the consumer. The proposed comment would have also provided examples, stating that the creditor may ask for the names, account numbers, and balances of the consumer's checking and savings accounts, but the creditor may not require the consumer to provide bank statements, or similar documentation, to support the information the consumer provides orally before providing the disclosures required by § 1026.19(e)(1)(i). Further, proposed comment 19(e)(2)(iii)–1 would have referenced § 1026.2(a)(3) and the related commentary for guidance on the definition of application.

The proposed provision did not generate much comment. A software vendor commenter sought clarification on whether a creditor must refuse verifying documentation a consumer brings to the creditor in anticipation of such documentation being needed. The Bureau does not believe that verifying documentation should be needed prior to issuing a Loan Estimate. However, the final rule does not prohibit the creditor from accepting verifying documentation if the consumer proffers such documentation, provided that it is not required by the creditor before the creditor provides the Loan Estimate.

As noted above in the section-by-section analysis of § 1026.2(a)(3), based on comments responding to the Bureau's proposed definition of application, the Bureau understands that some creditors currently require a purchase and sale agreement prior to issuing the RESPA GFE and the early TILA disclosures in purchase transactions.

The Bureau is concerned that some creditors may use the purchase and sale contract as verification documentation to support information that it has asked the consumer to provide in connection with the consumer's application, such as the sale price or the property address, before the creditor issues the Loan Estimate, although as noted in the section-by-section analysis of § 1026.2(a)(3), the practice may be permissible under current Regulation X for purposes of the RESPA GFE in limited cases. Final comment 19(e)(2)(iii)–1 explains that a creditor is not permitted to require, before providing the disclosures required by § 1026.19(e)(1)(i), that the consumer submit documentation to verify the information provided by the consumer. The Bureau is adopting § 1026.19(e)(2)(iii) based on the same intent on which HUD based § 1024.7(a)(5), which is to prevent overly burdensome documentation demands on mortgage applicants, and to facilitate shopping by the consumer.

The Bureau believes that requiring a consumer to submit a purchase and sale contract so that the creditor can obtain information it would otherwise obtain from the consumer or other sources may constitute overly burdensome documentation and inhibit shopping because under such a demand a consumer would be required to become obligated to the purchase of real estate prior to obtaining a reliable estimate of the cost of financing such purchase. The Bureau notes that the creditor may revise the estimates provided in the original Loan Estimate based on receipt of changed information under § 1026.19(e)(3)(iv)(A). Accordingly, the Bureau believes that requiring the consumer to provide a purchase and sale contract before issuing the Loan Estimate would be in contravention of the prohibition on requiring verifying documentation being finalized under § 1026.19(e)(2)(iii). The Bureau is adjusting comment 19(e)(2)(iii)–1 to clarify that the creditor may not require the consumer to provide a purchase and sale agreement to verify information provided by the consumer before providing the disclosures required by § 1026.19(e)(1)(i).

Final Rule

Accordingly, the Bureau is finalizing § 1026.19(e)(2)(iii) and comment 19(e)(2)(iii)–1 substantially as proposed. Section 1026.19(e)(2)(iii) provides that the creditor or other person shall not require a consumer to submit documents verifying information related to the consumer's application before providing the disclosures required by § 1026.19(e)(1)(i). Final comment 19(e)(2)(iii)–1 explains that the creditor or other person may collect from the consumer any information that it requires prior to providing the early disclosures before or at the same time as collecting the information listed in § 1026.2(a)(3)(ii) and provides illustrative examples. However, the creditor or other person is not permitted to require, before providing the disclosures required by § 1026.19(e)(1)(i), that the consumer submit documentation to verify the information collected from the consumer. The comment also provides illustrative examples, including an example involving a purchase and sale contract, as described above, and refers to § 1026.2(a)(3) and its commentary for guidance regarding the definition of application. The Bureau is adopting § 1026.19(e)(2)(iii) and comment 19(e)(2)(iii)–1 pursuant to its authority under section 105(a) of TILA, section 19(a) of RESPA, and for residential mortgage loans, section 129(B) of TILA.

19(e)(3) Good Faith Determination for Estimates of Closing Costs

The Bureau's Proposal

The Bureau proposed to amend Regulation Z by: (1) Incorporating and expanding existing Regulation X requirements that establish tolerance categories limiting the variation between the estimated amount of certain settlement charges included on the RESPA GFE and the actual amounts included on the RESPA settlement statement; and (2) applying these requirements to variations between the estimated amount of certain settlement charges included on the Loan Estimate and the actual amounts paid by or imposed on the consumer. Current Regulation X prohibits variations in origination charges and transfer taxes between the estimated amounts and the actual amounts unless one of six exceptions, such as a changed circumstance or a borrower-requested

change, applies.[194] The Bureau proposed to expand this zero percent tolerance category of settlement costs to include fees paid to affiliates of the creditor and fees paid to lender-required settlement service providers (*i.e.,* settlement service providers that the creditor requires the consumer to use).[195] Currently under Regulation X, these costs are in the ten percent tolerance category, which also includes recording fees and charges paid to non-lender-required third party settlement service providers where the borrower uses a lender-identified settlement service provider, including charges for owner's title insurance. Costs in the ten percent tolerance category could increase between the estimated amount and the amount actually paid by or imposed on the consumer so long as the sum of all charges paid by or imposed on the consumer in this category does not exceed the sum of all such charges included on the RESPA GFE by more than ten percent. 12 CFR 1024.7(e)(2). As discussed in greater detail in the section-by-section analysis of § 1026.19(e)(3)(i), the Bureau proposed to incorporate these changes in that section.

Under the proposal, fees for lender-required services for which a creditor permits the consumer to choose the provider and the consumer selects a settlement service provider identified by the creditor would remain in the ten percent tolerance category. Recording fees and owner's title insurance would also stay in the ten percent tolerance category. *See* the section-by-section analysis of § 1026.19(e)(3)(ii) below.

Further, similar to the current regulation, a cap would not be applied to certain settlement costs such as prepaid interest and property insurance premiums. This aspect of the proposal is discussed in greater detail in the section-by-section analysis of § 1026.19(e)(3)(iii) below. Lastly, similar to the current regulation, under the Bureau's proposal, creditors would continue to be able to rely on any of six exceptions such as changed circumstances and borrower-requested changes to adjust any estimated settlement cost subject to a tolerance if the creditor establishes that one of the six exceptions is the reason for the cost to increase beyond the applicable tolerance.

The Bureau's rationale was based on the reasons described in the proposal (summarized below), and in reliance on its authority to prescribe standards for ''good faith estimates'' under TILA section 128 and RESPA section 5, as well as its general rulemaking, exception, and exemption authorities under TILA sections 105(a) and 121(d), RESPA section 19(a), section 1032(a) of the Dodd-Frank Act, and, for residential mortgage loans, section 1405(b) of the Dodd-Frank Act and section 129B(e) of TILA.

The Bureau believed that creditors could develop accurate estimates of fees for settlement services charged by their affiliates and by lender-required providers, because creditors are aided by the increased level of knowledge and communication suggested by these types of relationships and the frequency of repeat business with a particular affiliate or lender-required settlement service provider. The Bureau also believed that lenders that were denying the opportunity of consumers to influence the quality and cost of settlement services through shopping by requiring consumers to use lender-required service providers should take greater responsibility for estimating settlement costs accurately and assume some of the risk of underestimation for failing to accurately estimate such costs.

The Bureau also believed that consumers benefit from having more reliable estimates of settlement costs. The Bureau believed that more reliable estimates are inherently beneficial. They enable consumers to make informed and responsible financial decisions. More reliable estimates also promote honest competition among industry providers that desire a fair and level playing field, and the existence of such a market for settlement services helps to prevent unnecessarily high settlement costs. Subjecting settlement costs to an enhanced reliability standard may also help to prevent financial surprises at the real estate closing that may greatly harm consumers.[196] The Bureau stated in the proposal that it believed that these benefits advance the principles upon which TILA and RESPA were founded, and advance the goals of the 2008 RESPA Final Rule, under which the current tolerance categories were established.

TILA. TILA section 128(b)(2)(A) requires creditors to provide good faith estimates of certain required disclosures not later than three business days after receipt of a consumer's written application for a closed-end mortgage loan that is also subject to RESPA. TILA section 128(b)(2)(D) also requires creditors to provide revised disclosures to consumers if the initially-disclosed APR becomes inaccurate, subject to a tolerance for accuracy, not later than three business days before consummation. TILA section 121(d) further establishes that the Bureau may create new tolerances for numerical disclosures other than the APR if the Bureau determines that such additional tolerances are necessary to facilitate compliance with TILA. Regulation Z § 1026.19(a)(1)(i) implements the good faith and delivery requirements of TILA section 128(b)(2)(A) in the context of certain mortgage loans. It requires creditors to make good faith estimates of the disclosures required by § 1026.18 by either delivering or placing the disclosures in the mail not later than the third business day after the creditor receives the consumer's written application.[197]

Although settlement charges have historically been the subject of RESPA, section 1419 of the Dodd-Frank Act amended TILA section 128(a) to require creditors to disclose: ''In the case of a residential mortgage loan, the aggregate amount of settlement charges for all settlement services provided in connection with the loan, the amount of charges that are included in the loan and the amount of such charges the borrower must pay at closing . . . and the aggregate amount of other fees or required payments in connection with the loan.'' 15 U.S.C. 1638(a)(17). The term ''settlement charges'' is not defined under TILA. This amendment expands the disclosure requirements of TILA section 128(a) beyond the cost of credit to include all charges imposed in connection with the mortgage loan. The Bureau stated in the proposal that the amendment made no distinction between whether those charges relate to the extension of credit or the real estate transaction, or whether those charges are imposed by the creditor or another party, so long as the charges arise in the context of the mortgage loan settlement.

[194] For a discussion of changed circumstances and borrower-requested changes, see the section-by-section analysis of § 1026.19(e)(3)(iv).

[195] As proposed, the term ''affiliate'' would have meant any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956, 12 U.S.C. 1841(k). 77 FR 51167, fn. 141.

[196] The Bureau stated in the proposal that settlement service providers such as appraisal management companies and title companies may be affiliated with the creditor. Because fees paid for appraisals and title-related services constitute a large percentage of total settlement service fees paid by consumers at consummation, permitting these fees to vary by ten percent may significantly increase the actual cost of obtaining a mortgage.

[197] Section 1026.18 of Regulation Z includes several disclosures related to the cost of credit, such as the amount financed, finance charge, and annual percentage rate. Section 1026.18(c)(3) also provides that the itemization of amount financed need not be delivered if the RESPA GFE is provided.

RESPA and HUD's 2008 RESPA Final Rule. A stated purpose of RESPA is that consumers should receive effective advance disclosures of settlement costs.[198] Further, the statute establishes the requirement that lenders must provide consumers with good faith estimates of settlement costs, which include most fees charged in connection with a real estate settlement, within three days of receiving a consumer's application for a mortgage loan.[199] HUD amended Regulation X with its 2008 RESPA Final Rule after a ten-year investigatory process that found RESPA's stated purposes were undermined by market forces. HUD found that cost estimates appearing on the RESPA GFE could be significantly lower than the amount ultimately charged at settlement, even though in most cases loan originators could estimate final settlement costs with great accuracy. *See* 73 FR 14030, 14039 (March 14, 2009). Further, consumers were often unable to challenge increases in settlement costs because many consumers found out about the increases immediately before settlement, which was the point in time where they were in the weakest bargaining position.

Since the enactment of the 2008 RESPA Final Rule, however, concerns were identified that could undermine its goals. The first of such concerns was the treatment of fees paid to lender affiliates. The inclusion of such fees in the ten percent tolerance category means that they could increase by as much as ten percent prior to the real estate closing, in addition to increases based on changed circumstances and borrower-requested changes. The Bureau stated in the proposal that given that the affiliate relationship is inherently beneficial to the creditor, permitting affiliate fees to vary by as much as ten percent without a need to justify the increase may incent creditors to raise fees at closing solely to obtain all money available up to the ten percent tolerance.

The second of these concerns centers on the ability of consumers to shop for settlement service providers. As discussed above in the section-by-section analysis of § 1026.19(e)(1)(vi), HUD intended to promote shopping by giving some information to the consumer as a starting point to shop. It promulgated the requirement that loan originators must provide borrowers with a written list of providers if the loan originator permits a borrower to shop for third-party settlement services. In the proposal, the Bureau stated that the concern is that creditors have used the requirement to direct consumers to use only the providers that are on the written list, thereby turning the lists into ''closed lists'' of ''preferred providers,'' and denying consumers the ability to influence the cost and quality of settlement services through shopping.

Dodd-Frank Act. As discussed above, sections 1032(f), 1098, and 1100A of the Dodd-Frank Act require integration of the disclosure provisions under TILA and RESPA, and sections 1098 and 1100A of the Act further provide that the purpose of the integrated disclosures is ''to facilitate compliance with the disclosure requirements of [RESPA] and [TILA], and to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures.'' The Bureau stated its belief in the proposal that these amendments require integration of the regulations related to the accuracy and delivery of the disclosures, as well as their content.

During the Small Business Review Panel process, several small entity representatives expressed concern about the unintended consequences that may result from applying the zero-percent tolerance rule currently under Regulation X to affiliates of the creditor or mortgage broker and to providers selected by the creditor,[200] and the Small Business Review Panel recommended that the Bureau consider alternatives that would increase the reliability of cost estimates while minimizing the impacts on small entities and solicit comment on the effectiveness of the current tolerance rules.[201]

Consistent with the Small Business Review Panel's recommendation, the Bureau solicited comment on all aspects of the proposal, including the cost, burden, and benefits to consumers and to industry regarding the proposed revisions to the good faith requirements, and whether the current tolerance rules have sufficiently improved the reliability of the estimates that creditors give consumers, while preserving creditors' flexibility to respond to unanticipated changes that occur during the loan process. The Bureau solicited comment on the frequency, magnitude, and causes of settlement cost increases. The Bureau also requested comment on any alternatives to the proposal that would further the purposes of TILA, RESPA, and the Dodd-Frank Act and provide consumers with more useful disclosures.

Comments

Consumer advocacy groups did not provide comments on the proposed application of the zero percent tolerance category of settlement costs to fees paid to affiliates of the creditor and fees paid to settlement service providers that creditors require consumers to use.[202] But the Bureau received numerous comments from industry commenters representing a wide range of segments of the mortgage origination industry on both the Bureau's rationale to expand the zero percent tolerance category of settlement costs to fees paid to lender affiliates and lender-required providers and the specific provisions of § 1026.19(e)(3). Provision-specific comments are addressed in the section-by-section analysis of each subsection of § 1026.19(e)(3), as applicable. This general section-by-section analysis of § 1026.19(e)(3) addresses comments received on the Bureau's rationale to expand the zero percent tolerance category of settlement costs to fees paid to lender affiliates and lender-required providers.

Industry commenters expressed mixed views on industry's ability to adapt to the change in the zero percent tolerance category of settlement charges, the impact of the change on competition and consumers, and alternatives. As discussed in more detail below, industry commenters questioned the Bureau's belief about the ability of creditors to accurately estimate the charges imposed by its affiliates and lender-required providers. Some commenters asserted that the Bureau was basing its proposal on anecdotal evidence, rather than systemic data. Commenters, including a large bank commenter, also questioned the Bureau's legal authority to establish a zero percent tolerance category for any settlement charge. They asserted that RESPA permits a creditor to provide consumers an estimate of settlement costs, rather than requiring a creditor to disclose the exact amount of a settlement charge early in the loan origination process.

Compliance impact. Commenters expressed mixed views about the ability of industry to comply with the expansion of the zero percent tolerance category of settlement charges to

[198] RESPA section 2(b). 12 U.S.C. 2601.

[199] RESPA section 5(c). 12 U.S.C. 2604.

[200] *See* Small Business Review Panel Report at 34, 37–38, 40, 64, 67, and 71.

[201] *Id.* at 29.

[202] Two national consumer advocacy groups, however, provided comments on the aspect of the proposal that would have kept prepaid interest in the category of settlement costs not subject to tolerances at all. For a detailed discussion of this issue, see the section-by-section analysis of § 1026.19(e)(3)(iv) below.

include fees paid to lender affiliates and lender-required settlement service providers. A regional bank holding company stated that it supported the accuracy thresholds on the Loan Estimate, but that industry should be given at least 18 months to comply with the new rules.

Many industry commenters asserted that the proposed tolerance rules will be disruptive and costly because it would be difficult to estimate fees paid to lender-affiliates and lender-required service providers accurately early in the loan origination process. The SBA argued that the Bureau should maintain the current ten percent cushion for third-party charges because the small entities that participated in the Small Business Review Panel process stated that they were currently able to comply with HUD's 2008 RESPA Final Rule. A number of the commenters asserted that the current tolerance rules have largely solved the problem of large settlement cost increases at closing and that if the Bureau did not have evidence of widespread or systemic abuse of consumers, the Bureau should not change the current rules.

Industry commenters expressed concern about the impact of unforeseen circumstances that could change the cost estimates quoted on the original Loan Estimate, and about a creditor's ability to estimate affiliate fees and lender-required service provider fees. Some commenters suggested that unforeseen circumstances are especially likely to be an issue in rural areas where properties are often unique, title work frequently includes more variables, and appraisal costs vary because it is difficult to gather comparable sales data. Other commenters suggested that costs may be difficult to estimate initially if the creditor is working outside of the creditor's market and lacks familiarity with the prices charged by local settlement service providers.

Commenters also expressed concern that the original estimates could change because of overall market forces, such as market-based price fluctuations or a change in the availability of a lender-required service provider. A national provider of title insurance and settlement services asserted that even under well-defined vendor agreements for services such as providing an appraisal, obtaining a flood risk determination, or obtaining the consumer's credit report, fees may vary slightly from time to time. Some commenters, including industry trade associations representing banks and mortgage lenders, suggested that section 8 of RESPA, the statutory provision in RESPA that prohibits kickbacks, referral fees and similar considerations being exchanged in the context of referrals for settlement service business, is one of the reasons that explains why the creditor is unable to control settlement service fees.

Ability to estimate affiliates' fees. Several industry commenters, including mortgage lenders, a credit union, an industry trade association representing affiliated real estate businesses, and an industry association representing realtors, expressed support for the Bureau's rationale for including fees paid to affiliates in the zero percent tolerance category. They agreed that affiliated business relationships facilitate greater communication and coordination than a relationship between independent entities operating at arm's length. But other commenters expressed concern that unless the creditor-affiliate relationship is one based on actual control of the creditor over the affiliate, creditors do not control the affiliates' cost.

Ability to estimate fees of lender-required providers. Many commenters cited the lack of knowledge about a non-affiliated service provider's fees and control over the provider, as the primary reason they are concerned about expanding the zero percent tolerance category of settlement charges to include fees paid to lender-required providers. As noted above, some mortgage lenders, a credit union, and an industry trade association representing realtors supported the Bureau's rationale for including affiliate fees in the zero percent tolerance category. But they expressed concern that the same level of knowledge of and control over costs does not exist between creditors and unaffiliated service providers, even in situations where the creditor selects the unaffiliated service providers.

Competitive impact. Commenters also expressed mixed views about the competitive impact of the expansion of the zero percent tolerance category of settlement fees. An industry trade association representing independent land title agents and a title company commenter expressed support for the proposal's potential to encourage consumer shopping, and thereby increase competition. Some commenters, including the SBA and several industry trade associations representing banks and mortgage lenders expressed concerns that the proposed rule would increase affiliation and decrease competition, thereby harming small, independent settlement service providers.

But other commenters believed that there would be a decrease in affiliation. An industry trade association representing Federally-charted credit unions expressed concern that although the expansion may decrease affiliation, well-established settlement service providers, rather than small entities, will reap the benefits from de-affiliation, because creditors would be incented to seek services from established providers that can offer fee guarantees or provide reimbursements if tolerance thresholds are crossed. A Federal credit union commenter expressed concern that small creditors may be negatively impacted by the proposed rules because large creditors can use affiliation to control costs and provide accurate estimates, while small creditors would have to rely on unaffiliated settlement service providers that charge fees small creditors do not manage or control.

As noted above, several industry commenters supported the Bureau's rationale for the inclusion of fees paid to lender affiliates. But the commenters expressed concern about whether the change would lead to an unfair marketplace if only fees paid to lender-required affiliates were subject to the zero percent tolerance rule. The commenters asserted that the same tolerance rules should apply to affiliated and unaffiliated service providers equally.

Impact on consumers. The proposal's potential impact on consumers also generated mixed reactions from industry. One large bank commenter stated that imposing a zero percent tolerance rule when the consumer is not given a choice in selecting the service provider and the creditor has a degree of control over the provider is the right thing to do for the consumer. An industry trade association representing independent land title agents and a title company commenter supported expanding the zero percent tolerance category of fees to include fees paid to affiliates because they believed that it would encourage consumer shopping and promote consumer choice. The trade association commenter stated that it conducted a survey of its members and found that over half of the respondents thought that it was appropriate to subject affiliate fees to a zero percent tolerance on cost increases.

In joint comments, associations representing State consumer financial services regulators expressed support for the expansion. The commenters stated that applying the zero percent tolerance rule to fees of lender affiliates and lender-required service providers will ensure consumers are not subject to abusive practices that were prevalent in the past, and it will additionally incent creditors to provide consumers with accurate Loan Estimates and Closing

Disclosures. The commenters stated that the proposal should lead to a healthier residential mortgage market because better informed consumers provided with accurate disclosures make better choices and are less likely to default, and creditors will have a less cumbersome and more certain process, reducing the risk of error and uncertainty associated with the disclosure process. The commenters, however, stated that the tolerance thresholds should be adjusted if they cause closings to be delayed unnecessarily because industry has raised concerns about possible disruptions and inconveniences to consumers flowing from the combination of the Bureau's proposed changes to the tolerance rules and the timing requirement for delivery of the Loan Estimate.

Many industry commenters asserted that expanding the zero percent tolerance category of settlement costs to include fees paid to lender affiliates and lender-required service providers would harm consumers. They asserted that if creditors are held to a zero percent tolerance for fees paid to lender affiliates and lender-required nonaffiliated service providers, creditors may either increase their loan origination costs or quote higher third-party fees as a hedge against losses if the actual cost for a settlement service in the zero percent tolerance category charged at settlement is greater than the cost estimate disclosed on the Loan Estimate. A State housing finance agency expressed concern that overestimating third-party fees would harm consumers, because it would make the cost of the loan look higher than it actually is to consumers. An industry trade association representing community banks expressed concern that creditors may collude on prices with settlement service providers because the proposal creates pressure to disclose accurate cost estimates, and such collision would ultimately harm consumers.

As noted above, industry trade associations representing banks and mortgage lenders suggested creditors may increase affiliation to manage settlement costs. The commenters asserted this, in turn, may mean less credit availability for consumers because increased affiliation would raise the risk of creditors exceeding the points and fees thresholds for qualified mortgages under the Bureau's 2013 ATR Final Rule,[203] and for qualified residential mortgages under a credit risk retention proposal issued by other Federal regulators.[204] The SBA expressed concern that the negative impact of affiliation on small, independent service providers may harm consumers by decreasing competition.

Still other commenters, including the SBA and industry trade associations representing banks, argued that the proposed application of the zero percent category of settlement costs would cause an increase in the number of revised Loan Estimates being issued. They asserted that this, in turn, could increase consumer confusion, cause information overload, create closing delays, and increase the cost of obtaining a loan because creditors would pass the cost of producing the revised Loan Estimates to consumers.

Alternatives. Commenters presented a number of alternatives, including retaining the current tolerance rules. Several commenters suggested that the Bureau narrowly define the term ''affiliate'' so that the zero percent tolerance category of fees would only be expanded to include fees paid to affiliates in which the creditor has a majority ownership interest. As noted above, several commenters asserted that the Bureau should treat affiliated and unaffiliated settlement service providers equally. One such commenter suggested that the Bureau subject both affiliate provider fees and non-affiliated provider fees to a five percent tolerance on cost increases.

Still other industry commenters advocated for more fundamental changes. A number of mortgage lenders and mortgage broker commenters submitted similar comments asserting that the current tolerance rules generally caused consumer harm, and it would be better for mortgage transactions to be subject to the rules that applied before HUD's 2008 RESPA Final Rule became effective. A national industry association representing mostly mortgage brokers stated that a materiality standard, which measures the amount of a cost increase against the loan amount, would be a better way to address limitations on settlement cost increases.

A State association representing escrow agents asserted that tolerance rules should only apply to loan costs. If a consumer must pay the same fee in a cash transaction, then the fee should not be subject to limitations on increases. Some commenters, including industry trade associations representing banks and mortgage lenders, requested that the Bureau permit fees in the zero percent tolerance category to increase so long as the aggregate amount of these fees do not increase. The commenters stated that the result would streamline the disclosures and consumers would not be harmed because the total amount the consumer pays would be the same.

Finally, industry trade associations representing banks and mortgage lenders asserted that the Bureau should consider whether to offer lenders an exemption from compliance with section 8 of RESPA so lenders could negotiate with third-party settlement service providers and offer consumers settlement service packages with guaranteed prices. The trade associations representing banks and mortgage lenders expressed the view that relief from section 8 liability is needed so creditors do not accidentally exceed the points and fees thresholds for qualified mortgages and qualified residential mortgages.

Final Rule

The Bureau has considered these comments, but is finalizing the proposed expansion of the current zero percent tolerance category of settlement costs to affiliate fees and fees of lender-required service providers. As discussed in greater detail below in the section-by-section analysis of § 1026.19(e)(3)(i), the final rule generally provides that any affiliate charge or charge of a lender-required provider paid by or imposed on the consumer that exceeds the amount for such charge estimated on the disclosures required by § 1026.19(e)(1)(i) is not in good faith, subject to legitimate cost revisions such as changed circumstances or borrower-requested changes.

As noted, several industry commenters expressed support for the Bureau's rationale to expand the zero percent tolerance category of settlement costs to fees of lender affiliates. The Bureau also does not believe that expanding the zero percent tolerance category will negatively impact credit availability. As previously noted, some industry trade associations suggested creditors may increase affiliation to manage settlement costs. The commenters asserted this, in turn, may mean less credit availability for consumers, because increased affiliation increase the risk that mortgages would not be able to be qualified mortgages or qualified residential mortgages because creditors would exceed the points and fees thresholds. Also as noted above,

[203] 78 FR 6408 (Jan. 30, 2013).

[204] 76 FR 24090 (Apr. 29, 2011). On August 29, 2013, the agencies announced in a joint press release that a revised NPRM on the rule has been issued. *See e.g.,* Board of Governors of the Federal Reserve System, *et al.* Agencies revise proposed risk retention rule, available at *http://www.federalreserve.gov/newsevents/press/bcreg/20130828a.htm* (last accessed Aug. 29, 2013).

some commenters suggested that providing industry with relief from RESPA section 8 liability would be an effective way to solve the problem, because creditors and settlement service providers could agree on prices in advance and avoid exceeding the points and fees threshold.

The Bureau believes that the substantial communication that already exists between creditors and their affiliates would enable creditors to determine, early in the mortgage origination process, whether a loan would exceed the points and fees threshold tests. Accordingly, the Bureau is not persuaded that the proposal would negatively impact credit availability. The Bureau also believes that the presence of this points and fees threshold may incent creditors to strengthen the already-substantial communication with their affiliates to obtain affiliate cost information with greater accuracy early in the process, which would, in turn, facilitate compliance with the final rule. In addition, the Bureau does not have information that the lack of such an exemption has had any detrimental effect on creditors' ability to comply with the current tolerance rules under Regulation X.

Further, there is a longstanding debate about whether RESPA section 8 liability casts a shadow over creditors and settlement service providers such that it hinders the ability of creditors to comply with tighter tolerances for settlement charges. As noted above, some industry trade associations suggested that creditors and settlement service providers should be provided with relief from section 8 liability if they could guarantee the prices of certain settlement services. HUD proposed a similar solution in 2002,[205] and a strong backlash from independent settlement service providers and consumer advocacy groups ensued.[206]

Additionally, the Bureau believes that if a creditor denies consumers the opportunity to influence the quality or cost of settlement services through shopping by requiring consumers to use lender-selected settlement service providers, then the creditor should take responsibility for making accurate estimations and assuming the risk of under-estimation. As noted above, one large national provider of title insurance and settlement services stated that creditors enter into ''well-defined'' vendor agreements with lender-required service providers. The Bureau believes that the existence of such agreements supports the Bureau's rationale that creditors are in a superior position of knowledge with respect to the expected costs of the services of lender-required providers. The Bureau acknowledges that unforeseen circumstances and market forces could render estimates of settlement services inaccurate. To the extent that the variation is due to a changed circumstance or borrower-requested change, the final rule permits a creditor to revise the cost estimate it originally provided to the consumer. The Bureau recognizes that the ten percent cushion could help creditors and settlement service providers manage the risk of price fluctuations associated with market forces. But the Bureau believes creditors' ability to obtain information about their affiliate's or preferred provider's pricing means that creditors do not need the ten percent cushion under the current tolerance rules to manage such risk, because the final rule permits revisions based on legitimate changed circumstances and borrower-requested changes.

With respect to the concerns expressed by some commenters about the competitive consequences of applying the zero percent tolerance category to affiliate fees and fees paid to lender-required service providers, the Bureau does not believe that this final rule will threaten competition by pushing small, independent settlement service providers out of business. The Bureau believes that this final rule may actually enhance competition in the market for settlement service providers. If a creditor does not want the zero percent tolerance rule to apply to the cost of a lender-required service, a creditor must permit the consumer to select the settlement service provider for that service, and the service provider cannot be an affiliate of the creditor. Further, if the creditor permits a consumer to select the settlement service provider, the creditor must provide the consumer with a written list identifying available providers, which as illustrated in the model written list the Bureau is finalizing in this final rule as form H–27 of appendix H to Regulation Z, would expressly disclose to the consumer that the consumer may choose a different settlement service provider. The Bureau believes that these provisions would promote consumer shopping and competition among settlement service providers.

The Bureau also believes that the structural flaws in HUD's 2008 RESPA Final Rule the Bureau identified in the proposal and described in this section-by-section analysis justify the Bureau taking this action in this final rule, even though the Bureau's empirical support rests on anecdotal evidence, rather than systemic data, because of the significant harm that can result from increased closing costs to consumers. Further, with respect to the argument that RESPA permits a creditor to provide consumers with an estimate of settlement costs, rather than requiring a creditor to disclose the exact amount of a settlement charge early in the loan origination process, the Bureau observes that the final rule incorporates the current tolerance rules' exceptions (*i.e.,* the amount of settlement charges subject to the zero percent tolerance category, as well as the ten percent tolerance category, may change due to events such as changed circumstances and borrower-requested changes).

With respect to the argument that an unintended consequence of the Bureau's proposal would be that creditors would increase their origination charges to compensate for increased costs due to settlement charges exceeding the expanded zero percent tolerance category of settlement costs, the Bureau doubts that creditors will, in fact, incur such increased costs for the reasons already discussed and also believes that competition among creditors should be an effective countervailing force to prevent creditors using affiliates from charging higher interest rates on their loans. The Bureau also doubts that the final rule will pressure creditors and settlement service providers to collude on prices or to limit business relationships to ones with established settlement service providers that can offer price guarantees or provide reimbursements if tolerance thresholds are crossed. The Bureau believes that current restrictions under section 8 of RESPA on kickbacks, referral fees, and similar considerations should deter such behavior.

Some commenters expressed concern that creditors would have to issue more revised Loan Estimates, and the Bureau acknowledges that this is a possibility. However, the Bureau believes that this result is adequately counter-balanced by the benefits that will flow to consumers from receiving more accurate cost estimates and better enabling consumer shopping. The Bureau believes that adopting the proposal would mean that consumers would have more certainty about their settlement costs early in the loan process, which can enhance the ability of consumers to shop among creditors. The Bureau does not believe that expanding the zero percent tolerance category as proposed would delay closings, which concerned some commenters, because as noted above, creditors would be able to revise cost

[205] 67 FR 49134 (Jul. 29, 2002).

[206] 73 FR 14030, 14032 (Mar. 14, 2008).

estimates subject to a tolerance in the event of a changed circumstance or borrower-requested change. In addition, as discussed in greater detail below in the section-by-section analysis of § 1026.19(e)(4), this final rule does not prohibit disclosing revised costs that have changed due to a changed circumstance or borrower-requested change on the Closing Disclosure provided under § 1026.19(f)(1)(i).

The Bureau does not believe that the final rule must be adjusted to subject all affiliated and unaffiliated businesses to a zero percent tolerance because it does not believe that this final rule will treat affiliated businesses unfairly. As discussed above, the application of the zero percent tolerance category of settlement charges to affiliated settlement service providers and lender-required unaffiliated settlement service providers is based on the premise that in both cases, creditors that use affiliates or unaffiliated providers they require are in a superior position of knowledge with respect to the expected costs of the services of those providers and can provide more accurate disclosures than they are with respect to the expected costs of services of unaffiliated and non-required providers. It is not based merely on the premise that creditors should be able to estimate more accurately all settlement charges. Additionally, because the Bureau's justification is not primarily based on the existence of actual control, the Bureau does not believe that ''affiliates'' should be defined to include only entities in which the creditor holds a majority ownership interest.

The Bureau also does not believe that fundamental changes must be made to the current tolerances framework on charges for settlement services. As noted above, the current tolerance rules resulted from HUD's ten-year-long investigation of problems in the settlement services industry. For reasons discussed above, the Bureau believes that it is reasonable to expect creditors to estimate affiliate fees and fees paid to service providers required by the creditors as if they were estimating their own fees. In addition, such accurate estimates will benefit consumers because accurate estimates will enable consumers to make more informed comparisons among different loans, thus facilitating shopping. Therefore, the Bureau does not believe it is appropriate to permit fees in the zero percent tolerance category to increase so long as the aggregate amount of these fees does not increase. Further, for the same reasons, the Bureau does not believe other alternative fundamental changes raised in the comments, such as setting limitations on cost increases based on the materiality of the change, changing the zero percent tolerance rule to a five percent tolerance rule, or limiting the application of the tolerance rules to loan costs, are appropriate.

Legal authority. The Bureau is adopting in this final rule the expansion of the zero percent tolerance category generally as proposed, with the modifications described below, pursuant to its authority to prescribe standards for ''good faith estimates'' under TILA section 128 and RESPA section 5, as well as its general rulemaking, exception, and exemption authorities under TILA sections 105(a) and 121(d), RESPA section 19(a), section 1032(a) of the Dodd-Frank Act, and, for residential mortgage loans, section 1405(b) of the Dodd-Frank Act and section 129B(e) of TILA.

For the reasons discussed above, the Bureau believes that expanding the zero percent tolerance category of settlement charges to include affiliate charges and charges of lender-required service providers is consistent with TILA's purpose in that it will ensure that the cost estimates are more meaningful and better inform consumers of the actual costs associated with obtaining credit. The Bureau also believes that this final rule will effectuate the statute's goals by ensuring more reliable estimates, which will increase the level of shopping for mortgage loans and foster honest competition for prospective consumers among financial institutions. The Bureau further believes that this final rule will prevent potential circumvention or evasion of TILA by penalizing underestimation to gain a competitive advantage in situations where TILA requires good faith.

As noted above, section 121(d) of TILA generally authorizes the Bureau to adopt tolerances necessary to facilitate compliance with the statute, provided such tolerances are narrow enough to prevent misleading disclosures or disclosures that circumvent the purposes of the statute. The Bureau has considered the purposes for which it may exercise its authority under TILA section 121(d) and, based on that review and for reasons discussed above, the Bureau believes that the tolerance categories adopted in this final rule are appropriate, will facilitate compliance with the statute by providing bright-line rules for the determination of ''good faith'' based on the knowledge of costs that creditors have, or reasonably should have, and prevent misleading disclosures. Additionally, the Bureau believes that the final rule is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b), because providing consumers with more accurate estimates of the costs of the mortgage loan transaction will improve consumer understanding and awareness of the mortgage loan transaction through the use of disclosure. Section 129B(e) of TILA generally authorizes the Bureau to adopt regulations prohibiting or conditioning terms, acts, or practices relating to residential mortgage loans that are not in the interest of the borrower. The Bureau has considered the purposes for which it may exercise its authority under TILA section 129B(e). Based on that review and for reasons discussed above, the Bureau believes that the regulations are appropriate because unreliable estimates are not in the interest of the borrower.

Section 19(a) of RESPA authorizes the Bureau to prescribe regulations and make interpretations to carry out the purposes of RESPA, which include more effective advance disclosure of settlement costs. The Bureau has considered the purposes for which it may exercise its authority under RESPA section 19(a). Based on that review and for reasons discussed above, the Bureau believes that the final rule is appropriate. It will ensure more effective advance disclosure of settlement costs by requiring creditors to disclose accurate estimates when such creditors are in a position to do so. Contrary to assertions made by certain commenters about the Bureau's authority to impose zero percent tolerance on any settlement charge, the Bureau's authority is broad and, as noted above, resides in a number of statutes.

19(e)(3)(i) General Rule

As discussed above, Regulation X currently provides that the amounts imposed for certain settlement services and transfer taxes may not exceed the amounts included on the RESPA GFE, unless certain exceptions are met. The items included under this category are generally limited to charges paid to creditors and brokers, in addition to transfer taxes. The Bureau proposed to incorporate the zero percent tolerance rule in Regulation X in proposed § 1026.19(e)(3)(i). Further, as discussed above in the general section-by-section analysis of § 1026.19(e)(3), the Bureau proposed to expand the scope of the zero percent tolerance category to include fees paid to affiliates and lender-required service providers. Legitimate cost revisions when an unexpected event occurs, such as a changed circumstance or a change

requested by the consumer, would permit fees subject to the zero percent tolerance to increase from their initial estimates.

Proposed § 1026.19(e)(3)(i) would have provided that the charges paid by or imposed on the consumer may not exceed the estimated amounts of those charges required to be disclosed under § 1026.19(e)(1)(i), subject to permissible reasons for revision provided in § 1026.19(e)(3)(iv), and except as otherwise provided under § 1026.19(e)(3)(ii) and (iii). Proposed comment 19(e)(3)(i)–1 would have explained that § 1026.19(e)(3)(i) imposes the general rule that an estimated charge disclosed pursuant to § 1026.19(e) is not in good faith if the charge paid by or imposed on the consumer exceeds the amount originally disclosed. Although proposed § 1026.19(e)(3)(ii) and (e)(3)(iii) would have provided exceptions to the general rule for certain types of charges, the comment would have explained that those exceptions generally would not apply to: (1) Fees paid to the creditor; (2) fees paid to a broker; (3) fees paid to an affiliate of the creditor or a broker; (4) fees paid to an unaffiliated third party if the creditor did not permit the consumer to shop for a third party service provider; and (5) transfer taxes.

Proposed comment 19(e)(3)(i)–2 would have provided guidance on the issue of whether an item is ''paid to'' a particular person. In the mortgage loan origination process, individuals often receive payments for services and subsequently pass those payments on to others. Similarly, individuals often pay for services in advance of the real estate closing and subsequently seek reimbursement from the consumer. This proposed comment would have clarified that fees are not considered ''paid to'' a person if the person does not retain the funds and would have provided examples. Proposed comment 19(e)(3)(i)–3 referred to other provisions addressing the distinction between transfer taxes and recording fees.

Proposed comment 19(e)(3)(i)–4 would have provided examples illustrating the good faith requirement in the context of specific credits, rebates, or reimbursements. The proposed comment would have clarified that an item identified, on the disclosures provided pursuant to § 1026.19(e), as a payment from a creditor to the consumer to pay for a particular fee, such as a credit, rebate, or reimbursement would not be subject to the good faith determination requirements in § 1026.19(e)(3)(i) or (ii) if the increased specific credit, rebate, or reimbursement actually reduced the cost to the consumer. The proposed comment would have further clarified that specific credits, rebates, or reimbursements could not be disclosed or revised in a way that would otherwise violate the requirements of § 1026.19(e)(3)(i) and (ii). The proposed comment would have illustrated these requirements with examples.

Proposed comment 19(e)(3)(i)–5 would have clarified how to determine ''good faith'' in the context of lender credits. The proposed comment would have explained that the disclosure of ''lender credits,'' as identified in § 1026.37(g)(6)(ii), is required by § 1026.19(e)(1)(i). The proposed comment would have also explained that lender credits are payments from the creditor to the consumer that do not pay for a particular fee on the disclosures provided pursuant to § 1026.19(e)(1)(i). The proposed comment would have further clarified that these non-specific credits are negative charges to the consumer—as the lender credit decreases the overall cost to the consumer increases. Thus, under the proposal an actual lender credit provided at the real estate closing that is less than the estimated lender credit provided pursuant to § 1026.19(e)(1)(i) would have been an increased charge to the consumer for purposes of determining good faith under § 1026.19(e)(3)(i). The proposed comments would have illustrated these requirements with examples. The proposed comment would have also included a reference to § 1026.19(e)(3)(iv)(D) and comment 19(e)(3)(iv)(D)–1 for a discussion of lender credits in the context of interest rate dependent charges.

Comments

The Bureau received a number of comments on its proposal to incorporate aspects of the current zero percent tolerance under Regulation X in this final rule. The comments addressed the Bureau's proposal to keep transfer taxes in the settlement costs subject to the zero percent tolerance category, the treatment of ''no cost'' loans, the treatment of lender credits and specific credits, and the definition of ''affiliate.''

A number of industry commenters asserted that transfer taxes should not be subject to a zero percent tolerance. The commenters included industry trade associations representing banks and mortgage lenders, individual large banks, community banks, mortgage lenders, mortgage brokers, a rural creditor, and settlement and title agents. The commenters asserted that transfer taxes are neither paid to, nor set by, the creditor. The commenters asserted that the amounts charged for transfer taxes vary among different State and local jurisdictions, provisions of the real estate purchase and sale contract, and transaction-specific factors, like changes in the loan amount, and locality-specific factors, such as local law or custom that determines if the seller or consumer is ultimately responsible for paying the transfer tax.

Some industry commenters, including industry trade associations representing banks and mortgage lenders, asserted that ''no cost'' loans should not be subject to tolerance rules because the creditor finances the consumer's closing costs. Industry commenters also expressed confusion about the treatment of lender and specific credits. They sought various clarifications about specific credits, including how to determine when a creditor has committed a tolerance violation regarding specific credits, how to disclose these credits on the Loan Estimate, and whether changed circumstances would apply to lender credits and specific credits.

A State manufactured housing trade association sought an exemption that would permit creditors to decrease the amount of lender credits actually provided to the consumer at closing without causing a tolerance violation in transactions subject to the Federal Housing Administration's streamlined refinancing program and other similar programs. The trade association commenter explained that the program guidelines limit the amount of cash a creditor can pay to the consumer at closing. Accordingly, the creditor may need to reduce the amount of the actual lender credit at the real estate closing to remain in compliance with program guidelines. The trade association commenter stated that if the reduction was considered a tolerance violation, creditors may respond by reducing the number of rate lock offers on these transactions.

Some commenters, including an individual title company commenter, suggested that the Bureau define the term ''affiliate.'' Lastly, the Bureau received requests from some title company commenters that sought an exemption from the proposed general rule with respect to the treatment of payments that affiliated title companies receive at closing that are disbursed to service providers not affiliated with the lender as payment for services performed by the unaffiliated service providers on behalf of the affiliated title companies.

Final Rule

The Bureau has considered the comments, and is adopting § 1026.19(e)(3)(i) substantially as proposed. Section 1026.19(e)(3)(i) provides that an estimated closing cost disclosed pursuant to § 1026.19(e) is in good faith if the charge paid by or imposed on the consumer does not exceed the amount originally disclosed under § 1026.19(e)(1)(i), subject to permissible reasons for revision permitted under § 1026.19(e)(3)(iv), such as a changed circumstance or a borrower-requested change, and except as otherwise provided under § 1026.19(e)(3)(ii) and (iii).

The adoption of the final rule means that for purposes of conducting the good faith analysis, the creditor compares the actual charge paid by or imposed on the consumer to the estimated amount disclosed in the original Loan Estimate. If the originally estimated amount changed due to one of the valid reasons for revision set forth in this final rule, *e.g.,* a changed circumstance or borrower-requested change, the creditor may compare the actual charge paid by or imposed on the consumer with the revised estimated amount, provided that the creditor provides the revised amount pursuant to the redisclosure requirements in this final rule, discussed in greater detail below in the section-by-section analysis of § 1026.19(e)(4). The Bureau has adjusted the text of § 1026.19(e)(3)(i) to harmonize the regulatory text with the related commentary.

Comment 19(e)(3)(i)–1 is adopted substantially as proposed, with minor changes to enhance clarity. The Bureau has added a new comment 19(e)(3)(i)–2 to explain that for purposes of § 1026.19(e), a charge ''paid by or imposed on the consumer'' refers to the final amount for the charge paid by or imposed on the consumer at consummation or settlement, whichever is later. As discussed in greater detail in the section-by-section discussion of § 1026.19(f)(1)(ii), some industry commenters expressed concern about the ability of creditors to determine the final cost for certain settlement services three business days before consummation, because in some jurisdictions, settlement does not occur until after consummation, and costs could change between consummation and settlement. The Bureau understands that recording fees, which are subject to the ten percent tolerance category, are an example of such costs that could change between consummation and settlement.

The Bureau is concerned that by not clarifying what a charge ''paid by or imposed upon the consumer'' means, the proposed rule would not have adequately accounted for changes in actual closing costs in jurisdictions where consummation and settlement occur at different times, which in turn, could complicate the creditor's good faith analysis under § 1026.19(e)(3)(i) and (ii). Accordingly, the Bureau believes that compliance will be facilitated if the Bureau clarifies that for purposes of § 1026.19(e)(3), a charge ''paid by or imposed on the consumer'' refers to the final amount for the charge paid by or imposed on the consumer at consummation or settlement, whichever is later. The comment further explains that ''consummation'' is defined in § 1026.2(a)(13), and that ''settlement'' is defined in Regulation X, 12 CFR 1024.2(b). The Bureau notes that current Regulation Z refers to ''settlement'' with respect to the determination of whether a finance charge is a prepaid finance charge under § 1026.2(a)(23) (see comment 2(a)(23)–2.ii) and the timing of corrected disclosures for transactions secured by a consumer's interest in a timeshare plan under § 1026.19(a)(5)(iii) (see comment 19(a)(5)(iii)–1). Comment 19(e)(3)(i)–2 also provides illustrative examples. The Bureau further notes that final § 1026.19(f)(2)(iii) generally requires the creditor to provide a revised Closing Disclosure after consummation if the Closing Disclosures provided pursuant to § 1026.19(f)(1)(i) becomes inaccurate after consummation.

The Bureau is making a modification to proposed comment 19(e)(3)(i)–2, renumbered as comment 19(e)(3)(i)–3, to facilitate compliance. Proposed comment 19(e)(3)(i)–2 did not include an illustration of whether transfer taxes and recording fees are considered ''paid to'' the creditor for purposes of § 1026.19(e). As adopted, comment 19(e)(3)(i)–2 provides such an illustration. The Bureau is finalizing proposed comment 19(e)(3)(i)–3, renumbered as comment 19(e)(3)(i)–4, substantially as proposed to streamline the references to commentary to § 1026.37(g)(1) that discuss the differences between transfer taxes and recording fees.

The Bureau is not finalizing proposed comments 19(e)(3)(i)–4 and –5 on the treatment of lender credits and specific credits in consideration of the comments received. Instead, the Bureau is adopting new comment 19(e)(3)(i)–5 to clarify that the final rule is incorporating the guidance on lender credits under current Regulation X. The Bureau acknowledges industry's concern that the Loan Estimate does not permit lender credits and specific credits to be separately disclosed. But under current Regulation X, lender credits and specific credits are not separately disclosed on the RESPA GFE. Accordingly, the Bureau believes that maintaining the status quo on the treatment of lender credits and specific credits will reduce industry confusion and facilitate implementation of this final rule.

New comment 19(e)(3)(i)–5 explains that the disclosure of ''lender credits,'' as identified in § 1026.37(g)(6)(ii), is required by § 1026.19(e)(1)(i), and that ''lender credits,'' as identified in § 1026.37(g)(6)(ii), represents the sum of non-specific lender credits and specific lender credits. Non-specific lender credits are generalized payments from the creditor to the consumer that do not pay for a particular fee. Specific lender credits are specific payments, such as a credit, rebate, or reimbursement, from a creditor to the consumer to pay for a specific fee. Non-specific lender credits and specific lender credits are negative charges to the consumer. The actual total amount of lender credits, whether specific or non-specific, provided by the creditor that is less than the estimated ''lender credits'' identified in § 1026.37(g)(6)(ii) and disclosed pursuant to § 1026.19(e) is an increased charge to the consumer for purposes of determining good faith under § 1026.19(e)(3)(i). Comment 19(e)(3)(i)–5 also provides illustrations of these requirements. The comment also references § 1026.19(e)(3)(iv)(D) and comment 19(e)(3)(iv)(D)–1 for a discussion of lender credits in the context of interest rate dependent charges. With respect to whether a changed circumstance or borrower-requested change can apply to the revision of lender credits, the Bureau believes that a changed circumstance or borrower-requested change can decrease such credits, provided that all of the requirements of § 1026.19(e)(3)(iv), discussed below, are satisfied.

The Bureau is also adding new comment 19(e)(3)(i)–6 to provide guidance on how to perform the good faith analysis required by § 1026.19(e)(3)(i) with respect to lender credits. New comment 19(e)(3)(i)–6 explains that for purposes of conducting the good faith analysis required under § 1026.19(e)(3)(i) for lender credits, the total amount of lender credits, whether specific or non-specific, actually provided to the consumer is compared to the amount of ''lender credits'' identified in § 1026.37(g)(6)(ii). The comment also explains that the total amount of lender credits actually

provided to the consumer for purposes of the good faith analysis is determined by aggregating the amount of the ''lender credits'' identified in § 1026.38(h)(3) with the amounts paid by the creditor that are attributable to a specific loan cost or other cost, disclosed pursuant to § 1026.38(f) and (g). As clarified in final comment 19(e)(3)(i)–6, a creditor uses the actual total amount of lender credits, whether specific or non-specific, for purposes of the good faith analysis under § 1026.19(e)(3)(i).

However, with respect to the request that the Bureau provide a specific exemption that would allow the amount of lender credits to decrease so that the creditor would be able to stay within guidelines under streamlined refinancing programs that limit the amount of cash that the creditor could pay the consumer at closing, the Bureau declines. Lenders are not permitted to reduce the lender credits they provide to the borrower under current Regulation X. *See* HUD RESPA FAQs p. 27, # 4 (''GFE—Block 2''). Under current Regulation X, the loan originator may only apply the amount of the excess lender credits to additional closing costs previously not anticipated to be included in the loan, apply the excess to a principal reduction to the outstanding balance of the loan, pay the consumer the excess in cash, or reduce the interest rate and the credit accordingly. Creditors will be able to take the same actions with respect to lender creditors in streamlined refinancing programs under this final rule.

The Bureau is also adding commentary to § 1026.19(e)(3)(i) to address a comment the Bureau received from a document preparation company about the proposed requirements set forth in proposed § 1026.37(o)(4) and § 1026.38(t)(4) to disclose rounded numbers for certain charges on the Loan Estimate and Closing Disclosure. The commenter requested guidance on how numbers required to be rounded on the Loan Estimate pursuant to §§ 1026.37(o)(4) and 1026.38(t)(4) would be compared to the Closing Disclosure for the purposes of the tolerances provided in § 1026.19(f)(1). New comment 19(e)(3)(i)–7 explains that although §§ 1026.37(o)(4) and 1026.38(t)(4) require that the dollar amounts of certain charges disclosed on the Loan Estimate and Closing Disclosure, respectively, be rounded to the nearest whole dollar, to conduct the good faith analysis under § 1026.19(e)(3)(i) and (ii), the creditor should use unrounded numbers to compare the actual charge paid by or imposed on the consumer for a settlement service with the estimated cost of the service.

The Bureau does not believe that it would be appropriate to exempt ''no cost'' loans from § 1026.19(e)(3)(i). ''No cost'' loans must comply with the current limitations on settlement charge increases set forth in Regulation X. Additionally, the text of § 1026.19(e)(3)(i) indicates that the general rule applies to both charges that are paid by the consumer, and charges that are imposed on the consumer. In a ''no cost'' loan transaction, closing costs may not be paid by the consumer because they are financed by the creditor, but are nonetheless imposed on the consumer. The Bureau also believes that consumers should receive reliable cost estimates for ''no cost'' loans so the consumer could use the Loan Estimate to compare such loans, where the closing costs are financed, with loans that do not finance closing costs.

The Bureau also declines to modify the rule to provide an exemption for payments that affiliated title companies receive at closing that are then disbursed to unaffiliated service providers as payment for services performed by the unaffiliated service providers on behalf of the affiliated title companies. If a lender requires a consumer to use an affiliated company for title services, then the fees the consumer pays to the affiliate company should be subject to zero percent tolerance, even if the affiliate uses vendors to perform the title services.

The Bureau has also considered the comments about the application of the zero percent tolerance rule to transfer taxes. The Bureau believes that a creditor should be able to obtain information about transfer taxes with considerable precision based on its knowledge of the real estate settlement process and resources it has available, such as software that permits a creditor to estimate transfer taxes with considerable precision, even though it is originating a loan in a geographical area with which it is unfamiliar. In addition, the amount of transfer taxes could be obtained through other sources, such as directly from the government authority of the jurisdiction where the transaction is taking place. Further, because the final rule reflects the current rule, the Bureau believes that creditors have already adapted to this requirement. Further, the adoption of § 1026.19(e)(3)(iv) in this final rule, as discussed below, offers a level of flexibility for the creditor to make adjustments to its estimate for transfer taxes similar to the current rule under Regulation X if the amount of transfer taxes increases because of a changed circumstance or borrower-requested change. Lastly, as noted above, the Bureau has added a comment to § 1026.19(e) to define ''affiliate'' for purposes of § 1026.19(e) by explaining that it has the same meaning as in § 1026.32(b)(2) in current subpart E of Regulation Z.[207]

19(e)(3)(ii) Limited Increases Permitted for Certain Charges

Proposed § 1026.19(e)(3)(ii) would have permitted the sum of recording fees and all charges for non-affiliated third-party services for which the creditor permits the consumer to shop for a provider other than those identified by the creditor, to increase by ten percent for the purposes of determining good faith. Proposed comment 19(e)(3)(ii)–1 would have explained that § 1026.19(e)(3)(ii) provides that certain estimated charges are in good faith if the sum of all such charges paid by or imposed on the consumer does not exceed the sum of all such charges disclosed pursuant to § 1026.19(e) by more than ten percent. The proposed comment would also have explained that § 1026.19(e)(3)(ii) permits this limited increase for only: (1) fees paid to an unaffiliated third party if the creditor permitted the consumer to shop for the service, consistent with § 1026.19(e)(1)(vi)(A); and (2) recording fees.

Proposed comment 19(e)(3)(ii)–2 would have clarified that pursuant to § 1026.19(e)(3)(ii), whether an individual estimated charge subject to § 1026.19(e)(3)(ii) is in good faith depends on whether the sum of all charges subject to § 1026.19(e)(3)(ii) increase by more than ten percent, even if a particular charge does not increase by more than ten percent. The proposed comment would have also clarified that § 1026.19(e)(3)(ii) provides flexibility in disclosing individual fees by focusing on aggregate amounts, and would have provided illustrative examples. Proposed comment 19(e)(3)(ii)–3 would have discussed the determination of good faith when a consumer is permitted to shop for a settlement service, but either does not select a settlement service provider, or chooses a settlement service provider identified by the creditor on the list required by § 1026.19(e)(1)(vi)(C). The proposed comment would have explained that § 1026.19(e)(3)(ii) provides that if the

[207] Current § 1026.32(b)(2), which sets the definition of ''affiliate'' in subpart E of Regulation Z, will be renumbered as § 1026.32(b)(5) when the Bureau's 2013 ATR Final Rule becomes effective on January 10, 2014.

creditor requires a service in connection with the mortgage loan transaction, and permits the consumer to shop, then good faith is determined pursuant to § 1026.19(e)(3)(ii)(A), instead of § 1026.19(e)(3)(i) and subject to the other requirements in § 1026.19(e)(3)(ii)(B) and (C). The proposed comment also would have illustrated the requirement with examples.

Proposed comment 19(e)(3)(ii)–4 would have discussed how the good faith determination requirements apply to recording fees. The proposed comment would have explained that the condition specified in § 1026.19(e)(3)(ii)(B), that the charge not be paid to an affiliate of the creditor, is inapplicable in the context of recording fees. The proposed comment would have also explained that the condition specified in § 1026.19(e)(3)(ii)(C), that the creditor permits the consumer to shop for the service, is similarly inapplicable. Therefore, the proposed comment would have stated that estimates of recording fees would only have needed to satisfy the condition specified in § 1026.19(e)(3)(ii)(A) (*i.e.,* that the aggregate amount increased by no more than ten percent) to be subject to the requirements of § 1026.19(e)(3)(ii).

Comments

Commenters expressed concern that fees subject to the ten percent tolerance would be restricted to fees paid to non-affiliates for services for which creditors permit consumers to shop. A number of commenters opposed the Bureau's proposal to keep recording fees in the ten percent tolerance category. A number of commenters sought various clarifications of proposed § 1026.19(e)(3)(ii).

An industry trade association representing mortgage lenders asserted that whether a consumer is able to shop beyond the written list of providers for a settlement service should not be a condition that determines whether the ten percent tolerance applies to a fee charged by a settlement service provider. An industry trade association representing banks asserted that the ten percent tolerance rule should apply to lender-required service providers and that no tolerance rules should apply to fees paid to settlement service providers selected by the consumer without, or regardless of, a creditor's recommendation because the creditor has no knowledge of or control over the pricing set by such providers.

The commenters opposing the application of the ten percent tolerance to recording fees included commenters that opposed the application of the zero percent tolerance to transfer taxes, and many based their opposition on similar arguments they made for transfer taxes. A large bank commenter observed that recording fees can increase shortly before, or even at, closing. A settlement agent commenter suggested that applying the ten percent tolerance rule to recording charges will delay closings and harm consumers. But a law firm employee commenter from a State that requires attorneys to conduct real estate closings suggested that the ten percent tolerance rule would not negatively impact the timeliness of closings.

Industry trade association commenters representing banks and mortgage lenders observed that, in some cases, the creditor may disclose an amount for a settlement service on the original Loan Estimate but later on, the service is no longer required, due to unexpected events. The commenters asserted that the final rule should clarify that the estimated amount for that settlement service disclosed on the Loan Estimate be included in the sum of all estimated amounts for charges subject to § 1026.19(e)(3)(ii) for purposes of the good faith analysis under § 1026.19(e)(3)(ii), because the creditor could not have predicted the occurrence of the event that resulted in the nonperformance of a lender-required service.

A large bank commenter requested the Bureau confirm that the ten percent tolerance applies where the creditor permits the consumer to shop for a settlement service, but the consumer still asks the creditor to select the settlement service provider. The large bank commenter also requested clarification on what tolerance rule applies when the consumer asks the creditor to select the settlement service provider, even though the creditor permits the consumer to shop pursuant to § 1026.19(e)(1)(iv)(A), and the creditor selects a non-affiliate that the creditor did not disclose to the consumer on the list required by § 1026.19(e)(1)(iv)(C).

Final Rule

The Bureau has considered the comments and is adopting § 1026.19(e)(3)(ii) with minor revisions to enhance clarity. Section 1026.19(e)(3)(ii) provides that an estimate of a charge for a third-party service performed by an unaffiliated settlement service provider or a recording fee is in good faith if the aggregate amount of such charges paid by or imposed on the consumer does not exceed the aggregate amount of such charges disclosed under § 1026.19(e)(1)(i) by more than 10 percent, provided that the creditor permits the consumer to shop for the third-party service, consistent with § 1026.19(e)(1)(vi). Comments 19(e)(3)(ii)–1 through –4 are adopted substantially as proposed.

With respect to applying the ten percent tolerance rule to fees paid to service providers recommended by the creditor, the Bureau believes there needs to be a determination, pursuant to § 1026.19(e)(3)(ii), whether the fee is paid to an unaffiliated third party and whether the creditor permitted the consumer to shop for the service. The Bureau recognizes that some consumers may ask their creditor or mortgage broker for recommendations when selecting settlement service providers; however, the Bureau is concerned that some creditors and mortgage brokers may try to require the consumer to select certain providers while appearing to permit the consumer to shop for a provider. If the creditor or mortgage broker engages in this practice, the Bureau believes that it may raise similar consumer protection issues associated with creditors developing ''closed lists'' of ''preferred providers,'' discussed above in the general section-by-section analysis of § 1026.19(e)(3).

The Bureau declines to incorporate in final § 1026.19(e)(3)(ii) some commenters' suggestion that the estimated amount of a settlement service be included in the amount of charges used to conduct the good faith analysis required by § 1026.19(e)(3)(ii), even when the service was not performed. Current Regulation X provides that if a service that was listed on the RESPA GFE was not obtained in connection with the transaction, then no amount for that service should be reflected on the RESPA settlement statement, and the estimated amount for that charge on the RESPA GFE should not be included in any amount used to determine whether a tolerance violation has occurred. 12 CFR part 1024, app. C. HUD explained that the reason for adopting this rule is that allowing loan originators to include in the good faith analysis charges from the RESPA GFE for settlement services that were not purchased could both induce loan originators to discourage consumers from purchasing settlement services in order to increase the cushion they have under the ten percent tolerance rule and to disclose on the RESPA GFE services that the consumer will not need in the transaction. 76 FR 40612, 40614 (July 11, 2011). The final rule largely mirrors these requirements in that if the creditor discloses a cost estimate for a settlement service on the Loan Estimate, but the

settlement service was not obtained, the creditor cannot include the fee estimate in the estimated aggregate amount for purposes of conducting the good faith analysis under § 1026.19(e)(3)(ii). To facilitate compliance, the Bureau is adopting new comment 19(e)(3)(ii)–5. Comment 19(e)(3)(ii)–5 explains that in calculating the aggregate amount of estimated charges for purposes of conducting the good faith analysis pursuant to § 1026.19(e)(3)(ii), the aggregate amount of estimated charges must reflect charges for services that are actually performed, and provides an illustrative example. The Bureau believes that the ten percent tolerance rule should continue to apply to recording fees. Because this is the current rule under Regulation X, the Bureau believes that creditors have already adapted. The comments also suggested that there was a concern that because recording fees can increase shortly before closing, closing can be delayed if a revised Loan Estimate must be provided. But pursuant to § 1026.19(e)(4)(ii), discussed below, a creditor complies with § 1026.19(e)(4) by listing the revised recording fee in the Closing Disclosure.

19(e)(3)(iii) Variations Permitted for Certain Charges

Section 1024.7(e)(3) of Regulation X currently provides that the amounts charged for services other than those identified in § 1024.7(e)(1) and § 1024.7(e)(2) may change at settlement. The Bureau proposed § 1026.19(e)(3)(iii), which would have provided that estimates of the following charges are in good faith regardless of whether the amount actually paid by the consumer exceeds the estimated amount disclosed, provided such estimates are consistent with the best information reasonably available to the creditor at the time the disclosures were made: prepaid interest; property insurance premiums; amounts placed into an escrow, impound, reserve, or similar account; and charges paid to third-party service providers selected by the consumer consistent with § 1026.19(e)(1)(vi)(A) that are not on the list provided pursuant to § 1026.19(e)(1)(vi)(C). The Bureau reasoned that: (1) certain types of estimates, such as those for property insurance premiums, may change significantly after the original disclosures required under § 1026.19(e)(1)(i) are provided; and (2) the existing Regulation X rule would be improved and compliance facilitated by specifically identifying which items are included in this category.

Proposed comments 19(e)(3)(iii)–1, –2, and –3 would have clarified that the disclosures for items subject to § 1026.19(e)(3)(iii) must be made in good faith, even though good faith is not determined pursuant to a comparison of estimated amounts and actual costs. The proposed comments would have clarified that the disclosures must be made according to the best information reasonably available to the creditor at the time the disclosures are made. The Bureau stated in the proposal that it was concerned that unscrupulous creditors could underestimate, or fail to include estimates for, the items subject to § 1026.19(e)(3)(iii) and mislead consumers into believing the cost of the mortgage loan is less than it actually is. The Bureau also stated in the proposal its belief that this concern must be balanced against the fact that some items may change significantly and legitimately prior to consummation. Further, the Bureau stated that while the creditor should include estimates for all fees ''the borrower is likely to incur,'' it may not be reasonable to expect the creditor to know every fee, no matter how uncommon, agreed to by the consumer, for example in the purchase and sale agreement, prior to providing the estimated disclosures. The proposal would have struck a balance between these considerations by imposing a general good faith requirement.

Accordingly, proposed comment 19(e)(3)(iii)–1 would have explained that estimates of prepaid interest, property insurance premiums, and impound amounts must be consistent with the best information reasonably available to the creditor at the time the disclosures are provided. Proposed comment 19(e)(3)(iii)–1 would have explained that differences may exist between the amounts of charges subject to § 1026.19(e)(3)(iii) disclosed pursuant to § 1026.19(e)(1)(i) and the amounts of such charges paid by or imposed upon the consumer, so long as the original estimated charge, or lack of an estimated charge for a particular service, was based on the best information reasonably available to the creditor at the time the disclosure was provided. The proposed comment would have illustrated the requirement with an example.

Proposed comment 19(e)(3)(iii)–2 would have discussed the good faith requirement for required services chosen by the consumer that the consumer has been permitted to shop for, consistent with § 1026.19(e)(1)(vi)(A). It would have explained that, if a service is required by the creditor, and the creditor permits the consumer to: shop for that service, provides the written list of providers, and the consumer chooses a service provider that is not on the list to perform that service, then the actual amounts of such fees need not be compared to their original estimates.

Proposed comment 19(e)(3)(iii)–2 would have further clarified that the original estimated charge, or lack of an estimated charge for a particular service, must be made based on the best information reasonably available to the creditor at that time and would have illustrated the requirement with an example. The proposed comment would have also clarified that if the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) but fails to provide the list required by § 1026.19(e)(1)(vi)(C), then good faith is determined pursuant to § 1026.19(e)(3)(ii) instead of § 1026.19(e)(3)(iii) regardless of the provider selected by the consumer, unless the provider is an affiliate of the creditor, in which case good faith is determined pursuant to § 1026.19(e)(3)(i).

Proposed comment 19(e)(3)(iii)–3 would have clarified the good faith requirement for optional settlement services (*i.e.,* service that are not lender-required) chosen by the consumer. It would have explained that differences between the amounts of estimated charges for services not required by the creditor disclosed pursuant to § 1026.19(e)(1)(i) and the amounts of such charges paid by or imposed on the consumer do not necessarily constitute a lack of good faith and would have illustrated the requirement with an example. Proposed comment 19(e)(3)(iii)–3 would have also explained that the original estimated charge, or lack of an estimated charge for a particular service, must still be made based on the best information reasonably available to the creditor at the time that the estimate was provided, and would have illustrated the requirement with an example.

Comments

The Bureau received a number of comments seeking various adjustments and clarifications. Although an industry trade association representing affiliated real estate businesses expressed support for the inclusion of property insurance premiums in the category of charges not subject to a tolerance, even if the insurance provider is a lender affiliate, at least one industry commenter sought clarification on whether property insurance premiums would have been subject to tolerances. The commenter asserted that property insurance premiums should not be subject to

limitations on increases because there are too many variables that ultimately determine the premium amount due at closing on a consumer's property insurance policy.

Some industry commenters asked the Bureau to clarify that property taxes, insurance premiums and homeowner's association, condominium, and cooperative fees are included in the costs subject to proposed § 1026.19(e)(3)(iii), regardless of whether these costs would have been placed into an escrow or similar account. An industry trade association representing community associations stated their belief that the good faith requirement would impose a burden on its members. The commenter expressed concern that the final rule would succeed in encouraging consumer shopping, which in turn would increase the number of information requests to community associations to which they must respond. The commenter was also concerned that the definitions of application and business day with respect to the original Loan Estimate delivery requirement would impose additional burden on community associations by shortening the amount of time community associations would have to respond to creditor inquiries. The commenter further expressed concern that under State consumer protection laws, community associations may be held liable if there is a difference between the estimated cost of community association assessments and the actual cost of the assessments. The commenter asserted that the Bureau should encourage creditors to use information about association assessments provided by either the seller or the buyer when preparing the Loan Estimate.

State bar associations and individual law firm commenters from States that require attorneys to conduct real estate closings requested that the Bureau include attorney and title-related fees in final § 1026.19(e)(3)(iii). They asserted that it is inappropriate to subject these fees to limitations on increases because the provision of legal services is not a commodity and thus, cannot be priced as such. Further, the commenters asserted that price limitations are not necessary because of existing competitive pressures in the market. They also expressed concern that applying tolerance rules to their fees would incent creditors to require consumers to use certain lender-selected providers to control closing costs.

Two national consumer advocacy groups questioned the inclusion of prepaid interest in proposed § 1026.19(e)(3)(iii). The commenters asserted that the creditor should not have any difficulty calculating prepaid interest if the creditor knows the closing date and the loan's interest rate. The commenters asserted creditors should be encouraged to provide new, timely disclosures, rather being permitted to provide misleading disclosures of costs that are known to the creditor. Industry trade associations representing banks and mortgage lenders asserted that the Bureau should require creditors to list the maximum possible amount of prepaid interest that could be paid by or imposed on the consumer on the original Loan Estimate because it will enhance the ability of the consumer to shop and compare loans. It appears that the commenters are concerned that without imposing this requirement, some creditors may underestimate prepaid interest.

These trade association commenters also requested that the Bureau confirm that owner's title insurance and other charges for services that the creditor does not require are not subject to the tolerance rules, even if they are provided by an affiliate of the creditor. A settlement agent commenter also asserted that the good faith requirement should not apply to costs that the consumer incur for settlement services not required by the creditor. A community bank commenter stated that it strongly recommended that settlement provider fees should not be subject to tolerances if the provider of that service was not listed on the written list of providers the creditor provides to the consumer. Finally, a law firm commenter and a State association representing land title agents asserted that the Bureau appears to have eliminated the category of settlement service fees not subject to any tolerance that exists in current Regulation X.

Final Rule

The Bureau has considered the comments and is adopting § 1026.19(e)(3)(iii) and comments 19(e)(3)(iii)–1 through –3 substantially as proposed, with revisions to enhance clarity with respect to determining good faith under § 1026.19(e)(3)(iii). The final rule also clarifies the treatment of optional settlement services (*i.e.,* services not required by the lender). *See* § 1026.19(e)(3)(iii)(E). The Bureau believes that § 1026.19(e)(3)(iii) strikes the appropriate balance between the risk that some creditors may intentionally engage in bait and switch tactics, against the fact that some items may change significantly and legitimately prior to consummation. For example, the Bureau believes that prepaid interest is one such item and should be included in § 1026.19(e)(3)(iii). The Bureau believes that the risk that creditors may intentionally manipulate the disclosure of prepaid interest is low, compared to fees in the zero or ten percent tolerance categories, and the good faith requirement in § 1026.19(e)(3)(iii) will deter intentional underestimation of prepaid interest. On a related issue, the argument made by some commenters that creditors should be required to disclose the maximum possible amount of prepaid interest that the consumer may pay at closing on the original Loan Estimate is inconsistent with the good faith requirement in the final rule.

The Bureau does not believe that charges related to owner's title insurance should be included in the charges not subject to tolerances. Under current Regulation X, such fees are subject to the ten percent tolerance rule. The Bureau believes that changing the current rule weakens consumer protection. The Bureau also believes that attorney fees for conducting closings and title-related services in States that require attorneys to conduct real estate closings should be subject to a tolerance. In these States, the attorney is performing services that a settlement agent would provide, and thus, the attorney fees should be subject to the same tolerance rules as settlement agent charges. Additionally, the Bureau believes that the fees for conducting closings can be estimated with considerable accuracy at the time the Loan Estimate is provided. Further, these fees can be adjusted in cases of changed circumstances or borrower-requested changes.

With respect to the concern that creditors may require consumers to use certain providers to control costs if attorney fees are subject to the tolerance rules, the Bureau has addressed the potential impact of the tolerance rules on competition in the general section-by-section analysis of § 1026.19(e)(3), and has concluded that this final rule may actually enhance competition in the market for settlement service providers. In response to the argument that price limitations on attorney fees are not necessary because of market forces, the Bureau notes that the final rule does not limit what an attorney may charge for conducting settlement services. The only limitation these rules set on attorney fees for conducting closings and title-related services is the limitation on the amount by which the actual fee paid by or imposed on the consumer for such services may exceed the estimated fee for such services disclosed on the Loan Estimate. Further, as discussed above, under the final rule estimated closing costs will be able to be

revised to reflect cost increases due to a changed circumstance or borrower-requested changes. In this regard rule mirrors current Regulation X.

The Bureau does not believe that optional services chosen by the consumer should be exempt from the good faith requirement. As discussed above, both RESPA and TILA establish good faith requirements related to closing costs, which includes optional services chosen by the consumer. In response to concerns raised by the industry trade association representing community associations, the Bureau has adjusted comment 19(e)(3)(iii)–1 to clarify that the ''reasonably available'' standard in § 1026.19(e)(3)(iii) means that the estimate for a charge subject to § 1026.19(e)(3)(iii) was obtained by the creditor through due diligence. As applied to community association assessments, this means that the creditor normally may rely on the representations of the consumer or seller. The Bureau notes that this ''reasonably available'' standard is the same ''reasonably available'' standard for estimated disclosures set forth in comment 17(c)(2)(i)–1 of Regulation Z, and thus, final comment 19(e)(3)(iii)–1 contains a reference to comment 17(c)(2)(i)–1.

Finally, as noted above, a number of the commenters sought clarification on various other aspects of the proposal. As is currently the case under Regulation X, final § 1026.19(e)(3)(iii) provides that property insurance premiums are included in the category of settlement charges not subject to a tolerance, whether or not the insurance provider is a lender affiliate. The final rule also mirrors current Regulation X in that property insurance premiums, property taxes, homeowner's association dues, condominium fees, and cooperative fees are subject to tolerances whether or not they are placed into an escrow, impound, reserve, or similar account.

On the question of whether proposed § 1026.19(e)(3)(iii) would have included fees paid to service providers that were not listed on the written list of service providers set forth in § 1026.19(e)(1)(vi)(C), comment 19(e)(3)(iii)–2 provides guidance on this question. With respect to the question whether proposed § 1026.19(e)(3)(iii) would have included fees paid to lender affiliates for an optional settlement service, charges for third-party services not required by the creditor (other than owner's title insurance) are not subject to a tolerance category, even if a lender affiliate provides them. The Bureau recognizes that this position may appear to be at odds with the general treatment of affiliate fees. However, the Bureau believes that the optional nature of such services means that consumers may decide not to purchase these services later in the origination process, or choose a provider that offers a better price for the service. The Bureau believes that these factors distinguish fees paid to affiliates for optional services from fees paid to affiliates for lender-required services. Accordingly, the Bureau believes that it is not necessary to subject fees paid to affiliates for optional services to zero tolerance. However, the Bureau expects to closely monitor the implementation of this final rule, including § 1026.19(e).

19(e)(3)(iv) Revised Estimates

Regulation X § 1024.7(f) currently provides that the estimates included on the RESPA GFE are binding, subject to six exceptions. The Bureau proposed to incorporate § 1024.7(f) in § 1026.19(e)(3)(iv), which would have provided that, for purposes of determining good faith under § 1026.19(e)(3)(i) and (ii), a charge paid by or imposed on the consumer may exceed the originally estimated charge if the revision is caused by one of the six reasons identified in § 1026.19(e)(3)(iv)(A) through (F). Proposed comment 19(e)(3)(iv)–1 would have clarified the general requirement of § 1026.19(e)(3)(iv). The Bureau stated in the proposal that it agreed that there would be certain situations that could legitimately cause increases over the amounts originally estimated, and that the regulations should provide a clear mechanism for providing revised estimates in good faith. Consistent with current Regulation X,[208] proposed comment 19(e)(3)(iv)–2 would have clarified that, to satisfy the good faith requirement, revised estimates may increase only to the extent that the reason for revision actually caused the increase and would have provided an illustrative example of this requirement. Proposed comment 19(e)(3)(iv)–3 would have clarified the documentation requirements related to the provision of revised estimates. Regulation X § 1024.7(f) contains a separate regulatory provision related to documentation requirements. The Bureau stated in the proposal that it believed that this requirement would have been encompassed within the requirements the Bureau proposed in § 1026.25 with respect to recordkeeping. The proposed comment would have clarified that the creditors must retain records demonstrating compliance with the requirements of § 1026.19(e) in order to comply with § 1026.25. The proposed comment would have also provided illustrative examples.

A mortgage broker commenter asserted that the Bureau should expand the categories of valid reasons for revisions to include mistakes made by mortgage brokers. The Bureau has considered the comment but believes that mistakes made by the mortgage broker should not be included among the valid reasons for a settlement charge to exceed the amount originally estimated for the charge. As a general matter, errors are not a basis for revising Loan Estimates, and the Bureau does not believe that mortgage broker errors should be treated differently than other errors.

A community bank commenter stated that the Bureau should clarify that creditors are permitted to provide updated disclosures to borrowers anytime, even though the change is an increase beyond the applicable tolerance threshold. In consideration of this comment, the Bureau has revised proposed § 1026.19(e)(3)(iv) and comment 19(e)(3)(iv)–1. The Bureau believes that the revisions will clarify that § 1026.19(e)(3)(iv) does not prohibit a creditor from providing updated disclosures. Rather, § 1026.19(e)(3)(iv) provides an exception to the general rule in § 1026.19(e)(3)(i) and (ii) that a charge paid by or imposed on the consumer must be compared to the amount in the original Loan Estimate.

As adopted, § 1026.19(e)(3)(iv) provides that for purposes of determining good faith under § 1026.19(e)(3)(i) and (ii), a creditor may use a revised estimate of a charge instead of the amount originally disclosed under § 1026.19(e)(1)(i) if the revisions is due to one of the reasons set forth in § 1026.19(e)(3)(iv)(A) through (F). Comment 19(e)(3)(iv)–1 explains that § 1026.19(e)(3)(iv) provides the exception to the rule that pursuant to § 1026.19(e)(3)(i) and (ii), good faith is determined by calculating the difference between the estimated charges originally provided under § 1026.19(e)(1)(i) and the charges paid by or imposed on the consumer. It clarifies that pursuant to § 1026.19(e)(3)(iv), for purposes of determining good faith under § 1026.19(e)(3)(i) and (ii), the creditor may use a revised estimate of a charge instead of the amount originally disclosed under § 1026.19(e)(1)(i) if the revision is due to one of the reasons set forth in § 1026.19(e)(3)(iv)(A) through (F). Comments 19(e)(3)(iv)–2 and –3 are adopted as proposed.

[208] *See* § 1024.7(f)(1), (2), (3), and (5).

19(e)(3)(iv)(A) Changed Circumstance Affecting Settlement Charges

In general. Section 1024.7(f)(1) of Regulation X currently provides that a revised RESPA GFE may be provided if changed circumstances result in increased costs for any settlement service such that charges at settlement would exceed the tolerances for those charges. The Bureau proposed § 1026.19(e)(3)(iv)(A), which would have also provided that a valid reason for re-issuance exists when changed circumstances cause estimated charges to increase or, for those charges subject to § 1026.19(e)(3)(ii), cause the sum of all such estimated charges to increase by more than ten percent. Proposed comment 19(e)(3)(iv)(A)–1 would have provided further explanation of this requirement and would have included several examples. The Bureau stated in the proposal its belief that creditors should be able to provide revised estimates if certain situations occur that increase charges.

Changed circumstance. Section 1024.2 in current Regulation X generally defines changed circumstances as information and events that warrant revision of the estimated amounts included on the RESPA GFE. The Bureau proposed a similar definition, but with certain changes to address feedback that it had received suggesting that there was confusion about the Regulation X definition. Thus, the Bureau proposed in § 1026.19(e)(3)(iv)(A) to define a changed circumstance as: (1) An extraordinary event beyond the control of any interested party or other unexpected event specific to the consumer or transaction; (2) information specific to the consumer or transaction that the creditor relied upon when providing the disclosures and that was inaccurate or subsequently changed; or (3) new information specific to the consumer or transaction that was not relied on when providing the disclosures.

This proposed definition, most significantly, would have omitted the fourth prong of the existing definition of changed circumstances: ''[o]ther circumstances that are particular to the borrower or transaction, including boundary disputes, the need for flood insurance, or environmental problems.'' The Bureau suggested in the proposal that the items listed in the fourth prong were already covered by other elements of the definition and questioned whether the overlap had contributed to the industry uncertainty surrounding what scenarios constitute a changed circumstance under the current definition of changed circumstances in Regulation X. The Bureau sought comment on whether its proposed definition of changed circumstances was appropriate, and specifically on whether there are scenarios that should be considered a changed circumstance that would not be captured under any of the three prongs set forth in the proposed definition.

Proposed comment 19(e)(3)(iv)(A)–2 would have provided additional elaboration on the proposed definition and would have provided several examples of changed circumstances. Proposed comment 19(e)(3)(iv)(A)–3 would have explained how the definition of application under § 1026.2(a)(3) relates to the definition of changed circumstances under § 1026.19(e)(3)(iv)(A). The proposed comment would have explained that although a creditor is not required to collect the consumer's name, monthly income, or social security number to obtain a credit report, the property address, an estimate of the value of the property, or the mortgage loan amount sought, for purposes of determining whether an estimate is provided in good faith under § 1026.19(e)(1)(i), a creditor is presumed to have collected these six pieces of information. The proposed comment would have further explained that if a creditor provides the disclosures required by § 1026.19(e)(1)(i) prior to receiving the property address from the consumer, the creditor could not subsequently claim that the receipt of the property address was a changed circumstance, under § 1026.19(e)(3)(iv)(A) or (B).

Industry commenters had mixed reactions to the Bureau's proposed definition of changed circumstances. A regional bank holding company commenter and a community bank commenter stated that they supported the proposed definition. In contrast, a company that performs compliance training and consulting services to credit unions stated that the Bureau should not change the current definition of changed circumstances because the change is not required by the Dodd-Frank Act. The commenter also asserted that changing the definition of changed circumstances would result in an extended implementation period. A national provider of title insurance and settlement services stated that the Bureau should conduct more research as to the most common changed circumstances that occur in transactions that would be subject to § 1026.19(e) and (f).

Some commenters, including an industry trade association representing Federally-chartered credit unions, objected to the Bureau's proposal to omit the fourth prong in the current definition of changed circumstances. The commenters expressed concern that the elimination of the fourth prong meant that situations such as boundary disputes, which are included as instances of changed circumstances under the current definition, would not be included under the Bureau's final rule. However, this commenter also asserted that the Bureau should provide additional guidance on what scenarios would be included in the fourth prong of the definition of changed circumstances if it retains the fourth prong in the final rule.

Several industry trade association commenters asserted that the Bureau should expand the definition of ''changed circumstances.'' Industry trade association commenters representing banks and mortgage lenders asserted that the Bureau should treat the scenario of a loan exceeding the points and fees thresholds for a qualified mortgage, HOEPA loan, or a qualified residential mortgage as a changed circumstance. In the alternative, they asserted that the Bureau should allow the creditor to deny the loan when the applicable threshold has been exceeded. An industry trade association representing Federally-charted credit unions asserted that the proposed definition of changed circumstances should be expanded to include situations where the consumer increases the down payment amount because it is very likely that settlement charges will change as a result of the increase in the down payment amount. The commenter also stated that changed circumstances should include situations where the seller changes a condition that would result in a change to estimated costs disclosed on the Loan Estimate.

Several industry commenters urged the Bureau to change the proposed definition of changed circumstances so that the term ''unexpected event'' is understood to mean an ''unexpected event'' from the creditor's point of view. Most of the commenters asserted that the change would reduce the incentive for the consumer to withhold information. Additional commenters requested clarification with respect to the term ''interested party,'' asserting that such clarification was necessary so that the creditor is not responsible for matters under the control of other parties.

A State bankers association also requested guidance on whether a change to the loan amount or monthly payment would be considered a changed circumstance, if it does not result in a

cost increase or in the APR becoming inaccurate. The commenter reported that its members have been advised by their regulators to reissue the RESPA GFE in such circumstances and asserted that this guidance has resulted in compliance burden.

A large bank commenter expressed concern that proposed § 1026.19(e)(3)(iv)(A) would not permit a creditor to reset estimates for purposes of the good faith analysis under § 1026.19(e)(3)(ii) unless the aggregate amount of all such charges increased by more than ten percent due to a changed circumstance. The commenter also observed that the current definition of changed circumstances sets forth what situations are not considered changed circumstances. The commenter sought clarification on whether creditors may assume that situations that are not changed circumstances under the current definition of changed circumstances would be considered changed circumstances under the proposed definition.

Lastly, a large bank commenter stated that the Bureau must provide additional clarity on whether it plans to issue guidance on changed circumstances that is similar to the HUD RESPA FAQs, or if the Bureau plans to adopt the HUD RESPA FAQs that address changed circumstances. The commenter stated that the HUD RESPA FAQs were critical to creditors' ability to establish compliance programs. Similarly, a software vendor commenter requested that the Bureau clarify whether the HUD RESPA FAQs on changed circumstances would still be valid after this rule is finalized.

Final Rule

The Bureau has considered the comments, and is adopting § 1026.19(e)(3)(iv)(A) and comments 19(e)(3)(iv)(A)–1 through 3 substantially as proposed, with revisions to enhance clarity. For the reasons stated below, the Bureau does not believe that the comments warrant material changes to proposed § 1026.19(e)(3)(iv)(A). The Bureau believes that the final rule clearly indicates that unless a scenario falls under one of the three prongs listed under the definition of changed circumstances, the scenario is not a changed circumstance. The Bureau recognizes that the current definition of changed circumstance sets forth both scenarios that are changed circumstances and those that are not.[209] The Bureau believes that this is a confusing formulation, and the Bureau's approach makes the meaning of changed circumstances clearer. But the Bureau agrees that there is value in explaining what changed circumstances do not include, and notes that for purposes of Regulation Z, explanations and clarifications are generally set forth in the official staff commentary to Regulation Z. The Bureau is taking this approach. For example, comment 19(e)(3)(iv)(A)–3 explains that a creditor may not claim that a changed circumstance has occurred if it provides the Loan Estimate pursuant to § 1026.19(e)(1)(i) without collecting any of the six items of information that make up the definition of application. This reflects the current understanding of which scenarios are not changed circumstances.[210]

The Bureau also believes that it is appropriate to adjust the current definition of changed circumstances, notwithstanding the assertion that the Bureau should not change the current definition of changed circumstances because it is not required by the Dodd-Frank Act. The fact that an industry trade association representing Federally-chartered credit unions requested additional guidance on the current definition supports the Bureau's belief that there is industry uncertainty surrounding what constitute a changed circumstance. The Bureau does not believe that the changes this final rule makes to the current definition of changed circumstances would result in an extended implementation period because the Bureau believes that the most significant change—the elimination of the fourth prong—is a change to streamline the current definition without narrowing the scope of changed circumstances. The Bureau also does not believe that additional research is needed on changed circumstances because the Bureau believes that the most common scenarios that should be considered a changed circumstance are encompassed in the final definition.

The Bureau also declines to retain the fourth prong in the current definition of changed circumstances in the final rule. The Bureau believes that the final rule encompasses the scenarios that are currently addressed by the fourth prong. Comment 19(e)(3)(iv)(A)–2 provides an example of how a boundary dispute is considered a changed circumstance.

The Bureau recognizes that creditors are incented not to make loans that exceed the points and fees thresholds for qualified mortgages, HOEPA loans, or qualified residential mortgages. If a changed circumstance causes the loan to exceed the application threshold, then the creditor has a legitimate basis for revision. However, the Bureau does not believe that the fact that the event occurred is, by itself, a changed circumstance. A loan may exceed the threshold because of mistakes that the creditor made in the points and fees calculation. As stated elsewhere in the section-by-section analysis of § 1026.19(e), creditor errors are not legitimate reasons for revising Loan Estimates. The Bureau also believes that it is not necessary to specifically provide that a creditor may deny a loan once the applicable points and fees threshold has been exceeded because the Loan Estimate is not a loan commitment. However, the Bureau reminds creditors that Regulation B contains requirements that apply when the creditor denies a consumer's loan application.

In response to the assertion that the definition of changed circumstances should include a scenario where the consumer increases the down payment amount, the Bureau believes that to the extent that the act of increasing the down payment amount actually increased settlement charges subject to the tolerance rules beyond the applicable tolerance, then the scenario would be considered a valid reason for re-issuance under § 1026.19(e)(3)(iv)(C), which the Bureau is adopting as proposed for reasons discussed below. Additionally, the Bureau believes that scenarios where the seller changes a condition that would result in a change to estimated costs disclosed on the Loan Estimate, are encompassed within the definition of changed circumstances.

With respect to the argument that the Bureau should change the proposed definition of changed circumstances so that the term ''unexpected event'' is understood to mean an ''unexpected event'' from the creditor's point of view because the modification would reduce the incentive for the consumer to withhold information, the Bureau declines. As illustrated in comment 19(e)(3)(iv)(A)–2, the term ''unexpected event'' is meant to encompass scenarios that involve changes that take place after the original Loan Estimate has been provided to the consumer. The consumer would not be able to withhold information about events that have not occurred.

The Bureau declines to clarify the term ''interested party.'' The Bureau believes that the term ''interested party'' should be interpreted broadly because mortgage loan transactions are complex and affect the interests of many parties. For example, the local government entity in which the property is located can be considered an interested party

[209] 12 CFR 1024.2(b).

[210] *Id.*

because the government entity has an interest in the transfer taxes that would be collected upon the consummation of the transaction. Further, with respect to the assertion that clarifying the term ''interested party'' is necessary to ensure that the creditor is not responsible for matters under the control of other parties, the Bureau believes adopting this position would undermine § 1026.19(e)(1)(ii), which provides that the creditor is responsible for ensuring that a mortgage broker complies with § 1026.19(e) when the mortgage broker provides the disclosures required by § 1026.19(e). The Bureau also believes that this position contradicts the tolerance rules, which makes creditors responsible for providing reliable estimates of costs under the control of other parties, such as third-party settlement service providers and government jurisdictions.

The Bureau believes that whether a change to the loan amount or monthly payment would be considered a changed circumstance depends on whether the reason for the change is a scenario that is described in one of the three prongs of the definition of changed circumstances.

The Bureau declines to change the proposed rule such that each occurrence of a changed circumstance becomes an opportunity for a creditor to reset the estimates used for the good faith analysis under § 1026.19(e)(3)(ii). Limiting legitimate reasons for revisions for charges subject to the ten percent tolerance rule to situations where the changed circumstance causes the aggregate amount of all such charges to increase by more than ten percent is the current rule under Regulation X and the Bureau's intention. Otherwise, if a creditor is allowed to reset the estimate used for the good faith analysis under § 1026.19(e)(3)(ii) every time there is a changed circumstance, it weakens the ten percent tolerance rule. Finally, with respect to the status of the HUD RESPA FAQs that address changed circumstances, the final rule will replace the HUD RESPA FAQs with respect to transactions subject to § 1026.19(e), (f), and (g). But with respect to transactions currently subject to Regulation X, but will not be subject to § 1026.19(e), (f), and (g), the HUD RESPA FAQs will continue to apply. Accordingly, HUD RESPA FAQs, instead of the final rule, will continue to apply to reverse mortgage transactions and federally related mortgage loans made by persons that are not ''creditors'' under Regulation Z.

19(e)(3)(iv)(B) Changed Circumstance Affecting Eligibility

Section 1024.7(f)(2) of Regulation X currently provides that a revised RESPA GFE may be provided if a changed circumstance affecting borrower eligibility results in increased costs for any settlement service such that charges at settlement would exceed the tolerances for those charges. The Bureau proposed § 1026.19(e)(3)(iv)(B), which would have provided that a valid reason for reissuance exists when a changed circumstance affecting the consumer's creditworthiness or the value of the collateral causes the estimated charges to increase. Proposed comment 19(e)(3)(iv)(B)–1 would have explained the requirement and provided illustrative examples. The Bureau did not receive any comments on proposed § 1026.19(e)(3)(iv)(B). Accordingly, the Bureau is finalizing § 1026.19(e)(3)(iv)(B) and comment 19(e)(3)(iv)(B)–1 with minor revisions to enhance clarity.

19(e)(3)(iv)(C) Revisions Requested by the Consumer

Section 1024.7(f)(3) of Regulation X currently provides that a revised RESPA GFE may be provided if a borrower requests changes to the mortgage loan identified in the GFE that change the settlement charges or the terms of the loan. The Bureau incorporated this same concept in proposed § 1026.19(e)(3)(iv)(C), which would have provided that a valid reason for reissuance exists when a consumer requests revisions to the credit terms or the settlement that cause estimated charges to increase. Proposed comment 19(e)(3)(iv)(C)–1 would have illustrated this requirement with an example.

A law firm commenter asserted that it was unreasonable to require a creditor to provide revised disclosures even though the reason for the revision was due to a borrower-requested change. The Bureau has considered the comment but is finalizing § 1026.19(e)(3)(iv)(C) and comment 19(e)(3)(iv)(C)–1 as proposed because § 1026.19(e)(3)(iv)(C) reflects the current rule in Regulation X, § 1024.7(f)(3). Creditors should be able to comply with this requirement, because currently they are required to comply with an identical requirement (§ 1024.7(f)(3)) under Regulation X.

19(e)(3)(iv)(D) Interest Rate Dependent Charges

Section 1024.7(f)(5) of Regulation X provides that, if the interest rate has not been locked, or a locked interest rate has expired, the charge or credit for the interest rate chosen, the adjusted origination charges, per diem interest, and loan terms related to the interest rate may change. It also provides that when the interest rate is later locked, a revised RESPA GFE must be provided showing the revised interest rate-dependent charges and terms. The Bureau proposed to retain the same basic approach in proposed § 1026.19(e)(3)(iv)(D) and to illustrate the requirement with examples. The Bureau sought comment on the frequency and magnitude of revisions to the interest rate dependent charges, the frequency of cancellations of contractual agreements related to interest rate dependent charges, such as rate lock agreements, and the reasons for such revisions and cancellations. Although the Bureau ultimately proposed taking the same approach as the current regulation, it acknowledged in the proposal a number of concerns that it believed warranted careful monitoring of the market. While the Bureau acknowledged that several costs are affected by the consumer's rate and thus may fluctuate until that rate is locked, the Bureau expressed concern that the current provision in Regulation X could be used to harm consumers by engaging in rent-seeking behavior or attempting to circumvent the requirements of TILA or RESPA. However, the Bureau was unaware of any evidence that creditors were in fact using current Regulation X § 1024.7(f)(5) to harm consumers or to circumvent RESPA.

Comments

A State trade association commenter representing bankers stated that it believed that the regulatory text in proposed § 1026.19(e)(3)(iv)(D) with respect to when a creditor must provide the revised disclosures to the consumer when the interest rate is set was in conflict with the general redisclosure rule proposed in § 1026.19(e)(4)(i) because proposed § 1026.19(e)(3)(iv)(D) stated that the creditor must provide revised disclosures ''on the date that the interest rate is reset,'' whereas the general redisclosure rule gave the creditor three business days to deliver the revised disclosures. The commenter also requested that the Bureau clarify whether redisclosure is necessary when the locking of the interest rate does not change the interest rate or cost estimates disclosed on the original Loan Estimate. Similarly, a community bank commenter asserted that if the interest rate is locked after the creditor has provided the original Loan Estimate, the creditor should be permitted to determine whether to provide redisclosures if there is no change to the

disclosures that were originally provided.

A large bank commenter stated that the final rule should require that the revised Loan Estimate that is provided after the interest rate has been set should reflect all the items impacted by the revisions to the interest rate, bona fide discount points, and lender credits. The commenter asserted that the requirement would help ensure that information about monthly payments, projected payments, the cash to close amount, loan costs, and disclosures in the ''Comparison'' section of the Loan Estimate are also revised.

Final Rule

The Bureau has considered the comments, and for reasons set forth below, is finalizing § 1026.19(e)(3)(iv)(D) and comment 19(e)(3)(iv)(D)–1 with revisions to enhance clarity. The delivery requirement set forth in proposed 1026.19(e)(4)(i) was intended to establish the maximum amount of time that a creditor may let pass before providing the consumer with the revised Loan Estimate. The Bureau does not believe that creditors need that much time in situations where the interest rate is locked because the creditor controls when it executes the rate lock agreement. But in consideration of the comments, the Bureau is adding comment 19(e)(4)(i)–2 to explain the relationship between § 1026.19(e)(4)(i) and § 1026.19(e)(3)(iv)(D). The comment clarifies that if the reason for the revision is provided under § 1026.19(e)(3)(iv)(D), notwithstanding the three-business-day rule set forth in § 1026.19(e)(4)(i), § 1026.19(e)(3)(iv)(D) requires the creditor to provide a revised version of the disclosures required under § 1026.19(e)(1)(i) on the date the interest rate is locked. Comment 19(e)(4)(i)–2 also references comment 19(e)(3)(iv)(D)–1.

Final § 1026.19(e)(3)(iv)(D) and commentary also clarify that if the interest rate is simply set, but there is no rate lock agreement, § 1026.19(e)(3)(iv)(D) does not apply. Upon a review of the proposed rule text and commentary, the Bureau acknowledges that the proposed language could have caused confusion about whether the setting of the interest rate requires redisclosure where a rate lock agreement does not exist. But the Bureau intended that § 1026.19(e)(3)(iv)(D) only applies in situation where a rate lock agreement has been entered into between the creditor and borrower, or where such agreement has expired. The Bureau has made clarifying revisions to the rule text and commentary to address the potential confusion.

With respect to the request that the final rule require that the revised Loan Estimate reflect all of the items that are impacted by the revisions to the interest rate, bona fide discount points, and lender credits, the Bureau has made adjustments to the final rule text to clarify that the revised version of the Loan Estimate shall contain revisions to any other interest rate dependent charges and terms. The Bureau notes that this is the current rule under Regulation X, § 1024.7(f)(5). Lastly, as discussed above, the Bureau intends that the creditor redisclose interest rate dependent charges and terms when the interest rate is locked. Accordingly, if the creditor has to redisclose points because the consumer is paying points to the creditor to reduce the interest rate, the consumer could be paying both bona fide discount points, as defined in § 1026.32(b)(3), when the 2013 ATR Final Rule takes effect, and points that are not bona fide discount points. Final § 1026.19(e)(3)(iv)(D) provides that on the date the interest rate is locked, the creditor shall provide a revised version of the disclosures required under § 1026.19(e)(1)(i) to the consumer with the revised interest rate, the points disclosed pursuant to § 1026.37(f)(1),[211] lender credits, and any other interest rate dependent charges and terms. The Bureau believes that this adjustment will facilitate compliance with this final rule because § 1026.19(e)(3)(iv)(D) now clearly indicates that to comply, the creditor must redisclose all the points disclosed pursuant § 1026.37(f)(1), even if they include points in addition to the bona fide discount points under § 1026.32(b)(3).

19(e)(3)(iv)(E) Expiration

Section 1024.7(f)(4) of Regulation X currently provides that if a borrower does not express an intent to continue with the transaction within ten business days after the RESPA GFE is provided, or such longer time specified by the loan originator, then the loan originator is no longer bound by the RESPA GFE. Similarly, the Bureau proposed § 1026.19(e)(3)(iv)(E), which would have provided that a valid reason for reissuance exists when a consumer expresses an intent to proceed more than ten business days after the disclosures are provided. Proposed comment 19(e)(3)(iv)(E)–1 would have illustrated this requirement with an example. The Bureau explained in the proposal that it believed that it was important for consumers to be able to rely on the estimated charges for a sufficient period of time to permit shopping, and that ten business days was a reasonable period. Once it expired, however, the Bureau believed that creditors should be permitted to provide revised disclosures that may reflect new charges.

The Bureau received few comments on the proposal. Some industry commenters sought clarification on how to count the ten-business-day period if the creditor provided the consumer with a revised Loan Estimate within the ten-business-day period before the consumer has indicated an intent to proceed. A mortgage broker commenter stated that mortgage brokers do not have control over third-party fees, and therefore, making the Loan Estimate binding on a mortgage broker for ten business days would be impractical.

The Bureau is finalizing § 1026.19(e)(3)(iv)(E) and comment 19(e)(3)(iv)(E)–1 substantially proposed, with revisions to enhance clarity. As adopted, § 1026.19(e)(3)(iv)(E) clarifies how to count the ten-business-day period, because it provides that the ten-business-day period begins after the disclosures required under § 1026.19(e)(1)(i) are provided pursuant to § 1026.19(e)(1)(iii). Lastly, with respect to the assertion that the mortgage broker should not be bound by the terms of the original Loan Estimate for ten business days after the mortgage broker provides it to the consumer, as noted above, the Bureau believes that a mortgage broker must comply with all of the requirements of § 1026.19(e) if the mortgage broker provides a consumer with the Loan Estimate.

19(e)(3)(iv)(F) Delayed Settlement Date on a Construction Loan

Section 1024.7(f)(6) of Regulation X currently provides that in transactions involving new construction home purchases, where settlement is expected to occur more than 60 calendar days from the time a RESPA GFE is provided, the loan originator cannot issue a revised RESPA GFE unless the loan originator provided the borrower with a clear and conspicuous disclosure stating that at any time up until 60 calendar days prior to the real estate closing, the loan originator may issue a revised RESPA GFE. The Bureau concluded that this approach made sense where consummation will not occur for an extended period of time. Accordingly, proposed § 1026.19(e)(3)(iv)(F) would have provided that a valid reason for

[211] The term ''bona fide discount points'' was not defined until the issuance of the Bureau's 2013 ATR Final Rule, which post-dated the issuance of the TILA–RESPA Proposal.

revision exists on construction loans when consummation is scheduled to occur more than 60 days after delivery of the estimated disclosures, provided that the consumer was alerted to this fact when the estimated disclosures were provided. Proposed comment 19(e)(3)(iv)(F)–1 would have clarified that a loan for the purchase of a home either to be constructed or under construction is considered a construction loan to purchase and build a home for the purposes of § 1026.19(e)(3)(iv)(F) and would have illustrated the requirement with examples. The Bureau stated in the proposal that the proposed comment would be consistent with guidance provided by HUD in the HUD RESPA FAQs p. 21, # 2 (''GFE—New construction''). The Bureau did not receive any comments on proposed § 1026.19(e)(3)(iv)(F), and is adopting § 1026.19(e)(3)(iv)(F) and comment 19(e)(3)(iv)(F)–1 as proposed, except for minor revisions to enhance clarity.

19(e)(4) Provision and Receipt of Revised Disclosures

19(e)(4)(i) General Rule

TILA's requirement that creditors provide corrected disclosures is not linked to the time when a creditor discovers that a correction is necessary. Instead, section 128(b)(2)(D) of TILA provides that the creditor shall furnish additional, corrected disclosures to the borrower not later than three business days before the date of consummation of the transaction, if the previously disclosed annual percentage rate is no longer accurate, as determined under TILA section 107(c), and this requirement is set forth in current § 1026.19(a)(2)(ii). RESPA does not expressly address timing requirements for the delivery of revised RESPA GFEs, but Regulation X generally requires that a revised RESPA GFE must be provided within three business days of the creditor receiving information sufficient to establish a reason for revision.[212]

While both regulations contain redisclosure requirements, their approaches are different. Regulation Z ensures that the consumer is made aware of changes at a specific point in time before consummation, but does not require the creditor to keep the consumer informed of incremental changes during the loan origination process. In contrast, Regulation X does, but those changes may occur up to the day of settlement.

The Bureau proposed adopting the Regulation X approach because it believed that intermittent redisclosure of the integrated Loan Estimate is necessary under RESPA because settlement service provider costs typically fluctuate during the mortgage loan origination process. Furthermore, the Bureau stated its belief that intermittent redisclosure is consistent with the purposes of TILA because it promotes the informed use of credit by keeping the consumer apprised of changes in costs.

Accordingly, the Bureau proposed § 1026.19(e)(4)(i), which would have provided that, if a creditor delivers a revised Loan Estimate, the creditor must do so within three business days of establishing that a valid reason for revision exists. Proposed comment 19(e)(4)–1 would have illustrated this requirement with examples.

Comments

The Bureau received a number of comments on the proposal, including, as discussed below, comments urging various alternative approaches to the incremental approach to redisclosure the Bureau proposed. A large bank commenter asserted that the proposed three-business-day redisclosure requirement ignores the realities of how creditors process information and underwrite loans and is arbitrary. It stated that 50 percent of lender credits and refunds it issues as required by current Regulation X are caused by its inability to meet Regulation X's three-business-day redisclosure requirement. The commenter stated that documenting the day that the event that caused the changed circumstance is difficult and uncertain because information about the event may take time to reach the division inside the creditor's organization that is responsible for providing the revised disclosures, and that in most cases, information must be verified by the creditor. The commenter also stated that in many cases, it is simply not possible for the creditor to verify that a changed circumstance has occurred and ensure that a revised disclosure is issued within three business days. The large bank commenter also asserted that the three-business-day requirement for redisclosure is especially unworkable with respect to charges in the ten percent tolerance category because when the estimated sum of charges exceeds the ten percent threshold, it could be the cumulative result of multiple changed circumstances.

Large bank commenters and industry trade associations urged the Bureau to adopt an alternative approach to the redisclosure requirement set forth in proposed § 1026.19(e)(4)(i). The commenters described the approach as the ''milestone approach.'' Under the ''milestone approach,'' revised disclosures would only have to be provided to the consumer at specific points in the mortgage origination process, such as the time that the interest rate is set and at the time of loan commitment because the occurrence of these events usually trigger closing cost changes. The commenters asserted that adopting a ''milestone approach'' would benefit consumers because it would address the issue of information overload. One of the supporters of the ''milestone approach'' stated that a series of RESPA GFEs is often provided to the consumer under the current Regulation X and often desensitizes the consumer to the information provided. The commenter asserted that information overload would worsen under the proposal because the Bureau's proposed definition of ''application'' would lead to more redisclosures. Another large bank commenter supporting the ''milestone approach'' stated that because the ''milestone approach'' would tie to key events in the origination process, the approach still ensures that the consumer gets a complete picture of the loan terms. One of the large bank commenters that supported the ''milestone approach'' also asserted that the approach would ease compliance burden because it would allow creditors to develop streamlined and efficient compliance programs, thus facilitating supervision.

Industry trade associations representing banks and mortgage lenders also advocated for redisclosure requirements different than what the Bureau proposed. The same industry trade association representing mortgage lenders asserted that it would be far less confusing to consumers and less burdensome to creditors if a redisclosure made within 30 days after receipt of a consumer's intent to proceed is deemed timely for all changed circumstances that occurred more than three days before the redisclosure is provided. As discussed above in the section-by-section analysis of § 1026.19(e)(1)(iii), industry trade associations representing banks and mortgage lenders expressed the view that the best solution to excessive redisclosure would be to require the creditor to provide a Loan Estimate

[212] ''If a revised GFE is to be provided, the loan originator must do so within 3 business days of receiving information sufficient to establish changed circumstances.'' 12 CFR 1024.7(f)(1) and (2). ''If a revised GFE is to be provided, the loan originator must do so within 3 business days of the borrower's request.'' 12 CFR 1024.7(f)(3). ''The loan originator must provide the revised GFE within 3 business days of the interest rate being locked or, for an expired interest rate, re-locked.'' 12 CFR 1024.7(f)(5).

some number of days after the consumer communicates an intent to proceed, and the commenters indicated a preference that it be 30 days. With respect to the provision of revised Loan Estimates, commenters expressed the view that the creditor should not have to provide the revised Loan Estimate to the consumer if the only items that have changed after the original Loan Estimate was provided are the closing date and charges related to the closing date. They also expressed the view that sending revised Loan Estimates in these situations would be redundant.

Industry trade associations representing banks and mortgage lenders asked if a revised Loan Estimate is required within three business days if fees increased due to a changed circumstance or borrower-requested change. They also asked if a revised Loan Estimate is ever required when there is not a changed circumstance or borrower-requested change. The commenters additionally asked if a creditor may redisclose based on underwriting information without receiving consumer approval to make the changes. The commenters also stated that it appeared that the proposal would have given the creditor the option of either delivering a revised Loan Estimate within three business days of a valid reason for revision, or waiting until four days before consummation to deliver the revised Loan Estimate.

The commenters also asserted that when new information is received, such as partial income verification, more than three business days is needed for the creditor to evaluate the information to comply with ability-to-repay and investor requirements. The commenters requested confirmation from the Bureau that the three-business-day period does not begin until after the evaluation is complete. A community bank commenter requested specific guidance from the Bureau as to the determination of when the three-business-day period begins for changed circumstances in instances when there may be new information received by the borrower or inconclusive information received. The commenter stated that in order to prevent an endless stream of redisclosures, the three-business day period should begin when the lender has fully evaluated the information.

Final Rule

After consideration of the comments, the Bureau is adopting the Regulation X approach to redisclosures that the Bureau proposed. The Bureau believes the approach best ensures that consumers are kept informed of incremental changes during the loan origination process by creditors, and thus, would best serve the policy goals of both TILA and RESPA, which the Bureau discussed in the proposal and above. Additionally, given that a number of industry commenters have raised concerns about the cost of redisclosures, the Bureau believes that creditors are incented to avoid excessive redisclosures. The Bureau also believes that the final rule facilitates the goal of limiting excessive redisclosures by limiting legitimate reasons for redisclosures to the six exceptions set forth in § 1026.19(e)(3)(iv). The Bureau also is not persuaded that there would be significant compliance burden because the final rule applies the current timing requirement in Regulation X for delivery of the revised RESPA GFE to the Loan Estimate.

In response to the concern that the Bureau's proposed definition of ''application'' would lead to more redisclosures, the Bureau has addressed the concern in great detail in the section-by-section analysis of § 1026.2(a)(3), above, and has concluded that it does not believe that the final rule will lead to more redisclosures. In consideration of the various requests for clarification on the timing requirement for the delivery of the revised Loan Estimate, the Bureau has revised proposed § 1026.19(e)(4)(i) and proposed comment 19(e)(4)–1, renumbered as comment 19(e)(4)(i)–1, to facilitate compliance. Final § 1026.19(e)(4)(i) provides that subject to the requirements of § 1026.19(e)(4)(ii), if a creditor uses a revised estimate pursuant to § 1026.19(e)(3)(iv) for the purpose of determining good faith under § 1026.19(e)(3)(i) and (ii), the creditor shall provide a revised version of the disclosures required under § 1026.19(e)(1)(i) reflecting the revised estimate within three business days of receiving information sufficient to establish that one of the reasons for revision provided under § 1026.19(e)(3)(iv)(A) through (C), (E) and (F) applies. Comment 19(e)(4)(i)–1 explains the three-business-day requirement set forth in § 1026.19(e)(4)(i) and provides illustrative examples. Additionally, as noted above in the section-by-section analysis of § 1026.19(e)(3)(iv)(D), the Bureau is adding comment 19(e)(4)(i)–2 to clarify the relationship between § 1026.19(e)(3)(iv)(D) and (e)(4)(i).

Together with the revisions to the text of § 1026.19(e)(3)(iv) and related commentary, the Bureau believes that the revisions to the text of § 1026.19(e)(4)(i) and related commentary make it unnecessary to further clarify whether a revised Loan Estimate must be provided when there is not a changed circumstance or borrower-requested change, other than the fact that it is four days before closing.

On the question of whether a creditor may issue a revised Loan Estimate without receiving consumer approval to make the changes, the Bureau believes that the final rule and commentary are clear that creditors are not required to obtain consumer approval before the creditor provides a revised Loan Estimate. The Bureau also believes that the final rule and commentary are clear that a creditor may not wait until four days before consummation to deliver the revised Loan Estimate when doing so violates the three-business-day requirement set forth § 1026.19(e)(4) or the day-of requirement set forth in § 1026.19(e)(3)(iv)(D).

With respect to requests that the Bureau clarify when the three-business-day delivery period begins, the Bureau believes that the examples set forth in comment 19(e)(1)(4)(i)–1 clearly illustrate that the three-business-day begins on the date that the creditor receives information that sufficiently establishes the reason for revision. The Bureau believes that the comment is clear in explaining that the burden is on the creditor to show that it has a reasonable basis to believe that the information it receives does not sufficiently establish the reason for the revision.

Lastly, in response to the comment from a large bank creditor that the proposed redisclosure delivery requirement would be especially unworkable for charges in the ten percent tolerance category, the Bureau believes that comment 19(e)(4)(i)–1.ii clearly illustrates that with respect to fees included in the ten percent tolerance category, the three-business day period is counted from the date on which the creditor has received sufficient information to establish that the sum of all fees included in the category of fees subject to the ten percent tolerance rule has exceeded the original estimated sum of such fees by more than ten percent due to changed circumstances. In other words, if, for example, the creditor receives information on May 1, that a fee included in the ten percent tolerance category will increase by an amount totaling six percent of the originated estimated sum of charges in the ten percent tolerance category, and then on May 8th, the creditor receives information that a changed circumstance will cause a different fee

included in the ten percent tolerance category to increase by an amount totaling two percent of the originated estimated sum of charges in the ten percent tolerance category, and then on June 15th the creditor receives information that a changed circumstance will cause a different fee included in the ten percent tolerance category to increase by an amount totaling four percent of the originated estimated sum of charges in the ten percent tolerance category, to comply with § 1026.19(e)(4)(i), the creditor would have to provide revised disclosures reflecting the 12 percent increase by June 18th, assuming that June 16th, 17th, and 18th are business days for purposes of § 1026.2(a)(6). The Bureau adopts § 1026.19(e)(4)(i) pursuant to its authority under TILA section 105(a), RESPA section 19(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, sections 129B(e) of TILA and 1405(b) of the Dodd-Frank Act.

19(e)(4)(ii) Relationship to Disclosures Required Under § 1026.19(f)(1)(i)

Proposed § 1026.19(e)(4)(ii) would have provided that the creditor shall deliver revised versions of the disclosures required by § 1026.19(e) in a manner that ensures such revised disclosures are not received on the same business day as the consumer receives the disclosures required by § 1026.19(f)(1)(i). The Bureau proposed this provision pursuant to its authority under TILA section 105(a), RESPA section 19(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). Proposed comment 19(e)(4)–2 would have clarified that revised disclosures may not be delivered at the same time as the final disclosures. The proposed comment would have also explained that creditors would comply with the requirements of § 1026.19(e)(4) if the revised disclosures are reflected in the disclosures required by § 1026.19(f)(1)(i) (*i.e.,* the Closing Disclosure). This proposed comment would have also included illustrative examples of the requirement.

As explained above, the purposes of RESPA and TILA include effective advance disclosure of settlement costs, and the informed use of credit by consumers. *See* TILA section 102; RESPA section 2. Section 105(a) of TILA also permits the Bureau to prescribe regulations that would improve consumers' ability to understand the mortgage loan transaction. The Dodd-Frank Act enhances TILA's focus by placing special emphasis on the requirement that disclosures must be made in a way that is clear and understandable to the consumer. Section 1405 of the Dodd-Frank Act focuses on improving ''consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures.'' The Bureau stated in the proposal that it was aware that, in some cases, creditors have provided a revised RESPA GFE at the real estate closing along with the RESPA settlement statement. The Bureau stated in the proposal its concern that this practice may be confusing for consumers and may diminish their awareness and understanding of the transaction.

The Bureau also stated in the proposal that it recognized there were cases in which a consumer might not have been confused by receiving good faith estimates on the same day, or even at the same time, as the consumer receives the actual settlement costs. However, because the estimated costs would match the actual costs, the Bureau expressed concern that consumers could be confused by seemingly duplicative disclosures. The Bureau was also concerned that this duplication could contribute to information overload stemming from too many disclosures, which could, in turn, inhibit the consumer's ability to understand the transaction. Accordingly, the Bureau proposed § 1026.19(e)(4)(ii) to prohibit creditors from providing a consumer with disclosures of estimated and actual costs at the same time. To draw a clear line to facilitate compliance, the creditor would not have complied with the requirements of proposed § 1026.19(e) if the consumer received revised versions of the disclosures required under § 1026.19(e)(1)(i) on the same business day as the consumer received the disclosures required by § 1026.19(f)(1)(i).

Comments

Reaction to the proposed prohibition on the simultaneous delivery of the Loan Estimate and the Closing Disclosure was mixed. In joint comments, trade associations representing State financial services regulators supported the prohibition. They stated that the proposed prohibition would incent creditors to avoid surprising consumers and intentionally under-estimating closing costs to get borrowers to select loans that may not be in the borrower's best interest. A non-depository lender that makes manufactured home loans stated that it supported the aspect of the proposal that would have permitted the creditor to reflect a revised disclosure on the Closing Disclosure.

In contrast, an industry trade association commenter representing non-depository financial services providers stated that the proposed prohibition on the simultaneous delivery of the Loan Estimate and Closing Disclosure could delay closings because settlement costs could increase shortly before the closing, and the creditor must be able to provide the revised Loan Estimate to reflect the increase. Industry trade associations representing banks and mortgage lenders stated that the requirement that a revised Loan Estimate must be received by the consumer four days before the consummation does not take into account the significance of the change or the burden associated with the waiting period. The commenters asserted that a four-day waiting period between the receipt of the revised Loan Estimate and consummation was unnecessary because the Bureau was also proposing to impose a three-business-day waiting period between the receipt of the Closing Disclosure and consummation in proposed § 1026.19(f)(1)(ii). A regional bank holding company expressed concern that under the proposal, a consumer could receive the Loan Estimate and the Closing Disclosure simultaneously if the creditor sends the disclosures by mail.

Final Rule

The Bureau has considered the comments and believes that § 1026.19(e)(4)(ii), as proposed, would not have delayed closings or limited a creditor's ability to manage cost increases and disclose them to the consumer, because although it would have prohibited simultaneous delivery of the Loan Estimate and the Closing Disclosure, proposed comment 19(e)(4)–2 would have clarified that under certain circumstances, a creditor could comply with § 1026.19(e)(4) by reflecting revised disclosures on the Closing Disclosure. The Bureau acknowledges that some commenters did not understand proposed § 1026.19(e)(4)(ii). Accordingly, the Bureau is revising the text of proposed § 1026.19(e)(4)(ii) and comment 19(e)(4)–2, renumbered as 19(e)(4)(ii)–1. As adopted, § 1026.19(e)(4)(ii) provides that the creditor shall not provide a revised version of the disclosures required under § 1026.19(e)(1)(i) on or after the date on which the creditor provides the disclosures required under § 1026.19(f)(1)(i). Section 1026.19(e)(4)(ii) also provides that the consumer must receive a revised version of the disclosures required § 1026.19(e)(1)(i) not later than four business days prior to consummation.

The Bureau believes that this addresses the regional bank holding company commenter's concern with the proposal that a consumer could receive the Loan Estimate and the Closing Disclosure simultaneously. Lastly, § 1026.19(e)(4)(ii) provides that if the revised version of the disclosures required under § 1026.19(e)(1)(i) is not provided to the consumer in person, the consumer is considered to have received such version three business days after the creditor delivers such version or places such version in the mail. This aspect of § 1026.19(e)(4)(ii) mirrors § 1026.19(e)(1)(iv). Accordingly, comment 19(e)(4)(ii)–1 references comments 19(e)(1)(iv)–1 and –2. The Bureau adopts § 1026.19(e)(4)(ii) and comment 19(e)(4)(ii)–2 pursuant to its authority under TILA section 105(a), RESPA section 19(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b).

19(f) Mortgage Loans Secured by Real Property—Final Disclosures

As discussed in the section-by-section analysis of § 1026.19 above, the disclosure requirements prior to consummation of a closed-end credit transaction under TILA apply only to creditors. For certain mortgage transactions, TILA requires creditors to furnish a corrected disclosure to the consumer not later than three business days before the date of consummation of the transaction if the prior disclosed APR has become inaccurate. *See* 15 U.S.C. 1638(b)(2)(A), (D). In contrast, RESPA generally applies to lenders and settlement agents. RESPA requires the person conducting the settlement (*e.g.,* the settlement agent) to complete a settlement statement and make it available for inspection by the borrower at or before settlement. *See* 12 U.S.C. 2603(b). RESPA also provides that, upon the request of the borrower, the person who conducts the settlement must permit the borrower to inspect those items which are known to such person on the settlement statement during the business day immediately preceding the day of settlement. *Id.*

Regulation Z implements TILA's requirement that the creditor deliver corrected disclosures and currently provides that, if the annual percentage rate disclosed in the early TILA disclosure becomes inaccurate, the creditor shall provide corrected disclosures with all changed terms. *See* 12 CFR 1026.19(a)(2)(ii). Regulation Z further provides that the consumer must receive the corrected disclosures no later than three business days before consummation. *Id.* Regulation X provides that the settlement agent shall permit the borrower to inspect the RESPA settlement statement, completed to set forth those items that are known to the settlement agent at the time of inspection, during the business day immediately preceding settlement. *See* 12 CFR 1024.10(a).

As noted above, section 1032(f) of the Dodd-Frank Act provides that the Bureau shall propose for public comment rules that combine the disclosures required under TILA and sections 4 and 5 of RESPA. In addition, sections 1098 and 1100A of the Dodd-Frank Act amended RESPA section 4(a) and TILA section 105(b), respectively, to require that the Bureau establish the integrated disclosure requirements for ''mortgage loan transactions'' that are ''subject to both or either provisions of'' RESPA sections 4 and 5 (the RESPA GFE and RESPA settlement statement requirements) and TILA. *See* 12 U.S.C. 2604(a); 15 U.S.C. 1604(b). As noted above, although Congress mandated that the Bureau integrate the rules under TILA and RESPA, it did not reconcile the timing requirements or the division of responsibilities between the creditor and settlement agent in TILA and RESPA.

In general, the proposed rule would have required that consumers receive the Closing Disclosure three business days before consummation in all circumstances and that, if any revisions were made to the Closing Disclosure before consummation, consumers would receive a revised Closing Disclosure that would have triggered an additional three-business-day waiting period, subject to several limited exceptions. Those exceptions would have included changes made due to consumer-seller negotiations, changes to reflect refunds curing violations of the good faith analysis at proposed § 1026.19(e)(3), and changes in which the amount actually paid by the consumer at closing does not exceed $100. The Bureau also would have included a limited waiver provision that would have allowed consumers to waive or modify the timing requirements in cases involving a bona fide personal financial emergency.

In response to public comment, the final rule narrows the circumstances in which changes that occur between initial provision of the Closing Disclosure and consummation would trigger a new three-business-day waiting period. These changes are discussed in more detail below in the section-by-section analyses of § 1026.19(f)(1)(ii) and (f)(2).

The proposed rule also set forth two alternative requirements for who would be responsible for providing the Closing Disclosure. Under alternative 1, the creditor would have been solely responsible for providing the Closing Disclosure. Under alternative 2, the creditor would have been responsible for providing the Closing Disclosure, but would have been expressly permitted to share responsibility with a settlement agent. Settlement agents would have been required to comply with the provisions of § 1026.19(f) and the creditor would have been responsible for ensuring the requirements of § 1026.19(f) have been satisfied. In response to comments, the Bureau is finalizing alternative 2, as discussed in more detail in the section-by-section analysis of § 1026.19(f)(1)(v) below.

The Bureau received extensive public comment on the proposed rules for the delivery of the Closing Disclosure. In general, commenters focused on the proposed timing and responsibility for providing the Closing Disclosure. The vast majority of commenters were concerned the Bureau's proposed timing requirements would delay most or a large percentage of transactions. Commenters also provided extensive feedback on whether the creditor or settlement agent should bear responsibility for preparing and delivering the Closing Disclosure. The Bureau also received comment on other aspects of proposed § 1026.19(f), as described more fully below in their respective sections. The final rule revises the proposal in response to these comments, as described throughout this section.

19(f)(1) Provision of Disclosures

19(f)(1)(i) Scope

As discussed above, the integrated disclosure mandate requires the Bureau to reconcile several aspects of the disclosure requirements under TILA and RESPA. Thus, pursuant to its authority under sections 105(a) of TILA, 19(a) of RESPA, and 1032(f) of the Dodd-Frank Act, the Bureau proposed to integrate the disclosure requirements in TILA section 128 and RESPA section 4 in § 1026.19(f)(1)(i). This section would have provided that, in a closed-end consumer credit transaction secured by real property, other than a reverse mortgage subject to § 1026.33, the creditor shall provide the consumer with the disclosures in § 1026.38 reflecting the actual terms of the credit transaction. Proposed comment 19(f)(1)(i)–1 would have provided illustrative examples of this provision.

Comments

As noted above and discussed in greater detail in § 1026.19(f)(1)(ii)(A) below, the Bureau received extensive public comment regarding the timing requirements for delivery of the Closing Disclosure. Among other things, many commenters from across the real estate and mortgage lending industries were concerned that a general requirement to disclose the ''actual terms'' of the transaction to the consumer three business days before consummation would prove impracticable because many costs are not known by that time. Commenters also observed that the proposed delivery rules, which would have created a presumption that the consumer received the Closing Disclosure three business days after it was placed in the mail, would have required that creditors and settlement agents disclose a large amount of information on the Closing Disclosure at least six business days, and possibly more, before consummation. Commenters further explained that information required to be disclosed on the Closing Disclosure derives from many sources, including settlement agents and other settlement service providers, and that creditors frequently do not select settlement service providers.

Both creditor and settlement agent commenters were concerned that they could not guarantee that the ''actual terms'' of the transaction could be provided three business days before consummation in every case. Commenters also were concerned that a requirement to disclose the ''actual terms'' of the transactions before consummation would delay closings because creditors would not provide the Closing Disclosure until all parties have finalized their information. Because settlement costs currently are not disclosed to borrowers until the day before or the day of settlement on the RESPA settlement statement, industry commenters were concerned about the feasibility of providing the ''actual terms'' of the transaction before consummation, notwithstanding the proposed exceptions for consumer-seller negotiations, tolerance cures, and $100 or less increase in the cash to close amount. Commenters were concerned that the proposed exceptions would be too narrow to account for the many reasons closing costs could change before consummation, and that the need for revisions would arise inevitably, triggering a series of three-business-day waiting periods.

Settlement agent commenters recommended that the Bureau integrate the final TILA disclosure with the RESPA settlement statement by cross-referencing in Regulation Z certain RESPA-related disclosure requirements in Regulation X.[213] A trade association representing the settlement agent and title insurance industry recommended that the final rule divide the Closing Disclosure requirements among Regulation Z and Regulation X, as a modification to one of the alternatives proposed by the Bureau with respect to who would be responsible for providing the Closing Disclosure. The commenter submitted draft language for the Bureau to consider adopting in the final rule.

Final Rule

Actual terms. The Bureau believes consumers must receive accurate information about the actual terms of their transactions. The Bureau also appreciates that some information about the transaction may not be known with certainty three business days before consummation. The Bureau further understands that consumers and other parties may face costs if closings are delayed, as discussed in greater detail in the section-by-section analyses of § 1026.19(f)(1)(ii)(A) and (f)(2) below. From the extensive public comments it received on this aspect of the proposal, the Bureau understands that creditors and settlement agents obtain transaction cost information from a wide variety of sources and third parties. The Bureau understands that some costs may only be known before or even after consummation. In light of these concerns, the final rule clarifies the requirements in § 1026.19(f) with respect to the accuracy of the information contained in the Closing Disclosure provided three business days before consummation, as discussed in more detail below, and with respect to changes that may occur before and after consummation, as discussed in the section-by-section analyses of § 1026.19(f)(1)(ii)(A) and (f)(2) below.

Final § 1026.19(f)(1)(i) is adopted as proposed with a technical revision to the heading of § 1026.19(f)(1). Final § 1026.19(f)(1)(i) provides that, in a closed-end consumer credit transaction secured by real property, other than a reverse mortgage subject to § 1026.33, the creditor shall provide the consumer with the disclosures in § 1026.38 reflecting the actual terms of the transaction.

Proposed comment 19(f)(1)(i)–1 is adopted substantially as proposed, with revisions to conform to the final rule. The Bureau recognizes that changes may occur after the Closing Disclosure is first provided three business days before consummation. Accordingly, comment 19(f)(1)(i)–1 states that if the disclosures provided pursuant to § 1026.19(f)(1)(i) do not contain the actual terms of the transaction, the creditor does not violate § 1026.19(f)(1)(i) if the creditor provides corrected disclosures that contain the actual terms of the transaction and complies with the other requirements of § 1026.19(f), including the timing requirements in § 1026.19(f)(1)(ii) and (f)(2). The comment includes a reference to the timing requirements of § 1026.19(f)(2) because that provision, as revised, includes timing and delivery requirements applicable to changes that may occur after the Closing Disclosure is first provided under § 1026.19(f)(1)(ii)(A) three business days before consummation. See the section-by-section analysis of final § 1026.19(f)(2) for a discussion of these redisclosure requirements.

The final rule also amends the example in the final sentence of proposed comment 19(f)(1)(i)–1 to reflect revisions made in the final rule to address changes that may be made before consummation without triggering additional three-business-day waiting periods under § 1026.19(f)(2). Specifically, the comment includes an example in which the consumer adds a mobile notary service after the creditor provides the Closing Disclosure, which requires that the creditor provide corrected disclosures at or before consummation, pursuant to § 1026.19(f)(2)(i). In addition, comment 19(f)(1)(i)–1 refers to ''corrected disclosures'' rather than ''new disclosures'' to reflect the terminology currently used with respect to the final TILA disclosures in Regulation Z and for greater consistency throughout § 1026.19(f).

Best information reasonably available standard. As discussed in more detail in the section-by-section analyses of § 1026.19(f)(1)(ii)(A), (f)(2)(i), and (f)(2)(ii), the Bureau recognizes that the Closing Disclosure provided to consumers three business days before consummation pursuant to § 1026.19(f)(1)(ii)(A) may require revisions, and that creditors may face compliance difficulties providing the ''actual terms'' of the transaction three business days before consummation. Accordingly, as discussed in more detail below, the final rule clarifies the

[213] Although commenters provided these comments in response to the Bureau's proposal for which party would be responsible for providing the Closing Disclosure, discussed in more detail in the section-by-section analysis of § 1026.19(f)(1)(v) below, the Bureau is addressing them here because they implicate the decision to integrate the disclosures in § 1026.19(f).

accuracy standards applicable to the Closing Disclosure provided three business days before consummation.

While the Bureau acknowledges that the Closing Disclosure provided three business days before consummation may require subsequent revisions, the Bureau does not expect revisions will be made to terms that will impose significant, long-term costs to consumers. First, the final rule expands the zero percent tolerance category that applies to the estimated charges under § 1026.19(e) from the category that is applicable to the RESPA GFE under current Regulation X to include charges paid to affiliates of the creditor or a mortgage broker and charges for which the consumer cannot shop for the service provider, as discussed in the section-by-section analysis of § 1026.19(e)(3) above. Second, the final rule imposes redisclosure requirements resulting in a new three-business-day waiting period for certain changes to the APR, loan product, and prepayment penalties, discussed in the section-by-section analysis of § 1026.19(f)(2) below. With respect to revisions resulting from the consumer's participation in the transaction, such as third-party services that the consumer shops for independently (*e.g.,* owner's title insurance), the Bureau believes the consumer will be aware of cost increases associated with such services. In addition, to the extent changes occur between the time the Closing Disclosure is first provided and consummation that may affect the Cash to Close disclosure under § 1026.38, the Bureau believes creditors and settlement agents will have an incentive to keep consumers informed of such changes to ensure the efficient operation of closings. In addition, the Bureau believes the final rule will provide industry with additional incentive to ensure consumers receive disclosures that are as accurate as possible at the time they are provided to minimize subsequent revisions.

The accuracy standards with respect to the final TILA disclosures and the RESPA settlement statement currently differ under Regulation X and Regulation Z. RESPA section 4 requires that the RESPA settlement statement itemize all charges imposed upon the borrower and the seller, and current Regulation X § 1024.8(b)(1) requires the disclosure of the ''actual charges'' paid by the borrower and seller. However, Regulation Z currently accounts for the practical difficulties that creditors may face in providing information on disclosures delivered before consummation. Regulation Z § 1026.17 contains general disclosure requirements applicable to closed-end transactions, including mortgage loans. Section 1026.17(c)(2)(i) states that, ''[i]f any information necessary for an accurate disclosure is unknown to the creditor, the creditor shall make the disclosure based on the best information reasonably available at the time the disclosure is provided to the consumer, and shall state clearly that the disclosure is an estimate.'' Comments 17(c)(2)(i)–1, –2, and –3 contain guidance explaining the application of the best information reasonably available standard.

While the Bureau did not propose to amend the text of § 1026.17(c)(2)(i), it did propose amendments to the commentary of that section to clarify the applicability of the best information reasonably available standard to the particular estimation and redisclosure requirements of § 1026.19(e) and (f). For example, as discussed in the section-by-section analysis of § 1026.17(c)(2)(i), proposed comment 17(c)(2)(i)–1 would have added a clause to the first sentence of the comment that states, ''[e]xcept as otherwise provided in §§ 1026.19, 1026.37, and 1026.38, disclosures'' may be estimated when the exact information is unknown at the time disclosures are made. Proposed comment 17(c)(2)(i)–1 also would have added a sentence to the end of the existing comment that states, ''[f]or purpose of § 1026.17(c)(2)(i), creditors must provide the actual amounts of the information required to be disclosed pursuant to § 1026.19(e) and (f), subject to the estimation and redisclosure rules in those provisions.'' Thus, creditors would have had to disclose the actual terms of the transaction for the disclosures under § 1026.19(f), including for disclosures provided three business days before consummation. Proposed comment 17(c)(2)(i)–2 (labeling estimates) would have added a sentence to the current comment to clarify that, for disclosures required by § 1026.19(e), use of the Loan Estimate form H–24 of appendix H, pursuant to § 1026.37(o), satisfies the requirement that the disclosure state clearly that the disclosure is an estimate, and that ''for all other disclosures,'' creditors have flexibility in labeling estimates.

The Bureau believes the actual charges standard applicable to the RESPA settlement statement under Regulation X and the best information reasonably available standard generally applicable to closed-end disclosures provided before consummation under Regulation Z must be reconciled to integrate the disclosure requirements of RESPA and TILA. Accordingly, the final rule revises proposed comment 17(c)(2)(i)–1 to clarify that the best information reasonably available standard applies to the Closing Disclosure in certain circumstances. In addition, as discussed below, the final rule includes comment 19(f)(1)(i)–2, which is similar to the commentary generally applicable to § 1026.17(c)(2)(i), but differs in certain respects.

Comment 17(c)(2)(i)–1 explains that creditors may estimate when the exact information is unknown to the creditor at the time disclosures are made, and that information is unknown if it is not reasonably available to the creditor at the time the disclosures are made. Comment 19(f)(1)(i)–2 is substantially similar, but uses the phrase ''actual term'' instead of ''exact information'' to reflect the requirements of § 1026.19(f)(1)(i) that the creditor provide the consumer with disclosures in § 1026.38 reflecting the ''actual terms'' of the transaction. Because the best information reasonably available standard applies to the Closing Disclosure when it is provided three business days before consummation, comment 19(f)(1)(i)–2 provides that creditors may estimate disclosures provided under § 1026.19(f)(1)(ii)(A) and (f)(2)(ii) when the actual term is unknown to the creditor at the time disclosures are made, consistent with § 1026.17(c)(2)(i).

Like comment 17(c)(2)(i)–1, comment 19(f)(1)(i)–2.i explains that the ''reasonably available'' standard requires that the creditor, acting in good faith, exercise due diligence in obtaining information. An actual term is unknown only if it is not ''reasonably available'' to the creditor at the time the disclosures are made, and the ''reasonably available'' standard requires that the creditor, acting in good faith, exercise due diligence in obtaining the information.

The due diligence requirement is a critical element of the best information reasonably available standard. The Bureau expects creditors will conduct due diligence, and coordinate with settlement agents and other parties as necessary, to obtain information about the terms of the consumer's transaction so that the consumer receives a reliable Closing Disclosure three business days before consummation.

To clarify the due diligence requirement, comment 19(f)(1)(i)–2.i includes guidance similar to comment 17(c)(2)(i)–1 with respect to how a creditor exercises due diligence in obtaining information. Unlike comment 17(c)(2)(i)–1, comment 19(f)(1)(i)–2.i includes settlement agents as an additional example of a third-party

source the creditor may rely on in obtaining information. The comment includes this example because the Bureau understands that creditors are likely to rely on settlement agents for many types of information that must be provided in the Closing Disclosure. Thus, the comment illustrates that creditors might look to a settlement agent for homeowners association dues or other information in connection with a real estate settlement. This comment is intended to be illustrative and not exhaustive of the types of parties or information that a creditor might consult in performing due diligence.

If the creditor does not itself have the information regarding the actual terms, such as for the disclosures under § 1026.38(j) and (k), the creditor may rely on a third party settlement agent for the transaction in obtaining information regarding the actual terms of the transaction. The creditor would not be considered to have conducted due diligence if the creditor did not attempt to obtain such information from the settlement agent. In such case, the creditor would not be permitted to use an estimate for the disclosure provided under § 1026.19(f)(1)(ii)(A).

Comment 19(f)(1)(i)–2.i includes examples illustrating how a creditor exercises due diligence for purposes of § 1026.19(f)(1)(i). Comment 19(f)(1)(i)–2.i.A includes an example in which a creditor does not exercise due diligence in connection with the cost of the lender's title insurance policy to be purchased by the consumer. Comment 19(f)(1)(i)–2.i.B includes an example in which a creditor has exercised due diligence in connection with amounts disclosed under § 1026.38(j) and (k) because it bases disclosures on information about the consumer's transaction obtained from the settlement agent.

Like comment 17(c)(2)(i)–1, comment 19(f)(1)(i)–2.ii clarifies that, if an actual term is unknown, the creditor may use estimates in making disclosures even though the creditor knows that more precise information will be available at or before consummation. Similar to comment 17(c)(2)(i)–1, comment 19(f)(1)(i)–2 highlights the creditor's obligations to make subsequent disclosures. Comment 19(f)(1)(i)–2.ii specifically discusses the creditor's obligations to provide corrected disclosures at or before consummation containing the actual terms of the transaction under § 1026.19(f)(2), subject to the exceptions provided for in § 1026.19(f)(2).

Comment 19(f)(1)(i)–2 does not state that the creditor must label disclosures based on the best information reasonably available as estimates. Instead, comment 19(f)(1)(i)–2.ii clarifies that the labeling rules under § 1026.38 apply to the Closing Disclosures with a reference to comment 17(c)(2)(i)–2 to direct creditors to guidance on labeling estimates. The disclosure requirements in § 1026.38 generally do not permit creditors to label disclosures on the Closing Disclosure as estimates because creditors are required to use the master headings, headings, subheadings, labels, and designations required by that section.

The Bureau is aware that other disclosures provided under Regulation Z are labeled as estimates when information is unknown. However, the Bureau is concerned that labeling certain items on the Closing Disclosure as estimates may result in consumer confusion regarding the nature of the Closing Disclosure. In addition, the Closing Disclosure uses the term ''estimated'' in specific areas to inform the consumer when certain recurring costs may change in the future, such as future payments for taxes and property insurance. The Bureau believes the intended meaning of the term ''estimated'' for those disclosures may be affected by use of that term in other places on the Closing Disclosure form. Further, at the Bureau's Quantitative Study, consumer participants using the Closing Disclosure performed statistically significantly better at understanding their final loan terms and costs than consumer participants using the current RESPA settlement statement and final TILA disclosure. *See* Kleimann Quantitative Study Report at 68–69.

The Bureau notes that under § 1026.19(f)(2)(i) and (ii), creditors must provide corrected disclosures if information on disclosures provided under § 1026.19(f)(1)(i) becomes inaccurate. Thus, consumers will receive by consummation corrected disclosures stating the actual terms of the transaction. In addition, under final § 1026.19(f)(2)(iii), consumers will receive corrected disclosures after consummation if a subsequent event changes an amount actually paid by the consumer during the 30-day period following consummation. This approach is consistent with what the Bureau believes is the current practice under Regulation X, which provides that the RESPA settlement statement must state the actual charges paid by the borrower and seller, and does not provide for labeling charges as estimates, even if the RESPA settlement statement is subsequently revised.

Unlike comment 17(c)(2)(i)–1, comment 19(f)(1)(i)–2.iii explains how the best information reasonably available standard applies if a settlement agent provides certain disclosures under § 1026.19(f)(1)(i) instead of a creditor, pursuant to § 1026.19(f)(1)(v). As discussed in the section-by-section analysis of § 1026.19(f)(1)(v), a settlement agent may provide a consumer with the Closing Disclosure, provided the settlement agent complies with all relevant requirements of § 1026.19(f). Comment 19(f)(1)(i)–2.iii is intended to illustrate the applicability of the best information reasonably available standard to provisions as applied to settlement agents providing the Closing Disclosure three business days before consummation.

Comment 19(f)(1)(i)–2.iii explains that the settlement agent normally may rely on the representations of other parties in obtaining information, but the settlement agent also must satisfy the ''best information reasonably available'' standard. Accordingly, the settlement agent is required to exercise due diligence to obtain information if it is providing the Closing Disclosure pursuant to § 1026.19(f)(1)(v). Comment 19(f)(1)(i)–2.iii illustrates a scenario in which the settlement agent is considered to have conducted due diligence if it obtained from the creditor information for the loan terms table required to be disclosed under § 1026.38(b).

As discussed in the section-by-section analysis of § 1026.19(f)(1)(v), even if the settlement agent provides the Closing Disclosure, the creditor remains responsible under § 1026.19(f)(1)(v) for ensuring that the Closing Disclosure is provided in accordance with § 1026.19(f). Comment 19(f)(1)(v)–3 explains that the creditor is expected to maintain communication with the settlement agent to ensure that the settlement agent is acting in place of the creditor. Comment 19(f)(1)(i)–2.iii references this obligation and includes a cross-reference to comment 19(f)(1)(v)–3.

Denied or withdrawn applications. As discussed in the section-by-section analysis of § 1026.19(f)(1)(ii)(B) below, a trade association representing the timeshare industry requested that the final rule include commentary clarifying that, if the consumer's application will not or cannot be approved on the terms requested or the consumer has withdrawn the application, the Closing Disclosure is not required. Although the commenter provided this recommendation in the context of timeshare transactions, the Bureau

believes such guidance would be helpful as applied to all transactions subject to § 1026.19(f). Thus, as discussed below, the final rule includes comment 19(f)(1)(i)–3 to provide guidance for such situations, which reflects similar guidance applicable to the Loan Estimate.

Under § 1026.19(f)(1)(i), the creditor must provide a Closing Disclosure reflecting ''the actual terms of the transaction.'' Additionally, under § 1026.19(f)(1)(ii)(A) and (f)(2)(ii), the Closing Disclosure must be provided three business days before consummation; under § 1026.19(f)(2)(i), the Closing Disclosure must be provided at or before consummation; and for loans secured by timeshares under § 1026.19(f)(1)(ii)(B), creditors must ensure that the consumer receives the Closing Disclosure no later than consummation. If the consumer's application for credit is denied or withdrawn before the creditor provides the Closing Disclosure under § 1026.19(f)(1)(ii)(A), (f)(1)(ii)(B), (f)(2)(i), or (f)(2)(ii), creditors would be unable to disclose ''the actual terms of the transaction,'' and providing a Closing Disclosure in such cases would provide relatively little consumer benefit.

In other cases, an application may be denied or withdrawn after the three-business-day deadline by which the Closing Disclosure must be provided under § 1026.19(f)(1)(ii)(A) and, as applicable, § 1026.19(f)(2)(ii). In these cases, however, the denial or withdrawal of an application that may occur subsequent to the three-business-day deadline does not excuse a creditor's obligation to provide the Closing Disclosure by that deadline. Where the consumer is considering whether to withdraw a credit application in the days before consummation, the consumer's receipt of the Closing Disclosure three business days before consummation would provide critical information about whether it is in the consumer's interest to proceed with the transaction.

Accordingly, comment 19(f)(1)(i)–3 clarifies that the creditor is not required to provide the disclosures required under § 1026.19(f)(1)(i) if, before the time the creditor is required to provide the disclosures under § 1026.19(f), the creditor determines the consumer's application will not or cannot be approved on the terms requested, or the consumer has withdrawn the application, and, as such, the transaction will not be consummated. The comment also includes a cross-reference to comment 19(e)(1)(iii)–3, which provides examples in which an application will not or cannot be approved on the terms requested or has been withdrawn by the consumer.

Integration of Closing Disclosure requirements in Regulation Z. Section 1032(f) of the Dodd-Frank Act generally requires that the Bureau propose rules and model disclosures that combine the disclosures required under TILA and sections 4 and 5 of RESPA into a single, integrated disclosure for mortgage loan transactions covered by those laws. In addition, Dodd-Frank Act sections 1098 and 1100A amended section 105(b) of TILA and section 4(a) of RESPA to require the integration of the TILA disclosures and the disclosures required by sections 4 and 5 of RESPA. Although Congress imposed this integrated disclosure requirement, it did not harmonize the underlying statutes, as discussed in greater detail in the Legal Authority discussion in part IV above. Thus, to meet the Dodd-Frank Act's express requirement to integrate the disclosures required by TILA and RESPA, the Bureau must reconcile the differences between these two statutes.

The Bureau understands the concerns raised by commenters with respect to placing the requirements regarding disclosure of settlement charge information, which is traditionally considered to be only RESPA-required information, in Regulation Z. However, the Bureau believes it is appropriate to integrate the requirements of RESPA and TILA into a single Closing Disclosure set forth in Regulation Z. Section 1419 of the Dodd-Frank Act amended TILA by adding section 128(a)(17), which generally requires creditors to disclose the aggregate amount of settlement charges for all settlement services provided in connection with the loan and the aggregate amount of other fees or required payments in connection with the loan. The items included in this amendment are nearly all of the items that are included on the RESPA settlement statement. Accordingly, creditors would have to include in the TILA disclosures information that was traditionally known only to settlement agents in advance of consummation. Although TILA section 128(a)(17) requires that creditors disclose aggregate information, to meaningfully implement this requirement, the Bureau believes it is reasonable to require that creditors base such disclosure on the specific elements comprising the aggregate figure. Accordingly, and in light of the integration mandate, the Bureau believes it is appropriate to integrate the specific requirements of RESPA and Regulation X into Regulation Z.

In addition, the Bureau believes there are substantial practical benefits to locating the disclosure requirements in Regulation Z, including the benefits of facilitating industry compliance and improving consumer comprehension. The Closing Disclosure was subjected to extensive consumer testing as a single, integrated document. Were the Closing Disclosure divided as separate documents based on disparate requirements located in Regulation X and Regulation Z, there is risk that consumers would receive different parts of the Closing Disclosure at different times, which the Bureau believes would undermine consumer comprehension. Even if the rule were to require that the information be provided to consumers by the same deadline, there is a risk that consumers would receive separate, disjointed disclosures at separate times if, for example, parties providing the disclosures used different delivery services. Accordingly, the Bureau believes it is necessary to ensure that consumers receive the Closing Disclosure as a single, integrated document.

The Bureau believes ensuring consumer comprehension requires that the information in the Closing Disclosure be disclosed and delivered in a consistent manner. The Closing Disclosure was designed to facilitate the consumer's comparison of terms disclosed in the Loan Estimate. As a result, a number of the disclosure requirements applicable to the Closing Disclosure set forth in § 1026.38 cross-reference the disclosure requirements applicable to the Loan Estimate set forth in § 1026.37, rather than setting forth their own requirements.[214] This approach helps ensure consumers can easily compare the Closing Disclosure against the Loan Estimate. To this end, the Bureau believes the Closing Disclosure should be subject to rules relying on a single set of terminology, timing requirements, recordkeeping requirements, and a consistent set of other general disclosure requirements and commentary.

The Bureau believes the final rule will facilitate compliance because it will obviate potential conflicts between Regulation X and Regulation Z that might otherwise arise. For example, as described in more detail above,

[214] *See, e.g.,* § 1026.38(a)(5) (loan information disclosures requiring disclosure of the information required to be disclosed under § 1026.37(a)(8) through (11)); § 1026.38(c) (projected payment disclosures requiring disclosure of the information required to be disclosed under § 1026.37(c)); § 1026.38(f) (closing loan cost information described in § 1026.37(f)(1) and (3), and the total of loan costs based, *inter alia,* on such disclosures).

§ 1026.19(f)(1)(i) clarifies the applicability of the best information reasonably available standard set forth in the general disclosure requirements applicable to closed-end consumer credit transactions under § 1026.17(c)(2)(i), and § 1026.17 contains a number of other general disclosure requirements that address compliance questions raised by commenters, such as questions about delivery requirements in the case of multiple consumers. *See* section-by-section analysis of § 1026.19(f)(1)(iii) below; § 1026.17(d) (providing disclosures in the case of multiple consumers). Regulation Z also contains extensive commentary that interprets many of the provisions of Regulation Z, including the general disclosure requirements in § 1026.17. The Bureau believes this extensive commentary will assist industry in complying with the final rule. By contrast, locating certain Closing Disclosure requirements in Regulation X, with other information in Regulation Z, likely would present compliance difficulties for creditors and settlement agents. Because the Loan Estimate requirements will be located in Regulation Z, and because elements of the Closing Disclosure cross-reference elements of the Loan Estimate, creditors or settlement agents would be required to regularly consult Regulation Z. The Bureau is concerned that compliance with two sets of regulations for one disclosure would increase the risk of inconsistencies.

One trade association representing settlement agents and the title insurance industry implied that the Bureau could resolve any such discrepancies by including a provision in Regulation X stating that, for loans subject to § 1026.19(e) and (f), the definitions and rules of construction of Regulation Z would control, to the extent of any inconsistency. This commenter also recommended that the Closing Disclosure provisions in Regulation X cross-reference applicable Loan Estimate requirements located in Regulation Z. However, the Bureau does not believe such an approach will facilitate compliance, which is one of the purposes of the integrated disclosures. *See* Dodd-Frank Act sections 1098, 1100A. Because many of the individual elements of the Closing Disclosure cross-reference the Loan Estimate, and because the timing, delivery, and other general disclosure standards applicable to the Closing Disclosure rely on definitions and other provisions located in Regulation Z, coordination with Regulation Z would be unavoidable. The Bureau is concerned that separating the disclosure requirements between Regulation Z and Regulation X would foster confusion and inefficiencies, while not facilitating compliance with the disclosure requirements. *See* Dodd-Frank Act sections 1098, 1100A. For example, while the approach preferred by commenters may reconcile differences in terminology, the Bureau does not believe it would reconcile other differences, such as the general disclosure requirements in § 1026.17.[215]

The Bureau believes integrating the Closing Disclosure requirements in Regulation Z also satisfies the Dodd-Frank Act integration mandate. To meet the integration mandate, the Bureau must reconcile several important differences between RESPA and TILA. For example, to reconcile the different timing requirements under RESPA and TILA with respect to when the Closing Disclosure must be provided, the final rule generally requires that the Closing Disclosure be provided three business days before ''consummation.'' Regulation Z currently defines ''consummation'' as ''the time that a consumer becomes contractually obligated on a credit transaction.'' *See* § 1026.2(a)(13). Regulation X, by contrast, provides that the RESPA settlement statement must be delivered by ''settlement,'' which is defined as ''the process of executing legally binding documents regarding a lien on property that is subject to a federally related mortgage loan.'' *See* 12 CFR 1024.2(b). As noted by commenters representing the views of settlement agents, discussed in the section-by-section analysis of § 1026.19(f)(1)(ii)(A), ''consummation'' and ''settlement'' may not necessarily occur at the same time. To ensure consumers consistently receive a single, integrated Closing Disclosure in a timely manner, the Bureau believes it must reconcile these differences. Accordingly, as discussed in more detail in the section-by-section analysis of § 1026.19(f)(1)(ii)(A), the final rule requires that the Closing Disclosure be received three business days before ''consummation.'' Thus, as described above, the Bureau believes integrating the TILA and RESPA requirements applicable to the Closing Disclosure in § 1026.19(f)(1)(i) will satisfy TILA, RESPA, and the Dodd-Frank Act's integration mandate, will facilitate industry compliance, and will enhance consumers' understanding of their transactions.

Comments related to the integration of particular disclosure requirements are addressed where applicable below in the section-by-section analysis of § 1026.38. Comments related to liability issues raised by integrating the Closing Disclosure requirements in Regulation Z are addressed in the beginning of part V above. The final rule makes certain amendments to the proposal in response to comments regarding the timing and delivery requirements applicable to the Closing Disclosure, as discussed in greater detail throughout the section-by-section analysis of § 1026.19(f) below.

Final provisions. For the reasons discussed above, and based on the authority cited in the proposal as well as sections 1098 and 1100A of the Dodd-Frank Act, the final rule integrates the disclosure requirements in TILA section 128 and RESPA section 4 in final § 1026.19(f), as proposed. The final rule adopts the language in proposed § 1026.19(f)(1)(i) as proposed, with a technical revision to the heading of § 1026.19(f)(1). The final rule adopts proposed comment 19(f)(1)(i)–1 substantially as proposed, and adopts new comments 19(f)(1)(i)–2 and –3 pursuant to the Bureau's authority under sections 105(a) of TILA, 19(a) of RESPA, and sections 1098, 1100A and 1032(f) of the Dodd-Frank Act.

19(f)(1)(ii) Timing

19(f)(1)(ii)(A) In General

The Bureau explained in the proposal that the integrated disclosure mandate requires the Bureau to reconcile two statutory timing regimes that are currently not synchronized. The Bureau explained that the determination of how to integrate these conflicting statutory provisions also must be made in light of section 1405(b) of the Dodd-Frank Act, which focuses on improving ''consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures.'' The Bureau recognized in the proposal that consumers may be more aware of and better understand their transactions if consumers receive the disclosures reflecting all of the terms and costs associated with their transactions three business days before consummation. The Bureau explained that this would afford consumers sufficient time to review, analyze, and question the information reflected in the disclosure, such that consumers are aware of and understand the

[215] The commenter recommending this approach, in which the settlement agent would provide elements of the Closing Disclosure contained in Regulation X, explained that doing so would facilitate industry compliance and enhance consumer understanding. The Bureau has addressed settlement agent responsibility for the Closing Disclosure in the section-by-section analysis of § 1026.19(f)(1)(v).

transactions by the time consumers become obligated.

The Bureau also explained that if consumers receive the disclosures three business days before consummation, they would have sufficient time to identify and correct errors, discuss and negotiate cost increases, and have the necessary funds available. The Bureau expected that this also could eliminate the opportunity for bad actors to surprise consumers with unexpected costs at the closing table, when consumers are committed to going through with the transaction. Further, the Bureau explained that providing consumers with more time to review the Closing Disclosure may encourage creditors to take greater care to ensure the accuracy of the Loan Estimate. The Bureau noted that while the proposal's expanded Loan Estimate tolerances would reduce the likelihood of such tactics, requiring advance disclosure of the Closing Disclosure would make it easier for consumers to identify any changes and provide additional incentive for creditors to avoid such changes.

The Bureau acknowledged that a three-business-day period could result in closing delays, which would impose costs on some consumers. The Bureau also noted that, in extreme situations, such delays could cause a transaction to fall through if a consumer is under a contractual obligation to close by a certain date. The Bureau reasoned, however, that creditors and settlement agents currently coordinate to provide the RESPA settlement statement at closing and that these parties would have an incentive to complete closings as scheduled, and therefore the Bureau believed that they would adjust their business practices to provide the Closing Disclosure in a timely manner, making closing delays infrequent. The Bureau also noted that delayed or canceled closings could impose costs on covered persons as well, such as a loss in revenue for transactions that fall through due to a delay. The Bureau also noted that the proposed rule could create legal and reputational risks for creditors or settlement agents that are unable to close loans as planned.

Section 105(a) of TILA authorizes the Bureau to modify and add requirements under certain circumstances, and the Bureau stated its belief that requiring redisclosure in cases where it is not currently required under Regulation Z or Regulation X is necessary to effectively integrate the disclosures. Accordingly, the Bureau proposed § 1026.19(f)(1)(ii)(A), which would have provided that, except for transactions secured by timeshares, or as provided under proposed § 1026.19(f)(2), the creditor shall ensure that the consumer receives the disclosures no later than three business days before consummation. Pursuant to proposed § 1026.2(a)(6), the definition of ''business day'' that would have applied to § 1026.19(f)(1)(ii) would have been the specific definition that also applies to the right of rescission under § 1026.23: a business day would include all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a).

Proposed comment 19(f)(1)(ii)–1 would have provided illustrations of this requirement. Proposed comment 19(f)(1)(ii)–2 would have explained the requirement that consumers must receive disclosures no later than three business days in advance of consummation, and would have provided practical examples illustrating appropriate delivery methods.

Comments

The Bureau received extensive public comment and ex parte submissions regarding the timing of the Closing Disclosure's delivery requirements. Some industry commenters representing views from across the real estate market [216] and some individual consumers expressed support for a general three-business-day disclosure requirement. These commenters explained that a general three-business-day period would provide consumers an opportunity to review documents, ask questions, negotiate to reduce costs, gather necessary funds, transfer funds to the settlement agent, and reduce opportunity for bait-and-switch tactics. Settlement agents and attorney commenters explained that a general three-business-day requirement also would provide settlement agents more time to prepare settlement documents in an unpressured environment.

A variety of settlement agent commenters and an individual consumer explained that consumers are sometimes surprised at the closing table when they discover important changes to their loan terms, such as the discovery that they are receiving an adjustable rate mortgage loan rather than a fixed rate loan, or an adjustable rate mortgage loan with different loan terms than what they anticipated. Settlement agent commenters explained that a general three-business-day period would allow consumers to review the Closing Disclosure with an attorney or another advisor. Some of these commenters, however, expressed concern about triggering an additional waiting period as a result of redisclosing the Closing Disclosure and about how the Bureau's proposal would interact with other rules. Comments relating to the circumstances under which revisions to the Closing Disclosure would trigger an additional waiting period are discussed in more detail in the section-by-section analysis of § 1026.19(f)(2) below.

Commenters who represent consumer interests supported the three-business-day requirement. Two consumer advocacy groups submitting a joint comment supported the Bureau's proposal. A housing counseling agency noted that a mandatory period would address a common consumer complaint that refinancing settlements are frequently rushed. A State attorney general stated that a three-business-day period was necessary for consumers to consider all of the costs in light of the significant obligation assumed by the consumer in a mortgage transaction, particularly in the context of purchasing a home. Several associations of State banking regulators submitting a joint comment also supported a general three-business-day requirement, explaining that the three-business-day requirement would create consistency where there was a discrepancy between RESPA and TILA. This commenter noted that the proposed changes to the disclosures were perhaps the most sweeping and significant reform to the mortgage origination process in recent history, but cautioned that careful and coordinated implementation was essential to avoiding potentially significant market disruption.

However, many commenters from across the mortgage and real estate industry and a Federal agency opposed a general three-business-day disclosure requirement, arguing that providing ''final'' settlement costs three business days before consummation would be impracticable, unnecessary, and result in frequent closing delays that would impose costs on consumers, sellers, industry, and the market. Commenters explained that certain settlement costs were unknown three to six days in advance and usually are not known until a day or two before closing.[217] A

[216] Commenters included title and insurance companies, settlement agents, law firms, mortgage brokers, attorneys, a large bank, community banks, and trade associations representing creditors, attorneys, and settlement agents.

[217] Commenters observed that they would have to prepare the Closing Disclosure at least six business days before consummation because proposed § 1026.19(f)(1)(iii) would add three business days to the timeframe to obtain the benefit of a presumption that the consumer receives it three business days before consummation. As discussed in the section-by-section analysis of § 1026.19(f)(1)(iii), the

Continued

community bank representative stated that, while it would be feasible to prepare a borrower's closing costs three days in advance, it may be more difficult to account for the seller's transaction accurately by that time.

Difficulties with obtaining final costs three business days before consummation. Many commenters concerned about the general three-business-day requirement cited the likelihood of coordination problems between creditors, settlement service providers, and other third-parties. Both creditors and settlement agents expressed concern that they could not guarantee that other parties, such as government entities or third-party settlement service providers, would be able to provide final closing figures in a timely manner. As a result, commenters explained that it is common practice for consumers to review final settlement costs the day before settlement or several hours before settlement.

Settlement agent commenters explained that the RESPA settlement statement includes certain loan information and requires coordination with lenders, but that they do not receive the lender's settlement statement figures until the day of or day before closing. One escrow agent commenter explained that it is not uncommon for lenders and settlement agents to revise the RESPA settlement statement frequently because of differences in software used by those parties and miscommunications between them. Settlement agents also explained that the work of clearing known title defects can sometimes occur during the days leading up to consummation because certain defects may not come to light until after a title report is analyzed.

Creditors expressed similar coordination concerns and explained that many settlement service fees are outside of the control of the creditor or the creditor's affiliate. Community banks explained that they cannot ensure they receive accurate information in a timely manner from third parties such as realtors, attorneys, title companies, insurance agents, and other third-party lenders responsible for providing payoffs or subordination agreements. Commenters explained that third-party payoff information may become stale as a result of closing delays. A settlement agent commenter operating in a rural area explained that in an active real estate market, it can be difficult for creditors to obtain an appraisal more than three days before closing, and without underwriting being complete, creditors are unable to produce the exact numbers needed for the settlement statement. One non-depository lender explained that it is not uncommon for loan amounts to be adjusted in refinancings where appraisals or payoff figures from third parties arrive soon before consummation. Commenters also explained that final settlement costs could not be known in advance if consumers shop or otherwise request changes to the transaction, if settlement agent due diligence uncovers new obligations or encumbrances, or if delays cause per diem or prorated amounts to accumulate.

Costs associated with a general three-business-day period. A variety of settlement agents, title insurance companies, individual attorneys and law firms, a variety of creditors, industry trade associations, and a member of Congress, identified costs that consumers would face as a result of delayed closings caused by a mandatory three-business-day waiting period, including breach or expiration of real estate agreements; the expiration of interest rate locks; inconvenience and financial costs associated with rearranging closings (such as, if a consumer is required to arrange for temporary housing needs, or if a seller's subsequent purchase also is delayed); additional pre-closing diligence costs and attorney's fees; and, in the case of refinancings, especially those subject to the right of rescission's post-consummation funding delay, prolonged interest payments on outstanding debts.

Non-depository lenders, credit unions, community banks, mortgage brokers, settlement agents, trade associations representing those industries, a mortgage compliance company and an individual consumer stated that a general three-business-day period would inconvenience and impose logistical costs on consumers. Commenters explained consumers would have difficulties scheduling moving vans, time away from work, temporary housing, and could face delays up to 12 days or more before they could close. A mortgage company commenter noted that consumers in the military who are purchasing a home frequently stay in a hotel before they move in, and that, in those instances, closing delays could result in longer hotel stays. Law firms, settlement agents, and trade associations representing attorneys and credit unions anticipated that a general three-business-day period would lead consumers to ask more questions and engage in additional diligence before consummation, which would require more time on the part of settlement agents and attorneys per closing and, thus, increase costs to consumers.

Commenters also identified financial and opportunity costs that consumers could incur as a result of closing delays. Trade associations representing banks and settlement agents, a community bank and a community bank holding company, non-depository lenders, and a member of Congress indicated that a consumer's interest rate lock could expire as a result of a delay. As a result, commenters explained, consumers would have to pay a higher interest rate or pay additional fees to extend their rate lock or obtain a new one. Commenters expected that creditors would price rate locks higher and may limit their availability to account for closing delays across the market. A non-depository lender and a large bank estimated that the proposal's general three-business-day period, a three-business-day presumption of delivery, and two business days to prepare the disclosure would mean preparing and delivering the Closing Disclosure would take eight business days, or ten calendar days. Estimating that the cost of a rate lock at approximately two basis points per day, the non-depository lender commenter estimated consumers would pay approximately 20 basis points, or $400 on a $200,000 loan.

In addition to interest rate lock expiration, a large number of commenters expressed concern that a consumer's purchase agreement with a seller could expire, potentially putting the consumer in breach of the agreement. The consumer could lose the opportunity to purchase the home or incur per diem penalties, which in turn could jeopardize other of the consumer's arrangements. Numerous commenters also raised concerns about the ''domino effect'' of closing delays on sellers who may schedule coinciding settlements in which they are a buyer. Commenters were concerned this could affect the efficient operation of the residential real estate market. Commenters also explained that sellers in short-sales may be harmed, where a creditor may require that a sale occur within a specified period of time. Commenters also explained that, in the case of refinancings, where no seller is present, delays could force consumers to pay additional interest on an outstanding loan or delay their ability to meet an upcoming expense. One commenter suggested that the three-business-day timing requirement could

proposed rule would have provided that if the Closing Disclosure is not provided to the consumer in person, the consumer is presumed to have received it three business days after it is mailed or delivered to the address specified by the consumer.

be an unlawful interference with the right of buyers and sellers to contract.

Banks, non-depository lenders, and a trade association representing banks were concerned that a three-business-day receipt requirement would increase loan processing costs, including compliance costs or costs to extend expired rate locks or underwriting verifications, and costs necessary to secure warehouse financing capacity. For example, a community bank explained that it would have to add five days to its secondary market rate locks to meet the proposal's timelines to prevent the interest rate lock from expiring, and that such costs would be passed on to consumers. In addition, trade associations representing creditors and community banks expressed concern that delayed closings would require them to pay for additional warehouse financing capacity. Creditor and settlement agent commenters also were concerned that they would face liability and reputational risk arising from incorrect figures obtained from or delays caused by third parties, particularly where delays may result in the breach of a consumer's real estate agreement. One creditor requested that the final rule protect creditors from such liability and ensure that settlement agents bear responsibility for their mistakes.

Commenters also raised concerns that closing delays would be problematic for sellers who are paying off existing Federal Housing Administration (FHA) loans or consumers who are refinancing existing FHA loans. Commenters explained that FHA has traditionally charged borrowers a whole month's interest if they pay off their loans after the first day of any month; thus, many borrowers schedule closings at the end of the month to avoid this extra interest payment. Commenters explained that delayed closings could push scheduled end-of-month closings into the next month, causing consumers to pay additional interest.

In addition to general compliance costs, creditors noted they would face additional costs related to preparing revised Closing Disclosures. Settlement agents, law firms, credit unions, title insurance companies, and trade associations representing attorneys explained that delayed closings would result in fewer closings and increased burden on the part of settlement agents in terms of additional time and costs related to preparing the Closing Disclosure and answering consumers' questions. Some commenters thought that the pressure to avoid closing delays would lead to the circumvention of the closing process.

Uncertain benefits of a general three-business-day period. Many commenters maintained that a general three-business-day waiting period was unnecessary in light of the current tolerance rules because they limit increases in certain settlement costs, TILA rescission rights that impose a mandatory post-consummation three-business-day waiting period, other rulemakings under title XIV of the Dodd-Frank Act, and because a consumer's primary interest is in closing the transaction in a timely manner.

A wide variety of commenters also maintained that the APR accuracy requirements in Regulation Z and the good faith estimate tolerance requirements currently in Regulation X render additional waiting periods unnecessary. A trade association representing banks indicated that a consumer's cash to close amount would most likely increase due to consumer choice, rather than because of a loan origination charge, and that very few closed loans have increases in closing costs that result in tolerance violations requiring reimbursement, and therefore a three-business-day period was unjustified. Other commenters, including trade associations representing real estate agents, banks, and financial companies stated that other Bureau rulemakings under title XIV of the Dodd-Frank Act, such as the ability-to-repay, loan originator compensation, and HOEPA rulemakings made an additional three-business-day waiting period unnecessary.

A mortgage broker, a title insurance company and trade associations representing attorneys, banks, and financial companies maintained that a pre-consummation period would not enhance consumer understanding because consumers already have a long period of time to negotiate and review closing costs. A compliance company and a settlement agent commenter suggested that advance disclosure of real estate agent fees and other costs was unnecessary because consumers receive information about many fees during the course of the transaction. Commenters also emphasized that consumers are primarily interested in closing the transaction as quickly as possible and would not benefit from a waiting period.

Law firm commenters and a professional association representing attorneys did not think a waiting period would be useful without someone to help the consumer understand the Closing Disclosure. Law firm commenters explained that they expected many consumers would wait until consummation to review the document. The association representing attorneys believed it would be necessary to schedule separate meetings with consumers to help them understand the Closing Disclosure. One law firm commenter recommended that the final rule should require that consumers have an attorney present at settlement to explain the Closing Disclosure.

Transactions subject to the right of rescission. A variety of industry commenters critical of the Bureau's proposed three-business-day waiting period questioned the necessity of the pre-consummation waiting period in light of the right of rescission available to consumers for certain transactions under § 1026.23. These commenters explained that rescission rights render a pre-consummation waiting period unnecessary and that a pre-consummation waiting period would further delay the funding of a consumer's loan. Some commenters said that consumers could experience a nine-day waiting period at the earliest to fund such a loan.[218] A community bank commenter explained that creditors sometimes permit a post-consummation waiting period for transactions not subject to TILA rescission rights as a courtesy to consumers, and that a pre-consummation waiting period would further delay these transactions as well.

Some commenters requested that the Bureau exempt refinancings from a three-business-day waiting period or permit the three-business-day waiting period to run concurrently with the rescission period because the rescission rule already protects consumers. A large bank recommended that, for transactions subject to the right of rescission, the three-business-day right to cancel should begin with the consumer's receipt of the Closing Disclosure to shorten the waiting period by four days while still preserving the consumer's opportunity to review the transaction and rescind.

Alternatives recommended by commenters. Commenters recommended a number of alternatives to the proposed three-business-day period. Commenters including non-depository lenders, community banks, credit unions, and trade associations representing credit union suggested that a two-day or 48-hour period would better balance the need for advance disclosure with the consumer's interest in closing in a timely manner. Similarly, a one-day or 24-hour period was

[218] Commenters explained the nine-day period would be due to a three-day period by operation of proposed § 1026.19(f)(1)(iii), a three-day waiting period before consummation, and a three-day post-consummation waiting period by operation of the rescission rule.

recommended by many commenters, including a State housing development authority, mortgage brokers, individual consumers, non-depository lenders, community banks, law firms, as well as trade associations representing mortgage brokers, banks and community banks, credit unions, and the manufactured housing industry. Commenters believed a one-day period would provide consumers enough time to review the disclosure and would be less disruptive than a three-business-day requirement, although some thought that even a one-day delay could be problematic for consumers.

Other commenters, including a large bank, credit unions and trade associations representing credit unions, title insurance companies and a law firm, recommended that the final rule include no pre-consummation period, or that a pre-consummation period apply only if there is a tolerance violation. The large bank commenter explained that the Bureau could accomplish this by exempting all closed-end consumer mortgage loans secured by real property from the requirement under TILA section 128(b)(2) that an inaccurate APR triggers the obligation that a consumer receive a corrected final TILA disclosure no later than three business days before consummation. The commenter stated that this would harmonize the timing between TILA and RESPA and would facilitate compliance with the Dodd-Frank Act's integrated disclosure mandate.

One individual consumer was concerned that a three-business-day period could negatively affect a purchase transaction, but the commenter also questioned whether a three-business-day period would provide consumers sufficient time to question charges. One settlement agent commenter recommended that the final rule adopt a post-consummation period in which adjustments to the transaction could occur. A mortgage broker commenter recommended, as alternatives to a three-business-day advance disclosure, requiring the consumer's signature of the Closing Disclosure at closing or requiring that the Closing Disclosure be read aloud to consumers at closing to ensure the consumer understood the transaction. A settlement agent recommended that consumers should be able to determine how much time they would like before closing, or that the final rule should apply different timing requirements to different classes of consumers, depending on how experienced they are with mortgage transactions, such as by requiring that first-time home buyers receive the Closing Disclosure six days in advance, while all other consumers would receive the disclosure one-to-three days in advance, at their option.

In addition to recommending alternative timing regimes, commenters recommended that the final rule provide more flexible exemptions from the general three-business-day period. A trade association representing real estate agents, a financial holding company, a compliance company, and various settlement agents recommended that the final rule distinguish between loan and settlement costs for purposes of imposing a pre-consummation period. Commenters recommended either separating TILA and RESPA disclosures and requiring a three-business-day period for TILA disclosures and no waiting period for RESPA disclosures, or imposing a general three-business-day period but permitting settlement figures to be finalized at closing. One trade association representing settlement agents requested that the Bureau consider an exemption from the three-business-day period if the final cash to close amount does not increase beyond a certain tolerance. The commenter explained that this would allow transactions that have been estimated more accurately at the Loan Estimate stage to close without advance delivery of the Closing Disclosure.

Consummation v. settlement. The proposed rule would have required that the Closing Disclosure be delivered three business days before ''consummation,'' consistent with other provisions under TILA and Regulation Z. RESPA and Regulation X, by contrast, require the settlement statement to be delivered at ''settlement.'' Some settlement agents and various trade associations representing settlement agents, the title insurance industry, and banks requested clarification on how ''consummation'' would be defined and how the proposal would apply in jurisdictions in which settlement and consummation occur at different times.

Trade associations representing settlement agents and the title insurance industry explained that in some States, the signing of legally binding documents may occur at one time, while consummation may not occur until one or more days later, such as when the documents are recorded. Commenters requested clarification on whether, in this case, the Closing Disclosure would be provided when the documents are recorded. Other commenters were concerned that settlement may not occur until after consummation, and that the proposed rule did not adequately account for post-consummation changes occurring during the course of settlement.

Business day. As discussed in the section-by-section analysis of § 1026.2(a)(6), the Bureau received comments on the proposed definitions of ''business day'' applicable to the proposed rule. As noted in the section-by-section analysis of § 1026.2(a)(6), a variety of commenters supported establishing a consistent definition of business day to promote consistency across the provisions of Regulations X and Z. Commenters observed that the specific definition would allow one less day to comply with the timing requirements. One commenter was concerned that an inconsistent business day definition could create confusion if different products are treated differently (*e.g.,* refinancings). A trade association representing banks and financial companies recommended that business days should include Saturdays because doing so would allow consumers to close sooner.

Authority issues. Several industry trade associations and a large bank stated that the Bureau lacks authority under TILA and the Dodd-Frank Act to implement this aspect of the proposal, and that TILA and RESPA both would permit the Closing Disclosure to be provided at or before consummation. A compliance company commenter maintained that the Dodd-Frank Act does not specifically mandate that the Bureau improve disclosure of realtor fees or other transaction costs outside of the cost of financing. These commenters pointed out that RESPA does not require that settlement costs be disclosed in advance and that TILA requires a three-business-day waiting period only if a loan's APR changes outside of the tolerance. A large bank, a trade association representing banks and financial companies, and a trade association representing banks stated that the three-business-day waiting period under TILA only applies to the disclosure of the APR and not to other loan or settlement-related costs. A trade association representing banks and financial companies and a trade association representing banks pointed out that, soon after RESPA was enacted, Congress substantially amended its original early settlement cost disclosure requirement after substantial public protest, which the commenter believed indicates Congress prohibited such waiting periods thereafter.[219]

[219] As originally enacted on December 22, 1974, RESPA contained a requirement that lenders disclose in writing, not later than 12 days before settlement, the amount of each charge for settlement services. *See* Public Law 93–533, section 6 (12 U.S.C. 2605, repealed 1976). Congress subsequently amended RESPA to, among other things, repeal the requirement to provide advance disclosure of actual

Final Rule

After considering public comment and the ex parte submissions, the Bureau continues to believe there is significant consumer benefit to requiring that the Closing Disclosure be provided three business days before consummation. As described below, the final rule requires creditors to ensure that consumers receive the Closing Disclosure no later than three business days before consummation.

As noted above, the timing requirements of TILA and RESPA are not synchronized. TILA requires, for certain mortgage transactions, that creditors furnish a corrected disclosure to the consumer so that it is received not later than three business days before the date of consummation of the transaction if the prior disclosed APR has become inaccurate. *See* 15 U.S.C. 1638(b)(2)(A), (D). In contrast, RESPA requires that the person conducting the settlement (*e.g.,* the settlement agent) complete a settlement statement and make it available for inspection by the borrower at or before settlement. *See* 12 U.S.C. 2603(b). RESPA also provides that, upon the request of the borrower, the person who conducts the settlement must permit the borrower to inspect those items which are known to such person on the settlement statement during the business day immediately preceding the day of settlement. *Id.*

The Dodd-Frank Act amended TILA and RESPA to mandate that the Bureau establish a single disclosure scheme for use by lenders or creditors in complying comprehensively with the ''disclosure requirements'' of those statutes.[220] However, Congress did not define ''disclosure requirements'' and did not instruct the Bureau on how to integrate the different timing requirements under TILA and RESPA with respect to final disclosures. The Bureau believes that harmonizing the timing requirements is a component step towards achieving the goals of integration: to facilitate compliance and to ensure that consumers receive disclosures that will aid in their understanding of their mortgage loan transactions. Accordingly, the Bureau is adopting final § 1026.19(f)(1)(iii)(A) to adjust both TILA's and RESPA's timing requirements, using its authorities under sections 105(a) of TILA, 19(a) of RESPA, 1032(a) of the Dodd-Frank Act, and, for residential mortgage transactions, sections 129B(e) of TILA and 1405(b) of the Dodd-Frank Act.

Integrating the disclosures without reconciling the timing requirements would result in a series of disclosures provided by both the creditor and the settlement agent. Creditors would provide integrated disclosures three business days before consummation when necessary under TILA, as amended by MDIA, and then again at consummation. *See* TILA section 128(b)(2)(B)(ii) and (b)(2)(D); 15 U.S.C. 1638(b)(2)(B)(ii) and (b)(2)(D). Settlement agents would be required to permit the borrower to inspect the integrated disclosures one business day before settlement based on the information known by the settlement agent, and then would be required to provide them at or before ''settlement,'' which may occur before, concurrent with, or after ''consummation.''

The Bureau believes this uncoordinated approach to the timing of the disclosures could result in consumer confusion and unnecessary burden for industry. Therefore, the Bureau is using its authorities under sections 105(a) of TILA, 19(a) of RESPA, 1032(a) of the Dodd-Frank Act, and, for residential mortgage transactions, sections 129B(e) of TILA and 1405(b) of the Dodd-Frank Act to adjust both TILA and RESPA to require creditors to deliver Closing Disclosures at least three business days before consummation in all cases, and not only when the APR previously disclosed exceeds tolerance. Providing all consumers with three business days to review the Closing Disclosure will greatly enhance consumer awareness and understanding of the costs associated with the entire mortgage transaction.[221]

Disclosure to consumers of such component settlement charges three business days prior to consummation would represent an increased benefit for consumers from the current disclosure requirements under RESPA. Currently, RESPA requires that settlement agents disclose settlement costs and certain loan terms on the RESPA settlement statement at or before settlement, and inspection of the statement is permitted during the business day before settlement at the consumer's request. By affirmatively requiring that all consumers receive a Closing Disclosure listing loan terms and settlement charges three business days before consummation, the Bureau believes the potential for consumers to be surprised at closing will be reduced.

As the Bureau explained in the proposal, one of the purposes of the integrated disclosures is to aid consumer understanding of their transaction through the use of disclosures. To that end, the Bureau has developed the Loan Estimate and the Closing Disclosure to facilitate a comparison between the two, so that consumers can easily compare their estimated and actual charges. The Bureau's Quantitative Study, as described in part III above, determined that the integrated disclosures better enable consumers to compare their estimated and actual terms and costs than the current disclosures. *See* Kleimann Quantitative Study Report at 46–47. The Bureau believes this consumer benefit will be achieved best if consumers receive the Closing Disclosure three business days before consummation to compare the terms with the Loan Estimate, ask questions, and consider all of their options before proceeding with the transaction. To the extent changes occur between the time the Closing Disclosure is first provided three business days before consummation and consummation, consumers only will need to compare changes between two Closing Disclosures.

The benefits of a three-business-day period are not exclusive to consumers. The Bureau believes a general three-business-day requirement also will benefit industry because settlement agents, like consumers, will have time to review the Closing Disclosure in an unpressured environment and incorporate other changes to the transaction that may occur before consummation. Both creditor and settlement agent commenters explained that they have had problems coordinating to ensure the timely receipt of information necessary to prepare the RESPA settlement statement. Commenters, particularly settlement agents, explained that this

settlement costs and replace it with a requirement that lenders provide good faith estimates of likely settlement charges. Congress also added the requirement for settlement agents to make settlement costs available for inspection by the borrower upon request. *See* 12 U.S.C. 2603(b) (1976).

[220] Section 1098(2) of the Dodd-Frank Act amended RESPA section 4(a) to require that the Bureau ''publish a single, integrated disclosure for mortgage loan transactions (including real estate settlement cost statements) which includes the disclosure requirements of this section and section 5, in conjunction with the disclosure requirements of [TILA] that, taken together, may apply to a transaction that is subject to both or either provisions of law.'' 12 U.S.C. 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).

[221] See also the discussion in this section-by-section analysis below for reasons why the final rule uses the TILA term ''consummation'' rather than the RESPA term ''settlement'' as the event around which disclosures must be provided.

frequently results in a pressured, last-minute preparation of the RESPA settlement statement, increasing the risk of errors. As noted above, some individual settlement agent commenters supported a general three-business-day requirement because it would reduce the pressured atmosphere of last-minute closings. The Bureau believes a general three-business-day requirement will help correct for this problem by providing a strong incentive for parties to coordinate earlier. Thus, the Bureau believes a general three-business-day requirement will improve the operation of closings for all parties involved.

The Bureau recognizes that providing settlement cost and other information on the Closing Disclosure three business days before consummation will require that industry adjust current practice with respect to the disclosure of settlement charges. However, the Bureau notes that industry would have to adjust current practice to comply with the Dodd-Frank Act's impact on TILA. TILA, as amended by MDIA, and Regulation Z currently require redisclosure of all changed terms three business days before consummation when the APR is inaccurate. Under TILA section 128(b)(2)(D), the creditor must provide a corrected disclosure statement if the previously disclosed APR becomes inaccurate. *See* 15 U.S.C. 1638(b)(2)(A), (D).[222] As discussed above, section 1419 of the Dodd-Frank Act also amended TILA section 128(a) by adding paragraph (17), which requires creditors to disclose the aggregate amount of settlement charges for all settlement services provided in connection with the loan and the aggregate amount of other fees or required payments in connection with the loan. The items included in this amendment are nearly all of the items that are included on the RESPA settlement statement; and to disclose the aggregate figure, the Bureau believes creditors must know the itemized settlement charges. Accordingly, even if the final rule implemented the requirements of TILA, as amended by MDIA and the Dodd-Frank Act, in a manner similar to the current rule, the Bureau believes industry would have to implement systems necessary to disclose settlement cost information before consummation on the final TILA disclosures. The Bureau further believes that, in the absence of this final rule, it is possible that when the loan's previously disclosed APR becomes inaccurate, creditors would elect to provide final TILA disclosures with all changed terms, including settlement cost information required by TILA section 128(a)(17), to all consumers as a matter of practice to manage their TILA liability risk.[223]

Commenters opposed to the proposal were concerned that a general three-business-day timing requirement would lead to closing delays. As discussed below, the Bureau does not believe such a requirement alone would be the primary cause of any such delays. The Bureau believes creditors and settlement agents will be able to coordinate in advance based on when consummation is expected to occur to ensure that consumers receive a timely Closing Disclosure that includes the actual terms or is based on the best information reasonably available at the time it is provided. *See* the section-by-section analysis of § 1026.19(f)(1)(i). With a three-business-day requirement, the timing of particular actions by creditors and settlement agents may shift forward, further reducing the probability of closing delays. The Bureau further believes industry will have additional incentive to coordinate preparation of the Closing Disclosure in light of the interest in avoiding closing delays shared by consumers, sellers, and other parties.

Thus, the Bureau believes creditors or settlement agents can provide the Closing Disclosure so that it is received by the consumer no later than three business days before consummation without delaying consummation while they await more precise information about the actual terms of the transaction. In addition, the Bureau believes the revisions to the proposed redisclosure requirements will significantly reduce the risk of closing delays, as discussed in the section-by-section analysis of § 1026.19(f)(2)(i) and (f)(2)(ii).

Some commenters were concerned that a three-business-day rule would lead to additional closing conferences or time spent with consumers, and some commenters suggested that the Bureau require that attorneys or other settlement service providers be present to assist consumers with understanding their transaction. The final rule does not require the scheduling of closing conferences or the presence of particular personnel at a closing. The Bureau is concerned that such a requirement would be burdensome. The Bureau further believes that the design of the Loan Estimate and Closing Disclosure will help consumers understand their transaction, even if additional personnel are not available, as discussed in the Kleimann Quantitative Study Report.[224]

To the extent consumers ask creditors, settlement agents, or other parties questions about their transaction based on the information in the Closing Disclosure, the Bureau believes a general three-business-day requirement will improve consumer awareness and understanding of their transaction, consistent with Dodd-Frank Act section 1405(b). Enhancing consumer awareness and understanding is one of the principal goals of this rulemaking and is consistent with the purpose of the integration mandate. Thus, the Bureau believes a potential increase in burden associated with additional engagement with consumers is justified. In addition, to the extent consumers have an opportunity to ask questions and identify errors before they arrive at closing, a general three-business-day requirement may increase the efficient operation of closings.

Some commenters were concerned that a three-business-day requirement would be difficult to comply with because loan underwriting is sometimes not completed until soon before consummation, particularly in active real estate markets. While the Bureau

[222] MDIA amended TILA section 128(b)(2)(D) to require that creditors provide a corrected disclosure so that it is received by the consumer no later than three business days before consummation, if the APR changes outside of the TILA tolerances. *See* 15 U.S.C. 1638(b)(2)(D). In its final rule implementing MDIA, the Board explained that ''[t]he requirement in TILA Section 128(b)(2)(D) for a creditor to provide a corrected disclosure is essentially a requirement for the creditor to provide an additional set of the early disclosures required by TILA Section 128(b)(2)(A).'' *See* 74 FR 23289, 23296 (May 19, 2009). The Bureau agrees with this interpretation. Current § 1026.19(a)(2)(ii) of Regulation Z implements the MDIA amendments, requiring creditors to provide final TILA disclosures with all changed terms, pursuant to the statutory timing requirements. As a general rule, a disclosed APR is considered accurate if it is within a percentage of the actual APR. This percentage is commonly referred to as the ''APR tolerance'' or the ''TILA tolerance.'' In general, the tolerance specified for closed-end ''regular transactions'' (those that do not involve multiple advances, irregular payment periods, or irregular payment amounts) is one eighth of one percent; the tolerance specified for ''irregular'' transactions (those that involve multiple advances, irregular payment periods, or irregular payment amounts, such as an adjustable rate mortgage with a discounted initial interest rate) is one quarter of one percent. *See* 12 CFR 1026.22(a).

[223] As noted in the proposal, the Bureau received extensive feedback indicating that APR estimates included in the early TILA disclosures are so rarely accurate by the time of consummation that most creditors provide corrected disclosures at least three business days before consummation as a standard business practice, instead of analyzing the accuracy of the disclosed APR to ensure compliance with MDIA.

[224] As noted above, the Bureau's Quantitative Study determined that the integrated disclosures better enable consumers to compare their estimated and actual terms and costs than the current disclosures, and to understand their final transaction better than the current disclosures. *See* Kleimann Quantitative Study Report at 46–48.

appreciates that it may be difficult in certain cases to complete underwriting in advance, the Bureau does not believe such problems will be widespread as a result of a general three-business-day requirement because creditors already must be in a position to know a mortgage loan's APR as necessary to comply with MDIA's three-business-day requirement.

Commenters were concerned that a three-business-day requirement would have a negative impact on consumer choice. As discussed below, the Bureau believes the final rule affords consumers flexibility to make a wide variety of changes to their transaction between the time the Closing Disclosure is first provided and consummation without triggering a new three-business-day period. In fact, the Bureau believes a requirement to provide the Closing Disclosure so that it is received by consumers no later than three business days before consummation will help consumers make more informed decisions because they will have more information about the entire transaction before consummation. Further, in light of the revisions made to the proposed redisclosure requirements, discussed in greater detail in the section-by-section analysis of § 1026.19(f)(2) below, the Bureau does not believe a three-business-day period will frustrate consumer choice. The Bureau believes these revisions also address commenters' concern that closing delays would lead consumers to incur an additional month's interest based on FHA payoff rules.[225]

Several commenters stated that a three-business-day requirement was unnecessary because consumers already have time during the loan application, underwriting, and closing process to inform themselves about their transaction. However, the Bureau is concerned that a consumer's ability to understand the transaction and ask questions is limited without a single disclosure that presents all of the terms. Consumers may have difficulty making purchase decisions or other tradeoffs without accurate information about all of the costs involved in their transactions. As commenters explained, mortgage loan transactions involve many pieces of information from a variety of sources and, in some cases, underwriting and title exams may not conclude until later in the process. Because creditors and settlement agents are in a better position than consumers to coordinate this information and account for disbursements, the Bureau believes it is appropriate for consumers to receive this information in a single, integrated disclosure before consummation. The Bureau understands that consumers have an interest in completing their transaction in a timely manner, but the Bureau believes this goal can be achieved while also providing consumers timely information about the terms of their transaction.

The Bureau also believes a general three-business-day requirement is warranted, notwithstanding the Bureau's other Title XIV Rulemakings. While regulations adopted in the 2013 ATR Final Rule, 2013 Loan Originator Final Rule, and the 2013 HOEPA Final Rule provide important consumer protections, they do not specifically address the goal of enhancing consumers' awareness and understanding of the specific terms of their transaction. Moreover this final rule will work in concert with other consumer protections. For example, the Bureau's 2013 HOEPA Final Rule adopted counseling requirements, including requirements that creditors cannot extend a high-cost mortgage to a consumer unless the creditor receives written certification that the consumer has obtained counseling on the advisability of the mortgage from an approved counselor. *See* 12 CFR 1026.34(a)(5). In addition, the 2013 HOEPA Final Rule adopted requirements that lenders provide loan applicants a written list of counseling organizations that provide counseling services in the applicant's area. *See* 12 CFR 1024.20(a)(1). While counselors can provide general guidance, they can provide much more effective counseling if their advice is tailored to the terms of a consumer's transaction, based on information in the Closing Disclosure. To this end, the Bureau believes a general three-business-day review period will provide consumers time to consult a housing counselor or other professionals about the particulars of their transaction before consummation.

Other timing standards recommended by commenters. With respect to the suggestion that the Bureau exempt all closed-end consumer credit transactions secured by real property from MDIA's three-business-day redisclosure requirement (triggered by an inaccurate APR), the Bureau declines. For the reasons discussed below, the Bureau believes an exemption from the MDIA requirement that consumers receive the TILA disclosures three business days before consummation when the APR is inaccurate would be inconsistent with both TILA and the goals that this final rule seeks to achieve.

While such an exemption might eliminate concerns about delayed closings and reduce some burden on industry, it would remove what the Bureau believes is an important existing consumer protection under MDIA. As noted above, the Bureau believes consumers should be provided the opportunity to review their final loan terms and costs in an unpressured environment to identify mistakes, ask questions, and generally understand their transaction before becoming obligated to it. Providing consumers with information about their final loan terms and costs three business days prior to consummation also was recognized by the Board and HUD as providing important consumer benefits and was recommended by those agencies to Congress. *See* Board-HUD Joint Report at 43–44. In addition, the Bureau has developed the Loan Estimate and Closing Disclosure to match closely to enable consumers to easily compare their estimated and actual loan terms and costs. Further, as noted above, the Bureau's Quantitative Study has determined that the Bureau's integrated disclosures perform better than the current disclosures at enabling consumers to identify differences between the early and final disclosures. *See* Kleimann Quantitative Study Report at 46–47.

Because the Closing Disclosure contains a significant amount of detailed content necessary to inform consumers about their loan and their settlement charges, the Bureau believes that providing consumers with at least three business days before consummation to review the information and ask questions provides an important benefit to consumers. The Bureau believes the good faith estimate tolerance rules under § 1026.19(e)(3) will protect consumers against the most significant bait-and-switch risks. However, they do not provide protection against all changes that may occur between the time the Loan Estimate is provided and consummation. These changes include increases in certain real estate-related costs and disbursements to others, which could create legal issues for consumers after consummation. Further, the Bureau believes that providing consumers with better disclosures to identify changes or inaccuracies, as well as providing them with more time in which to do so, will further encourage creditors to provide more accurate Loan Estimates and Closing Disclosures, and discourage the use of bait-and-switch tactics.

[225] In addition, the Bureau believes the prepayment penalty provisions adopted in the Bureau's 2013 ATR Final Rule and May 2013 ATR Final Rule will reduce the likelihood that consumers will incur such charges in the future.

The Bureau has considered commenters' suggestions that the Closing Disclosure be provided earlier than three business days before consummation. However, as stated in the proposal, the Bureau also is concerned that it would be impractical to require delivery earlier than three business days before consummation. Thus, the final rule provides flexibility to industry by requiring creditors to ensure that consumers receive the disclosures no later than the third business day before consummation. Under this approach, a creditor need not complete the disclosures until the third business day before consummation, provided it can ensure that the consumer will receive the disclosures that day, such as via electronic mail consistent with applicable requirements regarding electronic delivery or hand delivery. *See* comments 19(f)(1)(ii)–2 and 19(f)(1)(iii)–2. In addition, as explained in more detail in the section-by-section analysis of § 1026.19(f)(1)(iii) below, the final rule makes amendments to the proposal, which the Bureau believes will facilitate compliance with the delivery requirements.

The Bureau believes a general three-business-day requirement will benefit consumers more than a requirement for creditors to ensure the consumer receives the Closing Disclosure two days or one day before consummation.[226] While shorter periods would reduce the extent of revisions to the Closing Disclosure before consummation, they would provide consumers less time to review the transaction. As noted above, the Closing Disclosure, like the current final TILA disclosure and RESPA settlement statement, contains a significant amount of information regarding the credit and the real estate transaction. The Bureau believes a three-business-day period in which to review the information is a reasonable amount of time considering this significant amount of information on the disclosure. The Bureau also believes a three-business-day period is appropriate because the three-business-day period was the period recently instituted by Congress under its MDIA amendments to TILA with respect to creditor disclosures when the loan's previously disclosed APR becomes inaccurate.

Transactions subject to the three-business-day right of rescission. The Bureau declines to exempt transactions subject to the three-business-day right of rescission from § 1026.19(f)(1)(ii)(A) or otherwise amend the rescission rules.[227] The Bureau believes the pre-consummation waiting period and the post-consummation waiting period for transactions subject to the right of rescission serve different purposes. The pre-consummation period permits the consumer an opportunity to understand the specific elements of the transaction, question specific charges, ask questions, consider other options, or potentially improve the terms of the transaction prior to consummation. On the other hand, the right of rescission provides consumers an opportunity to unwind the entire transaction and receive any fees they may have paid for the transaction. Exempting transactions subject to the right of rescission from the general three-business-day pre-consummation review period would mean many consumers would lose the opportunity to review the transaction details and resolve any concerns before consummation. The Bureau further notes that the Congresses that passed the Dodd-Frank Act and MDIA did not exempt rescindable transactions from MDIA's three-business-day waiting period. Currently under Regulation Z, creditors must provide the final TILA disclosures so that consumers receive them no later than three business days before consummation if the loan's previously disclosed APR becomes inaccurate, even if the loan is subject to the post-consummation three-business-day right of rescission.

While the Bureau has authority to exempt transactions from TILA's requirements in certain circumstances, an exemption is not warranted here because the amendments made to the final rule's redisclosure requirements in § 1026.19(f)(2) will significantly reduce the potential for closing delays. In addition, refinancings that are subject to the right of rescission typically involve fewer parties and require less coordination than purchase-money transactions. Thus, the Bureau believes creditors in those transactions should be able to provide disclosures for transactions subject to the right of rescission three business days before consummation without imposing burdensome delays on consumers.

Consummation v. settlement. The final rule requires that the Closing Disclosure be provided three business days before ''consummation,'' rather than before ''settlement.'' In general, TILA and Regulation Z require that creditors provide final TILA disclosures in certain circumstances three business days before ''consummation'' of the credit transaction, while RESPA and Regulation X require settlement agents to provide the RESPA settlement statement at or before ''settlement.'' Regulation Z currently defines ''consummation'' as ''the time that a consumer becomes contractually obligated on a credit transaction.'' *See* 12 CFR 1026.2(a)(13). Regulation X, by contrast, provides that the RESPA settlement statement must be delivered by ''settlement,'' which is defined as ''the process of executing legally binding documents regarding a lien on a property that is subject to a federally related mortgage loan.'' *See* 12 CFR 1024.2(b). The Bureau appreciates that ''consummation'' and ''settlement'' may not always coincide in some jurisdictions. The Bureau believes that reconciling this difference between TILA and RESPA satisfies the integration mandate. The Bureau believes ''consummation'' is appropriate because TILA section 128(b)(2)(D) requires that the creditor provide final TILA disclosures no later than three business days before consummation where the loan's previously disclosed APR becomes inaccurate. *See* 15 U.S.C. 1638(b)(2)(D). This is the standard that applies to TILA disclosures currently under MDIA, which, as amended by Dodd-Frank Act section 1419, include the disclosure of settlement cost information. *See* 15 U.S.C. 1638(a)(17). In addition, TILA requires that the early TILA disclosures be provided no later than seven business days before ''consummation.'' 15 U.S.C. 1638(b)(2)(A). The Bureau believes that the early and final TILA disclosures should be provided in the sequence set forth under TILA to ensure consumers benefit from the time necessary to review the respective disclosures before becoming obligated on the credit transaction. In addition, because ''consummation'' is a particular point in time, while ''settlement'' is defined as a ''process,'' the Bureau believes the rule provides clarity with respect to when the disclosures must be provided. Accordingly, the final rule uses ''consummation'' as the timing standard

[226] While the final rule does not impose a requirement for creditors to ensure that consumers receive the Closing Disclosure one or two days before consummation, the final rule does include a requirement for creditors to permit consumers a right to inspect the Closing Disclosure the business day before consummation upon the consumer's request. *See* the section-by-section analysis of § 1026.19(f)(2)(i).

[227] For certain transactions, including refinancings with a new creditor or refinancings with the same creditor where new money is advanced, TILA grants consumers a three-day right to rescind the transaction where a security interest is or will be retained in the consumer's principal dwelling. *See* 15 U.S.C. 1635(a). The right of rescission permits consumers time to reexamine their credit contracts and cost disclosures and to reconsider whether they want to put their home at risk by offering it as security for credit. *See* 12 CFR 1026.23.

applicable to the provision of the Closing Disclosure.

As noted above, the Bureau recognizes that ''consummation'' and ''settlement'' may not coincide in some jurisdictions. Indeed, the definition of ''settlement'' in Regulation X indicates that a settlement is not necessarily a singular event involving the execution of one agreement, but is instead a ''process of executing legally binding documents'' regarding a lien on property that is subject to a federally related mortgage loan. *See* 12 CFR 1024.2(b). Thus, in some jurisdictions, a settlement may begin before ''consummation'' under Regulation Z, and, in some jurisdictions, may conclude later.

The Bureau believes that the final rule should account for the variety of ways settlements are handled across the country without imposing unnecessary costs on consumers, sellers, or industry. Accordingly, the final rule provides additional flexibility by narrowing the triggers for new three-business-day waiting periods when changes occur to the terms of the transaction, as discussed in the section-by-section analysis of § 1026.19(f)(2). The Bureau believes these changes will help ensure the efficient operation of closings. To account for situations in which consummation may occur before a settlement concludes, the final rule provides additional flexibility for post-consummation events, as discussed in the section-by-section analysis of § 1026.19(f)(2)(iii) below.

Some commenters requested clarification of when ''consummation'' occurs, specifically inquiring whether it occurs when documents are recorded. As noted above, ''consummation'' is defined as ''the time that a consumer becomes contractually obligated on a credit transaction.'' *See* 12 CFR 1026.2(a)(13). Existing commentary to Regulation Z explains that when a contractual obligation on the consumer's part is created is a matter to be determined under applicable law, and that Regulation Z does not make this determination. *See* comment 2(a)(13)–1. Existing commentary also explains that consummation does not occur when the consumer becomes contractually committed to a sale transaction, unless the consumer also becomes legally obligated to accept a particular credit arrangement. *See* comment 2(a)(13)–2.

Business day. As noted in the section-by-section analysis of § 1026.2(a)(3), the final rule adopts the specific definition of business day applicable to § 1026.19(f)(1)(ii), as proposed. The Bureau believes the specific definition in § 1026.19(f)(1)(ii) is appropriate because the delivery requirement in § 1026.19(f)(1)(iii), as discussed in the section-by-section analysis for that section, provides that the consumer is deemed to have received the Closing Disclosure three business days after they are mailed or delivered, if not provided to the consumer in person. That provision uses the specific definition of business day to account for the current practice of United States postal service delivery on Saturday. Using the specific definition for the Closing Disclosure delivery requirements in this rule also will assist industry and consumers by facilitating the efficient delivery of the Closing Disclosure to reduce the potential for closing delays.

The Bureau does not expect that such use of the specific definition of business day in this rule will impose costs on industry because it would not operate to require that a creditor's or settlement agent's office be open on Saturday. It only enables them to count Saturday as a day on which the consumer received the disclosures. The Bureau believes that using the general definition of business day in § 1026.19(f)(1)(ii) and (f)(1)(iii) would create unnecessary delays in many cases because it would mean that creditors and settlement agents could not count Saturdays as a day of receipt, unless the creditor's or settlement agent's offices were open to the public for carrying on substantially all of its business functions. The Bureau believes it would be incongruous if the regulation did not recognize a consumer's actual receipt of the Closing Disclosure on a Saturday simply because the creditor's offices were not open. The Bureau recognizes that using a consistent definition of business day, both within Regulation Z and between Regulation X and Regulation Z, could benefit industry and consumers alike by providing more certainty regarding regulatory requirements and reducing compliance costs. However, the Bureau believes that streamlining the definition of business day should be part of a more comprehensive assessment of Regulation Z, which the Bureau believes is outside of the scope of this rulemaking. See the section-by-section analysis of § 1026.2(a)(6) for additional discussion of the definition of business day.

Other issues raised by commenters. With respect to a commenter's request that the final rule include protections for the creditor from breach of contract claims arising from delayed closing, the final rule does not expressly address such limitations on creditor liability. The final rule addresses disclosure obligations under TILA and RESPA; other creditor duties are outside the scope of this rulemaking. With respect to the commenter's request that the final rule address creditor liability for the accuracy of the Closing Disclosure, see the section-by-section analyses of § 1026.19(f)(1)(i) and (f)(1)(v).

Final provisions. For the aforementioned reasons, the final rule adopts § 1026.19(f)(1)(ii)(A) and comment 19(f)(1)(ii)–1 substantially as proposed. Final § 1026.19(f)(1)(ii)(A) makes technical revisions by adding references to other provisions of § 1026.19(f) that serve as exceptions to the general three-business-day requirement under § 1026.19(f)(1)(ii)(A). Specifically, the final rule replaces the reference to § 1026.19(f)(2) with more specific references to § 1026.19(f)(2)(i) and (f)(2)(iii) through (f)(2)(v). This change has been made because final § 1026.19(f)(2) has been revised to narrow the circumstances under which a new pre-consummation three-business-day period is required, as discussed in the section-by-section analysis of § 1026.19(f)(2)(i) and (ii) below. The final rule makes conforming changes to comment 19(f)(1)(ii)–1. Comment 19(f)(1)(ii)–1 also includes a technical revision by omitting a reference to comment 2(a)(6)–1 so that comment 19(f)(1)(ii)–1 cross-references only comment 2(a)(6)–2, which discusses the specific definition of business day applicable to § 1026.19(f)(1)(ii).

The final rule also adopts comment 19(f)(1)(ii)–2, with modifications. The comment has been reorganized for clarity, makes technical revisions, and includes additional discussion. The comment references the receipt rule in § 1026.19(f)(1)(iii) and includes examples illustrating when the Closing Disclosure would have to be delivered or placed in the mail to ensure the consumer receives the Closing Disclosure no later than three business days before consummation. The Bureau believes this language helps clarify the example that follows. In that example, consummation is scheduled for Thursday, and the comment explains that a creditor would satisfy the requirements of § 1026.19(f)(1)(ii)(A) if the creditor places the disclosures in the mail on Thursday of the previous week, because, for the purposes of § 1026.19(f)(1)(ii), Saturday is a business day, pursuant to § 1026.2(a)(6), and, pursuant to § 1026.19(f)(1)(iii), the consumer would be considered to have received the disclosures on the Monday before consummation is scheduled. The comment also includes a cross-reference to comment 19(f)(1)(iii)–1, which further clarifies the requirements of

§ 1026.19(f)(1)(iii) applicable to mail delivery. The comment also explains that a creditor would not satisfy the requirements of § 1026.19(f)(1)(ii)(A) in this example if the creditor places the disclosures in the mail on the Monday before consummation.

The comment also includes more detail than proposed comment 19(f)(1)(ii)–2 in explaining how a creditor in the above example could satisfy the requirements of § 1026.19(f)(1)(ii)(A) by delivering the Closing Disclosure by way of electronic mail on a day (Monday) that is three business days before consummation (Thursday). The comment also revises the proposal's reference to § 1026.17(a)(1) relating to disclosures in electronic form. The final comment refers to § 1026.38(t)(3)(iii) instead, which permits the Closing Disclosure to be provided in electronic form, subject to compliance with the E-Sign Act. As revised, the comment explains that the creditor in the above example could satisfy the requirements of § 1026.19(f)(1)(ii)(A) by delivering the disclosures on Monday, for instance, by way of electronic mail, provided the requirements of § 1026.38(t)(3)(iii) relating to disclosures in electronic form are satisfied and assuming that each weekday is a business day, and provided that the creditor obtains evidence that the consumer received the emailed disclosures on Monday. The comment also includes a cross-reference to comment 19(f)(1)(iii)–2, which discusses how § 1026.19(f)(1)(iii) applies to delivery methods other than mail delivery.

Final § 1026.19(f)(1)(ii)(A) and comments 19(f)(1)(ii)–1 and –2 are adopted pursuant to the Bureau's legal authority under sections 105(a) of TILA, 19(a) of RESPA, 1032(a) of the Dodd-Frank Act, and, for residential mortgage transactions, sections 129B(e) of TILA and 1405(b) of the Dodd-Frank Act. The Bureau has considered the purposes for which it may exercise its authority under section 105(a) of TILA and, based on that review, believes that the rule and commentary are appropriate. The final rule and commentary will help consumers avoid the uninformed use of credit by ensuring that consumers receive disclosures of the actual terms and costs associated with the mortgage loan transaction early enough that consumers have sufficient time to become fully informed as to the cost of their credit. The final rule and commentary are consistent with section 129B(e) of TILA because failing to provide borrowers with enough time to become fully informed of the actual terms and costs of the transaction is not in the interest of the borrower.

The Bureau also has considered the purposes for which it may exercise its authority under section 19(a) of RESPA and, based on that review, believes that the final rule and commentary are appropriate. The final rule and commentary will ensure more effective advance disclosure of settlement costs by requiring creditors to disclose the actual settlement costs associated with the transaction three business days before consummation.

The final rule and commentary are consistent with Dodd-Frank Act section 1032(a) because the features of mortgage loan transactions and settlement services will be more fully, accurately, and effectively disclosed to consumer in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage loan and settlement services if consumers receive the disclosures reflecting the terms and costs associated with their transactions three business days before consummation.

In addition, the Bureau has considered the purposes for which it may exercise its authority under section 1405(b) of the Dodd-Frank Act and, based on that review, believes that the final rule and commentary are appropriate. The final rule and commentary will improve consumer awareness and understanding of the mortgage loan transaction by ensuring that consumers receive the disclosures reflecting the terms and costs associated with their transactions three business days in advance of consummation. The final rule and commentary also will be in the interest of consumers and in the public interest because they may eliminate the opportunity for bad actors to surprise consumers with unexpected costs at the closing table, when consumers are less able to question such costs.

The Bureau recognizes that the timing requirement in § 1026.19(f)(1)(ii)(A) is a change from current industry practice. During the Small Business Review process, several small entity representatives were opposed to this modification. *See* Small Business Review Panel report at 35, 38, 40, 45, 53–54, 59–60, 67–68, 72, and 77. The Small Business Review Panel recommended that the Bureau explore ways to mitigate the potential impact of the three business day requirement on small entities. *Id.* at 29. While the final rule continues to require that the Closing Disclosure be provided to consumers three business days before consummation in all circumstances, the final rule has provided for more flexibility, in part, because of the concern of the rule's impact on the market. As discussed above in the section-by-section analysis of § 1026.19(f)(1)(i), the final rule includes new comment 19(f)(1)(i)–2, which clarifies when creditors may use the best information reasonably available when providing the disclosures required under § 1026.19(f)(1)(i). In addition, the final rule narrows the circumstances under which a new waiting period will be triggered for revisions to the Closing Disclosure, as discussed in more detail in the section-by-section analysis of § 1026.19(f)(2) below. Further, the final rule clarifies the receipt requirements in § 1026.19(f)(1)(iii), which the Bureau believes will facilitate compliance. The Bureau believes these modifications will reduce burden on small entities.

19(f)(1)(ii)(B) Timeshares

As explained above, in 2008 Congress amended TILA to require delivery of final disclosures three business days prior to consummation. However, Congress explicitly exempted mortgage loans secured by timeshares from MDIA's three-business-day requirement.[228] Accordingly, the Bureau proposed § 1026.19(f)(1)(ii)(B), which would have provided that, for transactions secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D), the creditor shall ensure that the consumer receives the disclosures required under § 1026.19(f)(1)(i) no later than consummation. The Bureau proposed these requirements pursuant to its authority under sections 105(a) of TILA, 19(a) of RESPA, and 1405(b) of the Dodd-Frank Act.

Proposed comment 19(f)(1)(ii)–3 would have explained that, for loans secured by timeshares, § 1026.19(f)(1)(ii)(B) requires a creditor to ensure that the consumer receives the disclosures required under § 1026.19(f)(1)(i) as soon as reasonably practicable, but no later than consummation. The proposed comment also would have included illustrative examples of this requirement.

Comments. A trade association representing the timeshare industry supported the Bureau's proposed exemption from the Closing Disclosure's timing requirements. The commenter also explained that proposed comment 19(f)(1)(ii)–3 should be modified to clarify that, if the creditor in the case of a transaction secured by a consumer's

[228] *See* MDIA, Public Law 110–289, section 2502(a)(6), 122 Stat. 2654, 2857 (2008); 15 U.S.C. 1638(b)(2)(G). ''Timeshare'' is defined in 11 U.S.C. 101(53D).

interest in a timeshare plan provides the credit application and consummates the transaction on the same day, or if consummation occurs a day after the application is received, there should be no requirement to provide the Loan Estimate required by § 1026.19(e)(1)(iii), and that the creditor would comply with § 1026.19(e)(1)(iii) and (f)(1)(i) by providing the Closing Disclosure. As discussed in the section-by-section analysis of § 1026.19(e)(1)(iii) above, the commenter noted that timeshare transactions are typically consummated on the same or very next day after the creditor receives the application.

The commenter also requested that comment 19(f)(1)(ii)–3 be amended to clarify that timeshare transactions covered by the rule may be consummated at any time after the Closing Disclosure is provided, similar to language in existing comment 19(a)(5)(ii)–1. The commenter further requested that language be added to the comment explaining that the disclosures required by § 1026.19(e)(1)(iii) and (f)(1)(i) are not required to be provided if the consumer's application will not or cannot be approved on terms requested by the consumer or if the consumer has withdrawn the application, similar to language in existing comment 19(a)(5)(ii)–4.

The commenter also requested that the Bureau also exempt timeshares from many of the Dodd-Frank Act's amendments to TILA by, for example, allowing timeshare lenders to use a timeshare-specific Closing Disclosure form or to strike out or omit inapplicable disclosures on the proposed forms. The commenter indicated that this would fulfill the exemption for timeshares recognized in the Dodd-Frank Act.

Final rule. The Bureau adopts § 1026.19(f)(1)(ii)(B) and comment 19(f)(1)(ii)–3 substantially as proposed, but has added additional commentary in response to the comments received. As discussed in the section-by-section analysis of § 1026.19(f)(1)(i), the final rule includes comment 19(f)(1)(i)–3 explaining that, for transactions covered by § 1026.19(f)(1)(i), creditors may rely on comment 19(e)(1)(iii)–3 in determining that disclosures are not required by § 1026.19(f)(1)(i) because the consumer's application will not or cannot be approved on the terms requested or the consumer has withdrawn the application. Thus, for timeshare transactions covered by § 1026.19(f)(1)(ii)(B), creditors need not provide the Closing Disclosure if a consumer's application is denied or withdrawn, in accordance with comment 19(f)(1)(i)–3.

Comment 19(f)(1)(ii)–3 adds language to proposed comment 19(f)(1)(ii)–3 clarifying that timeshare transactions may be consummated at the time or any time after the disclosures required by § 1026.19(f)(1)(i) are received by the consumer. To avoid uncertainty over whether consummation may occur after only the Closing Disclosure is provided, the comment also indicates that, in some cases, the Loan Estimate must be provided under § 1026.19(e) and includes a cross-reference to comment 19(e)(1)(iii)–4. Comment 19(f)(1)(ii)–3 amends the examples in proposed comment 19(f)(1)(ii)–3 to demonstrate that the Closing Disclosure must be provided no later than consummation. The comment includes an example in which an application is received on a Monday and consummation occurs on Friday of that week. The comment also includes an example in which an application is received on a Monday and consummation occurs the next day, on Tuesday of that week. In both examples, the Closing Disclosure must be provided no later than consummation.

To conform the comment to the language in § 1026.19(f)(1)(ii)(B), the comment omits language in proposed comment 19(f)(1)(ii)–3 that would have explained that, if an application is received on a Monday and consummation is scheduled for Friday, ''the creditor may provide the consumer with the disclosures required by § 1026.19(f)(1)(i) on Tuesday, June 2, if doing so is reasonably practicable.'' The comment also revises proposed guidance that would have addressed compliance with § 1026.19(e). Comment 19(f)(1)(ii)–3 explains that, in some cases, a Loan Estimate also must be provided under § 1026.19(e) and includes a cross-reference to comment 19(e)(1)(iii)–4, which addresses the provision of the Loan Estimate in timeshare transactions, as discussed in the section-by-section analysis of § 1026.19(e)(1)(iii).

Section 1026.19(f)(1)(ii)(B) and comment 19(f)(1)(ii)–3, as finalized, carry out the purposes of TILA and RESPA by ensuring meaningful disclosure of credit terms and effective advance disclosure of settlement costs, consistent with section 105(a) of TILA and 19(a) of RESPA, respectively. Also, the final rule and commentary will improve consumer awareness and understanding of transactions involving residential mortgage loans by requiring effective disclosure within a timeframe appropriate for loans secured by a timeshare, which will be in the best interest of consumers and the public consistent with Dodd-Frank Act section 1405(b).

19(f)(1)(iii) Receipt of Disclosures

TILA and RESPA differ in their treatment of delivery requirements for the final disclosures. Section 128(b)(2)(E) of TILA, as amended by MDIA, provides that, if the disclosures are mailed to the consumer, the consumer is considered to have received them three business days after they are mailed. 15 U.S.C. 1638(b)(2)(E). RESPA does not expressly address delivery requirements. Regulation Z provides that if the disclosures are provided to the consumer by means other than delivery in person, the consumer is deemed to have received the disclosures three business days after they are mailed or delivered. *See* 12 CFR 1026.19(a)(2)(ii). Regulation X provides that the settlement agent shall deliver the completed RESPA settlement statement at or before the settlement, except if the borrower waives the right to delivery of the completed RESPA settlement statement, in which case the completed RESPA settlement statement shall be mailed or delivered as soon as practicable after settlement. *See* 12 CFR 1024.10(b), (c).

To establish a consistent standard for the Closing Disclosure, the Bureau proposed to adopt § 1026.19(f)(1)(iii), which would have provided that, if any disclosures required under § 1026.19(f)(1)(i) are not provided to the consumer in person, the consumer is presumed to have received the disclosures three business days after they are mailed or delivered to the address specified by the consumer. The Bureau proposed these requirements pursuant to its authority under sections 105(a) of TILA, 19(a) of RESPA, and 1405(b) of the Dodd-Frank Act. Proposed § 1026.2(a)(6) would have applied the specific definition of ''business day'' to § 1026.19(f)(1)(iii). The specific definition of business day is the definition that applies to the right of rescission in § 1026.23 and includes all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a).

Proposed comment 19(f)(1)(iii)–1 would have explained that if any disclosures required under § 1026.19(f)(1)(i) are not provided to the consumer in person, the consumer is presumed to have received the disclosures three business days after they are mailed or delivered. The proposed comment would have further explained that this is a presumption which may be rebutted by providing evidence that the consumer received the disclosures earlier than three business

days. The proposed comment also would have included illustrative examples. Proposed comment 19(f)(1)(iii)–2 would have clarified that the presumption established in § 1026.19(f)(1)(iii) applies to methods of electronic delivery, such as email. However, the comment also would have explained that creditors using electronic delivery methods, such as email, must also comply with § 1026.17(a)(1). This proposed comment also would have included illustrative examples.

The Bureau recognized in the proposal that this requirement is different than the current requirement in Regulation Z. As explained above, the current rules deem corrected disclosures mailed or delivered to the consumer by a method other than in-person delivery to be received three business days after mailing or delivery. In contrast, the proposed rule instead would have created a presumption that the disclosures are received three business days after they are mailed or delivered to the address provided by the consumer. The Bureau was concerned that the current rule may not be appropriate for the Closing Disclosure, which contains much more information than the final TILA disclosures subject to the current rule, and therefore would require more time to review and understand. The Bureau reasoned that it therefore may be appropriate to create a presumption of receipt, which would provide additional encouragement for lenders to ensure that the disclosures are received in a timely manner.

The Bureau solicited feedback regarding whether the proposed rule would create uncertainty regarding compliance and whether the rule should be made analogous to § 1026.19(a)(2), which uses ''deem'' instead of ''presume,'' or whether § 1026.19(a) should be modified to reflect § 1026.19(f)(1)(iii), if the final rule adopts the presumption of receipt.

Comments

The Bureau received public comment and an ex parte submission regarding the proposed rule's presumption of receipt. A variety of commenters identified the proposed three-day presumption of receipt as a potential source of additional costs and delays. Commenters observed that the three-day presumption of receipt would add three more business days to the general three-business-day pre-consummation period, which could require that the Closing Disclosure be provided a minimum of six business days before consummation. Many commenters had questions about what type of evidence would be sufficient to demonstrate compliance with the rule and to respond to challenges to the presumption that the Closing Disclosure was not timely received.

Some commenters, including the SBA, expressed concern that demonstrating evidence of physical delivery, such as by using an overnight courier service, could be burdensome, and asked that the Bureau provide flexibility in the delivery rules such as by recognizing methods of electronic delivery and by providing clear guidance on what forms of proof are sufficient to demonstrate compliance. The SBA observed that the three-day presumption applied even for disclosures that are emailed, unless it could be proved that they were received earlier. A trade association representing settlement agents asked whether delivery by facsimile machine would be acceptable. A number of commenters suggested that electronic delivery methods, such as facsimile or email, could raise questions about how to demonstrate evidence of delivery, such as by read receipt, return receipt, an email from the person to be obligated on the loan, or email tracking metrics, such as open and click-through rates.

Several bank and credit union commenters, trade associations representing banks and financial companies, settlement agents, and title insurance commenters expressed concern that use of the word ''presumed'' meant the presumption could be defeated by an assertion that a consumer received it more than three business days after mailing or by denying that they received the disclosure by presenting oral evidence or a written affidavit. Commenters expressed concerns that managing compliance risk associated with defeating the presumption would likely delay closings and increase costs.

Trade associations representing banks expressed concern that the rebuttable presumption could delay closings because creditors or settlement agents would wait until they obtained sufficient evidence of receipt, particularly if a consumer waited to notify someone that it did not receive a timely disclosure. One trade association representing banks explained that creditors would not know that a consumer did not receive a mailed disclosure, or that receipt had been delayed, unless the consumer informed the creditor, and that the pre-consummation waiting period could be delayed if consumers wait to tell creditor that they did not receive the Closing Disclosure. A credit union commenter observed that a three-day presumption for electronic communications would encourage industry to send documents in-person or by overnight delivery to guarantee receipt.

A large bank commenter was concerned that creditors could face TILA liability for mail delivery delays that are outside of the creditor's control. A title insurance company explained that the rebuttable presumption would increase post-closing litigation, and that higher litigation risk would increase costs that would be passed on to consumers.

Rural lenders, settlement agents, and trade associations representing attorneys and settlement agents expressed concern about how the timing of the Closing Disclosure could impact closings in rural areas. Commenters explained that consumers are frequently in transit over long distances to attend a closing and may not always be able to receive documents electronically, that delivery can take longer than three days in certain areas and that certain carriers will not deliver documents on Saturdays. A rural lender explained that in-person delivery is not always an option in rural areas, so creditors would likely have to mail the Closing Disclosure six business days before consummation, but that proving timely delivery would be difficult.

To address these concerns, a large bank commenter recommended that the Bureau clarify in commentary that the presumption may be rebutted only by evidence that consumer received the disclosure earlier than three business days after mailing or delivery, but that it could not be challenged by assertions or evidence that the disclosures were in fact received more than three business days after mailing. A variety of commenters recommended retaining the current rule in Regulation Z that disclosures are deemed to be received three days after placed in the mail. A title insurance company commenter explained that ''deemed'' would make compliance more certain and would not delay transactions while creditors and settlement agents obtain evidence of receipt. The commenter suggested that the term ''presume'' would lead to post-closing litigation when persons in default on their loans attempt to rebut the presumption that disclosure was received within three days, which would increase costs to consumers because creditors and settlement agents would be forced to defend such litigation, and litigation costs would ultimately be passed on to consumers in the form of higher fees.

Credit union commenters recommended that the final rule establish a presumption of instant

receipt based on electronic delivery in all cases, or in cases where consumers have agreed to receive electronic communications. The commenter explained that electronic communications are received nearly instantly after sending, and it is likely that individuals involved in important transactions will check their electronic communications more than once per day. One trade association representing credit unions explained that it is reasonable to assume that members who have agreed to receive electronic communications expect to receive disclosures by email, and that a consumer's agreement to receive notices electronically should constitute adequate notice of expected delivery. A credit union commenter stated that electronic delivery should not require evidence to defeat the presumption in any case. One non-depository lender recommended that the presumption of delivery for emailed disclosure be shortened to 24 hours.

Commenters asked for clarification on what forms of evidence could be used to demonstrate the consumer received the disclosures for purposes of demonstrating compliance or rebutting the three-day presumption (and, by extension, defeating such rebuttals). A large bank in an ex parte comment asked that the Bureau confirm that an applicant's representation to the creditor, such as a recorded verbal acknowledgement or a signed statement, could defeat the presumption (*i.e.,* to prove that they received it earlier, or later, than three days). A trade association representing settlement agents and the title insurance industry asked, if the disclosure is delivered by the United States Postal Service or a courier service, whether a delivery confirmation, signature confirmation service, return receipt, or certified mail, could rebut the presumption of receipt. The commenter also asked whether a certificate of mailing or track-and-confirm receipt could establish the date on which the disclosure was sent. The commenter also asked, if a signature is required for confirmation of receipt, whether the signature must be the signature of the person named as a party to the loan.

A software company commenter requested clarification on whether the day the disclosures are mailed or delivered counts as the first day for purposes of the delivery requirements in 19(f)(1)(iii). Commenters also requested clarification regarding how to deliver the Closing Disclosure when there are multiple consumers involved. Several trade associations representing banks and financial companies requested clarification that the three-day period begins when the Closing Disclosure is delivered to the ''primary'' consumer when there are multiple consumers. One trade association representing settlement agents asked whether a particular consumer could elect a different method of delivery than a co-borrower. Another commenter asked that if multiple consumers are to be obligated on the loan, whether all of them must sign a delivery receipt to confirm they have received the Closing Disclosure.

Final Rule

The Bureau has considered the comments on this aspect of the proposal and is modifying the proposed provision creating a presumption of receipt three business days after delivery. The final rule adheres to the statutory provision under MDIA. The final rule provides that, if the Closing Disclosure is mailed to the consumer or delivered to the consumer by means other than delivery in person, the consumer is considered to have received the disclosure three business days after it is mailed or delivered. The final rule makes this change to reflect the standard for determining receipt set forth in TILA section 128(b)(2)(E), as amended by MDIA, in response to comments that indicated a presumption of receipt could delay closings and increase costs for consumers. This is the standard that currently applies to the final TILA disclosures under § 1026.19(a)(2).

When it issued the proposal, the Bureau reasoned that the presumption of receipt rule at proposed § 1026.19(f)(1)(iii) would provide additional encouragement for lenders to ensure that disclosures are received in a timely manner. Commenters provided feedback explaining that, to manage compliance risk associated with a presumption of receipt, creditors and settlement agents may incur additional costs and delay closings to ensure they have evidence of receipt. Accordingly, commenters requested clarification on the types of evidence that would be sufficient under the proposal, including an ex parte comment requesting clarification of whether a recorded verbal acknowledgment or a signed statement from the consumer would be sufficient to demonstrate compliance or withstand a challenge to the presumption of receipt.

In light of the variety of delivery methods and options offered by service providers, it is not feasible to define with sufficient clarity what evidence will demonstrate compliance or withstand a challenge to the presumption of receipt; such a determination would involve a factual inquiry. Without a bright-line standard or extensive regulatory guidance, the Bureau believes industry would likely seek to document evidence of receipt, such as through recorded verbal or written acknowledgements or affidavits, which may unnecessarily delay many transactions. The Bureau also is concerned that demonstrating compliance under the proposal could be especially difficult and costly in rural areas. Creditors and settlement agents in rural areas explained that long distances separate parties to a transaction, and that it is often difficult for creditors to obtain evidence that a consumer has, in fact, received a disclosure. By adhering to the statutory provision under MDIA, the final rule should facilitate compliance for creditors and settlement agents in these areas. Accordingly, the final rule modifies proposed § 1026.19(f)(1)(iii) so that the provision adheres to the statutory mailbox rule under TILA section 128(b)(2)(E) and the standard currently in Regulation Z § 1026.19(a)(2).

The final rule does not prevent creditors from arranging earlier delivery of the Closing Disclosure provided they ensure the consumer receives the disclosures no later than three business days before consummation, consistent with § 1026.19(f)(1)(ii) and (iii). Moreover, to accommodate changes that may occur between the time the Closing Disclosure is provided and consummation, the final rule has narrowed the triggers for new three-business-day waiting periods under the rule's redisclosure requirements, as discussed in the section-by-section analysis of § 1026.19(f)(2) below. The Bureau believes this change will further reduce the impact on industry and consumers in rural areas.

The final rule does not adopt separate rules or presumptions regarding the delivery of disclosures by overnight courier, electronic transmission, or other means. Although these methods may be faster than delivery by regular mail, the Bureau does not believe it is feasible to adequately identify satisfactory compliance in all cases. Nor does the Bureau believe it has sufficient information to identify a separate presumption of receipt for particular delivery methods, such as electronic delivery methods. However, a creditor or settlement agent is not required to use the three-business-day delivery standard to determine when the waiting period required by § 1026.19(f)(1)(iii) begins. Thus, if a creditor or settlement agent delivers the Closing Disclosure electronically consistent with

§ 1026.38(t)(3)(iii) or delivers the Closing Disclosure by overnight courier, the creditor or settlement agent may rely on evidence of actual delivery (such as documentation that the Closing Disclosure was received by certified mail or overnight delivery that uses a signature to accept delivery or email, if similar documentation is available) to determine when the three-business-day waiting period begins.

Some commenters requested clarification on when a Closing Disclosure is considered delivered for purposes of counting the three-business-day rule. For clarity and consistency with other provisions of § 1026.19(e) and (f), final § 1026.19(f)(1)(iii) provides generally that if the Closing Disclosure is not provided in person, the consumer is considered to have received the disclosures three business days after they are delivered or placed in the mail. Comment 19(f)(1)(iii)–1 also explains that the days are counted from the date on which the disclosures are placed in the mail. *See also* comment 19(f)(1)(ii)–2. Some commenters requested clarification regarding transactions involving multiple consumers. Final § 1026.17 sets forth the applicable requirements for such transactions and clarifies that the Closing Disclosure need only be given to one of the primary obligors, unless the transaction is subject to the right of rescission, in which case all consumers with the right to rescind must receive the closing disclosures. *See* section-by-section analysis of § 1026.17(d).

Final provisions. Accordingly, final § 1026.19(f)(1)(iii) provides that, if any disclosures required under § 1026.19(f)(1)(i) are not provided to the consumer in person, the consumer is considered to have received the disclosures three business days after they are delivered or placed in the mail. The heading of final § 1026.19(f)(1)(iii) has been modified to refer to ''Receipt of disclosures,'' which the Bureau believes is clearer than the proposed heading that would have referred to ''Delivery.'' As discussed in the section-by-section analysis of § 1026.19(f)(1)(ii)(A), the final rule adopts the specific definition of business day applicable to § 1026.19(f)(1)(iii) for purposes of the delivery requirements of the Closing Disclosure.

Comment 19(f)(1)(iii)–1 restates the requirement of § 1026.19(f)(1)(iii) and contains language similar to language in current comment 19(a)(2)(ii)–3, clarifying that, if the creditor delivers the disclosures under § 1026.19(f)(1)(iii) to the consumer in person, consummation may occur any time on the third business day following delivery. Comment 19(f)(1)(iii)–1 also clarifies that, if the creditor provides the disclosures by mail, the consumer is considered to have received them three business days after they are placed in the mail, for purposes of determining when the three-business-day waiting period required under § 1026.19(f)(1)(ii)(A) begins. For consistency with comment 19(e)(1)(iv)–1, comment 19(f)(1)(iii)–1 also explains that the creditor may, alternatively, rely on evidence that the consumer received the Closing Disclosure earlier than three business days after mailing. The comment also includes a cross-reference to comment 19(e)(1)(iv)–1 for an example in which the creditor sends disclosures by overnight mail.

Comment 19(f)(1)(iii)–2 also has been modified to conform to final § 1026.19(f)(1)(iii) and contains a sentence substantially similar to the last sentence in current comment 19(a)(2)(ii)–3, clarifying that creditors that use electronic mail or a courier other than the United States Postal Service also may follow the approach for disclosures provided by mail described in comment 19(f)(1)(iii)–1. This language replaces proposed language that would have explained that the three-business-day presumption applies to methods of electronic delivery and that would have provided an illustrative example and an explanation that the creditor could demonstrate compliance by providing evidence that the consumer received an emailed disclosure earlier. Thus, if a creditor sends a disclosure required under § 1026.19(f) via email on Monday, pursuant to § 1026.19(f)(1)(iii) the consumer is considered to have received the disclosure on Thursday, three business days later. For consistency with comment 19(e)(1)(iv)–2, the comment also explains that the creditor may, alternatively, rely on evidence that the consumer received the emailed disclosures earlier than three business days. Comment 19(f)(1)(iii)–2 includes a cross-reference to comment 19(e)(1)(iv)–2 for an example in which the creditor emails disclosures and receives an acknowledgment from the consumer on the same day. Comment 19(f)(1)(iii)–2 adopts substantially all of the language in proposed comment 19(f)(1)(iii)–2 regarding a creditor's use of electronic delivery methods, with a revised reference to § 1026.38(t)(3)(iii) instead of § 1026.17(a)(1) to reflect the requirements applicable to the Closing Disclosure.

The final delivery provision under § 1026.19(f)(1)(iii) and comments 19(f)(1)(iii)–1 and –2 are consistent with section 105(a) of TILA. Specifically, the rule and commentary will help consumers avoid the uninformed use of credit by ensuring that consumers receive disclosures of the actual terms and costs associated with the mortgage loan transaction early enough that consumers have sufficient time to become fully informed as to the cost of credit. The final rule and commentary are also authorized under section 19(a) of RESPA because they will ensure more effective advance disclosure of settlement costs by requiring creditors to make sure that the disclosures are delivered to the consumer three business days before consummation. In addition, § 1026.19(f)(1)(iii) and comments 19(f)(1)(iii)–1 and –2 are consistent with section 1405(b) of the Dodd-Frank Act because the rule will improve consumer awareness and understanding of the mortgage loan transaction by ensuring that disclosures reflecting all of the terms and costs associated with their transactions are delivered to the consumer three business days in advance of consummation.

19(f)(1)(iv) Consumer's Waiver of Waiting Period Before Consummation

TILA and RESPA set forth different waiver provisions applicable to the final disclosures. Section 128(b)(2)(F) of TILA provides that the consumer may waive or modify the timing requirements for disclosures to expedite consummation of a transaction, if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency. 15 U.S.C. 1638(b)(2)(F). Section 128(b)(2)(F) further provides that: (1) the term ''bona fide personal financial emergency'' may be further defined in regulations issued by the Bureau; (2) the consumer must provide the creditor with a dated, written statement describing the emergency and specifically waiving or modifying the timing requirements, which bears the signature of all consumers entitled to receive the disclosures; and (3) the creditor must provide, at or before the time of waiver or modification, the final disclosures. 15 U.S.C. 1638(b)(2)(F). This provision is implemented in current § 1026.19(a)(3) of Regulation Z.

Neither RESPA nor Regulation X contains a similar provision for emergencies. Instead, RESPA section 4 provides the Bureau authority to issue regulations under which consumers may waive their rights to receive the RESPA settlement statement at or before settlement. Regulation X provides that the settlement agent shall deliver the completed RESPA settlement statement

at or before the settlement, unless the borrower waives the right to delivery of the completed RESPA settlement statement. If the borrower exercises the waiver, the completed RESPA settlement statement must be mailed or delivered as soon as practicable after settlement. *See* 12 CFR 1024.10(b)(c).

The Bureau explained in the proposal that, although waivers based on a bona fide personal financial emergency are rare, the waiver provision serves an important purpose. Specifically, consumers should be able to waive the protection afforded by the waiting period if, in the face of a financial emergency, the waiting period does more harm than good. Accordingly, the Bureau proposed § 1026.19(f)(1)(iv), which would have allowed a consumer to waive the three-business-day waiting period in the event of a bona fide personal financial emergency. The provision would have required that the consumer have a bona fide personal financial emergency that necessitates consummating the credit transaction before the end of the waiting period, and that whether these conditions are met is determined by the facts surrounding individual situations. Further, each consumer who is primarily liable on the legal obligation would have been required to sign the written statement for the waiver to be effective.

Proposed comment 19(f)(1)(iv)–1 would have stated that, a consumer may modify or waive the right to the three-business-day waiting period required by § 1026.19(f)(1)(ii) only after the creditor makes the disclosures required by § 1026.19(f)(1)(i). This comment was modeled after comment 19(a)(3)–1, which was based on the text in TILA, and is consistent with commentary on waiving the rescission period and the pre-consummation waiting period required for certain high-cost mortgage transactions. The comment would have set forth one example: the imminent sale of the consumer's home at foreclosure, where the foreclosure sale will proceed unless loan proceeds are made available to the consumer during the waiting period, is one example of a bona fide personal financial emergency. The Bureau sought comment on the nature of waivers based on bona fide personal financial emergencies and whether the bona fide personal financial emergency exception is needed more in some contexts than in others (*e.g.,* in refinance transactions or purchase money transactions).

Comments

Consumer advocates and industry commenters differed in their views on the waiver proposal. Two consumer advocacy groups submitting a joint comment noted that the bona fide personal financial emergency waiver would protect consumers sufficiently from serious harm caused by a delayed closing. While they noted that consumers may be inconvenienced by closing delays, they stated that a waiver should not be available for mere inconveniences, and that a narrow waiver provision would provide industry an incentive to avoid such inconveniences without risking the potential that a flexible waiver provision could be abused.

By contrast, many industry comments expressed the view that the proposed waiver provision was inadequate. These commenters believed the bona fide personal financial emergency waiver was too restrictive to account for the variety of reasons a consumer may wish to waive the timing provisions of the Closing Disclosure. Creditors noted that they are already reluctant to accept bona fide personal financial emergency waivers under the current rescission rules because the lack of examples could subject them to possible TILA liability. A trade association representing banks explained that, due to TILA liability, creditors are often reluctant to honor a waiver where a borrower's attested circumstances do not rise to the level of a clear emergency but instead appear to be inconveniences.

Some industry commenters, including a title insurance company and a professional association representing attorneys, opposed a rule that relied on a waiver because of the potential for consumer abuse inherent in a waiver and the reputational and legal risk incurred by settlement agents who may need to consider whether to accept a waiver. Commenters explained that consumers likely would feel forced into signing a waiver on most closings that would undermine the purpose of the three-business-day period. Some settlement agent commenters noted the potential for consumer abuse inherent in waiver mechanisms, but they believed the Bureau nonetheless could craft a waiver provision to deal with this risk.

Commenters critical of the proposed waiver provision generally recommended several approaches to broaden the waiver provision, including expanding the bona fide personal financial emergency provision to cover additional ''emergencies,'' permitting a waiver for ''non-emergency'' circumstances, and permitting the consumer and the seller to jointly sign a waiver in the event of a closing being necessary to facilitate a coinciding settlement. One large bank stated that a flexible waiver would be necessary even if the Bureau expanded exemptions in the final rule because situations necessitating a waiver would arise that fall outside of the exemptions. The commenter stressed the consumers should be free to make their own decisions about whether to waive the timing requirements in the rule.

Commenters, including a GSE, asked that the Bureau consider a variety of examples that would either constitute a bona fide personal financial emergency or justify some other more flexible waiver, including the following: the consumer may miss a mandatory military service deadline; timely receipt of the Closing Disclosure would be impracticable because the consumer is traveling; the consumer expends financial resources to secure emergency housing or make other logistical arrangements; the consumer needs timely access to funds to satisfy a legal judgment or other legal arrangement, for an emergency medical procedure, or to repair a heating system in the winter; the consumer loses the opportunity to purchase a home because a sale contract expires; the consumer faces financial costs or economic hardship, such as the expiration of an interest rate lock, additional interest rate lock extension fees, additional prorated taxes, or higher interest payments on an existing loan in the case of refinancing; or a delay will affect the seller, such as by delaying a separate coinciding closing.

Some commenters suggested that a more flexible waiver should be available in particular circumstances. A large bank, a title insurance company, and settlement agent commenters recommended that a flexible waiver be available to consumers where the rule would trigger additional redisclosure waiting periods so the consumer could avoid the costs associated with a closing delay, such as the loss of a rate lock or penalties associated with a breach of a purchase agreement. A trade association representing banks and financial companies believed that a more flexible waiver should be permitted when a consumer is receiving a mortgage loan that meets the criteria of a ''qualified mortgage'' under the Bureau's rules. Several commenters requested that a flexible waiver be available for transactions subject to the three-business-day right to rescind under § 1026.23. A trade association representing credit unions and a large bank suggested non-cash-out and term-reduction refinancings presented less consumer risk and that consumers should be able to waive the rule's timing

requirements for such transactions. A credit union commenter stated that the waiver provision applicable to the Closing Disclosure should be consistent with the waiver provision applicable to the Loan Estimate.

A large bank believed creditors should be permitted to establish processes and controls around the issuance of waivers, while a settlement agent and a credit union commenter recommended that the Bureau develop disclaimer language for a waiver to mitigate the risk of abuse, and a mortgage broker commenter believed consumers should be able to acknowledge at closing that they have waived the rule's timing requirements. A trade association representing various mortgage professionals believed the risk of abuse should be addressed through enforcement rather than restrictive regulations.

Several commenters requested that the Bureau provide clarification on the mechanics for issuing a waiver. A law firm commenter requested that the final rule clarify how a waiver is obtained and what is required for approval. Various settlement agent commenters and a title insurance company commenter indicated that the seller should be able to exercise a waiver, while a trade association representing settlement agents and a community bank recommended that consumers and sellers should be required to execute a waiver to ensure that all parties can consider the effects of and necessity for a waiver.

Final Rule

The final rule adopts final § 1026.19(f)(1)(iv) substantially as proposed, with technical revisions discussed further below. The Bureau believes the bona fide personal financial emergency provision is the appropriate waiver mechanism for the Closing Disclosure, rather than the broader waiver currently provided for under Regulation X § 1024.10(c) with respect to the RESPA settlement statement. There is significant consumer interest in ensuring consumers receive the Closing Disclosure at least three business days before consummation, given the complexity and significance of mortgage transactions. Final TILA disclosures provided three business days prior to consummation under the amendments made to TILA by MDIA are already subject to the bona fide personal financial emergency waiver. This waiver provision will ensure that consumers only forego their ability to review the Closing Disclosures when they are presented with a financial emergency. In addition, the Bureau believes that implementing TILA's waiver provision is necessary to implement the delivery requirements for the integrated disclosures under MDIA and the Dodd-Frank Act.

The Bureau believes the bona fide personal financial emergency waiver should apply to all transactions subject to § 1026.19(f), and not just those loans subject to MDIA's three-business-day timing requirement (*i.e.,* loans for which the previously disclosed APR becomes inaccurate). While a more flexible waiver is available under Regulation X currently with respect to the RESPA settlement statement, the Closing Disclosure is different in nature because it integrates information derived from both RESPA and TILA. The final rule requires that the Closing Disclosure be provided three business days before consummation in all cases, as discussed in the section-by-section analysis of § 1026.19(f)(1)(ii)(A). As noted in the section-by-section analysis of § 1026.19(f)(1)(ii)(A), advance receipt of the Closing Disclosure provides important consumer protections, fulfills the goals of the integration mandate, and is in line with the goal of improving consumer awareness through disclosures for residential mortgage loans under sections 129B(e) of TILA and 1405(b) of the Dodd-Frank Act. The Bureau is concerned that a broader waiver for transactions not covered by MDIA's timing requirements could be abused and undermine these benefits. This risk of abuse was noted by consumer advocates and several industry commenters, as described above.

The Bureau recognizes that the limited guidance on what constitutes a bona fide personal financial emergency may limit the use of the waiver, but the Bureau believes the waiver should be reserved for limited use: when a consumer faces a true financial emergency, as distinct from an inconvenience. One commenter questioned whether the risk of abuse should be addressed through restrictive regulatory provisions instead of through enforcement activities. The Bureau believes a limited waiver provision in the final rule is an appropriate tool for addressing the risk of abuse. Because determining the circumstances surrounding the issuance of waivers would involve a fact-intensive inquiry, it may be difficult to identify whether consumer abuse occurred on any particular occasion. The Bureau is concerned that a more flexible waiver provision would make it more difficult to detect abuse.

The final rule does not include standardized disclaimer language, as suggested by some commenters. The Bureau believes it would be impracticable to provide standardized language in light of the unique characteristics of each mortgage loan transaction. In addition, the Bureau does not believe the risk of abuse would be mitigated by a statement provided at closing acknowledging a waiver. To be meaningful, the Bureau believes that waivers should be provided with the delivery of the Closing Disclosure and should be based on a justification contained in a written statement provided by the consumer and signed by all consumers primarily liable on the legal obligation. Thus, final § 1026.19(f)(1)(iv) prohibits the use of printed forms for this purpose.

A more flexible waiver standard might offer some consumer benefits. On balance, however, the Bureau does not believe it is needed to protect consumers from unnecessary delays. For example, additional delays and inconveniences for some consumers that would have been required by the proposed redisclosure requirements could be avoided by a more flexible waiver if such a redisclosure requirement were in place, as one commenter suggested. However, the Bureau believes the final rule's modification to the proposal's requirement for additional waiting periods and other disclosure requirements under § 1026.19(f) substantially reduce the likelihood of costly closing delays, thereby reducing the need for a broader waiver.[229] With respect to the circumstances that would trigger redisclosure waiting periods under the final rule, the Bureau believes a waiver should be available only in the event of a bona fide personal financial emergency. The Bureau believes the events triggering a new waiting period in § 1026.19(f)(2) have the potential to pose serious, long-term risk to consumers, and thus waivers in these cases should be limited.

In addition, the Bureau believes reliance on the bona fide personal financial emergency waiver provision will facilitate compliance better than a two-tiered waiver regime, in which transactions not subject to MDIA's timing requirements would be subject to a broader waiver. For example, a two-tiered waiver provision applicable to the Closing Disclosure would create a different standard for waivers than the standard for the Loan Estimate.

[229] *See, e.g.,* section-by-section analysis of § 1026.19(f)(1)(i) (best information reasonably available standard), (f)(1)(iii) (delivery), (f)(2)(i) and (ii) (revised triggers for the redisclosure waiting period), and (f)(2)(iii) (changes for post-consummation events).

Regarding comments requesting additional examples of a bona fide personal financial emergency, the example in comment 19(f)(1)(iv)–1 is illustrative and not exhaustive. For example, situations offered by commenters could constitute a bona fide personal financial emergency, such as a sudden, unforeseen mandatory military service deadline or an unforeseen medical emergency, depending on the facts and circumstances of an individual case.

One commenter stated that a more flexible waiver should be permitted when a consumer is receiving a qualified mortgage under the Bureau's ability-to-repay rules. While a qualified mortgage may present less risk that a consumer lacks an ability to repay the loan, a home mortgage transaction is a complex, long-term financial commitment that most consumers enter into only infrequently. Thus, the Bureau believes consumers receiving qualified mortgages will benefit from time to review the Closing Disclosure, to ensure that the loan terms and settlement charges offered contain no significant surprises.

The final rule does not provide for a broader waiver for transactions subject to the right of rescission, as requested by several commenters. A large bank and a trade association representing credit unions stated that non-cash-out and term-reduction refinancings presented less consumer risk and that consumers should be able to waive the rule's timing requirements for those transactions. The Bureau recognizes that a pre-consummation waiting period may, in some cases, lengthen the disbursement of funds for transactions subject to the right of rescission. However, as explained in the section-by-section analysis of § 1026.19(f)(1)(i)(A), the Bureau believes the pre- and post-consummation periods serve distinct purposes, and that the risk of closing delays for such transactions is limited, particularly in light of the modifications made to proposed § 1026.19(f).

Several commenters requested that the Bureau provide clarification on the mechanics for issuing a waiver. A law firm commenter requested that the final rule clarify how a waiver is obtained and what is required for approval. The requirements for obtaining a waiver are set forth in § 1026.19(f)(1)(iv) and are clarified in comment 19(f)(1)(iv)–1. Pursuant to § 1026.19(f)(1)(v), settlement agents providing consumers with the disclosures required under § 1026.19(f)(1)(i) also would need to comply with § 1026.19(f)(1)(iv), although creditors would remain responsible for compliance, pursuant to § 1026.19(f)(1)(v).

The final rule does not alter the mechanics for accepting waivers by permitting or requiring sellers to execute a waiver along with, or independent of, the consumer. Several settlement agents and a title insurance company indicated that the seller should be able to exercise a waiver; and a trade association representing settlement agents and a community bank recommended that consumers and sellers should be required to execute a waiver to ensure that all parties can consider the effects of and necessity for a waiver. The Bureau recognizes that sellers have interests that may be frustrated by the waiting period. However, the waiting period is a critical protection to ensure that consumers who are about to take on significant long term financial commitments have time to review the terms of the commitment and the settlement costs without being pressured. The Bureau is concerned that, if sellers could waive the waiting period or could jointly exercise the waiver, consumers would be rushed into accepting loan terms that they do not understand and settlement costs that they did not expect to incur.

Final § 1026.19(f)(1)(iv) and comment 19(f)(1)(iv)–1 are adopted substantially as proposed for the reasons stated in the proposal and above. The final rule and commentary include technical amendments to the first sentence of § 1026.19(f)(1)(iv) to conform to revisions regarding the three-business-day redisclosure waiting period under § 1026.19(f)(2)(ii). Specifically, proposed § 1026.19(f)(1)(iv) would have referred to the three-business-day waiting period ''for the disclosures required under paragraph (f)(1)(ii)'' of § 1026.19. Because a three-business-day period is required under § 1026.19(f)(1)(ii)(A) and (f)(2)(ii), the final rule refers to the three-business-day waiting periods under § 1026.19(f)(1)(ii)(A) and (f)(2)(ii). Comment 19(f)(1)(iv)–1 includes a similar reference to § 1026.19(f)(2)(ii). In addition, final § 1026.19(f)(1)(iv) includes a technical revision for clarity and consistency with a similar provision in § 1026.19(e) (*i.e.,* that a consumer can modify or waive ''the'' waiting period, instead of ''a'' waiting period).

Final § 1026.19(f)(1)(iv) and comment 19(f)(1)(iv)–1 are consistent with TILA section 128(b)(2)(F), which provides that the consumer may waive or modify the timing requirements for disclosures to expedite consummation of a transaction, if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency. Final § 1026.19(f)(1)(iv) and comment 19(f)(1)(iv)–1 are adopted pursuant to the Bureau's legal authority under sections 105(a) of TILA, 19(a) of RESPA, 1032(a) of the Dodd-Frank Act, and, for residential mortgage transactions, sections 129B(e) of TILA and 1405(b) of the Dodd-Frank Act. The Bureau has considered the purposes for which it may exercise its authority under section 105(a) of TILA and, based on that review, believes that final rule and commentary are appropriate. The final rule and commentary will help consumers avoid the uninformed use of credit by ensuring that consumers receive disclosures of the actual terms and costs associated with the mortgage loan transaction early enough that consumers have sufficient time to become fully informed as to the cost of their credit, subject to a limited waiver. The final rule and commentary are consistent with section 129B(e) of TILA because failing to provide borrowers with enough time to become fully informed of the actual terms and costs of the transaction is not in the interest of the borrower, except where the borrower determines otherwise if necessary to meet a bona fide personal financial emergency.

The Bureau also has considered the purposes for which it may exercise its authority under section 19(a) of RESPA and, based on that review, believes that the final rule and commentary are appropriate. The final rule and commentary will ensure more effective advance disclosure of settlement costs by requiring creditors to disclose the actual settlement costs associated with the transaction three business days before consummation, subject to a limited waiver provision.

The final rule and commentary are consistent with Dodd-Frank Act section 1032(a) because the features of mortgage loan transactions and settlement services will be more fully, accurately, and effectively disclosed to consumer in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage loan and settlement services if consumers receive the disclosures reflecting the terms and costs associated with their transactions three business days before consummation, unless they determine to waive or modify these timing requirements if necessary to meet a bona fide personal financial emergency.

In addition, the Bureau has considered the purposes for which it may exercise its authority under section 1405(b) of the Dodd-Frank Act and, based on that review, believes that the final rule and commentary are

appropriate. The final rule and commentary will improve consumer awareness and understanding of the mortgage loan transaction by ensuring that consumers receive the disclosures reflecting the terms and costs associated with their transactions three business days in advance of consummation, subject to a limited waiver. The final rule and commentary also will be in the interest of consumers and in the public interest because they may eliminate the opportunity for bad actors to surprise consumers with unexpected costs at the closing table, when consumers are less able to question such costs, unless consumers determine to waive or modify these timing requirements if necessary to meet a bona fide personal financial emergency.

19(f)(1)(v) Settlement Agent

TILA and RESPA impose requirements to provide disclosures on different parties. TILA and Regulation Z require that creditors provide the TILA disclosures, but neither TILA nor Regulation Z imposes disclosure requirements on settlement agents. In contrast, the RESPA settlement statement requirement generally applies to settlement agents, as implemented in Regulation X § 1024.10. Section 1032(f) of the Dodd-Frank Act requires the Bureau to propose for public comment rules that combine the disclosures required under TILA and sections 4 and 5 of RESPA. Dodd-Frank Act sections 1098 and 1100A amended TILA and RESPA to mandate that the Bureau integrate the disclosure requirements under TILA and RESPA, but Congress did not reconcile the division of responsibilities between creditor and settlement agent in TILA and RESPA.

As recognized in the proposal, persons who conduct settlements, such as settlement agents and closing attorneys, play a valuable role in the real estate settlement process. Settlement agents may be able to assist consumers with issues that arise during a real estate settlement perhaps even more effectively than creditors. However, the Bureau explained in the proposal that it was concerned that settlement agents may not be able to fulfill the obligations imposed by TILA. The Bureau also expressed concern that, if the responsibility to provide the disclosures were divided, consumers would receive duplicative, inaccurate, or unreliable disclosures. The Bureau explained that this result would be contrary to the TILA–RESPA integration mandate.

Accordingly, the Bureau proposed two alternative approaches to the responsibility for providing the Closing Disclosure. Alternative 1 would have made the creditor solely responsible for the provision of the disclosures required by § 1026.19(f). Alternative 2 would have permitted a settlement agent to provide the disclosures required under § 1026.19(f)(1)(i), provided the settlement agent complies with all requirements of § 1026.19(f) as if it were the creditor. Alternative 2 would have required the creditor and settlement agent to agree on a division of responsibilities regarding the delivery of the disclosures. To implement alternative 2, the Bureau proposed § 1026.19(f)(1)(v), which would have provided that a settlement agent may provide a consumer with the disclosures required under § 1026.19(f)(1)(i), provided the settlement agent complies with all requirements of § 1026.19(f) as if it were the creditor. The Bureau proposed alternative 2 pursuant to its authority under sections 105(a) of TILA, 19(a) of RESPA, and 1405(b) of the Dodd-Frank Act.

Proposed § 1026.19(f)(1)(v) would have required the creditor to ensure that the disclosures are provided in accordance with the requirements of § 1026.19(f). Accordingly, alternative 2 would not have relieved the creditor of its responsibility under § 1026.19(f). Thus, the creditor would have remained responsible for the disclosures provided under § 1026.19(f). *See* proposed comment 19(f)(1)(v)–3. Disclosures provided by a settlement agent in accordance with the requirements of § 1026.19(f) would have satisfied the creditor's obligation under § 1026.19(f)(1)(i).

Proposed comment 19(f)(1)(v)–1 would have clarified that a settlement agent may provide the disclosures required under § 1026.19(f)(1)(i) instead of the creditor. By assuming this responsibility, the settlement agent would become responsible for complying with all of the relevant requirements as if it were the creditor, meaning that ''settlement agent'' should be read in the place of ''creditor'' for all the relevant provisions of § 1026.19(f), except where the context indicates otherwise. The commentary would have clarified that the creditor and settlement agent must effectively communicate to ensure timely and accurate compliance with the requirements of § 1026.19(f)(1)(v).

Proposed comment 19(f)(1)(v)–2 would have clarified that if a settlement agent issues any disclosure under § 1026.19(f), the settlement agent must comply with the requirements of § 1026.19(f). This proposed alternative comment also would have clarified that the settlement agent may assume the responsibility to provide some or all of the disclosures required by § 1026.19(f), provided that the consumer receives one single disclosure form containing all of the information required to be disclosed pursuant to § 1026.19(f)(1)(i), in accordance with the other requirements in § 1026.19(f), such as requirements related to timing and delivery. The comment also would have included illustrative examples.

Proposed comment 19(f)(1)(v)–3 would have explained that if a settlement agent provides disclosures required under § 1026.19(f) in the creditor's place, the creditor remains responsible under § 1026.19(f) for ensuring that the requirements of § 1026.19(f) have been satisfied. The comment would have provided an example illustrating that the creditor does not comply with § 1026.19(f) if the settlement agent does not provide the disclosures required under § 1026.19(f)(1)(i), or if the consumer receives the disclosures later than three business days before consummation.

The proposed comment also would have clarified that the creditor does not satisfy the requirements of § 1026.19(f) if it provides duplicative disclosures, and clarified that a creditor does not satisfy its obligation by issuing disclosures required under § 1026.19(f) that mirror ones already issued by the settlement agent for the purpose of demonstrating that the consumer received timely disclosures. The comment would have further clarified that the creditor is expected to maintain communication with the settlement agent to ensure that the settlement agent is acting in place of the creditor, and that disclosures provided by a settlement agent in accordance with § 1026.19(f)(1)(v) satisfy the creditor's obligation under § 1026.19(f)(1)(i).

Proposed comment 19(f)(1)(v)–4 would have clarified that the settlement agent may assume the responsibility to provide some or all of the disclosures required by § 1026.19(f). The comment would have further clarified that the consumer must receive one single disclosure form containing all of the information required to be disclosed pursuant to § 1026.19(f)(1)(i), in accordance with the other requirements in § 1026.19(f), such as requirements related to timing and delivery. The proposed comment also would have included illustrative examples.

The proposed rule was designed to carry out TILA's goal of promoting the informed use of credit. The Bureau explained that the involvement of a settlement agent could result in increased consumer awareness and more meaningful disclosure of credit

terms, consistent with section 105(a) of TILA. The proposed regulation also was structured to achieve RESPA's purposes by resulting in more effective advance disclosure of settlement costs, consistent with section 19(a) of RESPA. The Bureau further stated that the proposed regulation also could improve consumer understanding and awareness of the transaction by permitting the Closing Disclosure to be completed and provided by settlement agents, who often assist consumers during a real estate closing, which is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b). The Bureau invited comment on other methods of dividing responsibility between creditors and settlement service providers, provided that such other methods ensure that consumers are provided with prompt, accurate, and reliable disclosures.

Comments

Overview. The Bureau received extensive public comment and ex parte submissions from across various sectors of the real estate and mortgage lending industries regarding responsibility for providing the Closing Disclosure. Commenters provided general feedback on the relative merits of creditor and settlement agent involvement in preparing the Closing Disclosure and more specific feedback on alternatives 1 and 2, and other alternatives for dividing responsibility. In addition, commenters provided feedback on the creditor's responsibility for ensuring compliance with § 1026.19(f) (which would have been required under both alternatives 1 and 2) and State law issues. Commenters also requested clarification on certain issues.

In general, commenters supporting creditor preparation of the Closing Disclosure observed that creditors would be better able to make loan-related disclosures and ensure compliance. A professional association representing attorneys, a large bank, and escrow agent commenters explained that creditors are in a better position to provide and explain loan-related disclosures. A large bank commenter also explained that creditors would be better positioned to facilitate consumer contact and ensure timely delivery of the disclosures three business days before consummation. A large bank commenter explained that settlement agents likely would be unable to complete the Closing Disclosure if the forms were in ''dynamic'' rather than ''static'' form. A community bank commenter explained that allowing a party other than the creditor to generate the Closing Disclosure would increase costs and delay the closing process, and thereby inconvenience and increase costs to consumers. In addition, a commenter from a company that provides escrow and title software argued that the Closing Disclosure should be provided by the creditor because the complexity of disclosures would make coordination difficult.

On the other hand, many settlement agent commenters questioned whether the creditor would act in the best interests of the consumer or other parties, such as sellers. A trade association representing settlement agents and the title insurance industry and various law firm commenters suggested that, without the role of an independent review or preparation of the Closing Disclosure by the settlement agent, creditors could misstate the charges of third parties, and that third parties are unable to correct such mistakes. The trade association commenter further explained that creditors and affiliated service providers would share the costs of creditor compliance risk, which would increase overall risk to creditor-affiliated businesses. Some settlement agent commenters pointed out that settlement agent preparation of the Closing Disclosure would not pose significant consumer risk because revisions to settlement costs are typically minor, whereas revisions to loan costs can impose significant costs to consumers.

Commenters also were concerned that creditor preparation of the Closing Disclosure would lead to conflicts between settlement agents and creditors, such as those arising from potentially conflicting closing instructions, or conflicts over the underwriting of title insurance if a creditor-prepared Closing Disclosure contained errors. Other settlement agent commenters were concerned that they may be unable to understand a creditor-prepared Closing Disclosure or explain it to other parties at settlement. Additional comments on creditor preparation of the Closing Disclosure are discussed in greater detail below.

In general, many commenters emphasized that settlement agents have unique expertise in conducting settlements and preparing settlement cost figures, and that preserving their role in the transaction would be critical to ensuring the efficient operation of closings. Various law firm commenters, trade associations representing attorneys, individual settlement agents, real estate agents, and mortgage brokers explained that only licensed real estate attorneys or settlement agents should handle closings because they are subject to State regulation and have expertise in local customs and disbursement activities. Commenters representing the views of law firms, credit unions, settlement agents, trade associations representing settlement agents and the title insurance industry, real estate agents, and title insurance companies explained that because of settlement agents' expertise in conducting closings and their coordination of multiple parties to the transaction, their preparation of the Closing Disclosure would be more efficient than creditor preparation. For example, settlement agent commenters expressed concern that closings would be delayed and costs would increase if settlement agents had to coordinate with creditors when handling last-minute changes to the Closing Disclosure at settlement.

Many commenters, including settlement agents, attorneys, law firms, title insurance companies, real estate brokers, and trade associations representing settlement agents and the title insurance industry stressed that the settlement agent serves an important consumer protection function by acting as a neutral, independent third party who verifies the creditor's figures and has the best interests of the consumer and all other parties in mind.[230] Commenters were concerned that creditor preparation of the Closing Disclosure would be a conflict-of-interest. For example, one trade association representing settlement agents and various law firm commenters raised the possibility that, without the role of an independent review or preparation of the Closing Disclosure by a settlement agent, creditors could misstate fees of third-party settlement service providers.

Other settlement agents, however, were concerned that making settlement agents responsible for the Closing Disclosure would conflict with the settlement agent's role as a neutral third party whose duty is limited to following closing instructions from the creditor and other parties to the real estate transaction. Additional comments on settlement agent preparation of the Closing Disclosure are discussed in greater detail below.

Support for alternative 1. Several non-depository lenders, a mortgage compliance company, and an individual consumer explained that alternative 1 would relieve creditors of TILA liability for the actions of settlement agents;

[230] As discussed below in the section-by-section analysis of § 1026.19(f)(4), many settlement agent commenters also raised concerns about a creditor's involvement in preparing the seller's portion of the Closing Disclosure. Commenters were concerned that sellers may not want to provide sensitive information to creditors that owe them no duty.

whereas, under alternative 2, creditors would have an obligation to supervise settlement agents but still assume all legal liability. A non-depository lender explained that, pursuant to CFPB Bulletin 2012–03, creditors already are obligated to supervise settlement agents as ''service providers.'' [231] The mortgage compliance company commenter asserted that, if settlement agents were allowed to deliver the Closing Disclosure, the final rule would have to create a safe harbor for the creditor for the settlement agent's failure to satisfy regulatory requirements.

Some settlement agent and escrow agent commenters perceived benefits to creditor responsibility for the Closing Disclosure under alternative 1. Commenters explained that alternative 1 would encourage creditors to take more responsibility for the efficient operation of closings, reduce creditor-caused delays, and ensure consumers receive more accurate information about closing costs. Another settlement agent commenter believed that ensuring creditor responsibility would improve regulators' ability to supervise for compliance. One commenter pointed out that creditors are already familiar with evaluating settlement costs because they often ''approve'' the RESPA settlement statement before it is provided to borrowers. In addition, some settlement agents explained that creditors are in the best position to ensure the accuracy of the Closing Disclosure because they will be in control of the Loan Estimate and are responsible for complying with the accuracy requirements in § 1026.19(e)(3), and because they are familiar with settlement costs, consistent with the current practice of approving the RESPA settlement statement.

In addition to ensuring creditor accountability, commenters representing settlement agents, escrow agents, and related trade associations explained that alternative 1 would relieve them of liability for the Closing Disclosure and would allow them to play a more traditional role related to conducting closings.[232] In particular, a trade association representing escrow agents supported alternative 1, because it believed alternative 2 could impose new creditor duties on settlement agents, which would be in conflict with the settlement agent's traditional role as a neutral third party. An escrow agent commenter explained that settlement agents do not have expertise in loan products and should not share in liability that applies to creditors. The commenter further explained that settlement agent responsibility for the Closing Disclosure would impose burdens on settlement agents because it would require that they coordinate with creditors to develop an accurate disclosure.

Concerns with alternative 1. Many commenters representing settlement agents, title insurance companies, real estate agents, and trade associations representing attorneys, settlement agents, and the title insurance industry were opposed to alternative 1 because they were concerned it would eliminate or significantly reduce the settlement agent's role, result in inefficient closings, and increase risk to consumers and the market.

Settlement agent and title insurance industry commenters were concerned that alternative 1 would reduce the availability of settlement agents, which would require consumers in some parts of the country would have to travel long distances or use mobile notaries because local settlement agents would no longer be available. Many settlement agent commenters also maintained that their ability to prepare the Closing Disclosure serves an important consumer protection function and that alternative 1 would present a conflict-of-interest if the creditor prepared the Closing Disclosure. Numerous settlement agent commenters, particularly attorneys and related trade associations, maintained that creditor preparation would conflict with various State laws regulating the conduct of settlements and the practice of law and could place attorneys who conduct settlements in the conflicted position of supervising a creditor's unauthorized practice of law.

Various commenters representing settlement agents, a real estate agent, title insurance companies, attorneys, credit unions, community banks, and various trade associations representing creditors, settlement agents, and the title insurance industry were concerned that alternative 1 would increase coordination costs for industry because it would shift settlement activities to creditors, introduce unnecessary complexity to the settlement process, delay the underwriting of title insurance, delay closings, and increase costs and risk to consumers. These commenters emphasized that settlement agents have unique expertise in local customs and procedures, are subject to State regulation, and are in the best position to prepare settlement cost disclosures because of their role in preparing the disbursement statement at closings. Community bank and credit union commenters were concerned that alternative 1 would require creditors to assume more responsibility for settlement activities and require that they hire staff attorneys licensed to practice in multiple jurisdictions, which would increase costs that would be passed on to consumers. Attorneys and trade associations representing attorneys shared these concerns. Commenters also explained that, while settlement agents likely would continue to provide collection and disbursement activities even under alternative 1, creditors would be required to document those activities on the Closing Disclosure. A settlement agent commenter stressed that settlement agents would be burdened even if a creditor were solely responsible for the Closing Disclosure because the settlement agent would likely be the party responsible for answering consumers' questions about the Closing Disclosure, but that they would have difficulty explaining a creditor-prepared form.

Finally, commenters noted that it was difficult to analyze the potential impact alternative 1 would have on the market. Commenters asserted that the Bureau did not provide sufficient analysis on the impact of alternative 1. A trade association representing the settlement agent and title insurance industry stated that the Bureau did not provide sufficient guidance about its expectations regarding creditor-settlement agent responsibility. A member of Congress stated that the Bureau did not analyze the impact of assigning sole responsibility to creditors would have on the settlement agent industry.

Support for alternative 2. Alternative 2 generally received broader support from industry commenters relative to alternative 1, although many commenters requested that the Bureau consider modifying alternative 2, as discussed below. Many commenters, including large banks, credit unions, community banks, settlement agents, related trade associations, and two consumer advocacy groups submitting a joint comment explained that alternative 2 most closely reflects current industry practice in which the creditor relies on settlement agent expertise and efficiency. Some settlement agent commenters noted that currently settlement agents must submit RESPA settlement statements to the creditor for approval, and that

[231] *See* U.S. Consumer Fin. Prot. Bureau, Bulletin 2012–03 (2012), available at *http://files.consumerfinance.gov/f/201204_cfpb_bulletin_service-providers.pdf.*

[232] However, a trade association representing settlement agents explained that it would support alternative 1 only if the Bureau could protect independent settlement agents from creditor consolidation that they believed could result from alternative 1. *See* the discussion of commenters supporting alternative 2.

alternative 2 reflected this practice. Settlement agent commenters emphasized that they are in a better position than creditors to prepare the Closing Disclosure because they receive information from third parties to the transaction, typically compute charges, such as recording and transfer charges, and handle payoffs to ensure marketable title is conveyed. A number of real estate agent commenters supported alternative 2 because it would provide for more efficient closings when an out-of-State creditor is involved. Settlement agents, a trade association representing settlement agents, and mortgage brokers also expressed support for alternative 2 because it would preserve their role in the transaction and mitigate the potential for creditor conflicts-of-interest.[233]

Commenters also observed that alternative 2 would allow creditors and settlement agents flexibility in determining how to divide responsibility and selecting the delivery option that best serves consumers, which they expected would reduce implementation costs, discrepancies on settlement disbursements statements, and impacts on small businesses. In particular, credit union commenters explained that, in some cases, credit unions may choose to close a loan in-house to reduce closing costs, while in other cases, they may choose to have a settlement agent complete transactional information. Credit union commenters explained that alternative 2 allows creditors to rely on settlement agents when needed, unlike alternative 1, which they believed would require creditors to hire staff attorneys to perform closings in multiple jurisdictions, increasing costs and limiting their ability to perform closings nationwide. A trade association representing banks and financial companies believed that this flexibility in dividing responsibility was sensible in light of creditor liability for exceeding tolerances under RESPA and other liability under TILA. However, the commenter also noted that the Bureau should consider making settlement service providers responsible for the accuracy of their information, for exceeding tolerances and otherwise for bearing responsibility for their role in the transaction.

Concerns with alternative 2. Creditor commenters, including large banks and community banks, expressed concern that creditors would retain ultimate liability for the Closing Disclosure under alternative 2, notwithstanding settlement agent participation. These commenters were concerned about their liability for settlement cost information outside of their control. A community bank commenter was concerned that a creditor would not be able to manage this risk if consumers shop for their own settlement agent. A nonbank lender suggested that alternative 2 would affect the timeliness of closings and increase the cost of the transaction because creditor liability would mean the creditor would still need to review the Closing Disclosure even if the settlement agent provided the information.

Settlement agent commenters expressed concern with creditor responsibility under alternative 2. Settlement agents were concerned that, like alternative 1, alternative 2 would lead to greater creditor control of the settlement process, such as by determining the scope of settlement agent involvement in the Closing Disclosure. Settlement agents also expressed concern that creditors, to manage their liability risk, would likely apply rigorous audit procedures to settlement agents and would be likely to sue settlement agents for compliance failures. Settlement agents also explained that creditors under alternative 2 would have to hire and train additional staff in the settlement process, which would result in higher costs being passed on to consumers.

In addition to concerns with creditor responsibility, some settlement agent commenters expressed concern with their own liability under alternative 2. In particular, several settlement agent commenters expressed opposition to proposed comment 19(f)(1)(v)–1, which would have clarified that a settlement agent may provide the disclosures instead of the creditor, but by assuming this responsibility, it becomes responsible for complying with all of the relevant requirements as if it were the creditor. One commenter who served as a panelist on the Small Business Review Panel indicated that assuming creditor liabilities and responsibilities would require settlement agents to increase their fees substantially.

Commenters representing creditors, settlement agents, and a software company explained that, to the extent they must coordinate to prepare a Closing Disclosure, creditors and settlement agents would have to develop software systems to exchange information between creditor and settlement agent systems that do not currently communicate with each other. Industry commenters also indicated that such systems would have to address the privacy implications of sharing potentially sensitive information.

Commenters representing a large bank, a trade association representing banks, settlement agents, attorneys, and a professional association representing attorneys indicated that settlement agents currently lack systems to generate TILA disclosures and that settlement agents may not be able to meet the technology requirements necessary to generate a Closing Disclosure or exchange information with creditors under alternative 2. A rural bank explained that creditors use hundreds and sometimes thousands of different settlement agents who use their own loan origination systems with no universal data interface, which would make shared responsibility difficult. A software company explained that, as a result of this lack of universality, software vendors likely would need to integrate different systems, which could be expensive and complicated by the lack of meaningful naming conventions and a lack of standardized data formats. The commenter recommended that the final rule take steps to minimize the need to integrate different systems.

Some settlement agent commenters believed that implementing the Closing Disclosure would be a significant expense, would force them to raise fees on consumers, and could decrease settlement agent productivity and put small practitioners out of business. To reduce costs, a number of settlement agent commenters recommended that the Bureau mandate a standard Closing Disclosure form, rather than model forms. Settlement agent commenters were concerned that use of model forms would require settlement agents to communicate with many disparate information technology systems, increasing burden.

One settlement agent commenter explained that the Closing Disclosure would impose coordination costs on settlement agents and creditors, regardless of how creditors and settlement agents divided responsibility. The commenter explained that, if creditors and settlement agents work in the same document, they would incur software integration costs; if the settlement agent provided information separately to the creditor, the creditor would incur costs in populating the Closing Disclosure; and, if the creditor assumes settlement agent duties,

[233] The trade association commenter noted in its comment letter that it preferred making creditors responsible for the form. However, this commenter explained that it would support alternative 2 if the Bureau could not protect the settlement agent industry from creditor consolidation of the industry as a result of making creditors responsible for the form, because of the threat of creditor conflict-of-interest during the settlement process.

settlement agents would face costs in terms of lost business opportunities and creditors would face costs in terms of hiring and training settlement agents.

Finally, a member of Congress stated that alternative 2 would require increased coordination, explaining that, while creditors and settlement agents currently coordinate in the closing process, they would need to adjust their procedures for the new forms and timing requirements. This commenter explained, however, that it was unclear how creditors would choose to coordinate with settlement agents under the new liability framework. Further, the commenter stated that, although it was clear that the role of settlement agents could change significantly under alternative 1, it was unclear which alternative would be less burdensome because the Bureau had failed to analyze the impact of either alternative 1 or 2. The member of Congress stated that the Bureau did not estimate the potential cost of changes that might be incurred as a result of alternative 2, and that it was unclear how creditors would choose to coordinate with settlement agents.

Requests for clarification regarding alternative 2. A community bank criticized alternative 2 as vague and open-ended, which would create confusion for creditors that would ultimately be subject to regulatory supervision. A settlement agent commenter requested that the Bureau clarify proposed § 1026.19(f)(1)(v), which would have stated that the settlement agent may provide a consumer with the disclosures required under § 1026.19(f)(1)(i), provided the settlement agent complies with all requirements of § 1026.19(f) as if it were the creditor. The commenter was concerned that this would impose a new duty on settlement agents to take responsibility for the financing of an individual's loan. The commenter recommended instead that the final rule provide for the delegation of duties between creditors and settlement agents.

A community bank and settlement agent commenters requested clarification on whether the settlement agent and creditor can complete their respective portions of the Closing Disclosure, combine their pages manually as one form or provide it separately from both parties to the consumer. Other commenters requested clarification on whether a creditor could prepare the Closing Disclosure provided three business days before consummation, with the settlement agent preparing any revised Closing Disclosures provided at consummation.

Other recommendations by commenters. Both creditors and settlement agents recommended alternatives that would require the Bureau to more specifically assign responsibilities with respect to the Closing Disclosure. Many settlement agent commenters did not necessarily express support for alternative 1 or 2, but instead generally advocated for their continued involvement in the settlement process, including the preparation of the Closing Disclosure. Trade associations representing settlement agents explained that, without further clarifying the settlement agent's role, settlement agents would face potentially large compliance costs because they would have to anticipate compliance with all aspects of the Closing Disclosure. One individual settlement agent suggested that the rule require title insurance underwriters to establish an effective process for managing the compliance risk of the settlement agents.

A wide variety of commenters representing creditors and various trade associations representing credit unions, banks, and community banks, settlement agents and the title insurance industry, as well as the manufactured housing industry recommended that the Bureau assign settlement agents substantive disclosure responsibilities so that creditors and settlement agents would prepare information over which they have respective control. A wide variety of settlement agent commenters requested that the Bureau impose similar requirements on creditors. For example, some commenters recommended dividing responsibility by the statutory authority requiring the disclosure, by page number (*e.g.,* creditors would prepare pages 1, 4, and 5, and settlement agents would prepare pages 2 and 3), or by the party that assumes responsibility for the Closing Disclosure. A rural bank explained that assigning specific disclosure responsibilities would reduce coordination costs because settlement agents and creditors currently use different software systems, which would make it difficult to exchange information.

A variety of commenters representing settlement agents, community banks, credit unions, title insurance companies, and trade associations representing settlement agents recommended that settlement agents be responsible for the Closing Disclosure. Community banks and credit unions expected this would alleviate concern about creditor liability for settlement agent conduct. Further, settlement agent commenters expected that this would ensure settlement agents remain involved in the settlement process and avoid a creditor conflict-of-interest. One commenter recommended that the consumer be able to choose whether the creditor or settlement agent prepare the Closing Disclosure. One settlement agent explained that requiring the settlement agent to prepare the Closing Disclosure but requiring the creditor to deliver the Closing Disclosure would be appropriate because in many cases the loan originator is the consumer's primary point of contact and could explain the final figures.

In addition to suggesting an option for assigning substantive disclosure obligations, commenters suggested options for assigning procedural duties or other standards, including liability, on creditors and settlement agents. Commenters requested that the final rule further define the responsibility of creditors and settlement agents to provide timely and accurate information. Large banks and trade associations representing creditors and attorneys suggested that, in light of creditor liability, settlement agents should be responsible for providing accurate information to creditors in a timely manner so creditors could prepare the Closing Disclosure.[234] One large bank commenter explained that settlement agents would not be able to accurately and timely prepare and provide the TILA portions of the Closing Disclosure. This bank and another large bank commenter explained that settlement agents play an important role in providing information about items such as, third-party lender payoff amounts, taxes, recording fees and other information currently within purview of settlement agents or real estate agents. One large bank commenter explained that the lender relies on the settlement agent to provide an accurate accounting of fees and charges listed on the closing sheet.

A settlement agent commenter, a compliance company, credit union trade associations, and a community bank commenter recommended that the final rule impose liability on whichever party is responsible for preparing the Closing Disclosure. One settlement agent commenter explained that settlement agents should prepare the Closing Disclosure, as they do today, but that the final rule should shift a portion of the burden for accuracy of the disclosure to settlement agents. The commenter explained that this would

[234] One commenter also recommended that settlement agents be responsible for exceeding the limitations on increases from the estimated charges disclosed on the Loan Estimate under § 1026.19(e)(3).

increase the likelihood that creditors would continue to rely on settlement agents because creditors would not carry all of the burden for the accuracy of the Closing Disclosure.

Similarly, settlement agent commenters recommended that the Bureau impose requirements on creditors to provide timely and accurate information to ensure settlement agents have sufficient time to prepare settlement costs on the Closing Disclosure. Settlement agent commenters and trade associations representing credit unions recommended that the settlement agent should prepare the Closing Disclosure and that the creditor should review and approve the form. Settlement agents explained that this would alleviate concerns about creditor conflicts-of-interest, while creditors pointed out that this would alleviate creditor liability for settlement agent actions. Trade associations representing banks and financial companies requested that the final rule address who will provide the Closing Disclosure before and at closing, recommending that the creditor should provide if before closing (unless the settlement agent agrees to provide it) and the settlement agent should provide revised closing disclosure at closing because the creditor is not always present at closing.

Creditor responsibility. A variety of creditors and trade associations representing creditors stated that they did not perceive a meaningful distinction between alternatives 1 and 2 because the creditor would remain liable under either option. Creditors expressed concern with this arrangement because provision of the Closing Disclosure depends on the cooperation of third parties, namely settlement agents. Large banks and a credit union explained that creditors do not control or have direct access to certain settlement charges and therefore could not guarantee that they will always be disclosed in a timely manner. A large bank explained that this is particularly the case with respect to information about amounts paid to and due from the seller. A large bank and a trade association representing banks observed that creditor responsibility for the accuracy of settlement costs would be a significant revision to existing practice.

Several commenters, including a non-depository lender, a settlement agent, and a trade association representing settlement agents and the title insurance industry believed that creditor responsibility for the Closing Disclosure would lead to dual closings (one for the real estate transaction and one for the mortgage transaction) resulting in a more complicated closing process at higher cost to the consumer. A law firm commenter and a title insurance agent anticipated that creditor-controlled closings would result in creditors choosing the cheapest closing attorney without regard to quality, increasing risk to the title insurance underwriter, thereby increasing title insurance premiums, which would be passed on to consumers.

A wide variety of commenters expressed concern that creditor responsibility for the Closing Disclosure would mean that creditors would take greater control over the settlement process or turn to larger, national settlement firms instead of independent settlement agents, which will limit consumer choice and the ability to shop, and which could have a negative impact on the availability of local settlement agents, particularly in rural areas. Other settlement agent commenters were concerned that reliance on national settlement agent companies would mean that settlements would lose the benefit of local settlement agent expertise. Some settlement agent commenters were concerned that creditor responsibility for providing the Closing Disclosure would encourage creditors to assume control over title insurance matters, become national title insurance companies, contract with title insurance companies directly, or impact real estate brokers' ability to freely refer clients to settlement agents.

Settlement agent and attorney commenters, including a national professional association representing attorneys, were concerned that creditor responsibility for the Closing Disclosure would result in risk-shifting between creditors and settlement agents, which they argued would not be in the consumer's interest. One settlement agent commenter anticipated that creditors would impose third-party vetting to ''approve'' settlement agents they work with, which would impose indirect costs on settlement agents. This commenter also anticipated that creditor responsibility for the Closing Disclosure would result in creditors requiring settlement agents to maintain additional liability insurance, which would come at a cost to settlement agents.

Other settlement agent commenters anticipated that creditor liability would result in creditors requiring any violation under RESPA or TILA to be borne by the settlement agent and that smaller settlement agents would not be able to bear this responsibility or be able to maintain the type of liability insurance that would be required by creditors. A law firm commenter predicted that the cost of title insurance premiums would increase to compensate for the lost revenue that would result from creditors preparing the Closing Disclosure. This commenter also indicated that diminishing the role of title agents would mean consumers would lose the protection of title insurance gap coverage that is provided by statute or required by the lender when a title agent closes the transaction, or that the consumer would no longer have the protection of the title insurance underwriter's closing protection letter. Many settlement agent commenters advocated for their continued involvement in preparing the Closing Disclosure, although a large number of settlement agents recommended that settlement agents be solely responsible for the Closing Disclosure, or that the Bureau further define a substantive division of responsibility.

By contrast, other commenters explained that creditor responsibility for the Closing Disclosure resembled current practice. Several agent commenters explained that creditors currently require settlement agents to obtain creditor approval for each RESPA settlement statement before a transaction closes or funds are disbursed. Commenters explained that, by approving the RESPA settlement statement and issuing preparation instructions to the settlement agent, the creditor already assumes some degree of responsibility for the contents of the RESPA settlement statement. Thus, as one commenter explained, the proposed rule would not, in practice, shift responsibility from the settlement agent company to the creditor and that it would be unnecessary for the rule to impose this responsibility on the creditor. A community bank commenter also noted that creditors already have responsibility for the accuracy of the RESPA settlement statement, but requested that settlement agents continue to be involved in preparing the Closing Disclosure in the purchase-and-sale context because of the additional requirements applicable to the seller. Two consumer advocacy group commenters explained that creditor liability under the rule would simplify enforcement of the rule and avoid confusion between creditors and other parties, and that creditors could protect themselves by negotiating indemnification agreements with and supervising settlement agents.

A trade association representing the settlement services industry and a community bank commenter explained that, if the final rule makes the creditor ultimately responsible for the Closing Disclosure, it should provide the

creditor flexibility to determine how to prepare and provide the Closing Disclosure. Commenters explained that, depending on the market, the creditor's size and financial resources, some creditors may develop a variety of approaches to preparing and providing the Closing Disclosure, including relying, in some cases, on an in-house capability, and in other cases relying on approved unaffiliated third-parties or affiliated third-parties. One commenter observed that reliance on affiliates may be compromised by the points and fees threshold in the Bureau's ability-to-repay rulemaking.

One large bank commenter requested that the Bureau exclude from the creditor's responsibility fees outside of the creditor's control or imposed after the creditor issues closing instructions to the settlement agent. This commenter requested that the Bureau clarify that, in dividing responsibility with a settlement agent, the creditor may rely on the documents prepared by the settlement agent, and that if additional fees that are not imposed by the creditor or other items are not accurately disclosed on the statement, the creditor will not be liable for the accuracy of such fees or other items.

Large banks and many individual settlement agent commenters questioned the Bureau's legal authority to alter the existing division of responsibility or liability under TILA and RESPA by making the creditor responsible for the settlement agent's actions. A trade association representing banks and a large bank noted that RESPA section 4(b) requires settlement statements to be provided by ''the person conducting the settlement'' and that Regulation X requires settlement agents to complete the RESPA settlement statement. A large bank commenter questioned how assigning TILA liability to the creditor would carry out the purposes of RESPA section 4. The commenter was concerned that the Bureau would prescribe a division of responsibility in which the settlement agent could take part in completing or providing the Closing Disclosure but without any regulatory consequence. The commenter further requested that the Bureau retain the current and respective responsibilities of creditors and settlement agents with respect to the Closing Disclosure, in light of the absence of a requirement in the Dodd-Frank Act, TILA, or RESPA, that a creditor be responsible for the settlement agent's actions in completing or providing the Closing Disclosure.

State law issues. Various commenters, including attorneys, law firms, title insurance companies, settlement agents and trade associations representing attorneys, settlement agents and the title insurance industry expressed concern that requiring creditor preparation of the Closing Disclosure would conflict with State regulation of closings and the practice of law. Commenters identified several provisions of State laws that they stated give consumers an absolute right to choose their closing attorneys in residential real estate transactions. Commenters also identified provisions of certain State laws that they explained require attorneys or other agents to conduct closings. They explained creditor preparation of the Closing Disclosure could constitute the unauthorized practice of law, and that attorney or escrow agent involvement in such a transaction could constitute abetting the unauthorized practice of law. One commenter was concerned that creditors would prevent consumers from having access to an attorney at closings, contrary to State law. One settlement agent raised concerns that State law requires settlement agents to ensure a closing is conducted in compliance with State law and the rules under RESPA, and that creditor preparation of the Closing Disclosure would eliminate the settlement agent's ability to perform under State law.

Requests for clarification. Various individual settlement agents and a trade associations representing settlement agents and the title insurance industry requested that the Bureau clarify whether the Closing Disclosure is a disbursement statement. One trade association commenter explained that the Closing Disclosure should not serve as a disbursement statement, but that industry should make this determination on its own. A settlement agent commenter requested clarification on whose responsibility it would be to provide the Closing Disclosure to the consumer.

Final Rule

In general. The final rule adopts alternative 2 substantially as proposed. In light of the comments and ex parte submissions and RESPA's long-standing requirements regarding settlement agent preparation and delivery of the RESPA settlement statement, the Bureau believes that expressly allowing creditors to work with settlement agents will provide the most certainty in the market. Indeed, creditor commenters indicated that alternative 2 would make clear that they could continue to rely on settlement agents. Thus, the Bureau believes the final rule avoids creating uncertainty and avoids increased compliance costs and other risks to industry that could ultimately result in higher costs to consumers.

Alternative 2 provides clarity for creditors while also leaving sufficient flexibility for creditors and settlement agents to arrive at the most efficient means of preparation and delivery of the Closing Disclosure to consumers. Under the final rule, creditors and settlement agents are free to divide responsibility in a variety of ways, including but not limited to a division in which the creditor provides the Closing Disclosure three business days before consummation and the settlement agent provides any corrected Closing Disclosure at consummation, subject to the provisions of § 1026.19(f), as suggested as an alternative by some trade association commenters representing banks and financial companies.

The Bureau has considered suggestions from industry to impose additional substantive and procedural obligations on both creditors and settlement agents, including suggestions by some commenters for dividing responsibility for specific disclosures between settlement agents and creditors. After considering these comments, the Bureau continues to believe alternative 2 most effectively balances the interests of ensuring consumers receive a timely and accurate Closing Disclosure prepared in a consistent manner with the interests of industry in complying with the rule. The Bureau believes that a rule that expressly divided substantive disclosure responsibilities or assigned strict procedural duties governing the relationship between creditors and settlement agents would impose coordination costs on creditors and settlement agents that may result in inefficiencies during the closing process. The Bureau believes that the better approach for consumers is to permit shared responsibility and allow creditors and settlement agents to decide how to divide that responsibility most efficiently.

As part of the Small Business Review Panel process, the Bureau considered requiring the creditor to prepare certain loan cost information, and the settlement agent to prepare certain real estate settlement cost information. Under this approach, the creditor and settlement agent would be jointly responsible for combining the portions of the disclosure and providing the consumer with a Closing Disclosure three business days before closing. *See* Small Business Panel Review Report at 12. However, the Bureau determined after conducting the Small Business Review Panel, and continues to believe, that such a division would be

impracticable. The Bureau received comments in response to the proposal suggesting a wide variety of approaches to creditor-settlement agent engagement, indicating that the industry does not employ a uniform method for disclosing information to consumers. In addition, there is significant overlap between the disclosures required by the two statutes, and creditors and settlement agents have access to both RESPA and TILA information.[235] Further, alternative 2 allows creditors and settlement agents to decide whether and how to coordinate, which would be complicated by a rule that assigned strict responsibilities to particular parties. For example, under the final rule, some creditors could conduct some closings in-house to avoid coordination costs in some cases. Alternative 2 provides flexibility by allowing creditors to manage preparation of the Closing Disclosure in a manner appropriate to their size, market, financial resources, and their own assessments of compliance risk and the applicability of other State law, Federal law, or other guidance, affecting their responsibility to supervise third-party service providers.[236]

Moreover, a number of settlement agents and related trade associations explained that they did not wish to bear responsibility or costs associated with providing the Closing Disclosure. A number of settlement agent commenters operating in escrow jurisdictions expressed concern with a requirement that would impose TILA disclosure obligations on them and expressly requested that they not have any responsibility for providing disclosures under TILA. The final rule addresses the concerns expressed by many settlement agent commenters about substantial compliance costs that they would incur in exchanging information and in coordinating with creditors. The final rule allows settlement agents to avoid such costs by not taking responsibility for the Closing Disclosure. At the same time, creditors would still be free to rely on settlement agents' expertise in conducting closings. Thus, Alternative 2 provides settlement agents some flexibility with respect to determining the scope of their involvement in preparing and delivering the Closing Disclosure.

In addition, the Bureau believes the final rule will avoid concerns with conflicting State laws governing the conduct of settlement. Although the final rule requires only that the creditor provide certain disclosures to consumers and does not require that the creditor conduct settlements, the Bureau appreciates that creditor preparation of the Closing Disclosure may raise operational questions for creditors in certain States. To the extent a creditor is concerned with compliance with State or local laws, a creditor under alternative 2 may share responsibility with the settlement agent in whatever manner they determine is appropriate. In contrast, if the final rule were to assign more substantive or procedural responsibilities to creditors or settlement agents, the rule could raise difficult compliance questions with respect to the conduct of settlements in some jurisdictions.

Some settlement agent commenters questioned whether creditors should have any role in preparing or overseeing the preparation of the Closing Disclosure. These commenters believed creditors would have an improper conflict-of-interest in preparing the disclosure of settlement costs. The Bureau does not believe that requiring creditors to retain responsibility for the Closing Disclosure in the final rule will lead to consumer harm or abuse in other contexts because creditors will have sufficient incentive to comply with the final rule to ensure consumers receive a timely and accurate disclosure.

Some commenters expressed concern that settlement agents could face operational challenges if a creditor prepares the Closing Disclosure in a manner that conflicts with the creditor's closing instructions to the settlement agent. The Closing Disclosure is designed to integrate disclosures provided to consumers under TILA and RESPA to enhance their understanding of the home mortgage loan transaction. To the extent the Closing Disclosure's disclosure requirements differ from other arrangements made pursuant to contract or other law or custom, the final rule does not prohibit creditors and settlement agents from developing their own disbursement instructions and managing any discrepancies as they arise, consistent with the current practice with respect to the RESPA settlement statement. To the extent settlement agents have questions about how to explain the Closing Disclosure to consumers, the Bureau believes they will be able to coordinate with the creditor ahead of time as a result of the general three-business-day requirement in § 1026.19(f)(1)(ii)(A). As noted in the section-by-section analysis of that section, the Bureau believes a general three-business-day requirement will improve coordination between settlement agents and creditors by providing all parties additional time to ask questions and correct errors.

Concerns with creditor responsibility under alternative 2. Commenters expressed concern that creditor responsibility for the Closing Disclosure would make creditors more likely to assume greater control over the settlement process, which would result in closing delays because creditors would have to approve any last-minute changes that arise at the closing table. Creditor commenters also questioned the Bureau's authority to require creditors to disclose settlement cost information, particularly in light of RESPA section 4. The Bureau appreciates industry's concerns that creditor responsibility for the Closing Disclosure may affect the current roles of creditors and settlement agents. However, to integrate the disclosure requirements under TILA and RESPA, the Bureau believes the final rule should make creditors responsible for the accuracy and delivery of the Closing Disclosure under § 1026.19(f).

As discussed in the section-by-section analysis of § 1026.19(f)(1)(ii)(A), Dodd-Frank Act section 1419 amended TILA to require that creditors disclose aggregate settlement cost information under the early and final TILA disclosures required by TILA section 128. *See* 15 U.S.C. 1638(a)(17). As a result, creditors have responsibility for disclosing settlement cost information that had previously been solely the responsibility of settlement agents under RESPA. In light of this responsibility, the Bureau believes alternative 2 is appropriate because it permits creditors flexibility in how they rely on settlement agents to disclose settlement cost information. In addition, the Bureau believes creditors are in a better position than settlement agents to provide other TILA disclosures, such as the finance charge and projected payments disclosures. Further, making a single party ultimately responsible for the Closing Disclosure will reduce the likelihood of inconsistencies and errors in disclosures that require coordination, such as the cash to close disclosure.

The Bureau also believes that modifications to the proposal made in the final rule will reduce the rule's impact on the existing roles of creditors

[235] While some of the Closing Disclosure requirements in Regulation Z are modeled on existing provisions in Regulation X, the Closing Disclosure also includes new information that will likely require some degree of coordination. For example, the cash to close disclosure on pages 2 and 3 involves a calculation of loan costs, settlement service costs, and other costs. Accordingly, because this calculation requires analysis of several categories of costs, settlement agents and creditors may need to coordinate to arrive at a single cash to close figure.

[236] *See, e.g.,* U.S. Consumer Fin. Prot. Bureau, Bulletin 2012–03 (2012), available at *http://files.consumerfinance.gov/f/201204_cfpb_bulletin_service-providers.pdf.*

and settlement agents. The final rule clarifies that, with respect to the Closing Disclosure provided three business days before consummation, creditors may provide disclosures based on the best information reasonably available and may rely on information provided by settlement agents. *See* the section-by-section analysis of § 1026.19(f)(1)(i) above. In addition, under § 1026.19(f)(1)(v), settlement agents may provide consumers with the Closing Disclosure, provided they comply with all relevant requirements of § 1026.19(f), as discussed further below.

Further, the final rule reduces the risk that changes to the Closing Disclosure will result in closing delays, as discussed in the section-by-section analyses of § 1026.19(f)(1)(i), (f)(1)(ii)(A), and (f)(2). For example, the narrowed redisclosure waiting period triggers in § 1026.19(f)(2) should facilitate a settlement agent's participation in the transaction. Because additional three-business-day periods will be triggered only by changes to APR, loan product, and the addition of a prepayment penalty, other changes to settlement costs will not trigger a new waiting period. *See* the section-by-section analysis of § 1026.19(f)(2)(i) and (ii) above. The final rule also accounts for changes during the settlement process that may occur after consummation, as discussed in the section-by-section analysis of § 1026.19(f)(2)(iii). The Bureau believes these modifications will reduce compliance risk for creditors as they relate to the disclosure of settlement costs, which the Bureau believes will reduce the likelihood of disrupting the current roles of creditors and settlement agents.

The Bureau acknowledges that, despite these modifications to the final rule, creditors may assume greater responsibility for the disclosure of settlement cost information than they do currently. However, while creditors may seek to assume greater control over the disclosure of settlement costs or apply greater scrutiny to settlement services than under current rules, the Bureau believes creditors will continue to rely on the expertise of settlement agents in conducting closings. Creditor comments indicate that creditors and settlement agents have long-standing, deep relationships in which settlement agents act as creditors' partners in the closing and settlement process. As noted by many commenters, creditor responsibility under alternative 2 aligns with current practices and allow the parties to continue to work together to close home mortgage transactions in a manner that is most efficient for consumers and the market. With respect to commenters who were concerned that creditor responsibility for the Closing Disclosure would lead creditors to assume an improper role with respect to the underwriting of title insurance policies, the Bureau believes title insurance underwriters and creditors share an incentive to minimize risk to the underwriting of their own title insurance. Thus, the Bureau expects that creditors will have strong incentives to continue to rely on settlement agents under alternative 2. Furthermore, the Bureau expects that the requirements adopted in the 2013 ATR Final Rule and the May 2013 ATR Final Rule may have an impact on a creditor's decision to rely on exclusive affiliate relationships because those rules limit the points and fees that may be charged for a qualified mortgage, which are defined to include affiliate charges. *See* § 1026.32(b)(1)(i)(D) and (b)(1)(iii).

With respect to commenters' concerns that creditor responsibility for the Closing Disclosure would lead to dual closings, the final rule does not require that closings be conducted in any particular manner, other than to require the delivery and inspection of the Closing Disclosure in accordance with the requirements of § 1026.19(f). The Bureau expects industry will adapt current practices in a variety of ways, consistent with other applicable law or custom, to ensure consumers receive the required disclosures. With respect to concerns about closing delays caused by creditor-settlement agent coordination, the Bureau does not expect such delays will occur frequently because creditors and settlement agents already must coordinate to prepare the RESPA settlement statement. As noted by commenters, creditors and settlement agents work closely to conduct closings under current rules and the Bureau expects that this coordination will continue under the final rule.

One commenter suggested that the rule would require title insurance underwriters to establish an effective process for managing the compliance risk of settlement agents. The final rule does not impose requirements on title insurance underwriters to establish processes to manage the compliance risks of settlement agents as requested by commenters. Such requirements are outside of the scope of this rulemaking and are managed by most States through licensing regulations.

Some commenters expressed concern that proposed § 1026.19(f)(1)(v) would mean settlement agents would have to assume all the duties of the creditor. The Bureau does not intend through this final rule to impose duties outside the scope of § 1026.19(f) on settlement agents. A settlement agent's compliance with duties under § 1026.19(f) depends on the extent of settlement agent involvement in preparing and providing the Closing Disclosure. Proposed comment 19(f)(1)(v)-1 would have explained that, by assuming responsibility to provide the disclosures required under § 1026.19(f)(1)(i), the settlement agent becomes responsible for complying with all of the relevant requirements of § 1026.19(f). As discussed below, the final rule adopts this comment substantially as proposed. To further clarify the scope of a settlement agent's responsibility under the rule, and to conform to similar language in § 1026.19(e) with respect to mortgage brokers, final § 1026.19(f)(1)(v) states that a settlement agent may provide a consumer with the Closing Disclosure, provided the settlement agent complies with ''all relevant'' requirements of § 1026.19(f). In addition, the final rule omits the language ''as if it were the creditor'' to avoid any suggestion that settlement agents, by providing the Closing Disclosure, would assume duties outside the scope of § 1026.19(f).

The Bureau believes settlement agents' compliance with the relevant provisions of § 1026.19(f) is critical to ensuring consumers consistently receive a Closing Disclosure that complies with the final rule, regardless of how settlement agents and creditors divide responsibility. In addition, because creditors are responsible under § 1026.19(f)(1)(v) for ensuring compliance with § 1026.19(f), the Bureau believes creditors would be reluctant to share responsibility with settlement agents if it were unclear whether settlement agents had to comply with § 1026.19(f). Section 1026.19(f)(1)(v) makes clear that a settlement agent must comply with § 1026.19(f) to the extent it assumes the responsibility to provide the disclosures required by that provision.

Some commenters stated that the rule's lack of specificity about the roles of settlement agents and creditors would result in confusion over the responsibilities of the respective parties. As discussed above, however, the final rule does not further specify which parts of the Closing Disclosure a settlement agent is required to complete or, if more than one Closing Disclosure is provided under § 1026.19(f), which Closing Disclosure the settlement agent is required to deliver. Final § 1026.19(f)(1)(v) is intended to provide maximum flexibility between creditors and settlement agents so that they may

determine how to provide the Closing Disclosure most efficiently and effectively in the contexts of their businesses. As discussed below, the proposed comment 19(f)(1)(v)–2 has been revised to clarify the meaning of § 1026.19(f)(1)(v) with respect to a settlement agent's ability to divide responsibility with the creditor for providing different versions of the Closing Disclosure under § 1026.19(f).

Commenters also expressed concern about creditor responsibility for the Closing Disclosure, notwithstanding the settlement agent's involvement. As they would have been under proposed § 1026.19(f)(1)(v), creditors under final § 1026.19(f)(1)(v) are responsible for ensuring compliance with § 1026.19(f), even where a settlement agent provides the disclosures. The Bureau believes making a single party ultimately responsible for the Closing Disclosure will provide industry an incentive to ensure the Closing Disclosure is provided in a consistent manner. Creditor responsibility also may provide an incentive to improve creditor and settlement agent communication, as noted by some settlement agent commenters. The Bureau does not believe it is necessary to mandate in the final rule how a settlement agent and creditor must coordinate to ensure settlement agent compliance because settlement agents are already required to comply with § 1026.19(f)(1)(i), pursuant to § 1026.19(f)(1)(v).

Some commenters recommended that the final rule set forth objectives-based criteria for creditors and settlement agents to provide timely and accurate information. The Bureau does not believe it is necessary to do so. In general, the Bureau believes final § 1026.19(f)(1)(v) sets forth a clear standard for settlement agents to comply with § 1026.19(f) to the extent they provide disclosures under that section. In addition, the Bureau also believes that creditors will be able to manage compliance risk through agreements and arrangements with settlement agents and title insurance underwriters. In addition, the Bureau believes the clarification made in comment 19(f)(1)(i)–2, as discussed in the section-by-section analysis of § 1026.19(f)(1)(i), addresses concerns about relying on third-party information for the Closing Disclosure provided three business days before consummation.

The final rule does not include a requirement that the settlement agent provide information to the creditor in a timely manner. To provide industry maximum flexibility in preparing and providing the Closing Disclosure, the final rule does not mandate that settlement agents and creditors coordinate in any particular manner. In light of the variety of ways creditors and settlement agents may divide responsibilities and the diversity of settlement practices across the country, the Bureau does not believe it is feasible to define with specificity a timeliness standard for all creditors and settlement agents. Mandating specific timeframes for sharing information could be unnecessarily cumbersome for industry. Accordingly, the final rule does not require that settlement agents share information with creditors by any particular deadline. Nor does the final rule impose a general requirement for settlement agents to provide ''timely'' information. Without further defining such a requirement, the Bureau is concerned that such a standard would be vague. The Bureau expects settlement agents will have a business interest in coordinating with creditors to ensure they provide information in a timely manner.

Some commenters requested clarification on whether creditors and settlement agents may complete portions of the Closing Disclosure and combine their portions into one form manually provided to the consumer, or if they may separately provide their respectively completed portions to the consumer. Creditors and settlement agents may agree on a division of responsibility to complete portions of the Closing Disclosure, but they must coordinate to ensure the consumer receives a single disclosure. See the discussion of comment 19(f)(1)(v)–4 below. With respect to comments regarding the use of standard and model forms, see the section-by-section analysis of § 1026.38(t)(3) below.

Final provisions. For the reasons discussed above, the Bureau adopts the language in proposed § 1026.19(f)(1)(v) substantially as proposed. As discussed above, final § 1026.19(f)(1)(v) states that the settlement agent may provide a consumer with the disclosures required under § 1026.19(f)(1)(i), provided the settlement agent complies with ''all relevant'' requirements of § 1026.19(f). In addition, as discussed above, the final rule omits the language ''as if it were the creditor.''

Final § 1026.19(f)(1)(v) includes a modification with respect to the requirement that the creditor ensure that the disclosures required under § 1026.19(f)(1)(i) are provided in accordance with all requirements of § 1026.19(f). For clarity, and to conform to similar language in § 1026.19(e)(1)(ii) with respect to mortgage brokers who provide the Loan Estimate, the final provision states that the creditor must ensure that ''such'' disclosures are provided in accordance with ''all'' requirements of § 1026.19(f). For the same reasons, final § 1026.19(f)(1)(v) provides that disclosures provided by a settlement agent in accordance with the requirements of § 1026.19(f) satisfy the creditor's obligation under the general paragraph 19(f), instead of the more specific paragraph 19(f)(1)(i).

The Bureau adopts proposed comment 19(f)(1)(v)–1 substantially as proposed. To facilitate compliance with § 1026.19(f), the comment explains that, for purposes of § 1026.19(f), a settlement agent is the person conducting the settlement. This language is substantially similar to language in RESPA section 4(b), which requires ''the person conducting the settlement'' to provide the RESPA settlement statement. The comment does not include the language ''as if it were the creditor,'' to conform to the final rule. Comment 19(f)(1)(v)–1 also revises proposed language that would have addressed how § 1026.19(f)(1)(v) applies where requirements of § 1026.19(e) are referenced in § 1026.19(f). The proposed language would have referred to text in proposed comment 19(f)(1)(ii)–3 for an example involving timeshare transactions and provision of the Loan Estimate under § 1026.19(e), in which ''settlement agent'' could not be read in place of ''creditor.'' As discussed in the section-by-section analysis of § 1026.19(f)(1)(ii)(B) above, comment 19(f)(1)(ii)-3 has been revised with respect to the provision of the Loan Estimate for timeshare transactions. Accordingly, conforming changes have been made to comment 19(f)(1)(v)–1. Finally, comment 19(f)(1)(v)–1 also includes minor technical revisions for clarity.

The Bureau adopts proposed comment 19(f)(1)(v)–2 with modifications and additional discussion to clarify the variety of ways in which creditors and settlement agents may agree to divide responsibility with respect to providing the disclosures pursuant to § 1026.19(f)(1)(v). The comment uses the term ''provides'' to better reflect the language in the rule text, instead of the term ''issues'' that was used in proposed comment 19(f)(1)(v)–2. Comment 19(f)(1)(v)–2 also clarifies that if the settlement agent provides any disclosures under § 1026.19(f), the settlement agent must comply with the ''relevant'' requirements of § 1026.19(f). The comment also provides an illustrative example of how creditors and settlement agents could divide responsibility and includes a cross-reference to comment 19(f)(1)(v)–3 to

indicate that a creditor remains responsible under § 1026.19(f) for ensuring that the requirements of § 1026.19(f) have been satisfied.

Like the proposed comment, comment 19(f)(1)(v)–2 explains that the settlement agent may assume the responsibility to provide some or all of the disclosures required by § 1026.19(f). However, comment 19(f)(1)(v)–2 does not include the example in proposed comment 19(f)(1)(v)–2 that would have illustrated how a settlement agent and a creditor could divide responsibility with respect to completing the Closing Disclosure. Instead, comment 19(f)(1)(v)–2 includes a cross-reference to comment 19(f)(1)(v)–4 to refer to additional guidance on how creditors and settlement agents may divide responsibilities for completing the disclosures.

The Bureau adopts proposed comment 19(f)(1)(v)-3 substantially as proposed. The comment includes additional language to clarify the example in which the creditor does not comply with § 1026.19(f). The example in comment 19(f)(1)(v)–3 explains that if the settlement agent assumes the responsibility for providing all of the disclosures required under § 1026.19(f)(1)(i), the creditor does not comply with § 1026.19(f) if the settlement agent does not provide these disclosures at all, or if the consumer receives the disclosures later than three business days before consummation, as required by § 1026.19(f)(1)(ii) and, as applicable, (f)(2)(ii). The final rule adopts proposed comment 19(f)(1)(v)–4 with modifications to include additional language clarifying that creditors and settlement agents may divide responsibility to complete the Closing Disclosure under § 1026.38.

Final § 1026.19(f)(1)(v) and its associated commentary are adopted pursuant to the Bureau's authority under TILA section 105(a), RESPA section 19(a), and Dodd-Frank Act section 1405(b). Final § 1026.19(f)(1)(v) and its associated commentary will achieve the purposes of RESPA by resulting in more effective advance disclosure of settlement costs, consistent with section 19(a) of RESPA, and by promoting the informed use of credit, consistent with section 105(a) of TILA. The final rule and commentary also will improve consumer understanding and awareness of the transaction by permitting the form to be completed and provided by settlement agents, who often assist consumers during a real estate closing, which is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

The final rule and commentary are consistent with Dodd-Frank Act section 1032(a) because the features of mortgage loan transactions and settlement services will be more fully, accurately, and effectively disclosed to consumer in a manner that permits consumers to understand the costs, benefits, and risks associated consumers will understand the costs and risks associated with the mortgage loan and settlement services if settlement agents are permitted to provide the disclosures required under § 1026.19(f)(1)(i).

The Bureau understands that some commenters were concerned that settlement agents would face civil liability under section 130 of TILA if the Bureau adopted proposed alternative 2. However, the Bureau does not believe that a settlement agent's providing the Closing Disclosure, or some aspect thereof, under § 1026.19(f)(1)(v) exposes the settlement agent to civil liability under section 130 of TILA, to the extent that the settlement agent is not also functioning as a creditor or an assignee under TILA sections 130 and 131.

19(f)(2) Subsequent Changes

As discussed above, the proposal would have included a strict requirement that the disclosures provided three business days before consummation contain the ''actual terms'' of the transaction. Thus, because the ''actual terms'' would have had to be disclosed three business days before consummation pursuant to § 1026.19(f)(1)(ii), revisions to the Closing Disclosure generally would have triggered a new three-business-day pre-consummation waiting period. However, the Bureau recognized that, in certain circumstances, a strict application of the three-business-day waiting period required by proposed § 1026.19(f)(1)(ii) would operate to the consumer's detriment. Accordingly, proposed § 1026.19(f)(2) would have provided that if the Closing Disclosure provided pursuant to proposed § 1026.19(f)(1)(i) is subsequently revised for any of the reasons described in § 1026.19(f)(2), a creditor need not comply with the timing requirements in § 1026.19(f)(1)(ii) when providing a revised disclosure.

In general, under § 1026.19(f)(2)(i) and (f)(2)(ii) respectively, if changes occurred due to consumer and seller negotiations, or if the amount actually paid by the consumer did not exceed the amount disclosed pursuant to § 1026.38(d)(1) by more than $100, the creditor would have been required to provide a revised Closing Disclosure reflecting such changes at or before consummation, instead of triggering a new three-business-day pre-consummation waiting period. Proposed § 1026.19(f)(2)(iii) through (v) would have permitted revised disclosures to be provided within 30 days after consummation and, in some cases, as soon as reasonably practicable, where a revised Closing Disclosure was provided due to inaccuracies resulting solely from payments to a government entity, to correct non-numeric clerical errors, and to document cures for violations of the good faith estimate requirements, respectively.

As discussed in greater detail in the section-by-section analyses of § 1026.19(f)(2)(i) and (ii) below, the final rule narrows the circumstances in which revisions to the ''actual terms'' of the Closing Disclosure provided three business days before consummation under § 1026.19(f)(1)(ii)(A) trigger a new three-business-day pre-consummation waiting period. In general, pursuant to final § 1026.19(f)(2)(i) and (ii), a revised Closing Disclosure must be provided three business days before consummation when the loan's previously disclosed APR becomes inaccurate, the loan product changes, or a prepayment penalty is added; other revisions may be disclosed at or before consummation. Final § 1026.19(f)(2)(iii) through (v) set forth circumstances under which revised disclosures must be provided after consummation. However, because the triggers for providing a revised Closing Disclosure three business days before consummation have been narrowed pursuant to § 1026.19(f)(2)(ii), final § 1026.19(f)(2)(iii) through (v) no longer function as exceptions to the strict three-business-day requirement under proposed § 1026.19(f)(1)(ii). Nevertheless, the Bureau believes retaining them, with modifications discussed below, will enhance consumer awareness and understanding of their mortgage transaction and facilitate industry compliance.

19(f)(2)(i) and (ii) Changes Before Consummation

Proposed 19(f)(2)(i). Proposed § 1026.19(f)(2)(i), would have provided that if the consumer and the seller agree to make changes to the transaction that affect items previously disclosed, the creditor shall deliver revised disclosures reflecting such changes at or before consummation. Under proposed § 1026.19(f)(2)(i), these changes could be reflected on a revised Closing Disclosure without triggering a new three-business-day waiting period. Proposed comment 19(f)(2)(i)-1 would have provided illustrative examples of this requirement. The proposal reflected the

common practice in which sellers and buyers alter the terms of the real estate transaction based on the condition of the house at the time of the walk-though inspection, which is often the day before the scheduled real estate closing, and in some cases even continue to negotiate the deal at the closing table.

Proposed 19(f)(2)(ii). Proposed § 1026.19(f)(2)(ii) would have provided that if the amount actually paid by the consumer does not exceed the amount disclosed under § 1026.38(d)(1) by more than $100, the creditor shall deliver revised disclosures at or before consummation. The Bureau sought comment on whether $100 was the appropriate threshold to accommodate small miscalculations or minor changes prior to consummation. The Bureau proposed this exemption because it did not believe that small miscalculations or minor changes to the transaction should result in closing delays. The Bureau stated its belief that $100 may have been the correct tolerance based on feedback regarding the items most likely to change prior to consummation.

Proposed comment 19(f)(2)(ii)-1 would have discussed the requirements of § 1026.19(f)(2)(ii), which would have stated that the creditor may provide revised disclosures without regard to the timing requirements in § 1026.19(f)(1)(ii) if the amount actually paid by the consumer does not exceed the amount disclosed pursuant to § 1026.38(d)(1) by more than $100, provided that the creditor delivers revised disclosures at or before consummation. This proposed comment also would have included illustrative examples of these requirements.

Proposed comment 19(f)(2)(ii)-2 would have clarified that revised disclosures provided at consummation may reflect adjustments pursuant to both § 1026.19(f)(2)(i) and § 1026.19(f)(2)(ii). Thus, although proposed § 1026.19(f)(2)(ii) would have limited the difference between the amount disclosed pursuant to § 1026.19(f)(1)(i) and the amount actually paid at the real estate closing by the consumer to $100, the amount actually paid by the consumer at the real estate closing could vary by more than $100, to the extent permitted by proposed § 1026.19(f)(2)(i). This proposed comment also included illustrative examples of this provision.

Comments

The Bureau received extensive comment and ex parte submissions on the proposed redisclosure requirements and exemptions from a broad group of stakeholders, including consumer advocacy groups, commenters representing a variety of industry sectors, government agencies, and members of Congress. While most consumer advocacy groups did not comment specifically on this aspect of the proposal, two such groups submitting a joint comment supported the proposal's requirement to redisclose the Closing Disclosure at least three business days before consummation for any changes to the actual terms of the transaction, subject to the bona fide personal financial emergency waiver and the Bureau's proposed narrow exemptions. These commenters emphasized that any exemptions to the timing requirements should be narrow. An individual settlement agent commenter also expressed support for the redisclosure waiting period and the proposed exemptions.

A State attorney general commenter supported the redisclosure waiting period and the proposed exemptions and noted that the magnitude and cost of a consumer's decision to purchase a home make it particularly important that consumers be made aware of all associated costs far enough in advance of closing to be able to reasonably evaluate the transaction with all costs in mind. Several associations of State financial regulators submitted a joint letter in which they offered measured support for the proposed redisclosure waiting period. While these commenters noted that they generally supported an advance disclosure requirement, they stated that the Bureau should take a balanced and careful approach to the implementation of the proposed timing and redisclosure requirements. The letter stated that thresholds should not cause significant market disruptions and should be amended if they do. Thus, these commenters requested that the Bureau seek ways to avoid restricting access to credit or unnecessarily delaying closings. These commenters also emphasized that the expanded tolerances proposed by the Bureau would ensure that consumers are not subject to the types of abusive practices that they were in the past and would provide an incentive for lenders to provide consumers with accurate Loan Estimates and Closing Disclosures, reduce the risk of error and uncertainty associated with the disclosure process, and lead to a healthier residential mortgage market.

By contrast, an overwhelming majority of industry commenters, including a GSE, and a State housing development authority, along with members of Congress, expressed significant concern with the proposed redisclosure waiting period for changes to the actual terms of the transaction and the narrowness of the proposed exemptions. The SBA and members of Congress also expressed significant concern with the proposed redisclosure waiting period and the narrowness of the proposed exemptions.[237] Similar to concerns about the general three-business-day receipt requirement, commenters explained that providing ''final'' settlement costs three business days before consummation was impracticable, unnecessary, and would result in frequent closing delays that would impose substantial costs on consumers, sellers, industry, and the market. The majority of these commenters were concerned that the narrow exemption and waiver provisions would not reduce the likelihood of closing delays due to redisclosure.

Difficulties associated with a redisclosure waiting period. Commenters cited in connection with a three-business-day redisclosure period the same concerns they cited about the impracticality of providing final settlement costs three business days before consummation, described in the section-by-section analysis of § 1026.19(f)(1)(ii) above. Commenters identified a variety of reasons why transaction costs can change during the three-business-day period before consummation, which commenters believed would frequently trigger a new three-business-day period.

Many commenters highlighted consumer requests as a major source of changes to the loan or settlement costs. Commenters explained that consumers frequently request changes to the loan amount, either because the amount needed to pay off a refinanced loan changes or, in the purchase context, because the consumer's financing needs change independent of a negotiation with a seller. For example, commenters explained that consumers may discover they need a larger or smaller down-payment before consummation. Commenters also explained that consumers may make changes affecting their escrow charges or purchase products or services in connection with the transactions, such as insurance endorsements, mobile notary services, document-preparation services, inspections, and legal services. Commenters maintained that it would be important for consumers to retain

[237] The Bureau received one letter submitted by a member of Congress during the comment period and two ex parte letters dated May 24, 2013, signed by 62 Republican members and 20 Democratic members of Congress, respectively. The letters expressed serious concern with the proposal's redisclosure requirements.

flexibility to make changes to their transactions.

Commenters identified third party changes not requested by the consumer that could affect the transaction, despite reasonable due diligence of creditors and settlement agents. Commenters explained that it is not uncommon for third parties to correct errors or account for changed circumstances outside of the control of creditors or settlement agents. For example, a variety of commenters noted that homeowners' associations may be late in reporting assessments or fees associated with a certificate of approval. Another common example was that of third-party lenders who may be late in providing payoff statements or subordination agreements. Commenters also cited weather- or travel-related delays as reasons why certain costs may not be known until consummation. Commenters also identified changes that only affected the seller's side of the transaction as a common source of changes that might occur before consummation, such as increases in the seller's payoff amounts or additional interest due on taxes. Commenters did not believe changes to the seller's side of the transaction should require a new three-business-day waiting period. Commenters also explained that agents conducting a title exam may discover new encumbrances or other obligations, such as final utility charges, judgments, unpaid taxes, or, in rural areas, grazing leases, wells, or easements, during a ''final rundown'' the day before consummation that is often done as a matter of prudent due diligence.

In addition, commenters explained that a series of redisclosure waiting periods could be triggered if per diem or prorated amounts accumulate, such as prepaid interest or escrowed charges. A number of commenters, including a GSE, expressed concern that the accumulation of such charges could trigger a series of redisclosure periods if the de minimis exemption under proposed § 1026.19(f)(2)(ii) were too low. Commenters also explained that a number of settlement costs are interrelated, such as service provider commissions, and that a change in one item could easily change another.

Many industry commenters believed that the proposed exemptions were too narrow to prevent frequent closing delays. Members of Congress settlement agent commenters submitted ex parte letters expressing concern that the rule would put consumers in the position of having to choose between having their closing delayed for three days (and paying the associated increased costs) or not buying a product for their protection (such as a home warranty or an owner's title insurance policy). Commenters supported the consumer-seller negotiation exemption, but believed the proposed $100 de minimis exemption was too low to effectively prevent unnecessary delays. A trade association representing creditors and a member of Congress stated that the Bureau provided little rationale for selecting a $100 de minimis exemption, suggesting that it appeared arbitrary. Commenters explained that $100 was inadequate because it was not proportional to the transaction, did not account for inflation, or the variety of factors that can cause settlement costs to change within three to six business days before consummation and that are out of the creditor's or the settlement agent's control. Commenters explained that the following costs could easily exceed $100: fees charged for optional third-party services purchased by the consumer, such as a consumer's decision to hire an outside notary, a courier, or an attorney; consumer-requested changes to the loan amount, escrowed amounts, insurance policies or endorsements, premium-deductible tradeoffs, and home warranties; accumulating prepaid interest due to closing delays; or additional interest due on a consumer's payoff of an existing loan.

Costs associated with a redisclosure waiting period. A significant proportion of commenters stated that a mandatory three-business-day redisclosure waiting period would impose high costs on consumers, sellers, industry, and the real estate market generally. Commenters identified the same costs described in the section-by-section analysis of § 1026.19(f)(1)(ii) above, arguing that delayed closings would jeopardize a consumer's real estate agreements, result in financial costs and inconvenience to consumers and sellers, restrict a consumer's ability to shop, and prolong interest payments on outstanding debts. Commenters were concerned that delays caused by the redisclosure waiting period could cause certain loan and settlement costs to increase, which could trigger additional redisclosure waiting periods. Commenters also explained that uncertainty over when closings occur would make it difficult for consumers, sellers, settlement agents, and creditors to coordinate to reschedule closings. Some commenters were concerned that it would be difficult for parties to reschedule a closing date and that sellers may be unlikely to extend a purchase contract to accommodate a closing delay. In addition, a trade association representing banks explained that consumers would face liquidity problems if settlement agents placed consumer funds in non-interest-bearing accounts. A large bank and a trade association representing settlement agents explained that consumers in refinancings would have difficulty meeting upcoming expenses or would forego savings for each three-business-day period during which they would have to make payments on an existing loan. A settlement agent commenter and professional association representing attorneys were concerned that multiple consumer-seller walk-through inspections would be required during each redisclosure waiting period.

Commenters including settlement agents, creditors, and various trade associations also explained that the proposed rule could put consumers in a difficult position of deciding whether to make changes to their transaction (*e.g.,* to purchase an insurance policy or make changes to escrowed items) or delay closings. The ex parte letters from members of Congress also expressed concern with such a scenario.

Creditors were concerned that their underwriting costs would increase as a result of expired credit or employment verifications or expired interest rate locks, particularly if the Bureau finalizes tolerance rules that limit their ability to increase fees. Some creditors explained that they would likely price rate locks higher to cover this risk or that they may qualify the availability of guaranteed rates. Creditors also were concerned that uncertainty over the date of closing would require them to pay more for warehouse financing capacity. A settlement agent observed that settlement service providers may be inhibited from recouping the actual costs of their services if creditors or settlement agents did not revise the Closing Disclosure out of concern for triggering a redisclosure waiting period. A law firm commenter explained that without flexibility in the rule to account for changes in these charges, settlement service providers may delay consummation to ensure they are compensated for their services.

Many industry commenters, including a GSE, expressed concern about the aggregate impact of the proposed three-business-day redisclosure rule on the efficiency of the market. Commenters expressed serious concern about the unintended consequences of delayed closings on sellers who have scheduled their own purchase transaction to occur immediately after a consumer's purchase transaction (coinciding settlements) or who are under pressure to conduct a short sale of their property

(for less than the outstanding principal balance of their loan). Commenters frequently cited an anticipated ''domino effect'' of delayed closings across the market, which could result in unexpected additional costs and delay other transactions. In general, commenters were concerned that delayed closings would result in fewer closings and increased cost and burden that would be passed on to consumers. A trade association representing settlement agents and the title insurance industry submitted a commissioned study analyzing the aggregate impact of the proposed redisclosure waiting period, highlighting financial costs to sellers and consumers, as well as to State and local governments.[238] The study assumed that a little over half of total closings would experience at least one three-business-day delay of closing due to changes in the Closing Disclosure.

Alternatives recommended by commenters. Industry commenters recommended a variety of approaches to modify the Bureau's proposed timing requirements, including requiring no waiting periods, shortening the three-business-day period to a one- or two-day period, requiring a three-business-day period for TILA-mandated costs, or requiring no waiting periods for settlement-related costs. Other commenters recommended adding flexibility to the consumer waiver or increasing the $100 de minimis exemption. Other commenters recommended additional exemptions for types of loans (*e.g.,* refinancings), types of closing costs, or other exemptions based on changes requested by or benefiting the consumer.

A community bank, a trade association representing various mortgage professionals, and an individual consumer recommended that the final rule require a separate form to be provided to consumers documenting what changed from the initial Closing Disclosure. Trade associations representing various mortgage professionals and settlement agents, a community bank, and a non-depository lender recommended that the final rule impose waiting periods shorter than three business days, such as a one-business-day waiting period.

Many commenters, including trade associations representing settlement agents, banks, and real estate agents, title insurance companies, settlement agents, non-depository lenders, and attorneys, were concerned that the proposed exemptions would not cover all potential last-minute changes that presented relatively little consumer risk. Commenters requested that the Bureau clarify existing exemptions to prevent creditors and settlement agents from interpreting them narrowly to the detriment of consumers. Other commenters requested that the Bureau expand the scope of the proposed exemptions.

Many commenters offered recommendations for changes they did not believe warranted a new waiting period. One trade association representing banks and financial companies explained that while a change to the fundamental terms of the loan may warrant a new waiting period, minor changes should not. Commenters also stated that changes requested by, agreeable to, or that otherwise benefit consumers should not require a new waiting period so that consumers could maximize their flexibility before consummation. Other categories suggested by creditor commenters included adjustments to the loan amount (*e.g.,* due to investor or loan program limits or to account for payoffs of other loans), or changes that are due to circumstances outside of the creditor's control.

Commenters also recommended that changes to particular closing costs should not require a new three-business-day period. Trade associations representing banks, a large bank, and a non-depository lender stated that amounts collected at closing that change depending on when closing is scheduled to occur should be exempted from a redisclosure waiting period. Settlement agents, including one submitting an ex parte submission, and trade associations representing settlement agents and the title insurance industry offered a number of other examples: closing costs unrelated to loan costs paid by or on behalf of the consumer; payments to discharge any defects, liens, encumbrances or other matters requiring curative action discovered during a title search or examination; any prorated or per diem amount where the underlying rate does not change; insurance fees; home warranties; lender reserves for taxes and insurance and amounts paid to a State or local government; recording costs and other fees incurred for the consumer's convenience, such as wire fees, notary fees, and endorsement fees; and changes due to consumer-seller negotiations or as a result of local custom or practice. A large bank stated that small increases in numerical disclosures other than the cash to close amount should not trigger a new waiting period, and various settlement agents stated that revisions to the seller's side of the transaction also should be exempt. One trade association representing the workforce mobility industry recommended that the final rule include an exemption for consumers who are obtaining a mortgage loan in connection with a corporate-sponsored relocation.

A large bank, a community bank, and trade associations representing banks and financial companies suggested that changes to APR that are within the current TILA tolerances should not require a new waiting period. One trade association representing various mortgage professionals recommended a ten percent tolerance for changes in closing costs. Other commenters recommended that the Bureau make adjustments to the exemptions included in the proposal.

Many commenters supported exemptions but believed the proposed exemptions were too narrow. A trade association representing real estate agents anticipated that creditors and settlement agents would be likely to interpret the proposed exemptions cautiously, which would lead to the three-business-day redisclosure period being invoked frequently, imposing costs on consumers.

Trade associations representing banks and financial companies were concerned that sellers could game the proposed exemption for changes due to consumer-seller negotiations at proposed § 1026.19(f)(2)(i) and deliberately postpone closings. Other commenters requested that the exemption should account for other seller-related changes. A trade association representing banks, a non-depository lender, and a large bank requested that the proposed exemption be expanded to cover additional changes to the transaction that might arise from a consumer-seller negotiation affecting the terms of the purchase-and-sale agreement, such as a property price reduction that might result in a change

[238] The study stated that, ''[b]ased on incidents in past years, industry professionals expect that between 50 percent and 60 percent of total closing transactions would experience at least one three-day delay of closing due to changes in the Closing Disclosure forms.'' Nam D. Pham, Ph.D., NDP Consulting, *The Economic Contributions of the Land Title Industry to the U.S. Economy* (November 2012), p. 2. The study concluded that delaying the collection of transfer taxes and fees would result in a ''lost time value'' for State and local governments, with a cumulative impact of more than $1 million for every three-day period. Further, the study concluded that just one three-day delay would have an impact of nearly $193 million on sellers (in terms of time value and mortgage interest payments), an impact of nearly $64 million on homeowners who refinance (in terms of mortgage interest payments for each one percentage point mortgage rate reduction), and, for home buyers, an impact of more than $1 billion per year in additional mortgage interest payments throughout the life of their mortgage loans. *See id.*

in the loan amount and the reduction or elimination of mortgage insurance.

The Bureau received substantially more comment on the proposed $100 de minimis exemption under proposed § 1026.19(f)(2)(ii). Many commenters representing views from across the real estate industry and a member of Congress believed $100 was inadequate, as discussed above. A trade association representing the settlement service provider industry believed the threshold should be based on costs that are significant enough that the consumer would need three business days to decide whether to continue with the transaction. Many commenters, including a member of Congress, recommended that the de minimis threshold should be based on a percentage or a ratio relative to the loan amount or property value to account for consumers who may have different price sensitivities, market diversity, and the effects of inflation. Commenters proposed a range of alternatives to the $100 exemption: a percentage of the loan amount or the sale price of the property (commenters suggested thresholds ranging between 0.001 to 1 percent); a fixed dollar amount (commenters suggested thresholds ranging between $200 and $1,000); or the greater of a fixed dollar amount or a percentage. Other commenters recommended that the final rule allow creditors to guarantee third-party charges so they cannot change, provided the rule offers creditors relief from liability under RESPA section 8. A large bank and trade associations representing banks and financial companies recommended that the rule make the de minimis exemption available for any changes in fees, without regard to whether they are finance charges or which tolerance level applies to them.

Commenters recommended that the proposed three-business-day redisclosure requirement either be shortened or eliminated. A trade association commenter representing the views of mortgage professionals and affiliated service providers explained that shortening the timing of the Closing Disclosure would allow flexibility rather than unnecessary delays due to redisclosure and enforced waiting periods. Commenters also recommended that the redisclosure waiting period be limited to one day or 24 hours. One settlement agent commenter recommended that the final rule eliminate redisclosure waiting periods. The commenter believed that any bait-and-switch abuses would be better addressed through enforcement actions.

Requests for clarification. Commenters requested that the Bureau clarify several aspects of the proposed redisclosure requirements. A community bank commenter requested clarification on whether the Closing Disclosure must be provided again at consummation. This commenter was concerned that two closings could arise under the rule: one to provide the Closing Disclosure and one to sign the final loan documents. One individual consumer asked whether the three-business-day waiting period would eliminate the three-business-day right of rescission. A large bank and two trade associations representing banks and financial companies asked whether changes in interest rate or APR, either within or outside of the TILA tolerances, would trigger a new three-business-day period. Commenters also asked whether a new three-business-day period would be triggered if a fee was listed in the wrong category on the form, if changes were made to the escrowed items, if the consumer requests a change to how funds will be disbursed to others, if loan principal and periodic payments are reduced slightly, or if a creditor's approximate cost of funds calculation changes. One settlement agent commenter requested clarification on what would constitute a redisclosure. This commenter also requested clarification on which party would pay or absorb costs associated with any redisclosures. Trade associations representing banks and financial companies requested that the Bureau clarify that the de minimis threshold exemption at proposed § 1026.19(f)(2)(ii) was an aggregate threshold and did not apply to any particular costs.

Final Rule

The Bureau has considered the comments and ex parte submissions on this issue submitted by members of Congress. Based on the extensive and detailed comments the Bureau received on the types of changes that can occur after the Closing Disclosure is first provided, the final rule revises the proposed rule's exemptions to the redisclosure waiting period requirement to reduce the risk of unintended and potentially harmful consequences for consumers and the real estate market. As explained in the section-by-section analyses of § 1026.19(f)(1)(i) and (f)(1)(ii)(A) above, the final rule requires that consumers receive the Closing Disclosure three business days before consummation. However, in response to concerns expressed by commenters about closing delays caused by the proposed redisclosure requirement, the final rule narrows the triggers for a new three-business-day waiting period for changes that may occur after the Closing Disclosure is initially provided.

Under the final rule, if the Closing Disclosure is provided and the APR subsequently becomes inaccurate by exceeding the applicable tolerance, a corrected Closing Disclosure must be provided to the consumer at least three business days before consummation (§ 1026.19(f)(2)(ii)(A)).[239] In addition, the final rule requires redisclosure with a new three-business-day waiting period in two circumstances not currently provided for in Regulation Z: where the loan product changes (§ 1026.19(f)(2)(ii)(B)) and where a prepayment penalty is added (§ 1026.19(f)(2)(ii)(C)). The Bureau believes that a requirement that limits a redisclosure waiting period to these three situations in this final rule appropriately balances the consumer benefits of advance disclosure against the potential costs associated with a redisclosure waiting period.

While the proposed redisclosure requirement and narrow exemptions would provide a major incentive for industry to finalize settlement costs earlier in the process, the Bureau is concerned that creditors or settlement agents may not be in a position to ensure that all such costs will be known with certainty by the time the Closing Disclosure is first delivered. The breadth and specificity of comments on this issue demonstrated that settlement costs derive from a multitude of sources, including third-party lenders, local government entities, sellers, homeowners' associations, and a host of third-party settlement service providers; and such costs may change based on events outside the control of any one party. Further, the Bureau is concerned that the proposed redisclosure requirement and narrow exemptions could prevent consumers from making adjustments or informed purchases when it may be in their interest, or even necessary, to do so. For example, as some commenters noted, the cash to close amount could increase above the de minimis exemption if a consumer requests a smaller principal loan amount before consummation in exchange for making a larger down payment.

[239] Currently, corrected TILA disclosures must be provided to the consumer at least three business days before consummation if the previously disclosed APR becomes inaccurate. *See* § 1026.19(a)(2)(ii). The final rule generally maintains this trigger, although the final rule applies the redisclosure requirement to the Closing Disclosure under final § 1026.19(f)(2)(ii)(A).

Accordingly, the final rule narrows the circumstances under which changes between the initial provision of the Closing Disclosure and consummation will trigger an additional three-business-day waiting period. The final rule omits proposed § 1026.19(f)(2)(i) and (f)(2)(ii) and instead revises the three-business-day waiting period redisclosure triggers to three specific circumstances: the transaction's previously disclosed APR becomes inaccurate, the loan product changes, or a prepayment penalty provision is added to the transaction. Thus, if one of those events occurs between the time the initial Closing Disclosure is provided and consummation, the creditor must provide a corrected Closing Disclosure with all changed terms, and must ensure that the consumer receives the disclosure three business days before consummation. These events are described in final § 1026.19(f)(2)(ii). If changes for any other reason occur after the initial Closing Disclosure is provided, the creditor must provide a corrected Closing Disclosure reflecting any changed terms to the consumer so that the consumer receives the corrected disclosures at or before consummation, pursuant to § 1026.19(f)(2)(i).

Difficulties associated with a de minimis exemption. The final rule does not include the proposed de minimis exemption for changes in closing costs in light of comments received and the difficulty in identifying an appropriate dollar threshold. Commenters provided extensive feedback demonstrating why designing a reliable de minimis exemption would be difficult, and they identified a large number of factors that might influence changes in closing costs. However, as the Bureau noted in the proposal's analysis under section 1022 of the Dodd-Frank Act, the Bureau lacks reliable market-wide data of the types, size, or frequency of costs that typically change between the early TILA disclosure and RESPA GFE and the disclosures provided at consummation. The Bureau appreciates that increases in costs before consummation vary based on a variety of factors, including those dependent on local custom. The extent of these variables complicates the development of a reliable threshold.

Changes requiring a new three-business-day waiting period before consummation. In light of the potentially serious consequences of delayed closings for all parties to a transaction and the market generally, the Bureau believes a mandatory redisclosure waiting period should be limited to situations that have the potential to impose significant, long-term financial impacts on consumers. Unlike one-time costs paid at settlement, these changes can impose costs that can carry significant, long-term consequences for consumers, such as higher interest rates, an adjustable rate feature for which consumers may be unprepared, or a prepayment penalty that could preclude refinancing.[240] In addition, because changes to the loan product and the addition of a prepayment penalty involve complex decisions that affect consumers over the life of the loan, the Bureau believes consumers will benefit from having sufficient time to consider whether to accept such changes.[241]

As noted in the section-by-section analysis of § 1026.19(f)(1)(i), settlement agent commenters in support of a general three-business-day requirement explained that such a requirement would benefit consumers who are surprised at the closing table when they discover major changes to their loan product. The Bureau believes this rule is likely to encourage creditors to ensure consumers have time to consider the tradeoffs involving higher APRs, different loan products, or prepayment penalties sufficiently in advance of consummation to avoid the risk of closing delays. The final rule therefore limits the redisclosure and new waiting period requirements to cases in which a loan's previously disclosed APR changes outside of the TILA tolerance, the loan product changes, or where a prepayment penalty is added. Narrowing the redisclosure triggers to these circumstances will reduce the frequency of closing delays and, in light of the other consumer protections regarding settlement charges in this final rule, will, on balance, benefit consumers.

Further, the Bureau believes the final rule is in line with the goals of other consumer protections advanced by Congress in response to the recent financial crisis. Congress recognized the unique risks associated with changes to APR in 2008 under MDIA as well as the risks posed by certain loan products and prepayment penalties in 2010 under the Dodd-Frank Act.[242] While the regulations adopted in the Bureau's 2013 ATR Final Rule and May 2013 ATR Final Rule may reduce the likelihood that consumers obtaining qualified mortgages will be surprised by changes to loan products or the addition of a prepayment penalty, they generally will not prevent creditors from extending credit with such features. Although these rules will make it less likely that such changes will trigger a redisclosure waiting period, the Bureau believes the final rule should maintain this protection where such changes are not precluded. Moreover, the Bureau is concerned that a creditor could extend a qualified mortgage but still make certain last-minute changes to the loan product in manner that presents a risk to consumers, such as changes to the length of the introductory rate period or the frequency of interest rate adjustments, or change the loan to a non-qualified mortgage with certain product features that present unique risks to consumers.

The Bureau believes the final rule strikes the appropriate balance between protecting consumers from undue delays in closings and from bait-and-switch tactics. The Bureau believes the expanded Loan Estimate tolerance rules will address bait-and-switch risk by restricting certain increases in settlement charges. Under the final rule, loan origination charges, required services for which a consumer cannot shop, as well as services provided by a creditor's affiliate would be subject to a zero percent tolerance. In addition, recording fees and required services for which a consumer shops and chooses a non-affiliate identified by the creditor would be subject to an aggregate ten percent tolerance. *See* section-by-section analyses of § 1026.19(e)(3)(i) and (ii). The Bureau believes there is limited consumer risk with respect to items not covered by the Loan Estimate tolerances, such as prepaid interest, insurance premiums, escrowed amounts, and settlement costs disclosed pursuant to § 1026.38(g)(4), which typically involve adjustments and payments related to obligations and

[240] Although some changes to APR may result from one-time costs affecting the finance charge that are paid at consummation, APR also is a metric for other long-term costs of credit. It also is the metric MDIA relies on to determine when final TILA disclosures must be provided three business days before consummation.

[241] Research indicates that cognitive processes take more time when evaluating changes in terms. *See, e.g.,* Christopher Chabris *et al., The Allocation of Time in Decision-Making,* Journal of the European Economic Association (2009) (decision-makers spend more time on decisions when their estimates of the value of the best option is closer to the estimate of the value of the next best option); Mieneke W.H. Weenig and Marleen Maarleveld, *The Impact of Time Constraint on Information Search Strategies in Complex Choice Tasks,* Journal of Economic Psychology (2002) (in complex choice tasks, screening is based on fewer attributes when time pressure is imposed).

[242] *See, e.g.,* Dodd-Frank Act sections 1412, adding TILA section 129C(b) (generally defining a ''qualified mortgage'' as one that, among other things, does not contain negative amortization, interest-only payments, or balloon payments) (15 U.S.C. 1639c(b)); Dodd-Frank Act section 1450 (amending the contents of the special information booklet under RESPA section 5(b) to include discussion of balloon payments, prepayment penalties, and the advantages of prepayment) (12 U.S.C. 2604(b)).

other encumbrances that commonly must be paid as a condition to close.[243]

Although the final rule leaves some room for certain charges to change before closing without triggering an additional three-business-day waiting period, the Bureau believes such changes pose less harm to consumers than delaying closings because of these changes. For example, the final rule does not require a new waiting period for optional services for which a consumer shops independently, which costs are not subject to a good faith tolerance limit under § 1026.19(e)(3). Commenters explained that consumers frequently shop for some of these services in the days prior to closing for a number of reasons. For example, commenters explained that some consumers wait to purchase an owner's title insurance policy, and others purchase unexpected notary and courier services that may be necessary in rural areas where consumers cannot attend a closing in person, or to accommodate last-minute child-care or employment obligations. The final rule does not require a new waiting period because many of these costs are incurred to address unforeseen circumstances, they are generally one-time costs that are small relative to the entire transaction, and because consumers have an opportunity to shop for these services independently.[244]

Exemptions recommended by commenters. Commenters suggested additional exemptions that are not included in the final rule. The Bureau believes that significant operational challenges could arise if the final rule were to include a de minimis threshold and provided for a panoply of additional exemptions from the redisclosure waiting period (*e.g.,* exemptions for prepaid interest, escrowed amounts, changes to the seller's side of the transaction, or consumer-requested changes). As noted by several commenters, a final rule that included a long list of exemptions could increase regulatory complexity and impose substantial compliance costs on industry, especially smaller entities that may not have a large compliance staff, but may not provide any additional consumer benefit compared to the narrowed triggers the Bureau is finalizing. In addition, the Bureau does not believe it is practicable to list with specificity every situation that might warrant an exemption, and doing so may create confusion and unnecessary closing delays.

Cost of redisclosure. One commenter requested clarification on which party would be responsible for paying and absorbing costs associated with redisclosures of the Closing Disclosure. Final § 1026.19(f)(5) provides that no fee may be imposed on any person, as a part of settlement costs or otherwise, by a creditor or by a servicer (as that term is defined under 12 U.S.C. 2605(i)(2)) for the preparation or delivery of the disclosures required under § 1026.19(f)(1)(i). Other than this provision, § 1026.19(f) does not address which party is responsible for paying or absorbing costs associated with providing corrected Closing Disclosures.

Consumer's right to inspect. Current Regulation X § 1024.10(a) provides that the settlement agent shall permit the borrower to inspect the RESPA settlement statement, completed to set forth those items that are known to the settlement agent at the time of inspection, during the business day immediately preceding settlement. *See* 12 CFR 1024.10(a). The current Regulation X provision implements RESPA section 4(b)(2).

In the proposal, the Bureau did not propose retaining this requirement because, under the proposed rule, the creditor would have been required to deliver the Closing Disclosure three business days before consummation, and redisclose with an additional three-business-day waiting period if any of the actual terms changed, except in very limited circumstances described in the section-by-section analysis of § 1026.19(f)(2). Thus, under the proposal, the disclosures consumers would have received three business days before consummation would have been nearly accurate, other than for a narrow set of changes permitted under the exemptions in proposed § 1026.19(f)(2). Even if changes occurred after the initial Closing Disclosure was provided under the proposal, consumers would still have received a nearly accurate revised Closing Disclosure three business days before consummation. As a result, the Bureau determined that it was unnecessary to include the RESPA inspection requirement in the integrated disclosures.[245]

Several industry commenters requested that the Bureau return to the one-business-day requirement to inspect the Closing Disclosure. A community bank commenter and a trade association representing bank compliance officers recommended that the rule include a one-day right to inspect as an alternative to a three-business-day redisclosure period. The commenters stated that, while providing the Closing Disclosure three business days before closing may be beneficial once, any changes should be addressed within the three-business-day period and could be previewed at least one day before closing without necessitating three days repeatedly.

The Bureau has considered these comments and believes that, in light of the changes made in the final rule to the proposed redisclosure provisions, it is appropriate to include in the final rule a right to inspect the Closing Disclosure one business day before consummation. As discussed above, the final rule permits a greater range of changes to occur between the time the Closing Disclosure is initially provided (three business days before consummation) and consummation. Thus, because the Closing Disclosure may change before consummation without triggering a new three-business-day waiting period, except in the three circumstances discussed above, the Bureau believes it is appropriate to implement RESPA section 4, which gives borrowers the right to inspect the settlement statement one business day before settlement, by giving consumers the right to inspect the Closing Disclosure one day before consummation. The Bureau believes that implementing this statutory right will reduce the likelihood that consumers will be surprised by changes to the Closing Disclosure at the point of consummation. Moreover, the Bureau believes a one-day right to inspect will be less disruptive to the efficient operation of closings than a three-business-day redisclosure requirement.

For the reasons discussed above, the final rule adopts an inspection provision in § 1026.19(f)(2)(i). Under this final rule, notwithstanding the requirement to provide corrected disclosures at or before consummation,

[243] For example, because prepaid interest is based on an underlying interest rate, increases in prepaid interest are relatively predictable based on the number of days that still remain in the month after closing and the number of days prepaid interest accumulates. Additionally, because prepaid interest is a finance charge under Regulation Z, revisions to prepaid interest would be reflected in the loan's APR, changes to which are governed by TILA's three-business-day redisclosure requirement and rescission rules. Further, interest rates are locked in many instances, in which cases the only variable is the day of closing.

[244] With respect to insurance premiums that a consumer shops for independently, the Bureau believes other means are available for limiting consumer harm, such as a competitive marketplace for property insurance premiums, or, in the case of other insurance products, advance disclosures that such products are optional. *See, e.g.,* § 1026.4(d)(1) and (2) (conditioning the treatment of certain credit and property insurance premiums as a ''finance charge'' on the provision of advance disclosures); § 1026.37(g)(4) (Loan Estimate disclosures for owner's title insurance).

[245] The Bureau noted that certain Dodd-Frank Act amendments could be read as overriding the RESPA inspection requirement, but did not ground proposed § 1026.19(f)(1)(ii)(A) on such an interpretation. *See* 77 FR 51116, 51175, n.145.

the creditor must permit the consumer to inspect the Closing Disclosure, completed to set forth those items that are known to the creditor at the time of inspection, during the business day immediately preceding consummation. The final provision also includes language similar to that in current Regulation X § 1024.10(a), stating that the creditor may omit from inspection items related only to the seller's transaction.

This provision is similar to current Regulation X § 1024.10(a) but differs in certain respects. Unlike the current provision, which applies to the ''settlement agent,'' the final rule applies to the ''creditor.'' The Bureau recognizes that RESPA section 4(b) applies to ''the person conducting the settlement.'' 12 U.S.C. 2603(b). However, the final rule applies this requirement to creditors instead of settlement agents because § 1026.19(f)(1)(i) requires that creditors provide the Closing Disclosure. Nonetheless, pursuant to § 1026.19(f)(1)(v), the settlement agent may fulfill the creditor's responsibilities under § 1026.19(f)(2)(i). Comment 19(f)(2)(i)–2 addresses the settlement agent's role in permitting the consumer the right to inspect the Closing Disclosure. Settlement agents are subject to the requirements of § 1026.19(f)(1)(v), as discussed in the section-by-section analysis of that section above.

The final rule also uses the term ''consumer'' instead of ''borrower,'' consistent with the terminology of Regulation Z. In addition, unlike the current provision in RESPA and Regulation X, which permits borrowers the right to inspect the RESPA settlement statement the business day immediately preceding ''settlement,'' the final rule permits inspection during the business day immediately preceding ''consummation.'' The final rule applies this requirement to the business day before consummation instead of settlement because the final rule requires delivery of the Closing Disclosure at or before ''consummation.'' *See* the section-by-section analysis of § 1026.19(f)(1)(ii)(A). ''Business day'' in this provision is defined under § 1026.2(a)(6), as the day on which the creditor's offices are open to the public for carrying on substantially all of its business functions.'' This definition is substantially similar to the definition in Regulation X § 1024.2(b) that is used in the current inspection requirement in Regulation X § 1024.10(a). The Bureau believes it would be burdensome to require the inspection to occur on days creditors may not currently be open for business. *See* the section-by-section analysis of § 1026.2(a)(6).

The final rule does not contain an exemption for certain transactions currently implemented in Regulation X § 1024.10(d). The current provision in Regulation X provides generally that, when the borrower or the borrower's agent does not attend the settlement, or when the settlement agent does not conduct a meeting of the parties for that purpose, the transaction is exempt from the right to inspect, except that the RESPA settlement statement must be mailed or delivered as soon as practicable after settlement. The final rule does not include this exemption because the final rule requires that the Closing Disclosure be provided at or before consummation in all cases, regardless of whether an in-person settlement is conducted.

As discussed in more detail below, pursuant to its authority under TILA section 105(a), RESPA section 19(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b), the final rule adjusts and modifies the requirement of RESPA section 4(b)(2) allowing a one-business-day right to inspect the settlement statement from the person conducting the settlement. Specifically, the final rule adopts § 1026.19(f)(2)(i) to require creditors to permit consumers to inspect the Closing Disclosure, completed to set forth those items that are known to the creditor at the time of inspection, during the business day immediately before consummation, and that the creditor may omit from inspection items related only to the seller's transaction.

The Bureau believes adjusting the application of RESPA section 4(b)(2) is within its general mandate under Dodd-Frank Act sections 1032(f), 1098, and 1100A to prescribe integrated disclosures, which requires that the Bureau reconcile differences in coverage between the two statutes for the disclosure requirements under TILA and sections 4 and 5 of RESPA. As discussed above in the section-by-section analyses of § 1026.19(f)(1)(i) and (f)(1)(v), to satisfy the integration mandate, the Bureau must reconcile existing differences between TILA and RESPA. Accordingly, the final rule requires generally that the creditor provide the Closing Disclosure. RESPA section 4(b) imposes an obligation on ''the person who will conduct the settlement'' to permit the borrower a right to inspect the forms ''during the business day immediately preceding the day of settlement.'' The Bureau believes it is necessary to reconcile this requirement with the requirement under TILA section 128(b)(2)(D), as amended by MDIA and the Dodd-Frank Act, and implemented in this final rule under § 1026.19(f)(1)(i) requiring advance delivery of the Closing Disclosure by the creditor.

Final provisions. Final § 1026.19(f)(2)(i) provides that, except as provided in § 1026.19(f)(2)(ii), if the disclosures provided under § 1026.19(f)(1)(i) become inaccurate before consummation, the creditor shall provide corrected disclosures reflecting any changed terms to the consumer so that the consumer receives the corrected disclosures at or before consummation. Final § 1026.19(f)(2)(i) also provides that, notwithstanding the requirement to provide corrected disclosures at or before consummation, the creditor shall permit the consumer to inspect the disclosures provided under § 1026.19(f)(1)(i), completed to set forth those items that are known to the creditor at the time of inspection, during the business day immediately preceding consummation, but the creditor may omit from inspection items related only to the seller's transaction.

Final § 1026.19(f)(2)(ii) provides that, if one of the following disclosures provided under § 1026.19(f)(1)(i) becomes inaccurate in the following manner before consummation, the creditor shall ensure that the consumer receives corrected disclosures containing all changed terms in accordance with the requirements of § 1026.19(f)(1)(ii)(A): (A) the annual percentage rate disclosed under § 1026.38(o)(4) becomes inaccurate, as defined in § 1026.22; (B) the loan product is changed, causing the information disclosed under § 1026.38(a)(5)(iii) to become inaccurate; or (C) a prepayment penalty is added, causing the statement regarding a prepayment penalty required under § 1026.38(b) to become inaccurate.

The final rule adopts proposed comment 19(f)(2)(i)–1, modified to conform to the final rule, and adopts proposed comments 19(f)(2)(i)–1.i and –1.ii substantially as proposed. Proposed comments 19(f)(2)(i)–1.i and –1.ii would have provided examples of changes due to consumer-seller negotiations to illustrate the proposed exemption that was designed for that type of scenario. The Bureau believes the proposed commentary serves as useful guidance for the final rule because consumer-seller negotiations are a common reason that closing costs change. This commentary is intended to be illustrative and not representative of all changes that may occur prior to consummation. The final rule also includes comment 19(f)(2)(i)–1.iii,

which is similar to proposed comment 19(f)(2)(ii)–1. The comment illustrates a scenario in which a consumer-seller negotiation and an understated insurance premium cause closing costs to increase but do not trigger a new waiting period.

Comment 19(f)(2)(i)–1 has been revised to conform to final § 1026.19(f)(2)(i). Comments 19(f)(2)(i)–1.i, –1.ii, and –1.iii also include technical revisions to clarify that the creditor must provide corrected disclosures so that the consumer receives them at or before consummation. Comment 19(f)(2)(i)–2 addresses the consumer's right to inspect the Closing Disclosure during the business day before consummation. The comment explains that a settlement agent may satisfy the requirement to permit the consumer to inspect the disclosures under § 1026.19(f)(2)(i), subject to § 1026.19(f)(1)(v).

Comment 19(f)(2)(ii)–1 contains guidance illustrating when the changes specified by § 1026.19(f)(2)(ii)(A) through (C) trigger a new waiting period and corrected disclosures. Comment 19(f)(2)(ii)–1.i includes examples in which the APR changes. These example are similar to existing commentary found in § 1026.19(a)(2)(ii) that implements MDIA's timing requirements. Comment 19(f)(2)(ii)–1.i has been modified to reflect the requirements of § 1026.19(f)(2), to provide additional explanation for why different APRs in the examples would necessitate a new waiting period, and technical revisions for clarity. Comment 19(f)(2)(ii)–1.ii includes examples where the loan product changes, and comment 19(f)(2)(ii)–1.iii includes examples where a prepayment penalty is added.

Final § 1026.19(f)(2)(i) and (ii) and their associated commentary are adopted pursuant to the Bureau's legal authority under sections 105(a) of TILA, 19(a) of RESPA, 1032(a) of the Dodd-Frank Act, and, for residential mortgage transactions, sections 129B(e) of TILA and 1405(b) of the Dodd-Frank Act. The Bureau has considered the purposes for which it may exercise its authority under section 105(a) of TILA and, based on that review, believes that the final rule and commentary are appropriate. The final rule and commentary will help consumers avoid the uninformed use of credit by ensuring that consumers receive disclosures of the actual terms and costs associated with the mortgage loan transaction early enough that consumers have sufficient time to become fully informed as to changes to APR, changes to the loan product, and the addition of a prepayment penalty, which can impose long-term costs on consumers. The final rule and commentary also will help consumers avoid the uninformed use of credit by requiring that they receive corrected disclosures reflecting any changes to the actual terms of the transaction at or before consummation, and by requiring that consumers be permitted a right to inspect the Closing Disclosure for any changes that may occur before consummation. The final rule and commentary are consistent with section 129B(e) of TILA because failing to provide borrowers with enough time to become fully informed of major terms and costs of the transaction is not in the interest of the borrower. Similarly, failing to inform borrowers of any changed terms at or before consummation is not in the interest of the borrower.

The final rule and commentary are adopted pursuant to the Bureau's authority under sections 105(a) of TILA and 19(a) of RESPA. The Bureau believes that the final rule and commentary will carry out the purposes of TILA and RESPA by ensuring meaningful disclosure of credit terms, more effective advance disclosure of settlement costs, and will result in the elimination of kickbacks, referral fees, and other practices that tend to increase unnecessarily the costs of certain settlement services, consistent with sections 105(a) of TILA and 19(a) of RESPA, respectively. The Bureau also has considered the purposes for which it may exercise its authority under section 19(a) of RESPA and, based on that review, believes that the final rule and commentary are appropriate. The final rule and commentary will ensure more effective advance disclosure of settlement costs by requiring that creditors permit consumers a right to inspect the Closing Disclosure during the business day preceding consummation; by requiring that, if settlement costs change before consummation, creditors provide a corrected Closing Disclosure containing all changed terms at or before consummation; and by permitting consumers to make necessary changes affecting the settlement of their transactions.

The final rule and commentary are consistent with Dodd-Frank Act section 1032(a) because the features of mortgage loan transactions and settlement services will be more fully, accurately, and effectively disclosed to consumer in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage loan and settlement services if consumers receive corrected disclosures three business days before consummation when changes occur to the transaction that can impose significant, long-term risks on consumers. The Bureau believes these risks arise where the loan's previously disclosed APR becomes inaccurate, the loan product changes, or a prepayment penalty is added. In addition, the final rule and commentary are consistent with Dodd-Frank Act section 1032(a) because the features of mortgage loan transactions and settlement services will be more fully, accurately, and effectively disclosed to consumer in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage loan and settlement services, if consumers receive the disclosures reflecting all of the terms and costs associated with their transactions at or before consummation, and if consumers are permitted a right to inspect the disclosures for changed terms during the business day before consummation.

In addition, the Bureau has considered the purposes for which it may exercise its authority under section 1405(b) of the Dodd-Frank Act and, based on that review, believes that the final rule and commentary are appropriate. The final rule and commentary will improve consumer awareness and understanding of the mortgage loan transaction by ensuring that consumers receive the disclosures reflecting major changes to the terms and costs associated with their transactions three business days in advance of consummation, by ensuring that consumers receive corrected disclosures reflecting any changes to the terms of the transaction at or before consummation, and by ensuring that consumers have a right to inspect the disclosures reflecting all of the terms and costs associated with their transactions during the business day before consummation. The final rule and commentary also will be in the interest of consumers and in the public interest because the final rule and commentary may eliminate the opportunity for bad actors to surprise consumers with significant unexpected costs at the closing table, when consumers are less able to question such costs. Finally, the Bureau also is adopting the final rule and commentary pursuant to its authority under sections 1098, 1100A and 1032(f) of the Dodd-Frank Act.

19(f)(2)(iii) Changes Due to Events Occurring After Consummation

The Bureau proposed § 1026.19(f)(2)(iii), which would have provided that, if an event occurs after consummation that causes the disclosures to become inaccurate, and

such inaccuracy results solely from payments to a government entity in connection with the transaction, the creditor shall deliver corrected disclosures to the consumer no later than the third business day after the event occurs, provided the consumer receives the corrected disclosures no later than 30 days after consummation. The proposal was intended to address situations in which some costs are not known with absolute certainty until the loan documents are recorded. For example, a locality could change its schedule of recording fees, without advance notice, the day after the consumer signs the mortgage loan documents, but before the documents are recorded. The Bureau stated its belief that the final rule should provide flexibility to address this occurrence, so that these changes do not trigger an additional three-day waiting period. The Bureau proposed this provision pursuant to its authority under section 105(a) of TILA and section 19(a) of RESPA. Proposed comment 19(f)(2)(iii)–1 would have clarified that this provision applies to payments imposed by government entities, such as taxes, recording fees, and other taxes related to the real estate transaction, and provided several illustrative examples. The Bureau solicited feedback on whether changes, other than payments to government entities, may occur after the real estate closing, and whether the regulation should provide additional flexibility for such changes.

Comments

The Bureau received public comments and an ex parte submission regarding post-consummation redisclosure requirements. Bank commenters and a GSE were concerned about creditor liability resulting from post-consummation redisclosure requirements, given that third-party fee changes, including recording fees and other charges, are often outside of the creditor's control. Commenters recommended expanding the exemption for post-consummation changes beyond government entity payments, to cover any post-closing fee that is not under the creditor's control, such as settlement agent fees, homeowner's association fees, or third-party lender charges on a loan that is being refinanced. A trade association representing banks in a midwestern State, settlement agent commenters, and trade associations representing escrow agents and settlement agents explained that consummation of the loan and settlement of the entire transaction may occur at different times. Commenters explained that settlement may not end until several days after consummation of the loan. Commenters offered a variety of examples of events that could occur after consummation but before settlement that may cause amounts listed on the Closing Disclosure to change in addition to payments to a government entity, such as changes made by a consumer and seller during a final walk-through, the resolution of title issues, and other third-party charges.

A large bank and a trade association representing settlement agents explained that creditors occasionally understate final charges, but frequently will absorb the cost of the understatement. The commenter observed that post-closing redisclosure for these types of changes that do not affect the consumer will lead to consumer confusion and recommended instead requiring post-closing redisclosure only for changes that will impact the consumer, *i.e.,* when changes to the Closing Disclosure entitle the consumer to a refund.

A GSE and a large bank explained that creditors frequently do not know if a government entity has made a change that would make the Closing Disclosure inaccurate during the 30 days after consummation because changes are frequently not disclosed until documents are stamped and returned. Commenters also explained that documents are often not returned until 60–180 days, and sometimes a year, after documents are recorded because of delays in government processing. Commenters were concerned that complying with the proposal's 30-day period after consummation would be infeasible and recommended that the final rule extend the deadline and harmonize it with the deadline for providing revised disclosures for clerical errors in proposed § 1026.19(f)(2)(iv). A large bank recommended that a creditor should be required to provide a revised disclosure within 30 days of learning of an event, rather than within 30 days of consummation. A GSE recommended that creditors be required to provide the revised disclosure within seven business days of being notified of the issue, regardless of how long ago the loan was consummated.

Final Rule

In general. After considering the comments and ex parte submission on this issue, the final rule adopts a requirement to provide corrected disclosures for post-consummation events. However, as discussed in more detail below, the final rule does not limit such events to changes arising from payments to a government entity to account for additional changes that may occur after consummation. In addition, the final rule modifies the time period in which corrected disclosures must be provided.

There is a clear consumer benefit to disclosing actual costs at or before consummation. However, based on comments received, the Bureau recognizes that this may simply not be feasible in certain instances. The Bureau understands from trade associations representing creditors and settlement agents that, in certain jurisdictions, consummation can occur several days before settlement concludes.

RESPA section 4 provides that the settlement statement shall contain the amount imposed upon the consumer in connection with the settlement, and Regulation X § 1024.8(b)(1) sets forth the general rule that the settlement agent shall state the actual charges paid by the borrower and seller on the RESPA settlement statement. However, RESPA, Regulation X, and the HUD RESPA FAQs do not directly address subsequent revisions to the RESPA settlement statement, other than for correcting inadvertent or technical errors or curing tolerance violations. Thus, RESPA and Regulation X provide flexibility to account for the variety of settlement practices across the country.[246] Furthermore, Regulation Z also provide flexibility for changes that may occur after a disclosure is provided. Regulation Z § 1026.17(e) currently provides that events that occur subsequent to the provision of a disclosure do not render the disclosure inaccurate, but that redisclosure under certain circumstances may be required.

In integrating TILA's and RESPA's disclosure requirements, the Bureau believes it is appropriate for the final rule to provide flexibility to account for post-consummation events that may make earlier disclosures inaccurate to reflect the variety of settlement practices across the country. Without a more flexible exception to account for post-consummation changes, the Bureau is concerned that creditors and settlement agents may face compliance difficulties with disclosing the ''actual terms'' of the transaction at or before consummation, but before settlement is concluded.

[246] *See, e.g.,* RESPA section 4(a) (''The Bureau may, by regulation, permit the deletion from the forms prescribed under this section of items which are not, under local laws or customs, applicable in any locality'') (12 U.S.C. 2603(a)) and 12 CFR 1024.10(d) (exemption, in certain circumstances, from inspection and delivery requirements of the RESPA settlement statement where the borrower or borrower's agent does not attend the settlement, or when the settlement agent does not conduct a meeting of the parties for that purpose).

Concern about liability risk may create unnecessary inefficiencies and disrupt the consumer's and seller's transactions.

Post-consummation events requiring redisclosure. As discussed above, the Bureau intends for § 1026.19(f)(2)(iii) to account for changes that may occur during the normal settlement process after the point of ''consummation'' of the credit transaction. Accordingly, the rule refers to ''events in connection with the settlement of the transaction'' to reflect similar language in RESPA section 4(a), which requires that the RESPA settlement statement itemize all charges ''in connection with the settlement.'' 12 U.S.C. 2603(a).

Section 1026.19(f)(2)(iii) provides only for revisions for inaccuracies due to events occurring after consummation. Inaccuracies due to events occurring at or before consummation are covered by the other provisions of § 1026.19(f)(1)(i), (f)(2)(i), and (f)(2)(ii). The Bureau expects creditors and, as applicable, settlement agents, will conduct due diligence to ensure the Closing Disclosure contains accurate information at or before consummation, consistent with the requirements of § 1026.19(f). As discussed in the section-by-section analysis of § 1026.19(f)(1)(v) above, creditors may divide responsibility for providing the Closing Disclosure with settlement agents.

The final rule requires redisclosure only for post-consummation events that change an amount actually paid by the consumer. The Bureau does not believe consumers would benefit from revisions to the Closing Disclosure due to post-consummation events that do not affect charges imposed on them. Further, the Bureau believes this approach is consistent with RESPA and Regulation X. RESPA section 4 provides that the settlement statement shall contain the amount imposed upon the consumer in connection with the settlement. Regulation X § 1024.8(b)(1) provides the general rule that the settlement agent shall state the actual charges paid by the borrower and seller on the RESPA settlement statement. Thus, the Bureau believes a redisclosure to the consumer after consummation should be required only if a subsequent event changes a charge actually paid by the consumer and not for any change to the transaction.

The final rule imposes a redisclosure requirement based on changes attributable to post-consummation events occurring during the 30-day period following consummation. The Bureau believes a 30-day period will account for most events that would change the amount actually paid by the consumer and will provide flexibility to account for the variety of settlement practices across the country. The Bureau believes a 30-day period to identify post-consummation events is sufficient in light of comments and its understanding of current industry practice.

Several commenters, including a GSE and a large bank provided feedback that backlogs in county recorder's offices have resulted in delays of several months or, in some cases, a year. To address this issue, commenters recommended that the final rule require that creditors provide corrected disclosures within some period of time (*e.g.,* seven or 30 days) of being notified of a change to the actual terms of the transaction, without regard to how long after consummation such event occurs. The Bureau recognizes that the charges for some items, such as recording fees, may not be known with certainty until several months, and sometimes a year, after consummation. However, final § 1026.19(f)(2)(iii) does not provide for a long-term or open-ended period to account for changes to the Closing Disclosure because the Bureau does not believe such a requirement would provide significant consumer benefit in relation to the potential burden. The Bureau is concerned that such a requirement would impose costly ongoing compliance costs on creditors to monitor and analyze all activity that may increase an amount actually paid by the consumer in connection with the settlement of the transaction.

30-day period for providing corrected disclosures. The Bureau understands that creditors will not necessarily know an event has occurred that may make the Closing Disclosure incorrect at the time the event occurs. Accordingly, the final rule requires redisclosure not later than 30 days after the creditor's receipt of information sufficient to establish that such an event in connection with the settlement of the transaction has occurred. Under final § 1026.19(f)(2)(iii), if during the 30-day period following consummation, an event in connection with the settlement of the transaction occurs that causes the disclosures provided under § 1026.19(f)(1)(i) to become inaccurate, the creditor must deliver or place in the mail corrected disclosures to the consumer not later than 30 days after receiving information sufficient to establish that such event has occurred. The language regarding information sufficient to establish that an event in connection with the settlement of the transaction operates in the same manner as the standard that applies to creditors in the context of providing revised Loan Estimates under § 1026.19(e)(4)(i).

Unlike the standard in § 1026.19(e)(4)(i), which requires creditors to provide revised disclosures within three business days of receiving sufficient information to establish that an event has occurred, final § 1026.19(f)(2)(iii) provides that the creditor may provide corrected disclosures not later than 30 days after receiving information sufficient to establish an event has occurred. The Bureau believes a 30-day period balances creditors' interests in having sufficient time to process revisions to the Closing Disclosure with the interests of consumers in receiving corrected disclosures within a reasonable time after an event occurs. The Bureau also believes a 30-day period is reasonable in light of existing requirements under Regulation X that impose a 30-day deadline after settlement to cure tolerance violations and correct technical errors. Thus, the Bureau believes industry already has systems in place for conducting quality-control reviews during this period.

The 30-day period also is intended to harmonize the time period creditors have to cure tolerance violations that may arise due to events after consummation during the course of settlement under final § 1026.19(f)(2)(v). The Bureau believes this will reduce the number of corrected disclosures consumers may receive after consummation. Some post-consummation events covered by § 1026.19(f)(2)(iii) that cause the Closing Disclosure to become inaccurate also may be a tolerance violation for which a creditor provides a cure under § 1026.19(f)(2)(v). As discussed in more detail in the section-by-section analysis of § 1026.19(f)(2)(v), creditors must provide corrected disclosures to cure a tolerance violation no later than 60 days after consummation. Thus, where a creditor learns of a tolerance violation attributable to a post-consummation event during the 30-day period after consummation, it would comply with § 1026.19(f)(2)(iii) and (f)(2)(v) by providing the consumer with a corrected Closing Disclosure that reflects the tolerance cure not later than 30 days after receiving information sufficient to establish that the event has occurred. In addition to accommodating the 60-day period under § 1026.19(f)(2)(v), the 30-day period under § 1026.19(f)(2)(iii) accommodates the 60-day period under § 1026.19(f)(2)(iv) for providing corrected disclosures correcting non-numeric clerical errors. Thus, the Bureau believes the 30-day period for

providing corrected disclosures under § 1026.19(f)(2)(iii) will facilitate compliance and reduce the number of corrected disclosures received by consumers after consummation.

Final provisions. For the aforementioned reasons, the Bureau is adopting § 1026.19(f)(2)(iii) to provide that if during the 30-day period following consummation, an event in connection with the settlement of the transaction occurs that causes disclosures required under § 1026.19(f)(1)(i) to become inaccurate, and such inaccuracy results in a change to an amount actually paid by the consumer from that amount disclosed under § 1026.19(f)(1)(i), the creditor shall deliver or place in the mail corrected disclosures within 30 days of receiving information sufficient to establish that such event has occurred. The final rule and commentary use the term ''corrected disclosures'' rather than ''revised disclosures'' to reflect the terminology currently used with respect to the final TILA disclosures in Regulation Z and for greater consistency throughout § 1026.19(f). In addition, for consistency with other requirements under § 1026.19(e) and(f), the final rule also requires that the creditor deliver or place in the mail the Closing Disclosure.

The final rule adopts comment 19(f)(2)(iii)–1 with revisions to conform to the final rule as adopted. The comment restates § 1026.19(f)(2)(iii) and contains a cross-reference to comment 19(e)(4)(i)–1 for additional guidance on when sufficient information has been received to establish that an event has occurred for the purposes of § 1026.19(f)(2)(iii). The comment generally adopts the proposed examples illustrating the original provision, but has made conforming changes to reflect the revised timing requirements applicable to § 1026.19(f)(2)(iii) and to illustrate how § 1026.19(f)(2)(iii) interacts with other provisions of the final rule.

Comment 19(f)(2)(iii)–1.i makes a technical revision and omits language from the example in proposed comment 19(f)(2)(iii)–1.i that would have illustrated the discovery of a fee change on the 28th day after consummation. This example is inapplicable in light of the revision to the timing requirement in § 1026.19(f)(2)(iii). Comment 19(f)(2)(iii)–1.ii makes a technical revision and revises the example of proposed comment 19(f)(2)(iii)–1.ii in which transfer taxes owed to the State differ from those previously disclosed to illustrate the timing requirements of final § 1026.19(f)(2)(iii) and the interaction of this provision with final § 1026.19(f)(2)(v) in which a cure for a tolerance violation is provided.

Comment 19(f)(2)(iii)–1.iii modifies the example in proposed comment 19(f)(2)(iii)–1.iii, in which a $500 nuisance abatement assessment is discovered after consummation. The comment revises the example to illustrate a scenario in which the post-consummation event does not result in a change to an amount actually paid by the consumer, but does result in such a change for the seller, pursuant to § 1026.19(f)(4)(ii). Comment 19(f)(2)(iii)–1.iv includes revised language to clarify further the example in which the municipality in which the property is located raises property tax rates ten days after consummation. The comment clarifies that the scenario illustrated is one in which property taxes are raised ''effective after the date on which the settlement concludes.'' The comment explains that § 1026.19(f)(2)(iii) does not require the creditor to provide the consumer with corrected disclosures because the increase in property tax rates is not in connection with the settlement of the transaction.

Final § 1026.19(f)(2)(iii) and its associated commentary will prevent circumvention and evasion of, and will facilitate compliance with, TILA, by ensuring that consumers receive corrected disclosures of the final terms and costs of the transaction, consistent with section 105(a) of TILA. The final rule and commentary are also adopted pursuant to the Bureau's authority to implement section 4 of RESPA, consistent with section 19(a) of RESPA.

19(f)(2)(iv) Changes Due to Clerical Errors

Regulation X § 1024.8(c) generally provides that an inadvertent or technical error in completing the RESPA settlement statement shall not be deemed a violation of section 4 of RESPA if a revised settlement statement is provided within 30 calendar days after settlement. Section 130(c) of TILA provides that creditors and assignees cannot be liable for bona fide errors, including clerical errors. TILA section 130(b) contains a general cure provision, which relieves creditors of civil liability under certain circumstances, including if, within 60 days of identifying an error, the creditor notifies the person concerned and makes whatever adjustments are necessary.[247] RESPA does not contain a general cure provision. Proposed § 1026.19(f)(2)(iv) would have provided that a creditor does not violate § 1026.19(f)(1)(i) if the disclosures contain non-numeric clerical errors, provided the creditor delivers corrected disclosures as soon as reasonably practicable and no later than 30 days after consummation. The Bureau proposed this provision pursuant to its authority under sections 105(a) of TILA and 19(a) of RESPA. Proposed comment 19(f)(2)(iv)–1 would have clarified that clerical errors are errors such as typographical errors, or other minor errors that do not affect the amount owed by the consumer. The Bureau solicited feedback on whether the regulations should provide flexibility for numeric clerical errors, and how such flexibility could be provided without undermining the reliability of the disclosures provided to consumers at or before consummation.

Comments

Commenters requested that the Bureau provide more definitions and clarification of § 1026.19(f)(2)(iv). Two consumer advocacy groups submitting a joint comment requested that the Bureau clarify that a clerical error under § 1026.19(f)(2)(iv) should not include any error regarding the ''actual terms of the transaction.'' They also stated that if an error is discovered before consummation, a revised disclosure should be provided no later than consummation. The commenters recommended that the final rule include in commentary an example of a non-numeric error that would not be considered ''clerical'' that would require redisclosure before consummation.

A GSE explained that it is not uncommon that clerical errors are noticed months after consummation when a loan file undergoes quality-control review by a secondary market investor. The commenter recommended that the timing of § 1026.19(f)(2)(iv) should be harmonized with § 1026.19(f)(2)(iii), and that creditors should be required to provide a revised disclosure within seven business days of being notified of the error, regardless of how long after consummation the error was discovered. A trade

[247] ''A creditor or assignee has no liability under this section or section 108 or section 112 for any failure to comply with any requirement imposed under this chapter or chapter 5, if within sixty days after discovering an error, whether pursuant to a final written examination or notice issued under section 108(e)(1) or through the creditor's or assignee's own procedures, and prior to the institution of an action under this section or the receipt of written notice of the error from the obligor, the creditor or assignee notifies the person concerned of the error and makes whatever adjustments in the appropriate account are necessary to assure that the person will not be required to pay an amount in excess of the charge actually disclosed, or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower.'' 15 U.S.C. 1640(b).

association representing banks requested that the cure period be extended from 30 days to 90 days to account for quality control cycles.

In addition to non-numeric errors, commenters requested that the rule address numeric errors. A large bank requested that new exception should be added for redisclosures required due to numerical typographical errors, without any dollar amount or other threshold. A title insurance company stated that the rule should provide flexibility for ''numeric clerical errors,'' subject to the Bureau's promulgation of a specific definition of the term and providing specific examples. The commenter recommended that the final rule include a definition of ''numeric clerical errors'' limited to inadvertent misstatements of charges known by or previously disclosed to the consumer, where the creditor can document such knowledge. Another title insurance company commenter recommended that numeric errors include errors that do not affect the consumer. A title insurance company stated that, for overstatement and understatement errors, creditors should be required to provide a revised Closing Disclosure within the timeframe under § 1026.19(f)(2)(iv). A title insurance company stated that, for understatement errors, creditors should provide a revised Closing Disclosure at or before consummation and be able to collect additional amounts owed by the consumer, subject to the proposed $100 de minimis threshold.

A large bank requested that the final rule exempt numerical typographical errors, without regard to any dollar amount or threshold, such as when a fee correctly stated on the Loan Estimate as a $2,000 fee is mistakenly stated on the initial Closing Disclosure as a $200 fee. A trade association representing banks suggested that, if a fee is listed in the wrong category of the Closing Disclosure, but the correct amount is disclosed, a corrected Closing Disclosure should be provided at consummation.

Final Rule

Final § 1026.19(f)(2)(iv) is adopted substantially as proposed. The final rule provides a 60-day period for providing corrected disclosures and omits the requirement that creditors provide revised disclosures ''as soon as reasonably practicable.'' The final rule adopts comment 19(f)(2)(iv)–1 substantially as proposed, modified as discussed above and to conform to the final rule.

By finalizing 1026.19(f)(2)(iv), the Bureau does not intend to modify the scope or applicability of TILA section 130(b) or (c), which sets forth treatment for errors related to certain disclosures. The proposal would have incorporated existing requirements in Regulation X that clarify whether certain technical errors constitute a violation of RESPA section 4. By finalizing this requirement in § 1026.19(f)(2)(iv), the Bureau intends only to clarify that a creditor does not violate § 1026.19(f)(1)(i) if the creditor corrects a non-numeric clerical error within the first 60 days of consummation. The Bureau does not intend to affect statutory liability provisions for other types of errors. Thus, the Bureau does not believe it is necessary to define numeric errors and address how they must be cured in § 1026.19(f)(2)(iv).

Moreover, the Bureau does not believe it would be appropriate to create a category of ''numeric clerical errors,'' such as those limited to inadvertent misstatements of charges known by or previously disclosed to the consumer where the creditor can document such knowledge. The Bureau does not believe the fact that a charge was disclosed in a different manner to a consumer before an incorrect disclosure was provided is material for purposes of classifying a clerical error. The Bureau is concerned such a classification could undermine the value of the disclosures, which consumers should be able to rely on for accuracy. The Bureau also declines to classify errors based on whether they include errors that affect the consumer. The disclosures required under § 1026.19(f)(1)(i) are required because they contain information relevant to costs associated with the transaction, which inherently affects the consumer.

The Bureau does not believe correcting non-numeric clerical errors will impose a significant compliance burden because curing such errors can be done by providing corrected disclosures rather than making substantial revisions to the consumer's account. The Bureau also notes that it has harmonized the timing requirements for providing corrected disclosures under 1026.19(f)(2)(v) in the final rule, to require that creditors deliver corrected disclosures documenting a cure for tolerance violations no later than 60 days after consummation. The Bureau believes this approach will limit the number of corrected disclosures received by consumers and will facilitate compliance with the disclosure requirements.

In response to comments, the final rule includes an example of a non-numeric error in comment 19(f)(2)(iv)–1 that would not be considered ''clerical.'' However, the Bureau declines to clarify that a clerical error does not include any error regarding the actual terms of the transaction because such language could cause confusion. The requirement to disclose the actual terms of the transaction covers a wide array of disclosures and § 1026.19(f)(2)(iv) applies to a narrow set of errors.

The final rule revises the proposed 30-day period to a 60-day period and removes the condition that revised disclosures be provided ''as soon as reasonably practicable.'' The Bureau believes harmonizing the timing requirements with the timing requirements applicable to § 1026.19(f)(2)(v) will facilitate compliance by helping creditors coordinate providing corrected disclosures that also set forth cures for tolerance violations. As discussed in the section-by-section analysis of § 1026.19(f)(2)(v), the Bureau believes a 60-day period is warranted to facilitate compliance in jurisdictions in which settlement may conclude after consummation. The final rule omits the ''as soon as reasonably practicable'' language to set forth a clear deadline for compliance. The Bureau does not believe removing this language or extending the period for providing corrected disclosures will harm consumers because the risk posed by disclosures that contain a non-numeric, clerical error is minimal.

The final rule and commentary use the term ''corrected disclosures'' rather than ''revised disclosures'' to reflect the terminology currently used with respect to the final TILA disclosures in Regulation Z and for greater consistency throughout § 1026.19(f). In addition, for consistency with other provisions of § 1026.19(f), the final rule also requires the creditor deliver or place in the mail a corrected Closing Disclosure.

Final § 1026.19(f)(2)(iv) and comment 19(f)(2)(iv)–1 will prevent circumvention and evasion of, and will facilitate compliance with, TILA, by ensuring that consumers receive corrected disclosures consistent with section 105(a) of TILA. The final rule and commentary also will result in the elimination of kickbacks, referral fees, and other practices that tend to increase unnecessarily the costs of certain settlement services by ensuring that the consumer's records correctly reflect the terms, payments, and entities involved in the transaction, consistent with section 19(a) of RESPA.

19(f)(2)(v) Refunds Related to the Good Faith Analysis

Neither RESPA nor Regulation Z expressly requires creditors to refund money to the consumer based on

variations between the disclosed estimated costs of settlement services and the amounts for such settlement services actually paid by the consumer at consummation. Regulation X § 1024.7(i), however, provides that a lender or mortgage broker violates section 5 of RESPA if any charges at settlement exceed the charges listed on the RESPA GFE by more than the permitted tolerances, provided, however, that the loan originator may cure the tolerance violation by reimbursing to the borrower the amount by which the tolerance was exceeded at settlement or within 30 calendar days after settlement. As noted above, section 130 of TILA has a similar provision, with respect to civil liability, which relieves creditors and assignees of civil liability under certain circumstances, including if, within 60 days of identifying an error, the creditor notifies the person concerned and makes whatever adjustments are necessary to assure that the person will not be required to pay an amount in excess of the charge actually disclosed.

Accordingly, proposed § 1026.19(f)(2)(v) would have provided that, if amounts paid by the consumer exceed the amounts specified under § 1026.19(e)(3)(i) or (ii), the creditor complies with § 1026.19(e)(1)(i) if the creditor refunds the excess to the consumer as soon as reasonably practicable and no later than 30 days after consummation, and the creditor complies with § 1026.19(f)(1)(i) if the creditor provides revised disclosures that reflect such refund as soon as reasonably practicable and no later than 30 days after consummation. The Bureau proposed this provision pursuant to its authority under sections 105(a) of TILA, 19(a) of RESPA, and, with respect to residential mortgage loans, section 1405(b) of the Dodd-Frank Act.

Proposed comment 19(f)(2)(v)–1 would have discussed refunds related to the good faith analysis. The proposed comment would have explained the requirement under § 1026.19(f)(2)(v) providing that, if amounts paid by the consumer exceed the amounts specified under § 1026.19(e)(3)(i) or (ii), the creditor does not violate § 1026.19(e)(1)(i) if the creditor delivers disclosures revised to reflect the refund of such excess as soon as reasonably practicable and no later than 30 days after consummation. This proposed comment also would have included illustrative examples of these requirements.

Comments

Several commenters believed that the cure period was too narrow, would not give creditors sufficient time to conduct audit reviews or provide an incentive to cure violations after the 30-day period, and appeared arbitrary. Commenters explained that mortgage lending is a cyclical business and a 30-day period would be too short when lending is active. A large bank commenter stated that a 30-day period could prove impracticable when a creditor is reviewing loans purchased from a correspondent lender. The commenter stated that the Bureau proposed to adopt the Regulation X 30-day cure period but did not explain why it did not adopt TILA's cure period or offer any data that would suggest the period under TILA section 130 did not provide adequate consumer protection.

Bank and trade associations representing banks and financial companies also requested that the cure period be measured from the discovery of an error rather than from consummation, consistent with TILA section 130. Commenters explained that certain violations are known at or before consummation, so the cure period would be measured from that point in time. Commenters also explained that cure periods measured more than 30 days from consummation would provide an incentive for creditors to correct errors discovered as part of quality control testing that occurs more than 30 days after consummation. One large bank commenter recommended that cures be provided within 30 days of discovery of an error. A community bank holding company commenter stated that a 90-day period would give creditors additional time to conduct audit reviews. A large bank and a trade association representing banks and financial companies recommended a cure period from the date an error is discovered, consistent with TILA section 130. Several commenters recommended a 60-day cure period measured from the discovery of an error. A trade association representing banks and financial companies, a community bank, and a law firm commenter believed that a 90-day cure period was appropriate, for example, to account for periods of more active mortgage lending and in light of changes in industry practice that have extended quality control periods to comply with additional regulations. A trade association representing banks and financial companies requested that the final rule distinguish between intentional and unintentional violations and that an extended cure period be permitted for unintentional violations.

A consumer advocacy group commenter stated that creditors should be limited to correcting errors before litigation or rescission, and that the final rule should clarify that creditors may only correct errors before the consumer notifies the creditor of an error. The commenter explained that, absent clarification, there would likely be litigation over what constitutes a good faith error and what notice to a creditor triggers the time period for the creditor to correct the error without facing liability. The commenter believed that such a rule would help consumers exercise the right of rescission because it would prevent creditors from making a correction to avoid triggering rescission rights. The commenter also requested that the final rule contain a presumption that systemic errors are not good faith errors because such errors are unlikely to arise in the presence of adequate policies and procedures.

Two consumer advocacy groups submitting a joint comment requested clarification on how refunds would be provided to prevent unjust enrichment by creditors that exceed the good faith estimate tolerances when a consumer finances closing costs. The commenters were concerned that, if the creditor simply issues a cash refund, the consumer would continue paying interest on the financed closing costs. The commenters set forth an example in which a borrower finances $100 of closing costs in a 30-year mortgage loan having an eight percent fixed annual rate, and the creditor sends the consumer a $100 refund check, illustrating that the creditor will still earn $240 on that refund over the life of the loan unless the borrower sends an extra $100 payment to her mortgage servicer.

The commenters explained that typical consumers are unlikely to realize they must use the refund check to pay down the loan to avoid being charged additional interest. The commenters recommended that the final rule add a requirement specifying that, whenever a consumer finances any closing costs, the creditor must apply any refund as a credit against the principal balance of the loan, up to the amount of closing costs financed.

Commenters also requested clarification on the mechanics for tolerance cures. A community bank commenter asked whether a revised Closing Disclosure must be provided with the refund. A trade association representing banks and financial companies requested that the final rule clarify whether settlement agents may

cure a tolerance violation. A law firm commenter asked that the final rule clarify that a person's non-compliance with the rule during the cure period would not constitute a violation.

Final Rule

The Bureau has considered the comments on this issue and has determined to finalize § 1026.19(f)(2)(v) with a 60-day period as the deadline for providing refunds for tolerance cures and corrected disclosures reflecting the refund. While Regulation X § 1024.7(i) permits loan originators to cure tolerance violations by reimbursing to the borrower the amount by which the tolerance was exceeded at settlement or within 30 calendar days after settlement, the Bureau believes a 60-day period, measured from consummation, is warranted in light of the revisions to § 1026.19(e)(3) with respect to the good faith estimate requirements and to § 1026.19(f)(2)(iii) with respect to post-consummation events.

Under § 1026.19(e)(3)(i), an estimated closing cost disclosed pursuant to § 1026.19(e) is in good faith if the charge paid by or imposed on the consumer does not exceed the amount originally disclosed under § 1026.19(e)(1)(i), except as otherwise provided in § 1026.19(e)(3)(ii) through (iv). Comment 19(e)(3)(i)–2 clarifies that, for purposes of § 1026.19(e), a charge ''paid by or imposed on the consumer'' refers to the final amount for the charge paid by or imposed by the consumer at consummation or settlement, whichever is later. Thus, in jurisdictions where settlement occurs after consummation, some tolerance violations may not be known until some time after consummation. The Bureau believes creditors in those jurisdictions should be permitted to have sufficient time to provide refunds for tolerance violations that may not be known until after consummation, and that a 60-day period after consummation will account for jurisdictions in which settlement occurs after consummation.

Because Regulation X currently provides creditors a 30-day period after ''settlement'' to cure tolerance violations, the Bureau believes a 60-day period after consummation under the final rule will give all creditors sufficient time to cure tolerance violations. As discussed in the section-by-section analysis of § 1026.19(f)(2)(iii), creditors may need to make revisions for subsequent events occurring within 30 days after consummation. Because a revision under § 1026.19(f)(2)(iii) may result in a tolerance violation, the Bureau believes it is necessary to ensure creditors have a 30-day period to cure such violations and provide corrected disclosures.

The Bureau believes that providing creditors with sufficient time to obtain revised cost information, revise the integrated disclosures, prepare payments for such revised costs or the cures to be paid to consumers, and deliver such payments to consumers will facilitate compliance and ensure accurate disclosures and payments for consumers. The final rule also removes the condition that refunds and revised disclosures be provided ''as soon as reasonably practicable,'' which the Bureau believes will facilitate compliance by establishing a bright-line standard by which revised disclosures must be mailed or delivered.

The Bureau does not believe lengthening the cure period to 60 days after consummation will significantly undermine an existing consumer protection because it is synchronous with the cure period under TILA section 130(b) for errors corrected within 60 days of discovery of the error and because the cure will be provided in the form of a refund. The final rule does not extend the cure period further than 60 days after consummation or measure it from a date other than consummation. The Bureau believes that doing so would undermine the incentive for creditors to conduct quality control reviews as soon as reasonably practicable after consummation. In addition, the Bureau notes that creditors currently must provide tolerance cures within 30 days of settlement under Regulation X § 1024.7(i). Accordingly, a 60-day period after consummation may ease burden on creditors.

The final rule does not adopt different rules for curing intentional and unintentional violations. While TILA section 130(c) contains special liability provisions for unintentional violations, the Bureau does not believe it would be appropriate to condition tolerance cures based on whether a violation was intentional. The Bureau believes an objective, bright-line standard serves the interests of consumers, the supervisory activities of regulatory agencies, and industry compliance better than a timing standard that depends on a fact-intensive inquiry.

The final rule does not expressly limit a creditor's ability to correct errors to situations before a consumer has notified the creditor of the error. The Bureau has determined to follow the current Regulation X cure provision for increases beyond the limitations set forth in § 1026.19(e)(3), which does not contain the type of limitation requested by the commenter. As noted above, the Bureau is not seeking to alter the liability provisions under TILA.

For the aforementioned reasons, the final rule adopts a 60-day period for curing tolerance violations and providing revised disclosures. The final rule removes the proposed requirement that the disclosures be provided ''as soon as reasonably practicable.'' Final § 1026.19(f)(2)(v) provides that, if amounts paid by the consumer exceed the amounts specified under § 1026.19((e)(3)(i) or (ii), the creditor complies with § 1026.19(e)(1)(i) if the creditor refunds the excess to the consumer no later than 60 days after consummation, and the creditor complies with § 1026.19(f)(1)(i) if the creditor delivers or places in the mail corrected disclosures that reflect such refund no later than 60 days after consummation. The Bureau adopts comment 19(f)(2)(v)–1, revised to conform to the final rule. In addition, for clarity, the example in the comment has been modified to use the term ''consummation'' instead of ''closing,'' and explains how the creditor in this example complies with § 1026.19(e)(1)(i) and (f)(1)(i) where a tolerance cure and corrected disclosures must be provided. The final rule and commentary use the term ''corrected disclosures'' rather than ''revised disclosures'' to reflect the terminology currently used with respect to the final TILA disclosures in Regulation Z and for greater consistency throughout § 1026.19(f). In addition, for consistency with other requirements under § 1026.19(f), the final rule requires the creditor to deliver or place in the mail the corrected Closing Disclosure.

Commenters asked whether settlement agents may cure tolerance violations. Under the final rule, although creditors are responsible for complying with the good faith tolerance requirements and are responsible for providing cures, *see* § 1026.19(e)(3), settlement agents may provide revised disclosures in accordance with § 1026.19(f)(1)(v).

Commenters asked how tolerance cures would be documented on revised disclosures, and some commenters requested that the final rule provide clarification on how refunds must be provided in the event that a creditor exceeds tolerances when a consumer finances closing costs. If the amounts paid by the consumer exceed the amounts specified under § 1026.19(e)(3)(i) or (e)(3)(ii), § 1026.19(f)(2)(v) requires the creditor to refund the excess to the consumer. Comment 19(f)(2)(v)–1 includes a cross-reference to comment 38(h)(3)–2, which provides guidance on disclosing

refunds. With respect to providing refunds where closing costs are financed, as described by commenters, the Bureau does not believe it is practicable to provide guidance on the variety of situations in which refunds may be provided, particularly because consumers may have different preferences for how they wish to apply refunds.

A commenter asked that the final rule clarify that a person's non-compliance with the rule during the cure period would not constitute a violation. Final § 1026.19(f)(2)(v) provides that if amounts paid by the consumer exceed the amounts specified under § 1026.19(e)(3)(i) or (ii), the creditor complies with § 1026.19(e)(1)(i) if the creditor refunds the excess to the consumer no later than 60 days after consummation, and the creditor complies with paragraph § 1026.19(f)(1)(i) if the creditor delivers or places in the mail corrected disclosures that reflect such refund no later than 60 days after consummation. Thus, creditors do not violate § 1026.19(e) or (f) in connection with the refund changing the disclosures if they provide corrected disclosures in accordance with the timeframe in the final rule.

This final rule and commentary will enable meaningful disclosure of credit terms, prevent circumvention and evasion of TILA, and will facilitate compliance with TILA by enabling creditors to refund amounts collected in excess of the good faith requirements, consistent with TILA section 105(a). This also will result in the meaningful advance disclosure of settlement costs and the elimination of kickbacks, referral fees, and other practices that tend to increase unnecessarily the costs of certain settlement services by enabling creditors to refund amounts collected in excess of the good faith requirements, thereby furthering the meaningfulness and reliability of the estimated disclosures, consistent with section 19(a) of RESPA.

19(f)(3) Charges Disclosed

19(f)(3)(i) Actual Charge

Section 4 of RESPA provides that the settlement statement shall contain ''all charges imposed upon the borrower'' in connection with the settlement. 12 U.S.C. 2603(a). Regulation X § 1024.8(b)(1) currently provides the general rule that the settlement agent shall state the actual charges paid by the borrower and seller on the RESPA settlement statement. The Bureau proposed § 1026.19(f)(3)(i), which would have provided that the amount imposed upon the consumer for any settlement service shall not exceed the amount actually received by the service provider for that service, except if the charge is an average charge, as provided under § 1026.19(f)(3)(ii). The Bureau proposed this provision pursuant to its authority under section 105(a) of TILA, section 19(a) of RESPA, Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b).

Proposed comment 19(f)(3)(i)–1 would have explained that § 1026.19(f)(3)(i) provides the general rule that the amount imposed upon the consumer for any settlement service shall not exceed the amount actually received by the service provider for that service. The comment would have explained further that, except as otherwise provided in § 1026.19(f)(3)(ii), a creditor violates § 1026.19(f)(3)(i) if the amount imposed upon the consumer exceeds the amount actually received by the service provider for that service.

The Bureau explained that the proposed rule would prevent circumvention and evasion of, and will facilitate compliance with, TILA by requiring disclosure of the actual terms and costs of the transaction, consistent with section 105(a) of TILA. The Bureau also explained that the proposed rule would implement the requirements of RESPA section 4, pursuant to the Bureau's implementation authority under RESPA section 19(a), which also would result in the elimination of kickbacks, referral fees, and other practices that tend to increase unnecessarily the costs of certain settlement services, consistent with RESPA sections 2(b) and 8. The Bureau explained that the proposed rule also would ensure that the features of the consumer's mortgage loan are fully and accurately disclosed to the consumer, consistent with Dodd-Frank Act section 1032(a). The Bureau further explained that the proposed rule would improve consumer awareness and understanding of transactions involving residential mortgage loans and is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

The Bureau received few comments on this aspect of the proposal. A trade association representing banks explained that the proposed rule appears to impose a zero tolerance on charges imposed on consumer, unless average charges are used. The commenter explained that, under Regulation Z § 1026.4(c)(7), certain third-party fees are excluded from the finance charge if they are ''bona fide.'' The commenter explained that creditors have some protection against inadvertent mistakes because of the $100 finance charge tolerance under § 1026.18(d)(1). The commenter recommended that the final rule include a $100 tolerance, adjusted annually, for charges disclosed on the Closing Disclosure. One individual escrow agent requested that the Bureau clarify how settlement agents must balance their accounts if the amount of the title policy is not the actual premium. The Bureau has addressed questions with respect to specific disclosures in the applicable section-by-section analyses of § 1026.38.

The Bureau has considered the comment from the trade association and has determined to adopt the § 1026.19(f)(3)(i) and its associated commentary substantially as proposed, under the authority described in the proposal, with technical revisions to amend the reference to ''service provided,'' and refers instead to ''settlement service provider'' for clarity. The final rule does not include a $100 tolerance for settlement charges that may be inaccurately disclosed. The charges disclosed on the Closing Disclosure are subject to the accuracy standards in § 1026.19(f)(1)(i). In addition, the final rule affords creditors more flexibility with respect to events occurring after consummation that make the previous disclosures inaccurate. In addition, as noted above, the Bureau does not intend to alter the existing provisions under TILA section 130 regarding the curing of errors by creditors.

19(f)(3)(ii) Average Charge

As part of HUD's 2008 RESPA Final Rule, HUD adopted a limited exception to the requirement that the settlement statement shall contain the amount imposed on the borrower, which shall not be more than the amount received by the settlement service provider. *See* 12 U.S.C. 2603(a), 2607(b). Under current Regulation X, a lender or settlement service provider may charge more for a settlement service than the amount paid for that service if the charge is an average charge. Specifically, Regulation X § 1024.8(b) provides that the average charge for a settlement service shall be no more than the average amount paid for a settlement service by one settlement service provider to another settlement service provider on behalf of borrowers and sellers for a particular class of transactions involving federally related mortgage loans, and that the total amounts paid by borrowers and sellers for a settlement service based on the use of an average charge may not exceed the total amounts paid to the providers of

that service for the particular class of transactions.

Section 1024.8(b)(2) also provides that, the settlement service provider shall define the particular class of transactions for purposes of calculating the average charge as all transactions involving federally related mortgage loans for a period of time as determined by the settlement service provider, but not less than 30 calendar days and not more than six months, a geographic area as determined by the settlement service provider, and a type of loan as determined by the settlement service provider. Regulation X also requires a settlement service provider to use an average charge in the same class of transactions for which the charge was calculated, and if the settlement service provider uses the average charge for any transaction in the class, then the settlement service provider must use the same average charge in every transaction within that class for which a RESPA GFE was provided. *Id.* Regulation X prohibits the use of an average charge for any settlement service if the charge for the service is based on the loan amount or property value, such as transfer taxes, interest charges, reserves or escrow, or any type of insurance, including mortgage insurance, title insurance, or hazard insurance, and also requires the settlement service provider to retain all documentation used to calculate the average charge for a particular class of transactions for at least three years after any settlement for which that average charge was used. *Id.*

Proposed § 1026.19(f)(3)(ii) would have provided that a creditor or settlement service provider may charge a consumer or seller the average charge for a settlement service if the average charge is no more than the average amount paid for that service by or on behalf of all consumers and sellers for a class of transactions, the creditor or settlement service provider defines the class of transactions based on an appropriate period of time, geographic area, and type of loan, the creditor or settlement service provider uses the same average charge for every transaction within the defined class, and the creditor or settlement service provider does not use an average charge for any type of insurance, for any charge based on the loan amount or property value, or if doing so is otherwise prohibited by law. The Bureau proposed this provision pursuant to its authority under section 105(a) of TILA and 19(a) of RESPA.

Proposed comment 19(f)(3)(ii)–1 would have explained that average-charge pricing is the exception to the rule in § 1026.19(f)(3)(i) that consumers shall not pay more than the exact amount charged by a settlement service provider for the performance of that service. The comment would have clarified that, if the creditor develops representative samples of specific settlement costs for a particular class of transactions, the creditor may charge the average cost for that settlement service instead of the actual cost for such transactions, and that an average-charge program may not be used in a way that inflates the cost for settlement services overall.

Proposed comment 19(f)(3)(ii)–2 would have explained how an appropriate period of time, geographic area, and type of loan may be defined, and provided illustrative examples of issues a person may encounter when defining an appropriate geographic area and an appropriate type of loan. Proposed comment 19(f)(3)(ii)–3 would have provided further explanation related to the requirement that if a creditor chooses to use an average charge for a settlement service for a particular loan within a class, then the creditor must use that average charge for that service on all loans within the class. Proposed comment 19(f)(3)(ii)–3 also would have provided examples illustrating the uniform use requirement. Proposed comment 19(f)(3)(ii)–4 would have illustrated the requirement that the average charge must be calculated according to the average amount paid for a settlement service in a prior period, and clarifies that updates to the average charge may be delayed for an amount of time sufficient to re-calculate the average charge, provided that such delays are applied uniformly from one time period to the next.

Proposed comment 19(f)(3)(ii)–5 would have discussed the requirement that the total amount of average charges paid by consumers for settlement services may not exceed the total amount paid for those settlement services overall. The Bureau explained in the proposal that it has received extensive feedback from industry that this requirement, which currently exists under RESPA and Regulation X, has impeded industry adoption of average charge pricing. The Bureau stated its belief that prohibiting industry from collecting more money than is actually paid to settlement service providers means that industry cannot actually average costs over time, and must instead operate at a loss in the long term if industry chooses to use average charge pricing. The Bureau explained that it believed that the use of average-charge pricing promotes greater reliability for consumers. Therefore, the Bureau sought to address this concern to facilitate the adoption of average charge pricing. Proposed comment 19(f)(3)(ii)–5 would have addressed this issue and discussed the ways in which a person may comply with this requirement. The comment would have clarified that a person may refund the excess amounts collected or may factor in the excesses when determining the average charge for the next period. In addition, the comment would have clarified that a person also may comply by establishing a rolling monthly period of re-evaluation, and that a person complies by re-calculating the average amount every month, and will be deemed to be in compliance with sections 4 and 8 of RESPA if the person uses this method, even if the person collects more for settlement services than the total amount paid for those settlement services over time.

Proposed comment 19(f)(3)(ii)–6 would have explained that adjustments to the average charge based on prospective analysis are permitted if the creditor or settlement service provider develops a statistically accurate and reliable method for doing so. However, the Bureau explained in the proposal that it was concerned that prospective adjustments may not be practicable in the context of determining average charges. Accordingly, the Bureau sought comment on whether such a provision is appropriate.

Proposed comment 19(f)(3)(ii)–7 would have discussed the requirement that average charges may not be used for insurance premiums or for items that vary according to the loan amount or property value, such as transfer taxes. Proposed comment 19(f)(3)(ii)–8 would have clarified that an average charge may not be used where prohibited by any applicable State or local law. Proposed comment 19(f)(3)(ii)–9 would have explained how the recordkeeping requirements in § 1026.25 apply to the documents related to the calculation of average charge.

The Bureau proposed § 1026.19(f)(3)(ii) pursuant to its authority under section 105(a) of TILA and 19(a) of RESPA. HUD adopted average-charge pricing pursuant to its authority under section 19(a) of RESPA after finding that average-charge pricing would benefit consumers by lowering settlement costs and enabling more effective advance disclosure of such costs, consistent with RESPA sections 2(b), 4, 5, 8(c)(5), and 19(a).[248] In

[248] *See* 73 FR 14030, 14051–14052 (March 14, 2008). Section 8(c)(5) of RESPA provided that, ''Nothing in this section shall be construed as

addition to this authority, the Bureau explained that proposed § 1026.19(f)(3)(ii) would prevent circumvention and evasion of, and will facilitate compliance with, TILA, consistent with section 105(a) of TILA. The Bureau further stated that the proposed regulation would improve consumer awareness and understanding of the transaction, which would be in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

Comments

Trade associations representing banks were concerned that, if average cost pricing methodology cannot be used for small differences for different populations, they doubted whether it would be useful. Commenters were concerned that proposed comment 19(f)(3)(ii)–2 language appeared to require the creditor or settlement service provider to perform statistical analysis to determine what the median prices would be for a service, depending upon how the class was defined and whether there was a ''normal distribution'' of costs within a class. Commenters were concerned that the burden of conducting such analysis did not appear to have a reasonable relationship to any potential consumer benefit. Commenters also stated that, once a statistical analysis is complete, the proposed rule did not offer guidance on what level of difference in prices within a class would be acceptable.

Trade associations representing banks and financial companies explained that it was not clear under either the current or proposed rule when services are considered separate services, such as whether different types of credit reports or different types of appraisals and valuations can be considered the same service. Commenters recommended that the creditor either be able to treat these as the same type of service or as different types of services. Commenters also requested guidance on how to the rule would apply when there are intermediate settlement service providers, such as when a creditor uses multiple appraisal management companies that, in turn, use many different appraisers, or when a creditor uses more than one title company, each of which uses many subproviders to provide title-related services.

Trade associations representing banks and financial companies asked, if an average charge is paid by the consumer but the settlement service provider received a different amount, whether the amount disclosed should be the actual amount paid to the service provider or the average amount charged to the consumer. Commenters observed that disclosing the actual amount paid to the provider would be a compliance burden and confusing to the consumer. They recommended that, where the consumer pays an average charge, the amount disclosed should be the average charge.

A trade association representing settlement agents supported the proposed rule's average charge pricing rules and explained that it found the detailed direction on the computation and use of an average charge helpful. The commenter requested that current Regulation X provisions on average charge pricing be supplanted by the TILA provisions of the proposed rule.

A title insurance company commenter supported the inclusion of proposed comment 19(f)(3)(ii)–6, which would have explained that a creditor may prospectively adjust average charges if it develops a statistically reliable and accurate method for doing so. The commenter explained that a prospective analysis adjustment procedure, based on a statistically accurate and reliable method, provides a way to charge an average charge that is more reflective of the actual cost incurred and is more equitable to consumers. The commenter provided an example in which, for winter-weather States, the charge for a survey obtained during the months of October through March may be 25 percent higher than the charge for a survey obtained during the months of April through September. The commenter was concerned that, if a prospective analysis was not permitted, consumers obtaining a survey during winter months would pay an average charge calculated retrospectively, and based on lower prices before winter. Similarly, if a prospective analysis was not permitted, consumers obtaining a survey during summer months would pay an average charge calculated retrospectively, and based on higher prices before the summer. The commenter was concerned that this would lead to inequitable outcomes for some consumers and would provide a disincentive to the creditor or settlement service provide to use the average charge methodology.

The title insurance company commenter also explained that a prospective adjustment methodology would be able to account for unusual situations where there is a known unilateral increase or decrease in the actual cost of a particular third-party settlement service. The commenter gave an example in which a new law was to take effect January 1 that would result in an across-the-board increase of $50 per transaction in recording fees. Without a prospective adjustment for this expected change, the $50 per transaction recording fee actual cost would have to be absorbed by the creditor or settlement agent for the initial time period of up to six months and would never be recovered. The commenter also explained that, conversely, if the law would result in an across-the-board decrease of $50 per transaction in recording fees, an inability to use a prospective adjustment methodology would result in a windfall to the creditor or settlement agent for the initial time period at the expense of the consumer.

The commenter did not believe prospective adjustments would be impracticable in the context of determining average charges if, as proposed, documentation would have to be provided to support all average charge determinations. Recordkeeping requirements would provide data for seasonal variations and would ensure average charges are not prospectively adjusted at will.

The commenter requested that the Bureau provide guidance on who will determine the average recording charges, noting that ''alternative 1'' to proposed § 1026.19(f) (in which the creditor would have been solely responsible for providing the Closing Disclosure) would raise questions about whether the creditor would be required to pay the actual recording charge to the settlement agent or if the settlement agent would establish the average charge for recording fees. The commenter was concerned that, if the Bureau selected ''alternative 2'' (in which responsibility for proposed § 1026.19(f) could be divided between settlement agents and creditors), it may be difficult for settlement agents to establish the average recording charges because they also would be the party paying the actual recording charge as necessary to record the documents. The commenter requested that the Bureau provide guidance on these situations.

Final Rule

The Bureau has considered the comments received regarding the proposed average charge pricing provisions. Some commenters were concerned that burdensome statistical analysis would be required to use average charge pricing under the final rule. The final rule does not require that creditors or settlement service providers engage in statistical analysis to

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).

determine whether the class of transactions that serves as the basis for the average charge is based on an appropriate geographic area and loan type.

The Bureau does not believe it will be unreasonably burdensome for creditors or settlement service providers to assess whether a geographic area or loan type are defined using subgroups that clearly have distinct cost characteristics. The average cost pricing rules are not requirements, but are intended to provide creditors flexibility from the general requirement that the actual amount imposed on the consumer may not exceed the amount received by the settlement service provider. To the extent an average charge is imposed that exceeds the cost actually received by a settlement service provider, the Bureau believes it is reasonable to expect creditors to ensure the average charge is not derived from distinct markets. Deriving an average charge from a class composed of subgroups that have distinct cost characteristics would mean that a charge could be unfairly inflated and applied in a way that disadvantages certain populations.

Creditors relying on such charges must ensure that classes of transactions are defined in a way that complies with § 1026.19(f)(3)(ii). While the Bureau does not expect that the average cost pricing rules will require the use of expensive statistical analysis, creditors relying on such charges likely will need to review the distribution of charges in a class of transactions to ensure averages are not derived from populations that have dissimilar cost characteristics.

Commenters requested that the rule clarify when settlement services are considered separate services or how the rule would apply to settlement services that involve intermediate settlement service providers. Final § 1026.19(f)(3)(i) and (ii) sets forth cost disclosure rules with respect to a ''settlement service.'' RESPA section 3(3) defines ''settlement services'' as including ''any service provided in connection with a real estate settlement''; the definition sets forth a number of examples. 12 U.S.C. 2603(3). Similarly, Regulation X defines ''settlement service'' broadly to mean ''any service provided in connection with a prospective or actual settlement, including, but not limited to, any one or more of'' 15 classes of services, such as ''[r]endering of credit reports and appraisals.'' Neither TILA nor Regulation Z includes its own definition of ''settlement service.'' Because of the variety of settlement services and arrangements, the Bureau does not believe it is feasible to add additional specificity to that already provided by RESPA and Regulation X for purposes of the average cost pricing rules.

Creditors should exercise judgment in determining whether particular settlement services are distinct for purposes of calculating average charges, bearing in mind the requirement that an average charge should be no more than the average amount paid for a particular service by or on behalf of all consumers and sellers for a class of transactions. *See* § 1026.19(f)(3)(ii)(A). Creditors should also bear in mind that an average-charge program may not be used in a way that inflates the cost for settlement services overall. Thus, it would be inappropriate to derive an average charge for a settlement service comprised of sub-classes that have dissimilar cost characteristics because the nature of the service provided for each sub-class is clearly distinct. Similarly, where an average charge is applied to settlement services involving intermediary service providers, the appropriateness of an average charge would depend, among other things, on the nature of settlement service provided and how the provider charges for that service.

With respect to the comment recommending that the rule include a prospective adjustment methodology, the Bureau believes that a prospective adjustment methodology will facilitate compliance with the final rule. A prospective adjustment analysis can, in some cases, be a more efficient means of developing an average charge where certain cost increases are predictable using a statistically reliable and accurate method of adjustment. With respect to the comment requesting that the proposed average charge pricing regulations and commentary be included in Regulation X, such an amendment to Regulation X is outside the scope of this rulemaking.

For the aforementioned reasons and those discussed in the proposal, the Bureau has determined to finalize § 1026.19(f)(3)(ii) as proposed and comments 19(f)(3)(ii)–1 through –9 substantially as proposed. Minor modifications have been made to comments 19(f)(3)(ii)–2.i and –2.ii, which contain illustrative examples of how a creditor could define a geographic area and loan type. Comment 19(f)(3)(ii)–2.i clarifies that, where a geographic area is made up of sub-divisions, the geographic area would be ''appropriately defined'' if the sub-divisions had a relatively normal distribution of appraisal costs, even if the distribution ''for each subdivision'' ranges from below $200 to above $1,000. The final rule makes this modification to clarify further the meaning of the comment. A similar modification has been made to comment 19(f)(3)(ii)–2.ii.

In addition, comment 19(f)(3)(ii)–2 has been modified to explain that, for purposes of § 1026.19(f)(3)(ii)(B), a geographic area and loan type are appropriate if the sample size is sufficient ''to calculate average costs with reasonable precision,'' provided that the area and loan type are not defined in a way that aggregates costs between dissimilar populations. This language has been added to clarify the meaning of ''sufficient'' in this context. The comment then gives examples of whether a geographic area and loan type have been defined appropriately. With respect to loan type, comment 19(f)(3)(ii)(B)–2.ii explains that it would not be appropriate to define a loan type that includes two distinct rate products that have different median recording fees, which would reflect dissimilar cost characteristics between the two products. The commentary explains that a loan type could be appropriately defined if both rate products had a ''relatively normal distribution of recording fees,'' even if that distribution ranges between low and high amounts for both loan products. Comment 19(f)(3)(ii)–3.i and –3.ii include minor technical revisions.

Comment 19(f)(3)(ii)–9 has been revised to correct a reference to the document retention period required under § 1026.25. Proposed comment 19(f)(3)(ii)–9 had explained that, to comply with § 1026.25, a creditor must retain all documentation used to calculate the average charge for a particular class of transactions for at least two years after any settlement for which that average charge was used. In accordance with § 1026.25(c)(1), the comment clarifies that documentation must be retained for at least three years after any settlement for which the average charge was used.

Commenters requested clarification on whether, in a situation in which an average charge is paid by the consumer but where the settlement provider received a different amount, the amount disclosed should be the actual amount paid to the service provider or the average amount charged to the consumer. In this case, the charge disclosed would be the average charge, not the actual charge, pursuant to § 1026.19(f)(3)(i) and (ii). The Bureau believes this is consistent with RESPA and Regulation X, which require that the settlement statement disclose charges actually paid by the consumer.

A commenter requested clarification on how § 1026.19(f)(3)(ii) would apply to average charges for recording fees under either ''alternative 1'' or

''alternative 2'' with respect to the party responsible for providing the Closing Disclosure. As discussed in the section-by-section analysis of § 1026.19(f)(1)(v), the Bureau is finalizing ''alternative 2,'' which would permit creditors and settlement agents to share responsibility for complying with § 1026.19(f). If a settlement agent assumes the responsibility for charging a consumer an average charge instead of an actual charge, it must comply with § 1026.19(f)(3)(ii). *See* comment 19(f)(1)(v)–2. Thus, the settlement agent would charge the consumer an average charge for recording fees in compliance with § 1026.19(f)(3)(ii), even if it pays different actual charges to record documents.

Final § 1026.19(f)(3)(ii) and comments 19(f)(3)(ii)–1 through –9 are adopted pursuant to the Bureau's authority under section 105(a) of TILA and 19(a) of RESPA. HUD adopted average-charge pricing pursuant to its authority under section 19(a) of RESPA after finding that average-charge pricing would benefit consumers by lowering settlement costs and enabling more effective advance disclosure of such costs, consistent with RESPA sections 2(b), 4, 5, 8(c)(5), and 19(a). The Bureau agrees with HUD's reliance on these authorities. In addition to these authorities, the Bureau believes the final rule and commentary will prevent circumvention and evasion of, and will facilitate compliance with, TILA, consistent with section 105(a) of TILA. The Bureau believes that the final rule and commentary will improve consumer awareness and understanding of the transaction, which will be in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

19(f)(4) Transactions Involving a Seller

Neither TILA nor Regulation Z contain requirements related to the seller in a purchase transaction. Section 4 of RESPA provides that the integrated disclosure shall conspicuously and clearly itemize ''all charges imposed upon the seller'' in connection with the settlement. 12 U.S.C. 2603(a). Regulation X states that the settlement agent shall provide a completed RESPA settlement statement to any seller at or before the settlement, unless the borrower waives the right to delivery of the RESPA settlement statement at or before settlement, in which case the RESPA settlement statement shall be mailed to the seller as soon as practicable after settlement. *See* 12 CFR 1024.10(b) and (c). Accordingly, the Bureau proposed § 1026.19(f)(4)(i), (ii), and (iii) pursuant to its authority under sections 105(a) of TILA, 19(a) of RESPA, Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b).

Proposed § 1026.19(f)(4)(i) would have provided that in a closed-end consumer credit transaction secured by real property, other than a reverse mortgage subject to § 1026.33, the person conducting the settlement shall provide the seller with the disclosures in § 1026.38 that relate to the seller. Proposed § 1026.19(f)(4)(ii) would have provided that the person conducting the settlement shall provide these disclosures no later than the day of consummation. Under the proposed provision, if an event occurs after consummation that causes such disclosures to become inaccurate, and such inaccuracy results solely from payments to a government entity, the person conducting the real estate closing shall deliver revised disclosures to the seller no later than 30 days after consummation. Proposed § 1026.19(f)(4)(iii) would have provided that the amount imposed upon the seller for any settlement service shall not exceed the amount actually received by the service provider for that service, except for average charges calculated pursuant to § 1026.19(f)(3)(ii).

Proposed comment 19(f)(4)(ii)–1 would have explained that, if an event occurs after consummation that causes such disclosures to become inaccurate and such inaccuracy results solely from payments to a government entity, the person conducting the real estate closing shall deliver revised disclosures to the seller no later than 30 days after consummation. Proposed § 1026.19(f)(4)(i) would have required disclosure of the items that relate to the seller's transaction. Thus, the comment would have explained that the person conducting the real estate closing need only provide revised disclosures if an item related to the seller's transaction becomes inaccurate and such inaccuracy results solely from payments to a government entity. The proposed comment also would have provided illustrative examples of this requirement.

Comments

Commenters expressed mixed views with respect to the requirement to provide a separate seller's form. Some industry commenters noted that a separate seller's form would benefit the consumer and the seller because it would protect the privacy interests of both parties, as well as others. For example, one settlement agent noted that the parties' real estate agents frequently do not want their commissions to be disclosed publicly as part of the transaction. Some commenters also noted that separate forms would facilitate closings because last-minute changes that affect only one party could be accounted for separately. Other industry commenters were concerned that separate disclosures could create confusion and increase burden for creditors and settlement service providers, and potentially raise costs for sellers. A number of these commenters were concerned that a separate disclosure form for the seller would have been required under the proposal, which they believed would be unnecessarily burdensome and complicate closings. Settlement agent and law firm commenters also explained that a separate seller's form would not be in the buyer's or seller's interest because many transactions require a reference to the other party's side of the RESPA settlement statement (for example, to see where seller-paid closing costs are applied).

In addition, many commenters were concerned that a creditor may be responsible for the seller's transaction. They stated that it would not be in the seller's interest for the consumer's creditor to control all aspects of the funding, that creditors owe no duty to the seller, and that creditors lack expertise to complete information about the seller's transaction. A community bank stated that creditors should not have to complete the seller's disclosure, even if the closing is taking place at the creditor's offices; instead, the real estate agent or title company should prepare the form. Real estate agents stated that it would not be appropriate for the buyer's lender to contact the seller's lender for payoff information, and that this information should be obtained by the title company because such information would pose a conflict-of-interest for the creditor. One real estate agent commenter suggested that this would mean a seller would lack representation at the closing table and would need to hire a separate attorney, increasing closing costs.

One settlement agent commenter asked whether the seller should be afforded the same opportunity as the consumer to review the settlement figures three business days prior to closing. However, a community bank explained that, although it should not be a problem to provide the borrower the final closing costs three days in advance, most title companies are not able to provide the seller's figures until the day before closing at the earliest. The commenter noted that third-party lenders do not calculate the seller's payoff statement until right before closing and sometimes attorney fees are

not provided timely. A trade association representing various mortgage industry professionals requested that the Bureau design separate disclosure forms to avoid consumers receiving a Closing Disclosure that combines seller and consumer information. Commenters also asked how settlement performed by the creditor would be documented by the settlement agent for the seller if the creditor delivers the Closing Disclosure.

Trade associations representing banks and financial companies stated that proposed § 1026.19(f)(4)(i) appeared inconsistent with proposed § 1026.19(f)(2)(i). The commenters observed that, while § 1026.19(f)(4)(i) would have provided that ''the person conducting the real estate closing shall provide the seller with the disclosures in § 1026.38 that relate to the seller's transaction,'' proposed § 1026.19(f)(2)(i) would have provided that, if there were changes to the transaction, ''the creditor shall deliver revised disclosures reflecting such changes at or before consummation.''

A variety of settlement agents and trade associations representing settlement agents and banks requested clarification on how a seller's settlement agent would document settlements when the creditor provides the Closing Disclosure, and which document would serve as the ultimate disbursement document.

Final Rule

The Bureau has considered the comments on the proposed provisions regarding disclosure to the seller. The Bureau has determined to finalize the regulation and commentary substantially as proposed, with modifications described below. The Bureau understands commenters' concerns about the inconsistent usage of the terms ''settlement agent'' and ''the person conducting the real estate closing'' between § 1026.19(f)(4) and the other provisions of § 1026.19(f). The final rule revises proposed § 1026.19(f)(4)(i) and (ii) to change the term ''person conducting the real estate closing'' to the term ''settlement agent'' to conform to the usage of that term throughout § 1026.19(f). The Bureau believes this modification will facilitate compliance.

As set forth in § 1026.38, the final rule requires certain information about the seller's transaction because such information is necessary to comply with TILA section 128(a)(17), which requires that the creditor disclose the aggregate amount of settlement charges for all settlement services provided in connection with the loan and the aggregate amount of other fees or required payments in connection with the loan. The Bureau believes this requires disclosure of information about the seller's transaction. In addition RESPA section 4(a) requires that the RESPA settlement statement itemize all charges imposed upon the seller in connection with the settlement.

As discussed in more detail in the section-by-section analysis of 1026.19(f)(1)(v), creditors are permitted to divide responsibility for providing the Closing Disclosure with settlement agents, and the Bureau expects creditors will do so if they believe they cannot accurately or effectively make certain disclosures. The Bureau proposed a separate requirement under § 1026.19(f)(4)(i) for the person conducting the settlement to provide the disclosures in § 1026.38 that relate to the seller's transaction to the seller because the Bureau recognizes that a creditor does not owe a duty to the seller and to account for variations in local law that may require that the seller receive a separate disclosure (*e.g.,* for privacy reasons) or variations in local practice in which a seller and a consumer may not attend settlements in-person or at the same time. This requirement is intended to implement in Regulation Z the RESPA requirement that currently appears in Regulation X. *See* 12 CFR 1024.10(b). To the extent the seller's disclosure contains the same information as the Closing Disclosure, the Bureau does not believe substantial new burden will be created because information from the Closing Disclosure, or the Closing Disclosure itself, could be used. To avoid confusion over whether a separate seller's disclosure must be provided, the Bureau has clarified proposed comment 19(f)(4)(i)–1 to indicate that the settlement agent complies with § 1026.19(f)(4)(i) by providing a copy of the Closing Disclosure provided to the consumer, if it also contains the information under § 1026.38 relating to the seller's transaction, or alternatively providing the disclosures under § 1026.38(t)(5)(v) or (vi), as applicable. See the section-by-section analyses of § 1026.38(t)(5)(v) and (vi) for more discussion of the separate forms that are permitted for transactions involving a seller.

Some commenters were concerned that sellers would be reluctant to provide information to a creditor that may appear on the Closing Disclosure and one commenter explained that creditors should not have to complete the seller's disclosure, even if the closing is taking place at the creditor's offices. Final § 1026.19(f)(4)(i) provides that the settlement agent provides the seller's disclosure, which in most cases will not be the creditor.

With respect to concerns about sellers being reluctant to share their information, the Bureau believes final § 1026.19(f)(1)(v) will allow creditors and settlement agents to manage any conflicts as they arise. The Bureau also observes that Regulation X § 1024.10(b) currently requires, when the borrower's and seller's copies of the RESPA settlement statement differ, that the settlement agent deliver copies of both the borrower's and seller's copies of the RESPA settlement statement to the lender (if the lender is not the settlement agent). Some comments requested that the Bureau develop a separate forms, such as for refinancings, to avoid consumers receiving a Closing Disclosure that combines seller and consumer information. This is permitted pursuant to § 1026.38(t)(5). As discussed in the section-by-section analysis of that provision below, this provision provides for a separate form for the seller and consumer, a different version for transactions without a seller, and a different version only for the seller.

One commenter asked whether the seller should be afforded the same opportunity as the consumer to review the settlement figures three business days prior to closing. The final rule does not require that the seller receive the Closing Disclosure three business days before consummation, but the final rule does not prevent settlement agents from providing the Closing Disclosure to the seller earlier. As noted above, neither TILA nor Regulation Z contain requirements related to the seller in a purchase transaction. Regulation X generally requires that the settlement agent provide a completed RESPA settlement statement to any seller at or before the settlement. In the context of a credit transaction covered by TILA, consumers are considering the terms of a loan obligation in addition to settlement costs in connection with a purchase-money mortgage transaction. As discussed in the section-by-section analyses of § 1026.19(f)(1)(ii)(A), (f)(2)(i), and (f)(2)(ii), the Bureau believes a three-business-day period for consumers would be necessary to comply with the requirements of MDIA and to provide consumers sufficient time to consider major changes to the terms of a loan that could impose significant, long-term costs on consumers.

With respect to commenters' questions about use of the Closing Disclosure as a disbursement document, as explained also in the section-by-section analysis of § 1026.19(f)(1)(v), the Closing Disclosure is designed to

integrate disclosures provided under TILA and RESPA. To the extent the Closing Disclosure's disclosure requirements differ from other arrangements made pursuant to contract or other law or custom, the final rule does not prohibit creditors and settlement agents from developing their own disbursement instructions and managing any discrepancies as they arise, consistent with the current practice with respect to the RESPA settlement statement.

Final provisions. For the aforementioned reasons, including those cited in the proposal, § 1026.19(f)(4)(i) and (ii) and comments 19(f)(4)(i)–1 and 19(f)(4)(ii)–1 are adopted substantially as proposed, with modifications discussed below. Final § 1026.19(f)(4)(iii) is adopted without change.

Final § 1026.19(f)(4)(i) and (ii) and the associated commentary use the term ''settlement agent'' instead of ''person conducting the settlement'' to conform to the usage of the term throughout § 1026.19(f). Final § 1026.19(f)(4)(i) also requires that the settlement agent provide the seller with the disclosures in § 1026.38 that relate to the seller's transaction ''reflecting the actual terms of the seller's transaction.'' The final rule includes this language to conform § 1026.19(f)(4)(i) to the requirement in § 1026.19(f)(1)(i) and to reflect the standard currently in Regulation X for the settlement agent to state the actual charges paid by the borrower and seller on the RESPA settlement statement. *See* 12 CFR 1024.8(b)(1).

The final rule includes comment 19(f)(4)(i)–1, which clarifies how the settlement agent complies with § 1026.19(f)(4)(i) to provide the seller with the disclosures in § 1026.38 that relate to the seller's transaction. Specifically, comment 19(f)(4)(i)–1 explains that the settlement agent complies with § 1026.19(f)(4)(i) by providing a copy of the Closing Disclosure provided to the consumer, if it also contains the information under § 1026.38 relating to the seller's transaction, or alternatively providing the disclosures under § 1026.38(t)(5)(v) or (vi), as applicable. See the section-by-section analyses of § 1026.38(t)(5)(v) and (vi) for further discussion regarding the final rule with respect to the disclosures required under § 1026.38 in transactions involving a seller.

In addition, final § 1026.19(f)(4)(ii) amends the proposal to require that the settlement agent provide the seller's disclosures reflecting the actual terms of the transaction on the day of consummation. Regulation X generally requires that the settlement agent deliver the RESPA settlement statement to the seller at or before settlement. *See* 12 CFR 1024.10(b). As discussed in the section-by-section analysis of § 1026.19(f)(1)(ii)(A), the Bureau recognizes that ''consummation'' may not necessarily be the final ''settlement'' of the transaction. Final § 1026.19(f)(4)(ii) addresses changes that may occur after consummation.

Final § 1026.19(f)(4)(ii) and comment 19(f)(4)(ii)–1 also have been modified with respect to post-consummation changes to harmonize this provision with the requirements in final § 1026.19(f)(2)(iii) with respect to the circumstances requiring redisclosure and the timing for such redisclosures. Comment 19(f)(4)(ii)–1 includes a cross-reference to comment 19(e)(4)(1)–1 for additional guidance on complying with the timing requirement for post-consummation disclosures. Comment 19(f)(4)(ii)–1 includes an illustrative example, modified to conform to the final rule and includes a cross-reference to comment 19(f)(2)(iii)–1.iii for an additional example in which corrected disclosures must be provided to the seller.

The final rule includes § 1026.19(f)(4)(iv) to implement the requirement currently in Regulation X § 1024.10(b). The Regulation X provision generally provides that, when the borrower's and the seller's copies of the RESPA settlement statement differ, both copies shall be provided to the lender (if the lender is not the settlement agent). The Bureau believes it is important to integrate this requirement in § 1026.19(f) because § 1026.25(c)(1)(ii) generally requires creditors to retain copies of the disclosures under § 1026.19(f)(1)(i) and (f)(4)(i). Accordingly, final § 1026.19(f)(4)(iv) provides that, when the consumer's and seller's disclosures under § 1026.19(f) are provided on separate documents, as permitted under § 1026.38(t)(5), the settlement agent shall provide to the creditor (if the creditor is not the settlement agent) a copy of the disclosures provided to the seller under § 1026.19(f)(4)(i).

The Bureau believes the final rule and commentary will prevent circumvention and evasion of, and will facilitate compliance with, TILA, consistent with section 105(a) of TILA. The final rule and commentary implement the requirements of RESPA section 4, pursuant to the Bureau's implementation authority under RESPA section 19(a). The Bureau believes the final rule and commentary also will result in the meaningful advance disclosure of settlement costs and the elimination of kickbacks, referral fees, and other practices that tend to increase unnecessarily the costs of certain settlement services by ensuring that the terms of the transaction that relate to the seller, which include amounts owed to the seller, are fully and accurately disclosed to the seller, consistent with RESPA sections 8 and 19(a). The Bureau believes that receipt of the integrated disclosures in accordance with the final rule and commentary also will ensure that the features of the transaction and settlement services will be more fully and accurately disclosed to the consumer in a manner that permits sellers to understand the costs of the transaction, consistent with Dodd-Frank Act section 1032(a). The Bureau also believes that, by requiring sellers to receive the integrated disclosure, the final rule and commentary also will improve the seller's awareness and understanding of the seller's transaction, which involves a residential mortgage loan, which is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

19(f)(5) No Fee

Although TILA does not address fees related to the preparation of disclosures, RESPA provides that no fee may be imposed on any person, as a part of settlement costs or otherwise, by a lender in connection with a federally related mortgage loan made by such lender for the preparation or delivery of the settlement statement required by section 4 of RESPA or for statements required by TILA. *See* 12 U.S.C. 2610. Regulation X § 1024.12 implements RESPA's requirement. Neither TILA nor Regulation Z contains a similar requirement. The Bureau proposed § 1026.19(f)(5), which would have provided that no fee may be imposed on any person, as a part of settlement costs or otherwise, by a creditor or by a servicer for the preparation or delivery of the disclosures required under § 1026.19(f)(1)(i), escrow account statements required pursuant to section 10 of RESPA, or other statements required by TILA. The Bureau proposed this provision under TILA section 105(a) and RESPA sections 10 and 19(a). The Bureau explained that the proposed provision would strengthen the informed use of credit by ensuring that consumers are not informed that consumers must pay fees prohibited by law, and enhance competition by ensuring that creditors do not attempt to gain a competitive advantage by charging prohibited fees, both of which are consistent with section 105(a) of TILA. The Bureau also stated its belief that the proposal would result in the

meaningful advance disclosure of settlement costs and the elimination of kickbacks, referral fees, and other practices that tend to increase unnecessarily the costs of certain settlement services by ensuring that illegal fees are not included on the disclosures, consistent with section 19(a) of RESPA.

The Bureau received no comments on this proposed provision. For the reasons stated in the proposal and based on the authority stated in the proposal, the final § 1026.19(f)(5) is adopted with modifications from the proposal. For organizational purposes, the final rule limits the scope of the prohibition on charging fees for the preparation or delivery of the Closing Disclosure only. The full prohibition under Regulation X § 1024.12 remains in effect.

19(g) Special Information Booklet at Time of Application

Regulation X § 1024.6 contains the provisions related to the special information booklet, which is required by section 5 of RESPA. *See* 12 U.S.C. 2604. The Bureau proposed § 1026.19(g), which is substantially similar to the existing requirements in Regulation X, but modified to conform to the usage associated with TILA. The Bureau proposed this provision pursuant to its authority under TILA section 105(a) and RESPA section 19(a). The Bureau also solicited feedback on whether the Consumer Handbook on Adjustable-Rate Mortgages (CHARM) booklet, required under § 1026.19(b)(1), should be incorporated into the special information booklet.

Proposed comment 19(g)(1)–1 would have provided that the Bureau may, after publishing a notice in the **Federal Register**, issue a revised or separate special information booklet that addresses transactions subject to § 1026.19(g). The comment would have further clarified that the Bureau also may choose to permit the forms or booklets of other Federal agencies to be used by creditors, in which case the availability of the booklet or alternate materials for these transactions will be set forth in a notice in the **Federal Register**.

Proposed comment 19(g)(1)–2 would have clarified that, when two or more persons apply together for a loan, the creditor complies with § 1026.19(g) if the creditor provides a copy of the booklet to one of the persons applying. Proposed comment 19(g)(2)–1 would have explained that the special information booklet may be reproduced in any form, provided that no changes are made, except as otherwise provided under § 1026.19(g), and that provision of the special information booklet as a part of a larger document does not satisfy the requirements of § 1026.19(g). Comment 19(g)(2)–1 would have further clarified that any color, size and quality of paper, type of print, and method of reproduction may be used so long as the booklet is clearly legible. The Bureau explained that proposed § 1026.19(g) was consistent with TILA's purposes in that it would increase consumer awareness of the costs of the transaction by informing consumers that settlement costs can be influenced by shopping, thereby promoting the informed use of credit. The Bureau further explained that the provision would enhance consumers' ability to shop for a mortgage loan, which will effect changes in the settlement process that will result in the elimination of kickbacks, referral fees, and other practices that tend to increase unnecessarily the costs of certain settlement services, consistent with the Bureau's authority under section 19(a) of RESPA. Proposed comment 19(g)(2)–2 would have clarified that the special information booklet may be translated into languages other than English.

The Dodd-Frank Act amended RESPA section 5 to require that the booklet include, among other things, information about the trade-off between closing costs and interest rates over the life of the loan. *See* Dodd-Frank Act section 1450(2), amending section 5(b) of RESPA; 12 U.S.C. 2604(b)(1)(D).

At the time the Bureau was receiving public comments on this proposal, the Bureau also was considering the 2012 Loan Originator Proposal. In the 2012 Loan Originator Proposal, the Bureau proposed to use its exemption authority under the Dodd-Frank Act to allow creditors and loan originator organizations to continue making available loans with consumer-paid upfront points or fees. As noted in the discussion of comments in the section-by-section analysis of § 1026.19(e)(2)(ii) above, the 2012 Loan Originator Proposal generally would have required creditors to make a zero-zero alternative loan available to consumers before imposing upfront points or fees in a closed-end mortgage transaction.[249] The Bureau in that proposal solicited comments on variations and alternatives to this approach.

Comments

Commenters had several suggestions for some of the RESPA-required content for the special information booklet. In response to the 2012 Loan Originator Proposal, commenters explained that educating consumers generally about the relationship between interest rates and other costs would be preferable to a requirement that loan originators offer consumers particular terms. In addition, commenters stated that a mandated presentation of a zero-zero alternative may cause borrowers to believe that such an alternative is best in all cases, where in fact, the benefit to a borrower depends on many factors (including how long the consumer plans to remain in the mortgage, particularly as interest rates rise). Trade associations representing banks recommended that the special information booklet demonstrate hypothetical trade-offs to assist consumers in selecting loan options, similar to the current RESPA GFE. One trade association representing banks also emphasized that the Bureau should include generic information about the trade-off between a loan's interest rate and its points and fees. The commenter explained that many consumers shop based on rate and points and the commenter stated that it believed more would if they were advised accordingly. The commenter further explained that increased consumer interest in such shopping will drive the market to provide even more than the many rate and point choices available today, alleviating the need for mandated options. A commenter also explained that the booklet offers the opportunity and right platform to test various approaches to informing borrowers of available options.

With respect to combining the CHARM booklet with the special information booklet, a trade association representing settlement agents did not object to including the CHARM booklet with other materials. A trade association representing banks noted there were advantages and drawbacks to including the CHARM materials with the special information booklet. Among the advantages were that it would serve a growing market as ARM loans may become more popular as interest rates rise. Among the drawbacks were that the CHARM booklet is 36 pages long and would be very large compared to the booklet. The commenter believed it was important, in any event, that the CHARM materials be made accessible and easily understandable for consumers by the Bureau. A non-depository lender stated that the CHARM and special information booklets should remain separate. The commenter explained that CHARM booklet is directed to consumers who

[249] In the 2013 Loan Originator Final Rule, the Bureau adopted a complete exemption to the statutory ban on upfront points and fees set forth in TILA section 129B(c)(2)(B)(ii). *See* 78 FR 11279, 11370 (Feb. 15, 2013).

have applied for an ARM, and that it would be ill-suited to consumers who apply for a fixed rate loan. Credit union commenters supported consolidating the CHARM booklet with the special information booklet. One credit union commenter explained doing so would streamline the number of documents received by borrowers at the time of application without any detrimental effect to the borrower. The credit union commenter also explained that the combined document contains all of the information that a borrower would find useful in the application process while reducing information overload. Another credit union commenter explained that combining the CHARM booklet with the special information booklet would reduce information overload and would help consumers better understand the application process. A software company commenter requested clarification on whether two versions of the special information booklet will need to be made—one for ARMs and one for all others.

A professional association representing attorneys recommended that the special information booklet could be used to reduce the length and complexity of the integrated disclosures by containing information about the transaction that does not relate to the exchange of funds.

A non-depository lender supported proposed comment 19(g)(1)–2, clarifying that when two or more persons apply together for a mortgage loan, lenders are in compliance with the rule by providing a copy of the booklet to one of the persons applying. Trade associations representing banks and a non-depository lender commenter requested that the Bureau put high priority on developing web-based information that is linked to the forms as well as the booklet. Commenters explained that internet links would efficiently explain the forms to borrowers, and internet-based information and accompanying hard copy key or glossary materials could alleviate the need for explanatory information in the forms, making the forms shorter and more inviting to consumers. A trade association representing banks recommended that the Bureau include an interactive, online version made available to consumers and housing counselors.

A software company commenter requested clarification on whether the booklet would be required to be provided on 8.5 x 11 paper as a separate disclosure. The commenter also requested clarification on whether the graphic on the cover can be removed.

A trade association representing banks explained that the special information booklet and any accompanying web-based information accompanying the disclosures were as important as the forms themselves. The commenter explained that these materials should be proposed along with the tested and revised loan forms for comment by stakeholders. One non-depository lender requested that the Bureau seek public input when developing the booklet because it would provide almost as much information as the disclosures themselves. A trade association representing settlement agents reiterated its support for a public process in developing the special information booklet.

Final Rule

The final rule adopts § 1026.19(g) substantially as proposed and adopts commentary to that section substantially as proposed, along with other modifications discussed below. The Bureau views the special information booklet as part of the Bureau's broader mission to educate consumers about consumer financial products, and the Bureau intends to develop the special information booklet together with other educational materials that will be accessible on its public Web site. The Bureau also plans to update the booklet in the future to reflect the integrated disclosures adopted in this final rule, the amendments to section 5 of RESPA in section 1450 of the Dodd-Frank Act, and other Bureau rulemakings.

Creditor to provide the special information booklet under § 1026.19(g)(1). To define the term ''special information booklet,'' final § 1026.19(g)(1) includes clarifying language referring to the special information booklet required pursuant to section 5 of RESPA (12 U.S.C. 2604) to help consumers applying for federally related mortgage loans understand the nature and cost of real estate settlement services.

The final rule clarifies proposed § 1026.19(g)(1)(i) by omitting language that would have referred to the consumer's application ''for credit.'' The application under § 1026.19(g)(1) has the same meaning as the application under § 1026.2(a)(3)(ii). *See* the section-by-section analysis of § 1026.2. The final rule refers only to the consumer's ''application.'' To facilitate compliance, the final rule includes comment 19(g)(1)–3 to explain that ''application'' is defined in § 1026.2(a)(3)(ii). The comment also clarifies that the creditor need not provide the booklet under § 1026.19(g)(1)(i) when it denies an application or if the consumer withdraws the application before the end of the three-business-day period. The comment also includes a cross-reference to comment 19(e)(1)(iii)–3 for additional guidance on denied or withdrawn applications.

The final rule makes other amendments to the provisions in proposed § 1026.19(g)(1)(i) to clarify the timing requirements applicable to § 1026.19(g). Proposed § 1026.19(g)(1)(i) would have stated that the creditor must deliver the special information booklet ''not later than three business days after the application is received,'' and that the creditor need not provide the booklet if the creditor denies the consumer's application before the end of the ''three-day period.'' To set forth the timing requirements of § 1026.19(g) more clearly, the final rule provides that the creditor shall deliver or place in the mail the booklet not later than three business days after the ''consumer's application'' is received, and that the creditor need not provide the booklet if the creditor denies the consumer's application before the end of the ''three-business-day period.''

The final rule also revises § 1026.19(g)(1)(i) to state that the creditor shall deliver or place in the mail the special information booklet, to conform to the language of § 1026.19(e) and (f), as well as RESPA section 5(d), which states that the booklet ''shall be provided by delivering it or placing it in the mail.''

In addition, comment 19(g)(1)–1 revises proposed comment 19(g)(1)–1 to describe more clearly how the Bureau will issue revised or separate special information booklets. Specifically, comment 19(g)(1)–1 states that the Bureau may, ''from time to time,'' issue revised or ''alternative versions'' of the special information booklet that addresses transactions subject to § 1026.19(g). Proposed comment 19(g)(1)–1 would have stated that the Bureau may issue a revised or ''separate'' special information booklet that addresses transactions subject to § 1026.19(g).

Comment 19(g)(1)–1 includes these revisions because the Bureau believes the reference in proposed comment 19(g)(1)–1 to a ''separate'' booklet does not reflect the Bureau's interpretation of its authority under RESPA section 5 to issue alternate booklets that reflect different product types. As discussed above, commenters made a number of suggestions for revising the special information booklet or combining it with the CHARM booklet applicable to adjustable rate mortgage loans. Also as noted above, Dodd-Frank Act section 1450 amended RESPA section 5 to

require that the special information booklet include additional content. Some of this content may be more relevant to some products than others. And while § 1026.19(g)(1)(iii) currently limits the scope of coverage of the special information booklet to first-lien, purchase-money consumer credit transactions secured by real property, the Bureau plans to review the scope of § 1026.19(g) as it develops integrated disclosure requirements for other loans in future rulemakings.

The Bureau expects to publish revisions to the special information booklet in the future, for example, to conform the booklet's content to changes resulting from the Bureau's Title XIV Rulemakings. The Bureau also expects to publish revisions to implement the Dodd-Frank Act's amendments to RESPA section 5 and will take into account comments received in response to the proposal and other feedback received from interested parties in its design. *See* Dodd-Frank Act section 1450(2), amending section 5(b) of RESPA; 12 U.S.C. 2604(b)(1)(D). For example, the Bureau may determine that alternative versions of the booklet for particular product types may aid consumer understanding by providing consumers with information most relevant to their situation. Finally, the Bureau believes comment 19(g)(1)–1 is consistent with the current definition of ''special information booklet'' in Regulation X § 1024.2, which currently provides that ''[t]he Bureau may issue or approve additional booklets or alternative booklets by publication of a Notice in the **Federal Register**.''

Comment 19(g)(1)–1 also differs from proposed comment 19(g)(1)–1 in terms of when a revised or alternative version of the booklet may be issued. Under the comment, such a booklet may be issued ''by'' publishing a notice in the **Federal Register**. The proposed comment would have stated that the Bureau may issue a revised or separate booklet ''after'' publishing a notice in the **Federal Register**. The Bureau believes that the comment is clearer than the proposed commentary, which could have implied that an additional step was necessary to issue the booklet after publication of the **Federal Register** notice. In addition to these modifications, comment 19(g)(1)–1 includes a clarifying revision that the Bureau also may choose to permit the forms or booklets of other Federal agencies ''to be used by creditors.''

The final rule reorganizes § 1026.19(g)(1)(iii) to clarify the types of transactions for which the booklet is not required to be provided. Proposed § 1026.19(g)(1)(iii) would have provided that the creditor or mortgage broker need not provide the booklet to the consumer for transactions identified in § 1026.19(g)(1)(iii)(A) through (C), as well as those identified in § 1026.19(g)(1)(iii)(D), which would have listed ''[a]ny other consumer credit transaction secured by real property whose purpose is not the purchase of a one-to-four family residential property.'' The transactions under proposed § 1026.19(g)(1)(iii)(D) would have been inclusive of the transactions under § 1026.19(g)(1)(iii)(A) through (C). Accordingly, the final rule moves the reference to the class of transactions that would have been identified in proposed § 1026.19(g)(1)(iii)(D) to the more general provision in § 1026.19(g)(1)(iii), and retains the classes of transactions identified in § 1026.19(g)(1)(iii)(A) through (C) as examples. As revised, under final § 1026.19(g)(1)(iii), the creditor or mortgage broker need not provide the booklet to the consumer for a consumer credit transaction secured by real property, the purpose of which is not the purchase of a one-to-four family residential property, including, but not limited to, the transactions identified in the proposal (*i.e.,* refinancing transactions, closed-end loans secured by a subordinate lien, and reverse mortgages).

In addition, the final rule revises proposed § 1026.19(g)(1)(iii)(B), which would have referred to ''[c]losed-end loans when the lender takes a subordinate lien,'' to refer instead to ''[c]losed-end loans secured by a subordinate lien.'' The final rule includes this change to clarify that the booklet is not required to be provided when the creditor is extending only a closed-end loan secured by a subordinate lien. However, the booklet would be required to be provided when the creditor is extending a closed-end first-lien consumer credit transaction secured by real property for the purpose of purchasing a one-to-four family residential property, even if the creditor also is extending a closed-end subordinate-lien loan contemporaneously. The creditor would not be required under § 1026.19(g)(i)(iii)(B) to provide a second booklet for the subordinate-lien loan.

Permissible changes under § 1026.19(g)(2). The final rule revises proposed § 1026.19(g)(2) to provide clearer language with respect to permissible changes to the booklet. In addition, comment 19(g)(2)–1 includes a technical revision to the first sentence of the comment to refer more specifically to § 1026.19(g)(2) and includes a cross-reference to comment 19(g)(2)–3, which is discussed in more detail below. A minor revision has been made to improve the language in final § 1026.19(g)(2)(ii), and final § 1026.19(g)(2)(iv) includes a technical revision to replace a reference to ''the lender'' with a reference to ''the creditor,'' to conform to the terminology of Regulation Z. Comment 19(g)(2)–2 corrects a typographical error in the last sentence of the proposed comment and includes a reference to comment 19(g)(2)–3, discussed below.

In addition, the final rule amends proposed § 1026.19(g)(2)(iv) to provide that the cover of the booklet may be in any form and may contain any drawings, pictures or artwork, ''provided that the title appearing on the cover shall not be changed.'' As discussed below, this change has been made because the Bureau believes that future revised or alternative versions of the booklet will be more effective for consumers if creditors are not permitted to change the title. Proposed § 1026.19(g)(2)(iv) would have provided that ''[t]he cover of the booklet may be in any form and may contain any drawings, pictures or artwork, provided that the words 'settlement costs' are used in the title.'' This language would have reflected the current requirement under Regulation X § 1024.6(d)(2) applicable to the version of the booklet presently used by lenders. As noted above, the Bureau plans to update the special information booklet consistent with the amendments to section 5 of RESPA in section 1450 of the Dodd-Frank Act and to reflect the integrated disclosures. And as discussed above with respect to comment 19(g)(1)–1, the Bureau intends to issue a revised version, and possibly alternative versions of the special information booklet that implement the expanded content requirements of RESPA section 5 and the integrated disclosure requirements of § 1026.19(e) and (f). Because the amendments to RESPA section 5 include new content beyond settlement cost information, the Bureau expects future revised or alternative versions of the booklet will address topics in addition to settlement costs. Similarly, the Bureau expects the title of the revised or alternative versions of the booklet will refer to topics other than settlement costs.

The Bureau is concerned that, without this modification, the restriction on the permissible changes to the title (*i.e.,* the title must include the words ''settlement costs'') will become obsolete and may prove too narrow once the Bureau issues an updated version of the special information booklet covering a broader range of topics. Although updates to the booklet are still under consideration by

the Bureau, the Bureau believes the final rule must address future versions of the booklet so that the booklet's title accurately conveys to consumers the full range of content. Accordingly, the final rule amends § 1026.19(g)(2)(iv) to state expressly that creditors may not change the title of the booklet.

At the same time, the Bureau recognizes creditors should be permitted to continue to provide booklets already in use until the Bureau issues an update to address topics in addition to settlement costs. Accordingly, the final rule includes comment 19(g)(2)–3, which refers to the general restriction on changing the booklet's title under § 1026.19(g)(2)(iv) and comment 19(g)(1)–1, and explains that, until the Bureau issues a version of the special information booklet relating to the Loan Estimate and Closing Disclosure under §§ 1026.37 and 1026.38, for applications that are received on or after August 1, 2015, a creditor may change the title appearing on the cover of the version of the special information booklet in use before August 1, 2015, provided the words ''settlement costs'' are used in the title.

The final rule includes this comment to facilitate compliance for creditors using the current version of the special information booklet that does not address the integrated disclosure requirements of § 1026.19(e) or (f) until the Bureau issues an updated version for applications subject to the integrated disclosure requirements. In the event that the Bureau does not issue a revised or alternative version of the booklet that addresses the integrated disclosure requirements by the effective date of this final rule (August 1, 2015), the Bureau believes creditors should be permitted to rely on booklets they may have already modified in accordance with current Regulation X § 1024.6(d), including any permissible modifications creditors have made to the title. The Bureau believes this commentary is appropriate because a rule that restricts a creditor's ability to change the title of the current version of the booklet may impose unnecessary compliance burden on creditors without material consumer benefit. To provide creditors with guidance on compliance with the effective date of the final rule, comment 19(g)(2)–3 also contains a cross-reference to comment 1(d)(5)–1.

Clarifications. A commenter requested clarification on whether the graphic on the cover can be removed and whether the booklet would be required to be provided on 8.5 x 11 paper as a separate disclosure. Final § 1026.19(g)(2) permits certain changes to the booklet, including changes to the graphics on the cover. Final § 1026.19(g)(2)(iv) provides that the cover of the booklet may be in any form and may contain any drawings, pictures, or artwork, provided the words ''settlement costs'' are used in the title. The booklet is not required to be provided on 8.5 x 11 paper. Comment 19(g)(2)–1 clarifies that any color, size and quality of paper, type of print, and method of reproduction may be used so long as the booklet is clearly legible.

Final provisions. Final § 1026.19(g)(1) and (2), comments 19(g)(1)–1, –2, and –3, 19(g)(2)–1, and comments 19(g)(2)–1, –2, and –3 are adopted pursuant to the Bureau's authority under TILA section 105(a) and RESPA section 19(a). The final rule and commentary are consistent with TILA's purposes in that it will increase consumer awareness of the costs of the transaction by informing consumers that settlement costs can be influenced by shopping, thereby promoting the informed use of credit. The final rule and commentary will enhance consumers' ability to shop for a mortgage loan, which will effect changes in the settlement process that will result in the elimination of kickbacks, referral fees, and other practices that tend to increase unnecessarily the costs of certain settlement services, consistent with the Bureau's authority under section 19(a) of RESPA. The final rule and commentary implement Dodd-Frank Act section 1450, which amends RESPA section 5(a) and (b) to set forth new content for the special information booklet.

Section 1026.20 Disclosure Requirements Regarding Post-Consummation Events

20(e) Escrow Account Cancellation Notice for Certain Mortgage Transactions

Sections 1461 and 1462 of the Dodd-Frank Act amended TILA to create a new section 129D, which establishes certain requirements for escrow accounts for consumer credit transactions secured by a first lien on a consumer's principal dwelling (other than a consumer credit transaction under an open-end credit plan or a reverse mortgage). 15 U.S.C. 1639d(a) through (j). New TILA section 129D(h) and (j) require certain disclosures when an escrow account is established and certain other disclosures when an escrow account is refused or cancelled by the consumer, respectively.

Specifically, new TILA section 129D(h) establishes that a creditor must provide a disclosure with the information set forth under TILA section 129D(h) when an impound, trust, or other type of account for the payment of property taxes, insurance premiums, or other purposes relating to real property securing a consumer credit transaction is established in connection with the transaction (the Pre-Consummation Escrow Establishment Disclosure). Section 129D(j)(1)(A) establishes that a creditor or servicer must provide a disclosure with the information set forth under TILA section 129D(j)(2) when an impound, trust, or other type of account for the payment of property taxes, insurance premiums, or other purposes relating to real property securing a consumer credit transaction is not established in connection with the transaction (the Pre-Consummation Escrow Waiver Disclosure). Section 129D(j)(1)(B) establishes that a creditor or servicer must provide disclosures after consummation with the information set forth under TILA section 129D(j)(2) when a consumer chooses, and provides written notice of the choice, to close the consumer's escrow account established in connection with a consumer credit transaction secured by real property and in accordance with any statute, regulation, or contractual agreement (the Post-Consummation Escrow Cancellation Disclosure).

The Board's 2011 Escrows Proposal would have implemented the new TILA escrow requirements, and most aspects of that proposal have been implemented in the Bureau's 2013 Escrows Final Rule. *See* 78 FR 4726 (Jan. 22, 2013). But, for reasons discussed in greater detail in the section-by-section analysis of § 1026.38(l)(7) (Escrow account), the Bureau proposed to implement the Pre-Consummation Escrow Establishment Disclosure and Pre-Consummation Escrow Waiver Disclosure, along with certain other new disclosure requirements for mortgage transactions established by Title XIV (collectively, Affected Title XIV Disclosures), as part of the TILA–RESPA Proposal.

Additionally, on November 23, 2012, the Bureau issued a final rule effectively exempting persons from providing the Post-Consummation Escrow Cancellation Disclosure. *See* 77 FR 70105 (Nov. 23, 2012). In that final rule, the Bureau stated that it had concluded that delaying the Post-Consummation Escrow Cancellation Disclosure and coordinating its implementation with that of the integrated disclosure requirements is in the interest of industry and consumers alike. 77 FR 70105, 70111 (Nov. 23, 2012). The Bureau believed that implementing the Post-Consummation Escrow Cancellation Disclosure along with the

integrated disclosure requirements would allow the Bureau to use feedback it has received from consumer testing conducted prior to the TILA–RESPA Proposal, the comments on that proposal, and any additional consumer testing conducted subsequent to the proposal to harmonize the content and format of the Post-Consummation Escrow Cancellation Disclosure, the Pre-Consummation Escrow Waiver Disclosure, and the integrated disclosure. The Bureau stated its belief that consumers would benefit from a more fully integrated and synchronized overall mortgage disclosure scheme, and industry would benefit from a more coordinated implementation of the overall mortgage disclosure scheme mandated by the Dodd-Frank Act and implemented by the Bureau. The Bureau also noted that commenters to the Board's 2011 Escrows Proposal urged the Board to delay implementation of the Dodd-Frank Act's escrow disclosure requirements until the Bureau could finalize the integrated disclosure requirements. The commenters stated that harmonizing the rulemakings would allow for a comprehensive approach, and avoid duplicative forms and repetitive rulemakings. The Bureau believes that it is important to coordinate the implementation and requirements of the Pre-Consummation Escrow Establishment Disclosure, the Pre-Consummation Escrow Waiver Disclosure, and the Post-Consummation Escrow Cancellation Disclosure, because it will result in a more comprehensive and harmonized set of escrow disclosures, which will aid consumer understanding and facilitate compliance for industry.

Accordingly, in this final rule, the Bureau is adopting § 1026.20(e) to implement the Post-Consummation Escrow Cancellation Disclosure, pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and for residential mortgage loans, Dodd-Frank Act section 1405(b). Disclosure of this information would ensure that consumers have the facts to understand a key aspect of their mortgage loan and avoid the uninformed use of credit, consistent with the purpose of TILA. The Bureau also believes that § 1026.20(e) ensures that the features of the mortgage transaction, both initially and over the term of the transaction, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a), and improves consumer awareness and understanding of residential mortgage loans, which is in the interest of consumers and the public, consistent with section 1405(b). Except as otherwise discussed below, § 1026.20(e) generally adopts the proposed Post-Consummation Escrow Disclosure Cancellation requirements in the Board's 2011 Escrows Proposal.

20(e)(1) Scope

In the Board's 2011 Escrows Proposal, the Board proposed to add a new § 226.20(d) to Regulation Z to implement the disclosure requirements of TILA sections 129D(j)(1)(B) and 129D(j)(2), as enacted by section 1462 of the Dodd-Frank Act. The Board stated in the proposal that TILA section 129D(j)(1)(B) requires a creditor or servicer to provide the disclosures set forth in TILA section 129D(j)(2) when a consumer requests closure of an escrow account that was established in connection with a transaction secured by real property.

The disclosure requirements under proposed § 226.20(d), however, would have covered closed-end credit transactions secured by a first lien on real property or a dwelling. The Board stated in the proposal its belief that the information disclosed when an escrow account will be cancelled likely would be just as useful to a consumer who has a loan secured by manufactured housing as it would to a consumer who has a mortgage loan secured by a site-built home. The Board also believed that the coverage of all dwellings would ease compliance burden for creditors because the coverage of all dwellings would eliminate the analysis that creditors would have to undertake to determine whether and which disclosures would be triggered when a transaction will be secured by any one of various types of dwellings. The Board also proposed to apply § 226.20(d) to instances in which the creditor or servicer decides independently to cancel an escrow account. The Board believed that a consumer whose escrow account will be closed should be informed of the risks attendant with not having an escrow account, even if the consumer is not requesting the cancellation of the account.

Comments

Some industry commenters responding to the Board's 2011 Escrows Proposal asserted that the Board should not apply any of the proposed escrow disclosure requirements to transactions secured only by real property (*e.g.,* vacant or unimproved land), because escrow accounts are rarely established for such transactions. Commenters also asserted that none of the disclosure requirements should apply to dwellings because dwellings may include personal property, such as manufactured homes, recreational vehicles, and boats, and escrow accounts are seldom established for such transactions. Some commenters, including a large bank commenter and an industry trade association representing banks, asserted that the Board exceeded its authority when it proposed to apply the escrow disclosure requirements to transactions secured by dwellings and transactions secured only by real property.

Final Rule

The Bureau is adopting proposed § 226.20(d) in this final rule renumbered as § 1026.20(e)(1), pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and for residential mortgage loans, Dodd-Frank Act section 1405(b). Other than a modification to exempt reverse mortgage transactions under § 1026.33, § 1026.20(e)(1) finalizes the scope as proposed by the Board. The modification aligns the scope of the Post-Consummation Escrow Cancellation Disclosure more closely with the scope of § 1026.19(f) [250] and the post-consummation partial payment disclosure required by § 1026.39. The Bureau believes this modification will facilitate compliance with the integrated disclosure requirements and Post-Consummation Escrow Cancellation Disclosure requirements. Further, the Bureau noted in the TILA–RESPA Proposal that reverse mortgages have unusual terms and features, and that it intended to address these unique transactions in a separate, future rulemaking. *See* 77 FR 51115, 51137, 51157 (Aug. 23, 2012).

The Bureau has considered the comments regarding the scope of proposed § 226.20(d). Final § 1026.20(e)(1) only applies to consumer credit transactions for which an escrow account was established. Therefore, if escrow accounts are not typically established in connection with consumer credit transactions secured by personal property used as dwellings, or by vacant land, the disclosure requirement will not be triggered, and

[250] For reasons set forth in greater detail in the section-by-section analysis of § 1026.38(l)(7) below, the Bureau proposed to apply the TILA section 129D escrow requirements to all transactions subject to proposed § 1026.19(f), which would have included all closed-end credit transactions secured by real property, other than a reverse mortgage subject to § 1026.33, whether or not secured by a first-lien on real property.

thus, the rule may not be a compliance burden. In addition, consumer credit transactions are subject to substantial variability. The Bureau believes that requiring the provision of the Post-Consummation Escrow Cancellation Disclosure to consumers in transactions secured by personal property (*e.g.,* manufactured homes, boats, or recreational vehicles) used as dwellings, or transactions secured only by real property (*e.g.,* vacant or unimproved land), however rarely escrow accounts may be established in such transactions, may provide an important consumer protection if, in fact, an escrow account was set up. Further, the coverage of all dwellings would facilitate compliance because the coverage of all dwellings would eliminate the analysis that creditors would have to undertake to determine whether the cancellation of the escrow account established for a loan secured by a particular type of dwelling would trigger the disclosures. Section 1026.20(e)(1) also provides that the term ''escrow account'' has the same meaning as under 12 CFR 1024.17(b), and the term ''servicer'' has the same meaning as under 12 CFR 1024.2(b).

The Bureau is also finalizing comment 20(d)–1 proposed by the Board, renumbered as comment 20(e)(1)–1. Comment 20(e)(1)–1 explains that the term ''real property'' includes vacant and unimproved land. It clarifies that the term ''dwelling'' includes vacation and second homes and manufactured homes, boats, and trailers used as residences, and refers to additional guidance regarding the term provided by § 1026.2(a)(19) and related commentary. The Bureau is also finalizing comments 20(d)(2)–2 and –3 as proposed by the Board, renumbered as comments 20(e)(1)–2 and –3, respectively. Comment 20(e)(1)–2 explains that neither creditors nor servicers are required to provide the disclosures required by § 1026.20(e)(2) when an escrow account that was established solely in connection with the consumer's delinquency or default on the underlying debt obligation will be cancelled. Comment 20(e)(1)–3 explains that neither creditors nor servicers are required to provide disclosures required by § 1026.20(e)(2) when the underlying debt obligation for which an escrow account was established is terminated, including by repayment, refinancing, rescission, and foreclosure. Finally, as discussed above, the Board also proposed to require the provision of the disclosure when the creditor or servicer decides independently to cancel an escrow account. The Bureau is also finalizing this aspect of the Board's proposal without modification.

20(e)(2) Content of Required Disclosures

As discussed above, new TILA section 129D(j)(1)(B) establishes that a creditor or servicer must provide disclosures with the information set forth under TILA section 129D(j)(2) when a consumer chooses, and provides written notice of the choice, to close the consumer's escrow account established in connection with a consumer credit transaction secured by real property, and in accordance with any statute, regulation, or contractual agreement. As noted above, the statutory content requirements for this Post-Consummation Escrow Cancellation Disclosure are the same as the content requirements for the Pre-Consummation Escrow Waiver Disclosure.

The Board proposed § 226.20(d)(2), which would have set forth the content requirements of the Post-Consummation Escrow Cancellation Disclosure. Proposed § 226.20(d)(2) would have required a creditor or servicer to provide a statement on the escrow cancellation notice that the notice is to inform the consumer that the escrow account on the consumer's mortgage is being closed, the reason for its closure, and the risk of not having an escrow account. It would have also required the creditor or servicer to disclose the dollar amount of any fee that the consumer will be charged in connection with the closure. Proposed § 226.20(d)(2) would have further required the creditor or servicer to explain what an escrow account is and how it works, and to describe the consequences of the failure to pay for property costs, such as taxes and property insurance. Proposed § 226.20(d)(2) would have additionally required the creditor or servicer to inform the consumer whether the consumer can request that the escrow account be kept open. If the consumer can make such request, proposed § 226.20(d)(2) would have required the creditor or servicer to disclose the telephone number that the consumer can use to make the request and the latest date by which the consumer can make the request. The proposal would have also provided that if the creditor or servicer independently decides to cancel the escrow account, rather than agreeing to close it at the request of the consumer, and does not charge a fee in connection with the cancellation, the creditor or servicer shall omit this disclosure from the table.

Comments

A national consumer advocacy group asserted that the Board should require the creditor or servicer to state a reason if it decides independently to cancel the escrow account, or else the consumer would lack the information needed to determine whether the escrow cancellation is legitimate. Comments from industry commenters also indicated that some industry commenters disagreed with the model language the Board proposed to implement the content requirements that the Dodd-Frank Act established for the Post-Consummation Escrow Cancellation Disclosure. A national trade association representing property insurance carriers expressed concern that the model language the Board proposed to describe lender-placed insurance might have violated the McCarran-Ferguson Act because some States have established regulations with respect to notifying consumers of the placement of lender-placed insurance by their creditors.

A regional bank holding company commenter asserted that the proposed requirement that servicers must disclose the latest date by which the consumer can make the request to keep the consumer's escrow account was unclear because the proposed rule and corresponding commentary do not provide direction as to whether there is a minimum or maximum time limit for this date, or whether the disclosure is optional based on whether or not the creditor has an operational cut-off date. A large bank commenter sought clarification from the Board with respect to how creditors that do not charge a fee for the cancellation of an escrow account are to comply with the proposed requirement that such fee be disclosed.

Final Rule

Pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and for residential mortgage loans, Dodd-Frank Act section 1405(b), the Bureau is adopting the proposed content requirements of § 226.20(d)(2), with certain modifications and adjustments in response to consumer testing and comments received, in § 1026.20(e)(2). Under the heading ''Escrow Closing Notice,'' § 1026.20(e)(2) provides that if an escrow account was established in connection with a transaction subject to § 1026.20(e), and the escrow account will be cancelled, the creditor or servicer shall disclose clearly and conspicuously the information set forth in § 1026.20(e)(2)(i) and (ii).

Section 1026.20(e)(2)(i) requires a statement informing the consumer of the date on which the consumer will no longer have an escrow account. It also

requires a statement that an escrow account may also be called an impound or trust account, the reason why the escrow account will be closed, and a statement that without an escrow account, the consumer must pay all property costs, such as taxes and homeowner's insurance, directly, possibly in one or two large payments a year. The final rule provision also requires a table, titled ''Cost to you,'' that contains an itemization of the amount of any fee the creditor or servicer imposes on the consumer for closing the consumer's escrow account in connection with the transaction, labeled ''Escrow Closing Fee,'' and a statement that the fee is for closing the escrow account.

In addition to the legal authorities referenced above, TILA section 129D(j)(2)(D) establishes that the Bureau may include in the Post-Consummation Escrow Cancellation Disclosure such other information as it determines necessary for the protection of the consumer. A consumer advocacy group asserted that the Board's proposed notice requirements would not have given consumer sufficient information to enable them to make informed decisions in the event that an existing escrow account is canceled. In consideration of the consumer advocacy group's comments, the Bureau has added the requirement to § 1026.20(e)(2)(i) that the creditor or servicer include on the Post-Consummation Escrow Cancellation Disclosure a statement informing the consumer of the date on which the consumer will no longer have an escrow account. The Bureau believes that by identifying the point in time at which the responsibility of ensuring that previously-escrowed obligations are paid in a timely manner will transfer to the consumer, the disclosure will assist consumers in making decisions that will help ensure that the obligations are paid in such manner. For instance, knowing that the escrow account will be canceled as of a date certain may motivate the consumer to save a percentage of the consumer's income to ensure that the consumer's property tax obligation is paid when it becomes due.

Under the reference ''In the future,'' final § 1026.20(e)(2)(ii)(A) requires a statement of the consequences if the consumer fails to pay property costs, including the actions that a State or local government may take if property taxes are not paid and the actions the creditor or servicer may take if the consumer does not pay some or all property costs, such as adding amounts to the loan balance, adding an escrow account to the loan, or purchasing a property insurance policy on the consumer's behalf that may be more expensive and provide fewer benefits than a policy that the consumer could obtain directly. The Bureau has considered the comments and does not believe that the content requirements conflict with the McCarran-Ferguson Act, because it does not prohibit a creditor from complying with applicable State regulations on providing notifications to consumers with respect to the creditor's placement of such insurance.

Section 1026.20(e)(2)(ii)(B) requires a statement of a telephone number the consumer may use to request information about the escrow cancellation. The Bureau understands the view of the consumer advocate commenter that in situations where the creditor or servicer independently cancels the consumer's escrow account, the consumer should be able to receive information about the reason for the cancellation. However, the Bureau believes that this consideration must be counterbalanced by the fact that there could be a variety of reasons for the cancellation such that it would be difficult to provide model disclosures that can be used to facilitate compliance. The Bureau believes the best way to balance these competing concerns is to require the creditor or servicer to provide the consumer with a telephone number that the consumer can use to request more information about the cancellation of the consumer's escrow account. Accordingly the Bureau is adopting final § 1026.20(e)(2)(ii)(B), which requires a statement with a telephone number that the consumer can use to request additional information about the escrow account cancellation.

The Bureau modified the proposed content requirements to address situations where the creditor or servicer does not have a cut-off date. Accordingly, § 1026.20(e)(2)(C) requires a statement of whether the creditor or servicer offers the option of keeping the escrow account open and, as applicable, a telephone number the consumer can use to request that the account be kept open. Section 1026.20(e)(2)(ii)(D) requires a statement of whether there is a cut-off date by which the consumer can request that the account be kept open.

The Bureau is also making modifications and adjustments to the Board's proposed content requirements to incorporate elements of the model language the Bureau is adopting for the Pre-Consummation Escrow Establishment Disclosure and the Pre-Consummation Escrow Waiver Disclosure. The model language the Bureau is adopting for the Pre-Consummation Escrow Establishment Disclosure and the Pre-Consummation Escrow Waiver Disclosure is based on prototype language the Bureau created for both disclosures, which was refined over several rounds of testing, in response to feedback from consumer and industry participants to incorporate the use of plain language, simplify the disclosures, and improve accuracy and consumer comprehension. *See* Kleimann Testing Report at 228, 260, and 272.

The Bureau believes that it is appropriate to incorporate elements of the model language that the Bureau is adopting for the Pre-Consummation Escrow Establishment Disclosure and the Pre-Consummation Escrow Waiver Disclosure in the model language used for the Post-Consummation Escrow Cancellation Disclosure. Such incorporation will harmonize the content of the Post-Consummation Escrow Cancellation Disclosure, the Pre-Consummation Escrow Establishment Disclosure, and the Pre-Consummation Escrow Waiver Disclosure and create a synchronized and comprehensive set of disclosures regarding escrow accounts. Consumers will also benefit from a more fully integrated and synchronized disclosure scheme. Additionally, as noted above, the Dodd-Frank Act's statutory content requirements for the Pre-Consummation Escrow Waiver Disclosure and the Post-Consummation Escrow Cancellation Disclosure are the same. Accordingly, the Bureau believes that a more synchronized disclosure scheme for the Pre-Consummation Escrow Waiver Disclosure and the Post-Consummation Escrow Cancellation Disclosure will facilitate compliance for industry.

The Bureau is finalizing comment 20(d)(2)–1 as proposed by the Board, renumbered as comment 20(e)(2)–1. Comment 20(e)(2)–1 explains that the clear and conspicuous standard generally requires that disclosures be in a reasonably understandable form and readily noticeable to the consumer. The Bureau is finalizing comment 20(e)(2)(i)–1, which clarifies the requirement to disclose the Escrow Closing Fee. Comment 20(e)(2)(i)–1 explains that § 1026.20(e)(2)(i) requires the creditor to itemize the amount of any fee the creditor or servicer imposes on the consumer in connection with the closure of the consumer's escrow account, labeled ''Escrow Closing Fee.'' If the creditor or servicer independently decides to cancel the escrow account, rather than agreeing to close it at the request of the consumer, and does not

charge a fee in connection with the cancellation, the creditor or servicer complies with § 1026.20(e)(2)(i) by leaving the disclosure blank on the front-side of the one-page document described in § 1026.20(e)(4). The Bureau is making this clarification to harmonize the disclosure of the Escrow Closing Fee with the disclosure of the Escrow Waiver Fee required by § 1026.38(l)(7)(i)(B)(*2*), discussed in greater detail below in the section-by-section analysis of § 1026.38(l)(7). The Bureau also believes that the comment addresses the clarification sought by a large bank commenter with respect to how creditors that do not charge a fee for the cancellation of an escrow account are to comply with the proposed requirement that such a fee be disclosed.

20(e)(3) Optional Information

The Board proposed § 226.20(d)(3), which would have provided that the creditor or servicer providing the Post-Consummation Escrow Cancellation Disclosure, may, at its option, include its name or logo, or the consumer's name, property address, or loan number on the disclosure so long as it complies with the form requirements that the Board proposed. Some commenters, including several industry trade associations representing banks and financial services companies asserted that creditors should be allowed to add whatever information they deem important to the Post-Consummation Escrow Cancellation Disclosure.

Final rule. The Bureau has considered the comments, and notes that this final rule does not prohibit a creditor or servicer from providing additional information the creditor or servicer deems important at the same time as the creditor or servicer provides the Post-Consummation Escrow Cancellation Disclosure. Under the final rule, the creditor or servicer may provide additional information, provided that they follow the requirements set forth in this § 1026.20(e) with respect to the Post-Consummation Escrow Cancellation Disclosure. For example, the creditor or servicer may provide additional information on separate pages and include those pages in the same transmittal that contains the Post-Consummation Escrow Cancellation Disclosure. Accordingly, the Bureau is generally adopting the provision that the Board proposed, with modifications as described below. The Bureau believes that the modifications to the optional information requirements enhance consumer understanding, and the modifications to the form requirements complement the form of the Post-Consummation Escrow Cancellation Disclosure finalized by the Bureau in § 1026.19(e)(4).

Pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and for residential mortgage loans, Dodd-Frank Act section 1405(b), the Bureau adopts § 1026.20(e)(3). Final § 1026.20(e)(3) provides that creditor or servicer may, at its option, include its name or logo, the consumer's name, phone number, mailing address and property address, or the issue date of the notice, loan number or the consumer's account number on the notice required by this § 1026.20(e). Section 1026.20(e)(3) also provides that, except for the name and logo of the creditor or servicer, the information may be placed between the heading required by § 1026.20(e)(2) and the disclosures required by § 1026.20(e)(2)(i) and (ii). The name and logo may be placed above the heading required by § 1026.20(e)(2). The Bureau is finalizing comment 20(d)(3)-1 proposed by the Board substantially as proposed, renumbered as comment 20(e)(3)–1. Comment 20(e)(3)–1 explains that § 1026.20(e)(3) lists information that the creditor or servicer may, at its option, include on the notice required by this § 1026.20(e), and provides guidance on the placement of the optional information.

20(e)(4) Form of Disclosure

The Board proposed form requirements for the Post-Consummation Escrow Cancellation Disclosure in proposed § 226.20(d)(1). The Board generally proposed to require the creditor or servicer to provide the disclosures in the form of a table and in the format of a set of questions and answers. The Board also proposed commentary to explain the proposed form requirements and proposed a model form of appendix H to Regulation Z that creditors and servicers could use to comply with the proposed requirements. Commenters did not provide comments to the Board on this aspect of the Board's proposal.

Accordingly, the Bureau is adopting form requirements for the Post-Consummation Escrow Cancellation Disclosure in § 1026.20(e)(4), as well as a model form that creditors and servicers could use to comply with the form requirements. The model form is adopted as form H–29 of appendix H to Regulation Z, as described below in the section-by-section analysis of appendix H to Regulation Z below. The Bureau is generally adopting the form requirements of the Board's proposal, but the Bureau is modifying them to harmonize and synchronize the appearance of the Post-Consummation Escrow Cancellation Disclosure with the Pre-Consummation Escrow Establishment Disclosure and Pre-Consummation Escrow Waiver Disclosure that the Bureau is adopting in this final rule. The Bureau believes that a harmonized and synchronized set of disclosures benefit consumers by enhancing consumer understanding and facilitate compliance by industry.

The Bureau is adopting § 1026.20(e)(4) pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and for residential mortgage loans, Dodd-Frank Act section 1405(b). Section 1026.20(e)(4) provides that the disclosures required by § 1026.20(e)(2) shall be provided in a minimum 10-point font, grouped together on the front side of a one-page document, separate from all other materials, with the headings, content, order, and format substantially similar to model form H–29 of appendix H. It also provides that the disclosure of the heading required by § 1026.20(e)(2) shall be more conspicuous than, and shall precede, the other disclosures required by § 1026.20(e)(2).

The Bureau is finalizing comment 20(d)(1)(i)–1 as proposed by the Board, renumbered as comment 20(e)(4)–1. The Bureau is also finalizing comment 20(d)(1)(i)–2 as proposed by the Board, renumbered as 20(e)(4)–2. Comment 20(e)(4)–1 explains that the disclosures required by § 1026.20(e)(2) must be grouped together on the front side of a separate one-page document that contains no other material. Comment 20(e)(4)–2 explains that the notice containing the disclosures required by § 1026.20(e)(2) must be in writing in a form that the consumer may keep. The comment also refers to § 1026.17(a) and related commentary for additional guidance on the form requirements applicable to the disclosures required by § 1026.20(e)(2).

20(e)(5) Timing

Section 129D(j)(1)(B) of TILA, as added by Dodd-Frank Act section 1462, requires a creditor or servicer to provide the Post-Consummation Escrow Cancellation Disclosure in a timely manner. In the Board's 2011 Escrows Proposal, under proposed § 226.20(d)(4), a creditor or a servicer would have had to ensure that the Post-Consummation Escrow Cancellation Disclosure would be received by the consumer no later than three business days before closure of the consumer's escrow account. The Board believed that a consumer should be provided sufficient time to consider the attendant responsibilities and risks of not having an escrow account. The Board additionally believed that three

business days, which would mean all calendar days except for Sundays and specified public holidays, rather than the general definition of business day in § 1026.2(a)(6), would provide a consumer with such time to reflect on the consequences and risks associated with the closure of an escrow account.

The Board also proposed § 226.20(d)(5), which would have applied the ''mailbox rule'' to the timing requirement of proposed § 226.20(d)(4). Proposed § 226.20(d)(5) would have provided that if the disclosures required by § 226.20(d)(2) are mailed to the consumer or delivered by means other than in person, the consumer is considered to have received the disclosures three business days after they are mailed or delivered. The Board also proposed commentary to § 226.20(d)(4) and (5) to further clarify the proposed requirements and illustrate the requirements with examples.

Comments

Some industry commenters opposed the timing requirement set forth in proposed § 226.20(d)(4) because they believed that the creditor or servicer should not have to wait to close the consumer's escrow account after providing the consumer with the cancellation notice. Several industry trade associations representing banks and financial companies asserted that the Dodd-Frank Act does not establish a waiting period requirement for termination of escrow accounts. They also asserted that imposing a waiting period for an escrow account termination would be inconsistent with the Homeowners Protection Act of 1998 (12 U.S.C. 4901 *et seq.*) (HPA), because the HPA established timing requirements that a servicer must follow when the servicer cancels private mortgage insurance. It appears that the commenters believed that the timing requirements the Board set forth in proposed § 226.20(d)(4) would have been inconsistent with the requirements of the HPA if the consumer's escrow account was being cancelled in connection with the cancellation of private mortgage insurance pursuant to the HPA.

The commenters also asserted that a waiting period for an escrow termination also contradicts proposed § 226.45(b)(3)(i)(A) in the Board's 2011 Escrows Proposal, because the provision would have permitted cancellation of an escrow account when a loan is paid in full. A large bank commenter asserted rather than requiring creditors to send the Post-Consummation Escrow Cancellation Disclosure prior to the closure of the consumer's escrow account, the Bureau should permit creditors to send the notice after the consumer's escrow account has been closed because the consumer retains the ability to reinstate the escrow account after its closure.

A national consumer advocacy group commenter asserted that the three-business-day waiting period would not give consumers sufficient notice to dispute escrow account cancellations or to make arrangements to begin saving for expenses that have been escrowed. This commenter also stated that the proposal would be at odds with RESPA's qualified written request requirements, which provides that servicers have 30 days to respond to a consumer's qualified written request to correct a servicing error, because the timing requirement set forth in proposed § 226.20(d)(4) would have permitted a servicer to cancel a consumer's escrow account before the servicer is required to correct any servicer mistakes. The commenter asserted that the Board should impose a 45-day minimum notice requirement and an automatic extension requirement while the servicer investigates a consumer's qualified written requests.

Final Rule

The Bureau has considered the comments and is finalizing the proposal's timing requirements set forth in proposed § 226.20(d)(4) and (5), renumbered as § 1026.20(e)(5), with modifications. The Bureau is adopting § 1026.20(e)(5) pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and for residential mortgage loans, Dodd-Frank Act section 1405(b). Section 1026.20(e)(5)(i) provides that if the creditor or servicer cancels the escrow account at the consumer's request, the creditor or servicer shall ensure that the consumer receives the disclosures required by § 1026.20(e)(2) no later than three business days before closure of the consumer's escrow account. The Bureau believes that a consumer should be provided sufficient time to consider the attendant responsibilities and risks of not having an escrow account prior to the closure of the account. Three business days, which would include all calendar days except for Sundays and specified public holidays, would provide a consumer with such time if the creditor or servicer cancels the escrow account at the consumer's request. Further, finalizing the proposed timing requirements in the Board's proposed § 226.20(d)(4) and (5) is well within the Bureau's authority to implement TILA section 129D(j)(1)(B) which requires the creditor or servicer to provide the Post-Consummation Escrow Cancellation Disclosure in a ''timely'' manner.

Section 1026.20(e)(5)(i) does not cause an irreconcilable conflict with the timing requirements of the HPA. If the creditor must cancel the consumer's escrow account by a date certain pursuant to the requirements established by the HPA, the Bureau believes that the comments illustrate the actions the creditor must take with respect to ensuring that the account is cancelled by that date. With respect to the concern about the imposition of a waiting period for the cancellation of an escrow account when a loan is paid in full, comment 20(e)(1)–3, discussed above, clarifies that creditors and servicers are not required to provide the consumer with the Post-Consummation Escrow Cancellation Disclosure when the mortgage loan for which an escrow account was established is terminated by, for example, repayment of the loan.

Section 1026.20(e)(5)(ii) provides that if the creditor or servicer cancels the escrow account and the cancellation is not at the consumer's request, the creditor or servicer shall ensure that the consumer receives the disclosures required by § 1026.20(e)(2) no later than 30 business days before the closure of the consumer's escrow account. Section 1026.20(e)(5)(iii) provides that if the disclosures required by § 1026.20(e)(2) are not provided to the consumer in person, the consumer is considered to have received the disclosures three business days after they are delivered or placed in the mail.

As noted, a consumer advocacy group stated that three business days' notice of cancellation is not sufficient time for consumers to contest the cancellation, where the consumer did not initiate the cancellation. The Bureau believes that providing insufficient notice of cancellation could result in consumer harm, especially when the cancellation was based on the creditor or the servicer's error. Accordingly, the Bureau is modifying the Board's proposed timing requirements where the escrow account is being cancelled by the creditor or servicer, but not at the consumer's request.

To address these concerns, § 1026.20(e)(5)(ii) provides that if the creditor or servicer cancels the escrow account and the cancellation is not at the consumer's request, the creditor or servicer shall ensure that the consumer receives the disclosures required by § 1026.20(e)(2) no later than 30 business days before the closure of the consumer's escrow account. The Bureau acknowledges that the 2013 RESPA

Servicing Final Rule generally provides a servicer with 30 days (excluding legal public holidays, Saturdays, and, Sundays) to respond after it receives the borrower's notice of error.[251] But the Bureau believes that this must be counterbalanced by the concern about compliance burden with incorporating the timing requirements set forth in that rule in § 1026.20(e)(4) because those requirements would not be analogous to Regulation Z's definitions of business day.

The Bureau is also finalizing proposed comments 20(d)(4)–1 and –2 substantially as proposed, renumbered as comment 20(e)(5)(i)–1. Comment 20(e)(5)(i)–1 explains that § 1026.20(e)(5)(i) provides that if the creditor or servicer cancels the escrow account at the consumer's request, the creditor or servicer shall ensure that the consumer receives the disclosures required by § 1026.20(e)(2) no later than three business days before closure of the consumer's escrow account. The comment also explains that for purposes of § 1026.20(e)(5), the term ''business day'' means all calendar days except Sundays and legal public holidays referred to in § 1026.2(a)(6). The comment additionally references comment 2(a)(6)–2, and illustrates the requirement with an example.

The Bureau is adopting the Board's proposed comment 20(d)(5)–1 substantially as proposed, renumbered as comment 20(e)(5)(iii)–1. Comment 20(e)(5)(iii)–1 explains that § 1026.20(e)(5)(iii) provides that if the disclosures required under § 1026.20(e)(2) are not provided to the consumer in person, the consumer is considered to have received the disclosures three business days after they are delivered or placed in the mail. Accordingly, if the creditor or servicer provides the disclosures required by § 1026.20(e)(2) by mail, the consumer is considered to have received them three business days after they are placed in the mail for purposes of determining when the waiting periods required by § 1026.20(e)(5)(i) and (ii) begins. The comment also explained that creditors and servicers that use electronic mail or a courier to provide disclosures may also follow this approach. The comment further explains that if, however, the creditor or servicer delivers the disclosures required by § 1026.20(e)(2) to the consumer in person, the escrow account may be closed any time on the third or 30th business day following the date of delivery, as applicable. Finally, the comment explains that whatever method is used to provide disclosures, creditors and servicers may rely on documentation of receipt in determining when the three-business-day period required by § 1026.20(e)(5)(i) or the 30-business-day period required by § 1026.20(e)(5)(ii) before the closure of the escrow account begins.

Section 1026.22 Determination of Annual Percentage Rate

22(a) Accuracy of Annual Percentage Rate

The Bureau proposed conforming amendments to § 1026.22 to reflect the fact that proposed § 1026.38(o)(2) would have set forth finance charge tolerances for mortgage transactions subject to § 1026.19(f), as discussed below. These tolerances are not different from the tolerances that currently apply to closed-end mortgage transactions. The tolerances set forth in current § 1026.18(d)(1) would have continued to apply to closed-end transactions that would not have been subject to proposed § 1026.19(f). Accordingly, the Bureau proposed to revise § 1026.22(a)(4) and (5) and comment 22(a)(4)–1 to add references to § 1026.38(o)(2).

The Bureau did not receive comments on this aspect of the proposal. Accordingly, for the reasons stated in the proposal, the Bureau is finalizing the amendments to § 1026.22 as proposed.

Section 1026.24 Advertising

24(d) Advertisement of Terms That Require Additional Disclosures

24(d)(2) Additional Terms

Comment 24(d)(2)–2 currently provides guidance on how to state the terms of repayment in an advertisement, as required in § 1026.24(d)(2)(ii). The Bureau proposed to exercise its authority under TILA section 105(a) to revise the comment to conform with the additional forms of repayment term disclosures that would have applied to various types of mortgage transactions under the proposal. Proposed comment 24(d)(2)–2 would have clarified that, in advertisements for closed-end credit secured by real property or a dwelling, the repayment terms disclosed in the interest rate and payment summary table or the projected payments table under §§ 1026.18(s) or 1026.37(c) and 1026.38(c), as applicable, can be provided in an advertisement pursuant to § 1026.24(d)(2)(ii). The Bureau stated in the proposal that it believed that the format of disclosures applicable to a particular transaction is also the most appropriate format for advertising purposes. Proposed comment 24(d)(2)–2 also would have made clear that the payment schedule described in § 1026.18(g) is not the only permissible disclosure under § 1026.24(d)(2)(ii).

The Bureau did not receive comments specifically related to the proposed revision to comment 24(d)(2)–2. However, several commenters stated that advertising rules for mortgages are generally too complex and discourage providing any useful information on the term of the loan or pricing. Commenters also stated that the annual percentage rate should not be required on mortgage advertisements because consumers do not understand the annual percentage rate. The Bureau did not propose such a broad change to the advertising requirements of § 1026.24 in the proposal, but rather only proposed the clarifications to comment 24(d)(2) described above to reflect the interest rate and payment summary table under § 1026.18(s) and the new provisions applicable to the integrated disclosures, the projected payments table under §§ 1026.37(c) and 1026.38(c). While the Bureau recognizes some of the issues related to consumer understanding of the annual percentage rate disclosure are described in the proposal and the section-by-section analysis of § 1026.37(l), the Bureau did not propose to eliminate the requirement that it be included in mortgage advertisements and, thus, it will continue to be required by § 1026.24 under this final rule. Accordingly, the Bureau adopts the revisions to comment 24(d)(2)–2 as proposed.

Section 1026.25 Record Retention

In the TILA–RESPA Proposal, the Bureau proposed to amend § 1026.25 to apply the recordkeeping requirements under Regulation X to the proposed integrated disclosures and to require creditors to keep such records in an electronic, machine readable format.

25(a) General Rule

The Bureau proposed to amend § 1026.25(a) to exclude transactions subject to the disclosure requirements of § 1026.19(e) and (f) from the general recordkeeping requirement. Instead, the Bureau proposed to establish the recordkeeping requirements for such transactions under a new § 1026.25(c)(1).

The Bureau did not receive comments regarding the amendment to § 1026.25(a). Accordingly, the Bureau is finalizing § 1026.25(a) as proposed.

[251] *See* 78 FR 10696, 10878 (Feb. 14, 2013).

25(c) Records Related to Certain Requirements for Mortgage Loans

25(c)(1) Records Related to Requirements for Loans Secured by Real Property

25(c)(1)(i) General Rule

Neither TILA nor RESPA contain record retention requirements. Section 1026.25 of Regulation Z requires creditors to retain evidence of compliance with TILA for two years after the date disclosures are required to be made or action is required to be taken. Section 1024.7(f) of Regulation X requires lenders to retain documentation of any reason for providing a revised RESPA GFE for no less than three years after settlement. Furthermore, § 1024.10(e) of Regulation X requires lenders to retain each completed RESPA settlement statement and related documents for five years after settlement, unless the lender disposes of its interest in the mortgage and does not service the mortgage.

The Bureau proposed to reconcile these provisions by generally requiring a creditor to retain evidence of compliance with the requirements of § 1026.19(e) and (f) for three years. The Bureau stated in the proposal that it recognized that extending the record retention requirement from two years, as currently provided in Regulation Z, to three years may result in increased costs. However, the Bureau was not aware of any issues related to complying with the three-year period already required by Regulation X. The Bureau stated that creditors may be able to use existing recordkeeping systems to retain the integrated disclosures at no additional cost. Additionally, the Bureau noted that several sections of RESPA are subject to a three year statute of limitations.[252] The Bureau recognized that adopting a document retention period of less than three years could affect legal actions brought under RESPA. Thus, the Bureau stated its belief that it would be appropriate to require creditors to maintain records related to compliance for three years, as opposed to the two-year requirement of Regulation Z.

Pursuant to its authority under section 105(a) of TILA and section 19(a) of RESPA, the Bureau proposed § 1026.25(c)(1)(i), which stated that, except as provided under § 1026.25(c)(1)(ii), a creditor shall retain evidence of compliance with the requirements of § 1026.19(e) and (f) for three years after the later of the date of consummation, the date disclosures are required to be made, or the date the action is required to be taken. The Bureau stated its belief that this proposed modification would ensure that records associated with the integrated disclosures were kept long enough to facilitate compliance with both TILA and RESPA, which is necessary to both prevent circumvention of and facilitate compliance with TILA and RESPA. The Bureau solicited comment on whether the three-year period was appropriate, whether the retention requirement should be extended to five years to match the recordkeeping requirement in proposed § 1026.25(c)(1)(ii), and whether a shorter time period would conflict with the statute of limitations under section 16 of RESPA.

Several industry commenters, including a credit union and an industry trade association, noted that creditors were likely to maintain all records for the longer, five-year retention period for closing disclosures mandated by proposed § 1025(c)(1)(ii). As such, the commenters reasoned that creditors would not benefit from the shorter retention period in proposed § 1025(c)(1)(i), and suggested that the Bureau extend that requirement to match the requirement in proposed § 1026.25(c)(1)(ii). The Bureau appreciates the commenters' reasoning. However, the Bureau is finalizing § 1025(c)(1)(i) as proposed in keeping with its intent to mirror the existing retention periods for amendments to GFEs, as set forth in § 1024.7(f). In addition, although some creditors may maintain all records for the longer period, some may comply strictly with the three-year period, and thus, there may be less costs imposed on industry from the three-year period. In addition, the Bureau is not aware of any issues raised with regard to the existing three-year retention period under Regulation X.

Proposed comment 25(c)(1)–1 would have applied guidance currently applicable under § 1026.25(a) to proposed § 1026.25(c). The proposed comment would have clarified that the creditor must retain evidence that it performed the required actions as well as made the required disclosures. This included, for example, evidence that the creditor properly differentiated between affiliated and independent third party settlement service providers for determining good faith under § 1026.19(e)(3); evidence that the creditor properly documented the reason for revisions under § 1026.19(e)(3)(iv); or evidence that the creditor properly calculated average costs under § 1026.19(f)(3)(ii). Proposed comment 25(c)(1)–2 would have provided a cross-reference to § 1026.19(e)(1)(ii), which imposed responsibilities on mortgage brokers in some situations and may have implicated § 1026.25(c).

The Bureau did not receive comments regarding the proposed changes to proposed comments 25(c)(1)–1 and 25(c)(1)–2. For the reasons discussed above and in the proposed rule, the Bureau is finalizing § 1026.25(c)(1)(i) and comments 25(c)(1)–1 and 25(c)(1)–2 as proposed, pursuant to its authority under section 105(a) of TILA and section 19(a) of RESPA.

25(c)(1)(ii) Closing Disclosures

As noted above, while § 1026.25 of Regulation Z generally requires creditors to retain evidence of compliance with TILA for two years after the date disclosures are required to be made or action is required to be taken, § 1024.10(e) of Regulation X requires lenders to retain each completed RESPA settlement statement and related documents for five years after settlement, unless the lender disposes of its interest in the mortgage and does not service the mortgage. If the lender disposes of its interest and does not service the mortgage, § 1024.10(e) requires the lender to provide the lender's copy of the RESPA settlement statement to the owner or servicer of the mortgage as part of the transfer of the loan file. The owner or servicer to whom the files are transferred must retain the RESPA settlement statement for the remainder of the five-year period.

Because the Closing Disclosure contains the settlement information that is currently provided on the RESPA settlement statement, the Bureau proposed to adopt the five-year requirement with respect to the Closing Disclosure. The Bureau stated in the proposal that this information serves an important purpose as both the record of all fees associated with the transaction and as part of the official disbursement record. As such, this information may be needed for more than two years after the transaction. For example, State and local laws related to transactions involving real property may depend on the information being available for five years. Additionally, the Bureau recognized that the five-year recordkeeping requirement under Regulation X has been in effect since 1992.[253] The Bureau stated in the

[252] "[A]ctions [under sections 6, 8, or 9] brought by the Bureau, the Secretary, the Attorney General of any State, or the insurance commissioner of any State may be brought within 3 years from the date of the occurrence of the violation." RESPA section 16; 12 U.S.C. 2614.

[253] 57 FR 49600, 49607 (Nov. 2, 1992).

proposal that it was unaware of any problems caused by the five-year requirement and did not believe the time period should be shortened without evidence that the rule is not operating as intended, is unnecessary, or otherwise harms consumers. Thus, the Bureau stated its belief that requiring creditors to retain copies of the Closing Disclosure for five years was appropriate.

Pursuant to its authority under section 105(a) of TILA and section 19(a) of RESPA, the Bureau proposed § 1026.25(c)(1)(ii). Proposed § 1026.25(c)(1)(ii)(A) would have stated that the creditor shall retain each completed disclosure required under § 1026.19(f)(1)(i) and (f)(4)(i), and all documents related to such disclosures, for five years after settlement. The Bureau stated that it believed that this proposed modification would ensure that records associated with the integrated disclosures were kept long enough to facilitate compliance with both TILA and RESPA, which was necessary both to prevent circumvention of and facilitate compliance with TILA. The Bureau also stated the proposed recordkeeping requirement would enable accurate supervision, which would result in the more effective advance disclosure of settlement costs, consistent with section 19(a) of RESPA.

Proposed § 1026.25(c)(1)(ii)(B) would have provided that, if a creditor sells, transfers, or otherwise disposes of its interest in a mortgage and does not service the mortgage, the creditor must provide a copy of the disclosures required under § 1026.19(f)(1)(i) or (f)(4)(i) to the owner or servicer of the mortgage as a part of the transfer of the loan file, and such owner or servicer must retain such disclosures for the remainder of the five-year period. Proposed § 1026.25(c)(1)(ii)(C) would have provided that the Bureau has the right to require provision of copies of records related to the disclosures required under § 1026.19(f)(1)(i) or (f)(4)(i).

The Bureau recognized that the proposal was different from current requirements under Regulation X, which do not require a creditor to maintain these documents if the creditor disposes of its interest in the mortgage loan and does not service the mortgage loan. However, the Bureau believed that the current requirement provided little practical benefit to creditors, because other provisions of Regulations Z and X require creditors to maintain records of compliance for several years, even if the creditor transfers, sells, or otherwise disposes of its interest in the mortgage loan. The Bureau solicited feedback regarding whether it was appropriate for creditors that transfer, sell, or otherwise dispose of their interest in the mortgage loan, and do not service the mortgage loan, to keep these records for the five-year period. The Bureau also requested feedback on the additional costs that would result from such a requirement.

The Bureau did not receive any comments with respect to the appropriateness of the five-year retention period proposed by § 1026.25(c)(1)(ii)(A). It did, however, receive requests for clarification with respect to whether a creditor that sells, transfers, or otherwise disposes of its interest in a mortgage, as contemplated by § 1026.25(c)(1)(ii)(B), must continue to maintain a copy of the Closing Disclosure in its own records after disposing of the loan. To address this concern, the Bureau is revising § 1026.25(c)(1)(ii)(A) to clarify that, notwithstanding the provisions of § 1026.25(c)(1)(ii)(B), a creditor is required to retain a copy of the disclosures provided under § 1026.19(f)(1)(i) or (f)(4)(i) for a five-year period, even after it sells, transfers, or otherwise disposes of its interest in the loan. For the reasons set forth above and in the proposal, the Bureau is otherwise finalizing § 1026.25(c)(1)(ii) as proposed.

25(c)(1)(iii) Electronic Records

In the TILA–RESPA Proposal, the Bureau proposed to require retention of records of compliance in an electronic, machine readable format. The proposal stated that ''machine readable'' meant, for purposes of the proposal, a format where the individual data elements comprising the record can be transmitted, analyzed, and processed by a computer program, such as a spreadsheet or database program. Data formats for image reproductions (*e.g.,* PDF) or document text, such as those used by word processing programs, were not considered machine readable for purposes of the proposal.

Currently, neither TILA nor RESPA address electronic recordkeeping. Regulation Z permits, but does not require, electronic recordkeeping. Current comment 25(a)–2 provides that records can be maintained by any method that reproduces disclosures accurately, including computer programs. Regulation X also permits, but does not require, electronic records. *See* § 1024.23 and HUD RESPA FAQs p.3, #4 (''GFE—General'').

Issues Related to Adopting a Standard, Machine Readable, Electronic Data Format

The Bureau stated in the proposal that prior to proposing the electronic, machine readable requirement, it sought information regarding the costs of keeping records in an electronic, machine readable format. Based on these discussions, the Bureau recognized that requiring records in an electronic, machine readable format would impose new costs on industry, which would be limited to the up-front costs of upgrading existing computer systems and additional, ongoing data storage costs. As stated in the proposal, however, the Bureau also believed that keeping records in machine readable format could provide industry and consumers with numerous, significant benefits. The Bureau stated its belief that a prescribed electronic format could potentially reduce loan origination costs due to efficiency gains associated with a standardized data format. Further, a single data format could lower long-term costs by enabling creditors to migrate from older data formats to a single, standard data format. The Bureau stated it believed that a standard format could also foster innovation by allowing technology companies to create new programs that promote efficiency instead of tailoring programs to each firm's proprietary data format. In addition, the Bureau stated that the requirement may reduce industry's reliance on paper files, while allowing regulators to monitor some aspects of compliance remotely.

The Bureau believed that these benefits outweighed the costs associated with adopting and maintaining such a format. Thus, pursuant to its authority under section 105(a) of TILA, the Bureau proposed § 1026.25(c)(1)(iii), which would have provided that a creditor must retain evidence of compliance in an electronic, machine readable format. The Bureau believed that this proposed requirement would ensure that records associated with the integrated disclosures were readily available for examination, which could prevent circumvention of and facilitate compliance with TILA. The Bureau stated that the proposed regulation could also facilitate compliance with TILA by easing the burden of examinations and ensuring that all entities subject to TILA kept records in a standard format.

Based on the Bureau's discussions with industry regarding machine readable data formats, the Bureau stated in the proposal that it believed that XML may be the most appropriate

format for electronic recordkeeping. However, the Bureau did not specifically propose to mandate use of the XML format and instead solicited feedback on the costs and benefits of specific data formats. In addition, the Bureau proposed comment 25(c)(1)(iii)–1, which would have clarified that the requirements of § 1026.25(c)(1)(iii) were in addition to any other formats that may be required by administrative agencies responsible for enforcing the regulation. The Bureau solicited comment on this approach, including the costs associated with such a requirement. The Bureau also solicited comments on whether a small business exemption to the requirement was appropriate, and sought feedback on the proper contours of such an exemption. Finally, the Bureau solicited feedback on small business' current technology costs, and how such costs might be affected by an electronic recordkeeping requirement.

The Bureau received voluminous comments in response to proposed § 1026.25(c)(1)(iii) from various stakeholders, including creditors, industry trade associations, government entities, real estate attorneys, and title agents. The overwhelming majority of these comments expressed strong opposition to the proposed requirement. Most comments focused on the significant costs of implementation, especially for creditors who were not currently storing information in machine-readable format or who had recently adopted a specific electronic format and would now have to invest time and money in implementing a new technology. Many of these commenters also stated that any costs would eventually be passed on to consumers, or cause creditors to tighten or discontinue their lending programs. Other comments casted doubt on the benefits of a mandated electronic format, especially given that the proposal did not require that creditors adopt a specific electronic format or field-naming protocol. Still others raised practical concerns, such as how the electronic format would capture the narrative fields included in the integrated disclosures, or how creditors would be expected to coordinate with third parties, such as settlement agents, who would not be subject to the new requirement but who may nonetheless create or maintain certain transaction documents.

Other comments objected to the proposal on the grounds that it was ambiguous, stating that the proposal lacked clarity, including a sufficiently-specific definition of ''machine readable format'' and with respect to its application to entities other than creditors. Other commenters asserted that the rule went beyond the Bureau's statutory authority, or that the Bureau should not be mandating specific technological requirements for industry because it was a regulatory agency and lacked technical expertise in this area. The majority of commenters requested that the Bureau either withdraw § 1026.25(c)(1)(iii) altogether or delay it for a later rulemaking. Many small entity industry commenters requested that the Bureau adopt a small entity exemption, if the Bureau were to finalize the machine readable format requirement, and suggested different thresholds for such an exemption, stating that the costs of compliance would be especially burdensome for those entities.

The Bureau considered these comments and has decided not to finalize proposed § 1026.25(c)(1)(iii) and related comment 25(c)(1)(iii)–1. The Bureau believes that adopting a single standardized data format would be critical to achieving many of the potential benefits discussed in the proposal, and that significantly more consultation with stakeholders would be beneficial before taking that step. In light of the potential implementation costs for creditors, settlement agents, and other affected parties, the Bureau believes that it is important to assure that that any data format requirements be undertaken with care.

In addition, the Bureau recognizes that industry will need to make a number of data format decisions in the coming months as companies implement the final rule, and continues to believe that the adoption of a uniform electronic format throughout the mortgage industry could provide significant downstream benefits to industry and consumers alike. These benefits could include more efficient and cost-effective processing of mortgage loan data, improved consistency and data quality throughout the loan lifecycle, greater transparency for investors, and the potential for new technologies to reduce costs and streamline the mortgage process. For example, the GSEs, at the direction of the Federal Housing Finance Agency, are currently engaged in an effort to develop a standardized dataset for the Closing Disclosure, which they call the ''Uniform Closing Dataset (UCD),'' and which will utilize the data standards of the Mortgage Industry Standards Maintenance Organization (MISMO).[254] The GSEs have already created a draft dataset based on the proposed Closing Disclosure and plan to issue a final dataset after they revise the draft dataset based on this final rule. When fully implemented, such an initiative as the UCD could produce a uniform dataset for the vast majority of the market.

The Bureau will monitor the GSEs' development of the UCD and any other similar initiatives and will consider whether it can take additional steps to encourage the voluntary adoption of uniform standards or whether additional rulemaking activity may be appropriate in this area. In addition, in connection with its planned efforts to provide the public with implementation assistance with respect to this final rule, the Bureau expects to provide assistance to the GSEs in connection with their finalization of the draft UCD.

Section 1026.28 Effect on State Laws

TILA preempts State laws to the extent of their inconsistency with the statute and permits States, creditors, and other interested parties to request a determination by the Bureau regarding such inconsistency. Specifically, section 111(a)(1) states that the provisions of chapters 1 (General Provisions), 2 (Credit Transactions), and 3 (Credit Advertising and Limits on Credit 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,

[254] Fannie Mae, *Uniform Closing Dataset Overview* (June 30, 2013), available at *https://www.fanniemae.com/content/fact_sheet/ucd-overview.pdf*; Freddie Mac, *GSEs Developing Standardized Dataset to Support CFPB's Closing Disclosure Form* (July 30, 2013), available at *http://www.freddiemac.com/singlefamily/news/2013/0730_umpd_efforts.html*.

including, but not limited to, laws relating to the types, amounts, or rates of charges, or any elements of charges, permissible under such laws in connection with the extension or use of credit, and neither does TILA extend the applicability of those laws to any class of persons or transactions to which they would not otherwise apply. 15 U.S.C. 1610(b).

Regulation Z § 1026.28 implements TILA section 111. Section 1026.28(a) currently provides that State law requirements that are inconsistent with the requirements contained in chapters 1 through 3 of TILA and the implementing provisions of Regulation Z are preempted to the extent of the inconsistency.[255] Under § 1026.28(a), a State law is inconsistent with a TILA provision if it requires a creditor to make disclosures or take actions that contradict the requirements of TILA. A State law contradicts a requirement of TILA if it requires the use of the same term to represent a different amount or a different meaning than TILA, or if it requires the use of a term different from that required in TILA to describe the same item. A creditor, State, or other interested party may request the Bureau to determine whether a State law requirement is inconsistent, and if the Bureau makes such a determination a creditor may not make disclosures using the inconsistent term or form.[256] The specific procedures for requesting a State law preemption determination are set forth in § 1026.28(c) and appendix A to Regulation Z. Appendix A states, among other things, that the Bureau reserves the right to reverse a determination for any reason bearing on the coverage or effect of State or Federal law.

Current Regulation Z commentary provides further guidance on the TILA preemption rules. Comment 28(a)–2 includes examples of State laws that would be preempted (*e.g.,* a State law requiring use of the term ''finance charge'' but defining the term to include fees that TILA excludes, or to exclude fees that TILA includes). Comment 28(a)–3 explains that State law requirements calling for disclosure of items not covered by TILA or that require more detailed disclosures generally do not contradict the TILA requirements, provides examples of State laws that would not be preempted, and gives guidance as to whether a State law requiring itemization of the amount financed would be preempted. Comment 28(a)–4 explains that a creditor, prior to a preemption determination, may either (1) give the State disclosures or (2) apply the preemption standards to a State law, conclude that it is inconsistent, and choose not to give the State-required disclosures (but that no immunity is given under § 1026.28(a) for violations of State law if the creditor chooses not to make State disclosures and the Bureau later determines that the State law is not preempted). The comment also states that the Bureau will give sufficient time to creditors to revise their forms and procedures as necessary to conform with its preemption determinations. Comments 28(a)–8 through –15 discuss prior determinations made by the Federal Reserve Board prior to July 21, 2011, and recognized by the Bureau unless and until the Bureau makes and publishes any contrary determinations, to preempt certain State laws. For example, comment 28(a)–15 states that in Wisconsin, disclosure of the annual percentage rate under the particular State law referenced in the comment is preempted, because while the statute refers to ''annual percentage rate,'' it requires disclosure of a different amount than under TILA.

Section 18 of RESPA and current Regulation X § 1024.13 provide that State laws that are inconsistent with RESPA or Regulation X are preempted to the extent of the inconsistency. 12 U.S.C. 2616; 12 CFR 1024.13.[257] RESPA and Regulation X do not annul, alter, affect, or exempt any person subject to their provisions from complying with the laws of any State with respect to settlement practices, except to the extent of the inconsistency. *Id.* Upon request by any person, the Bureau is authorized to determine whether such inconsistencies exist, and the Bureau may not determine that any State law is inconsistent with any provision of RESPA if the Bureau determines that such law or regulation gives greater protection to the consumer. 12 CFR 1024.13(b). In making this determination, the Bureau must consult with ''appropriate Federal agencies.'' *Id.; see also* 12 U.S.C. 2616. Section 1024.13(c) sets forth the process by which the Bureau makes a preemption determination. Unlike Regulation Z, Regulation X does not list any State laws preempted by RESPA, and the Bureau is not aware of any.

The preemption provisions in TILA and RESPA and their implementing regulations thus contain similar language as far as scope of the preemption (*i.e.,* in both cases State laws generally are preempted only ''to the extent of the inconsistency''), but include different authority and procedures for determining whether State laws are preempted. For example, unlike Regulation X, § 1026.28 provides a regulatory standard for determining ''inconsistency'' (*i.e.,* disclosures or actions that contradict Federal law requirements) along with detailed commentary. RESPA, but not TILA, requires the preemption determination to be made by the Bureau in consultation with other appropriate Federal agencies. Moreover, while the Regulation Z provision addresses the relationship between Federal and State laws governing credit transactions, § 1024.13 refers to laws regarding settlement practices.

As stated previously, section 1032(f) of the Dodd-Frank Act requires the Bureau to propose rules and forms that combine the disclosures required under TILA and sections 4 and 5 of RESPA into a single, integrated disclosure for mortgage loan transactions covered by those laws. In addition, the Dodd-Frank Act amended sections 105(b) of TILA and 4(a) of RESPA, respectively, to require the integration of those disclosure requirements. However, the Dodd-Frank Act did not specify whether the TILA or the RESPA State law preemption provision applies to the provision of the integrated mortgage disclosures. In order to meet the Dodd-Frank Act's mandate, the proposed rule must reconcile the differences regarding these State law preemption regimes.

The Bureau proposed to require that the State law preemption provisions of Regulation Z, § 1026.28, apply to any State law preemption question arising with respect to the requirements of sections 4 and 5 of RESPA (other than the RESPA section 5(c) requirements regarding provision of a list of certified homeownership counselors), and §§ 1026.19(e) and (f), 1026.37, and 1026.38. To effectuate this change, the

[255] There are different rules regarding preemption of State laws relating to the disclosure of credit information in any credit or charge card application or solicitation that is subject to the requirements of section 127 of TILA and the correction of billing errors, but those rules are outside the scope of this rulemaking. *See* § 1026.28(a)(2), (d).

[256] TILA section 111(a)(2) and § 1026.28(b) generally permit a creditor, State, or other interested party to request that the Bureau determine whether a State-required disclosure is substantially the same in meaning as a TILA disclosure, and if the Bureau makes such a determination, creditors in the State can provide the State-required disclosure in lieu of the TILA disclosure. Comment 28(b)–1 clarifies that under § 1026.28, a State disclosure can be substituted for a Federal disclosure only after a determination of substantial similarity. State exemptions are addressed in more detail under § 1026.29 and associated commentary.

[257] The Bureau issued a final rule on July 10, 2013 that redesignated current § 1024.13 as § 1024.5(c), effective January 10, 2014, but the redesignation does not change the substance of the provision. 78 FR 44686, 44689 (July 24, 2013).

Bureau proposed two modifications to § 1026.28 and its associated commentary to reconcile differences regarding the State law preemption regimes of Regulation X and Regulation Z to meet the Dodd-Frank Act's mandate to integrate the mortgage loan disclosure requirements under TILA and RESPA.[258] First, the proposed rule would have modified § 1026.28(a) to provide that a determination of whether a State law is inconsistent with the requirements of sections 4 and 5 of RESPA (other than the RESPA section 5(c) requirements regarding provision of a list of certified homeownership counselors) and proposed §§ 1026.19(e) and (f), 1026.37, and 1026.38 would be made in accordance with § 1026.28 and not Regulation X § 1024.13. Second, the proposed rule would have added text to comment 28(a)–1 providing that, to the extent applicable to a transaction subject to § 1026.19(e) and (f), any reference to ''creditor'' in § 1026.28 included a creditor, a mortgage broker, or a closing agent, as applicable. This change coincided with the proposed alternative of § 1026.19(f)(1) that would have permitted the settlement agent to deliver the closing disclosure in place of the creditor. The Bureau stated that if this alternative were not adopted, it would not adopt the proposed addition of the reference to the closing agent to comment 28(a)–1. As described above in the section-by-section analysis of § 1026.19(f)(1), the Bureau is finalizing this alternative substantially as proposed, and as explained below, is adopting comment 28(a)–1 with a minor modification for clarity.

Several industry trade association commenters stated that preemption determinations under § 1026.28 should be made after consulting with other Federal agencies, as is provided under Regulation X in § 1024.13. As stated above, the Bureau must reconcile the differences between the two State law preemption regimes of RESPA and TILA. The two regimes are inconsistent with respect to the requirement under RESPA that the Bureau ''consult with appropriate Federal agencies.'' 12 U.S.C. 2616. As the Bureau stated in the proposal, there are certain transactions subject to TILA, but not RESPA, for which the integrated mortgage disclosures must be delivered under the proposed rule. Pursuant to § 1026.19(e) and (f), the proposed rule covers all closed-end consumer credit transactions secured by real property, other than reverse mortgages. Some of these transactions are not subject to RESPA (*i.e.,* if they are not a federally related mortgage loan as defined in Regulation X § 1024.2), but consumers in such transactions will receive integrated mortgage disclosures containing certain content mandated by RESPA. As such, in practice the statutory integrated disclosure requirements of TILA will apply to more transactions covered by § 1026.19(e) and (f) than those subject to RESPA. This may create confusion as to which preemption provision controls were a State law preemption question to arise with respect to the RESPA-mandated content on the integrated mortgage disclosures.

For these reasons, the Bureau has determined that the preemption regime under TILA section 111, as implemented by Regulation Z in § 1026.28, without a requirement that the Bureau consult with other Federal agencies, is the most appropriate for the disclosure requirements Congress mandated the Bureau to integrate under sections 1032, 1098, and 1100A of the Dodd-Frank Act. Accordingly, the Bureau is adopting the modifications to § 1026.28 and comment 28(a)–1 as proposed, with a change to the reference of ''closing agent'' to ''settlement agent'' to conform to the usage in the integrated disclosure requirements for clarity. The Bureau adopts these modifications pursuant to the authority under TILA section 105(a) and RESPA section 19(a), as described in the proposal.

Section 1024.5(c) will continue to apply to State law preemption questions arising with respect to all other aspects of RESPA and Regulation X, including the RESPA section 5(c) requirements regarding provision of a list of certified homeownership counselors.[259]

Section 1026.29 State Exemptions

The Bureau proposed two substantive modifications to the commentary to § 1026.29, in addition to relabeling some of the section numbering and lettering, to reconcile differences between TILA and RESPA provisions with respect to the Bureau's authority to grant State exemptions from disclosure provisions. TILA has several provisions that permit the Bureau to grant State exemptions from certain TILA disclosure provisions. Section 111(a)(2) of TILA allows the Bureau, upon its own motion or upon the request of any creditor, State, or other interested party that is submitted in accordance with procedures prescribed in regulations of the Bureau, to determine whether any disclosure required under any State law is substantially the same in meaning as a disclosure required under TILA. 15 U.S.C. 1610(a)(2). If the Bureau makes such a determination, TILA section 111(a)(2) provides that creditors located in that State may make such disclosure in compliance with such State law in lieu of the TILA disclosure, except that (1) the annual percentage rate and finance charge must be disclosed as required by section 122 of TILA, and (2) State-required disclosures may not be made in lieu of the high-cost mortgage disclosures under section 129 of TILA. Section 123 of TILA allows the Bureau by regulation to exempt any class of credit transactions within any State from the requirements of chapter 2 of TILA (Credit transactions) if the Bureau determines that the law of the State subjects the class of transactions to requirements substantially similar to those imposed under chapter 2 of TILA, and that there is adequate provision for enforcement.[260] 15 U.S.C. 1633.

Regulation Z § 1026.29 and appendix B to Regulation Z implement the TILA State exemption provisions.[261] Pursuant to § 1026.29(a), a State may apply to the Bureau to exempt a class of transactions within the State from the requirements of chapter 2 (Credit transactions) or chapter 4 (Credit billing) of TILA and the corresponding provisions of Regulation Z. The Bureau shall grant an exemption if it determines that (1) the State law is substantially similar to the Federal law or, in the case of chapter 4 of TILA, affords the consumer greater protection than the Federal law, and (2) there is adequate provision for enforcement. Comment 29(a)–2 clarifies that State law is ''substantially similar'' for purposes of § 1026.29(a) if the State statutory or regulatory provisions and State interpretations of those provisions are generally the same as TILA and Regulation Z. Comment 29(a)–3 clarifies that, generally, there is adequate provision for enforcement if appropriate State officials are authorized to enforce the State law through procedures and sanctions comparable to those available

[258] *See* sections 1032(f), 1098, and 1100A of the Dodd Frank Act. 12 U.S.C. 5532, 2603(a), and 1604(b), respectively.

[259] The provisions related to state law preemption questions under Regulation X § 1024.13 were moved to § 1024.5(c) effective on January 10, 2014. *See* 78 FR 44686, 44689 (July 24, 2013).

[260] Section 171(b) of TILA also addresses State exemptions and contains nearly identical language to section 123, but section 171(b) applies with respect to TILA chapter 4 (credit billing), which is not affected by this rulemaking. 15 U.S.C. 1661j(b).

[261] As noted earlier, § 1026.28(b) generally permits a creditor, State, or other interested party to request that the Bureau determine whether a State-required disclosure is substantially the same in meaning as a TILA disclosure, and if the Bureau makes such a determination, creditors in the State can provide the State-required disclosure in lieu of the TILA disclosure. Comment 28(b)–1 clarifies that under § 1026.28, a State disclosure can be substituted for a Federal disclosure only after a determination of substantial similarity.

to Federal enforcement agencies. Comment 29(a)–4 states that the Bureau recognizes certain TILA exemptions granted by the Board to Maine, Connecticut, Massachusetts, Wyoming, and Oklahoma prior to July 21, 2011, until and unless the Bureau makes and publishes any contrary determination. Comment 29(a)–4.i through –4.v currently provides, in relevant part, that credit transactions in these five States that are subject to the State consumer credit codes or truth in lending acts enumerated in such comment are exempt from the requirements of chapter 2 of TILA, which sets forth, among other provisions, the disclosure requirements for closed-end mortgages. The specific procedures for requesting a State exemption are set forth in § 1026.29(c) and appendix B to Regulation Z. Appendix B states, among other things, that the Bureau reserves the right to revoke an exemption if at any time it determines that the standards required for an exemption are not met.

Unlike TILA, RESPA does not contain a State exemption provision for credit transactions subject to RESPA. Rather, as discussed above with respect to § 1026.28, section 18 of RESPA [262] and Regulation X § 1024.13 provide that State laws that are inconsistent with RESPA or Regulation X are preempted to the extent of the inconsistency.

As stated above, sections 1032(f), 1098, and 1100A of the Dodd-Frank Act require the Bureau to propose for public comment, and publish final rules and forms that combine the disclosures required under TILA and sections 4 and 5 of RESPA into a single, integrated disclosure for mortgage loan transactions covered by those laws. However, the Dodd-Frank Act did not address a number of inconsistencies between TILA and RESPA that affect the provision of the integrated mortgage disclosures, including inconsistent provisions regarding the application of State law. In order to meet the Dodd-Frank Act's mandate, the final rule must reconcile the State exemption provisions. The Bureau proposed to reconcile these differences between Regulation X and Regulation Z to meet the Dodd-Frank Act's mandate to integrate the mortgage loan disclosure requirements under the two statutes.[263]

First, proposed revised comment 29(a)–2 would have modified the guidance regarding the ''substantially similar'' standard set forth in § 1026.29(a)(1) (*i.e.,* one of the two preconditions to the granting of an exemption). Proposed revised comment 29(a)–2 would have clarified that, in order for transactions that would otherwise be subject to the integrated disclosures required by § 1026.19(e) and (f) to be exempt from those disclosure requirements, the State statutory or regulatory provisions and State interpretations of those provisions must require disclosures that are generally the same as those prescribed by § 1026.19(e) and (f), in the forms prescribed by §§ 1026.37 and 1026.38. In effect, in order for an existing State exemption to be maintained, the State's law must require disclosures that are generally the same as the integrated disclosures, including the RESPA content.

Second, proposed revised comment 29(a)–4 would have stated that, although RESPA and Regulation X do not provide procedures for State exemptions, for transactions subject to § 1026.19(e) and (f), compliance with the requirements of §§ 1026.19(e) and (f), 1026.37, and 1026.38 satisfies the requirements of sections 4 and 5 of RESPA (other than the RESPA section 5(c) requirements regarding provision of a list of certified homeownership counselors). Furthermore, the proposed revised comment would have stated that if the transaction is subject to a previously-granted State exemption, then compliance with the requirements of any State laws and regulations incorporating the requirements of §§ 1026.19(e) and (f), 1026.37, and 1026.38 likewise satisfies the requirements of sections 4 and 5 of RESPA (other than the RESPA section 5(c) requirements regarding provision of a list of certified homeownership counselors). Thus, in Maine, Connecticut, Massachusetts, Oklahoma, and Wyoming, creditors, mortgage brokers, and settlement agents, as applicable, would have, under the proposal, been able to satisfy sections 4 and 5 of RESPA (other than the RESPA section 5(c) requirements regarding provision of a list of certified homeownership counselors) through compliance with State law so long as the ''substantially similar'' State statutory and regulatory provisions (*i.e.,* the State consumer codes or truth in lending acts enumerated in comment 29(a)–4.1 through –4.v, as applicable) expressly mandated delivery of the integrated mortgage disclosures required by the Dodd-Frank Act and implemented by this final rule.

The Bureau did not receive any comments on the proposed modifications to the commentary related to State exemptions. The Bureau understands these changes require some of the five States that were previously granted State exemptions under 12 CFR 226.29, the predecessor to § 1026.29, to change their laws and/or regulations, which may be a lengthy process because, to the extent the ''substantially similar'' State laws and regulations underlying the TILA State exemptions do not currently require the integrated disclosures mandated by the Dodd-Frank Act (specifically, the portions mandated by RESPA), there is a gap in these States' current statutory and regulatory regimes that must be filled in order to maintain the State exemptions. As such, the Bureau solicited comment on the amount of time that will be needed for these States to change their laws and/or regulations. The Bureau did not receive any comment on the amount of time that will be needed for those States to change their laws and/or regulations. However, two GSE commenters stated that the Bureau should impose a reasonable implementation period for the final rule that will permit the amendment of State laws and/or regulations. The Bureau believes that the States identified in proposed comments 29(a)–2 and –4 will be able to change their laws and/or regulations prior to the effective date of this final rule, which is discussed below in part VI. Accordingly, the Bureau is adopting the modifications to comments 29(a)–2 and –4 as proposed, pursuant to its authority under TILA section 105(a) and RESPA section 19(a) to make rules consistent with the purposes of those statutes, as described in the proposal.

Section 1026.37 Content of Disclosures for Certain Mortgage Transactions (Loan Estimate)

Proposed § 1026.37 would have set forth the required content of the integrated Loan Estimate disclosure, required by § 1026.19(e) to be provided to a consumer within three business days of the creditor's receipt of the consumer's application.

As described in the proposal, the proposed Loan Estimate would have integrated the disclosures currently provided in the RESPA GFE and the early TILA disclosure. In addition, the Loan Estimate integrates several disclosures that would otherwise be provided separately under various Federal laws. The Bureau stated in the proposal that it believed the three-page Loan Estimate, as proposed, integrates at least seven pages of disclosures. Specifically, the proposed Loan Estimate incorporated: (i) Three pages of the RESPA GFE; (ii) two pages typically used for the early TILA disclosure; (iii) one page typically used for the appraisal

[262] 12 U.S.C. 2616.

[263] *See* sections 1032(f), 1098, and 1100A of the Dodd Frank Act. 12 U.S.C. 5532, 2603(a), and 1604(b), respectively.

notification provided under ECOA section 701(e); and (iv) one page typically used for the servicing disclosure provided under RESPA section 6. In addition, the proposed Loan Estimate incorporated the disclosure of: (i) The total interest percentage under TILA section 128(a)(19), which was added by section 1419 of the Dodd-Frank Act; (ii) the aggregate amount of loan charges and closing costs the consumer must pay at consummation under TILA section 128(a)(17), which was added by section 1419 of the Dodd-Frank Act; (iii) for refinance transactions, the anti-deficiency protection notice under TILA section 129C(g)(3), which was added by section 1414(c) of the Dodd-Frank Act; and (iv) the homeowner's insurance disclosure in TILA section 106(c) and § 1026.4(d)(2)(i), which is required to exclude homeowner's insurance premiums from the finance charge. In the absence of the Bureau's proposed integration of the early TILA disclosure and the RESPA GFE, some of these new disclosures would have been added to the early TILA disclosure, which potentially could have increased that disclosure's typical two pages to three pages.

The Bureau received numerous comments from industry and consumer advocacy groups generally supporting the design of the proposed integrated disclosures. For example, a large national bank commented that the proposed disclosures are a distinct improvement over those in existing regulations and that the Bureau has consolidated multiple disclosures, minimized the conflicts between existing RESPA and TILA disclosure requirements, and created forms that are more visually appealing and more understandable to the consumer than the current forms. A national consumer advocacy group commented that the proposed integrated disclosures are in many ways an improvement over existing disclosures. A community bank praised the integrated disclosures as clearer and more concise than existing disclosures and noted several areas of ''commendation'' in both the proposed Loan Estimate and Closing Disclosure. The FTC Staff praised the integrated disclosures, particularly their formatting and language, as more effective than the current forms in conveying key loan terms to consumers.

In contrast, the Bureau received numerous comments that were critical of the design of the proposed integrated disclosures. For example, an individual settlement agent strongly criticized the proposed integrated disclosures, opining that they were significantly more complicated than the disclosures required under existing regulations. A national trade association representing mortgage lenders commented that the proposal went beyond what was necessary to reconcile TILA, RESPA, and the changes to both statutes mandated by the Dodd-Frank Act. A national trade association representing title attorneys commented that the proposed forms were too complex to be useful for consumers and would likely require title attorneys or settlement agents to create explanatory documents, thereby increasing the number of pages provided to the consumer.

Some commenters suggested that features not included in the integrated disclosures be added. For example, a national trade association representing mortgage bankers suggested that the Loan Estimate include a trade-off chart similar to one that was on the RESPA GFE, which would compare the loan that is subject of the Loan Estimate and another loan available to the borrower from that creditor that has a different rate, points, and fees mix. The comment stated that such a chart would be preferable to the Bureau's 2012 Loan Originator Proposal, which would have required that, before a creditor or mortgage broker may impose upfront points and/or fees on a consumer, the creditor must make available to the consumer a comparable, alternative loan with no upfront discount points, origination points, or origination fees (zero-zero alternative).[264] A GSE suggested that there should be a place on the Closing Disclosure to reflect whether the consumer was closing another loan at the same time as the transaction that is the subject of the Closing Disclosure.

As discussed above in part III, the Bureau has conducted extensive consumer testing of the proposed Loan Estimate and Closing Disclosure, both on their own and in comparison to the existing RESPA GFE and RESPA settlement statement and early and final TILA disclosures. The testing reflects that consumers are able to use the integrated disclosures to understand the loan presented, compare loans when shopping, compare their estimated and actual charges, and that the integrated disclosures perform significantly better than the existing disclosures under TILA and RESPA. *See* Kleimann Testing Report at 277, 280; Kleimann Quantitative Study Report at 68–69. Moreover, the Bureau was required by the Dodd-Frank Act both to integrate the existing disclosures and to add certain new information on the integrated disclosures that the Dodd-Frank Act added to TILA. Accordingly, while the Bureau appreciates certain commenters' concern that the integrated disclosures are overly complex, the Bureau has extensively tested the integrated disclosures to ensure the design and layout of the new disclosures is effective for consumers and minimizes the risk of information overload, while still including the information required by TILA and RESPA, including the new requirements added to TILA by the Dodd-Frank Act. Similarly, while the Bureau understands commenters' desire to add components to the integrated disclosures, the Bureau declines to do so given its statutory requirements to include large amounts of new information and the risk to consumers of information overload if the Loan Estimate and Closing Disclosure added still more information. Comments addressing specific parts of the integrated disclosures will be addressed in more detail in the section-by-section analysis of individual provisions.

Proposed § 1026.37 would have required that the information set forth in § 1026.37(a) through (n) be disclosed ''as applicable.'' The Bureau also proposed comments 37–1 and –2 to provide guidance regarding proposed § 1026.37. Proposed comment 37–1 would have clarified that a disclosure that is not applicable to a particular transaction generally may be eliminated entirely. The proposed comment would have provided as an example that the disclosure required by § 1026.37(m)(3) need not be included in a transaction for which the creditor does not require homeowner's insurance. Proposed comment 37–1 would have stated that a disclosure that is not applicable to a transaction alternatively may be included but marked ''not applicable'' or ''N/A.'' The proposed comment would have clarified that the adjustable payment table and adjustable interest rate information table required under proposed § 1026.37(i) and (j), respectively, are only permitted to be included in particular transactions. Proposed comment 37–2 would have directed creditors to § 1026.37(o) and its commentary for guidance on the proper format for the disclosures and permissible modifications to the format.

Several trade associations representing mortgage lenders and a national title insurance company commented that the ''as applicable'' standard in proposed § 1026.37 and comment 37–1 conflicted with proposed § 1026.37(o)(1)(i), which would have required the use of the proposed

[264] The Bureau did not adopt the zero-zero alternative in the 2013 Loan Originator Final Rule. 78 FR 11280 (Feb. 15, 2013).

standard form H–24 of appendix H to Regulation Z for all federally related mortgage loans. These commenters questioned how a disclosure that was not applicable could be eliminated entirely while still using form H–24. These same commenters as well as a large bank, a document preparation company, and a law firm commented that forms that change depending on the type of the transaction, known as ''dynamic forms,'' are difficult to program and therefore very costly to implement. These commenters requested that the Bureau instead mandate a static form. The Bureau received no public comments on proposed comment 37–2.

The Bureau believes that permitting inapplicable disclosures to be deleted is inconsistent with the proposal's intent for form H–24 to be used for all federally related mortgage loans, subject to certain limited exceptions noted in § 1026.37(o). The Bureau further believes that permitting the standard form to change for each of the myriad transaction types for which it is used could result in a Loan Estimate that is difficult for consumers to use for shopping purposes and unnecessarily costly and confusing for industry to implement.

Accordingly, the Bureau is revising § 1026.37 to delete the phrase ''as applicable.'' Additionally, the Bureau is revising comment 37–1 to clarify that disclosures under § 1026.37 must reflect the terms of the legal obligation between the parties, and that if any information necessary for an accurate disclosure is unknown to the creditor, the disclosure must be made in good faith, based on the best information reasonably available at the time the disclosure is provided to the consumer pursuant to §§ 1026.17(c) and 1026.19(e). The revised comment also clarifies that where a disclosure is not applicable, the disclosure may not be deleted from form H–24, unless otherwise provided under § 1026.37, and the use of ''not applicable'' or ''N/A'' for inapplicable disclosures is not permitted. The comment states that the inapplicable disclosure may be left blank, unless otherwise provided under § 1026.37. Final comment 37–1 is further revised to provide a different example of a disclosure that may be left blank pursuant to § 1026.37, specifically, the amounts required to be disclosed by § 1026.37(f)(1)(i) in a transaction for which the consumer does not pay points to the creditor to reduce the interest rate. As in the proposal, final comment 37–1 also references the adjustable payment and adjustable interest rate tables, which clarifies that the disclosures required by § 1026.37(i) and (j) may be included only where applicable to the transaction and otherwise must be excluded. Comments related specifically to the dynamic nature of these tables will be discussed as part of this section-by-section analysis of § 1026.37(i) and (j). Because it did not receive any comments on proposed comment 37–2, the Bureau is adopting comment 37–2 as proposed.

The Bureau adopts revised § 1026.37 and comment 37–1, and comment 37–2 as proposed, pursuant to its authority under TILA section 105(a), RESPA section 19(a), because the Bureau believes these provisions will promote the informed use of credit and more effective advance disclosure of settlement costs. In addition, the Bureau believes they will enable consumers to better understand the costs, benefits, and risks associated with mortgage transactions, consistent with Dodd-Frank Act section 1032(a). Furthermore, the Bureau believes they will improve consumer awareness and understanding of transactions involving residential mortgage loans and are therefore in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

37(a) General Information

The Bureau proposed § 1026.37(a), which would have combined and modified disclosures currently provided under Regulations X and Z in the Loan Estimate and would have added additional disclosures for transactions subject to proposed § 1026.19(e). For the reasons discussed below and consistent with TILA section 105(a), RESPA section 19(a), and the purposes of those statutes, the Bureau stated in the proposal that it believes that § 1026.37(a) will promote the informed use of credit and more effective advance disclosure of settlement costs. In addition, the Bureau stated that it believed proposed § 1026.37(a) will enable consumers to better understand the costs, benefits, and risks associated with mortgage transactions, consistent with Dodd-Frank Act section 1032(a). Furthermore, the Bureau stated it believes that § 1026.37(a) will improve consumer awareness and understanding of transactions involving residential mortgage loans and is therefore in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b). The Bureau received many comments related to the various provisions of § 1026.37(a) which will be discussed in detail below in their respective sections.

37(a)(1) Form Title

Although the Dodd-Frank Act requires the Bureau to combine the TILA and RESPA mortgage disclosures that are currently provided to consumers within three business days after application, the Dodd-Frank Act does not prescribe a title for the integrated form. Under § 1024.2(b) of Regulation X, the form providing consumers with the RESPA GFE of settlement charges they are likely to incur is called the ''Good Faith Estimate'' or ''GFE.'' Regulation Z does not prescribe a name for the early TILA disclosure required by § 1026.19(a)(1), although comment 17(a)(1)–5.ix permits the creditor to provide ''[a] brief caption identifying the disclosures'' and provides as examples of acceptable titles, ''Federal Truth in Lending Disclosures'' and ''Real Estate Loan Disclosures.''

Proposed § 1026.37(a)(1) would have required the creditor to use the term ''Loan Estimate'' as the title of the integrated disclosures provided pursuant to § 1026.19(e). The Bureau stated its belief in the proposal that the adoption of a standardized form name may eliminate confusion for consumers seeking to compare estimates for different loans and thereby promote the informed use of credit and more effective advance notice of settlement costs, consistent with TILA section 105(a) and RESPA section 19(a), and will enable consumers to better understand the costs, benefits, and risks associated with mortgage transactions, consistent with Dodd-Frank Act section 1032(a). In addition, the Bureau stated that it believed the use of standard terminology for the integrated disclosures will facilitate compliance for industry, which is a purpose of this rulemaking under Dodd-Frank Act sections 1098 and 1100A. The Bureau did not receive any comments regarding proposed § 1026.37(a)(1). Because the Bureau continues to believe that a standardized form name will effectuate the purposes of TILA and RESPA and facilitate compliance, it is adopting § 1026.37(a)(1) as proposed, based on the authority described in the proposal and above.

37(a)(2) Form Purpose

Proposed § 1026.37(a)(2) would have required the creditor to include a statement regarding one of the primary uses of the Loan Estimate for consumers, which is to compare it with the Closing Disclosure to verify the loan terms and costs. Specifically, proposed § 1026.37(a)(2) would have required the creditor to provide the following

statement at the top of all Loan Estimates, ''Save this Loan Estimate to compare with your Closing Disclosure.''

In the proposal, the Bureau stated its belief that the proposed language may benefit consumers and promote the informed use of credit by encouraging consumers to use the Loan Estimate as a tool to help them readily identify any changes to the loan transaction or costs that may have occurred between issuance of the initial Loan Estimate and the Closing Disclosure. The proposal noted that requiring creditors to disclose the purpose for the Loan Estimate and related disclosures is not a new requirement, and that appendix C to Regulation X currently requires specific language regarding the purpose of the RESPA GFE.[265] The Bureau stated that it believed that while the Bureau's proposed language differs from that prescribed by HUD, the disclosure in proposed § 1026.37(a)(2) accomplishes the same goal in a clearer and more succinct manner. The Bureau stated its belief that this disclosure will promote the informed use of credit and more effective advance notice of settlement costs, consistent with TILA section 105(a) and RESPA section 19(a), and will enable consumers to better understand the costs, benefits, and risks associated with mortgage transactions, consistent with Dodd-Frank Act section 1032(a).

The Bureau did not receive any comments on proposed § 1026.38(a)(2) and continues to believe disclosing the form purpose will benefit consumers in the ways discussed above. Accordingly, the Bureau is adopting § 1026.37(a)(2) as proposed, based on the authority stated in the proposal and above.

37(a)(3) Creditor

TILA section 128(a)(1) requires disclosure of the ''identity of the creditor required to make [the] disclosure.'' 15 U.S.C. 1638(a)(1). Regulation Z § 1026.18(a) implements TILA section 128(a)(1) and requires for each transaction the identity of the creditor making the disclosure. HUD imposed a similar requirement in appendix C to Regulation X, requiring the name and contact information for the ''loan originator.''

The Bureau proposed § 1026.37(a)(3) pursuant to TILA section 105(a), RESPA section 19(a), and Dodd-Frank Act section 1032(a), which mirrors § 1026.18(a) and would have required the name of the creditor making the disclosure. The Bureau stated in the proposal that it believed that by allowing the consumer to identify the name of the creditor providing the Loan Estimate, this disclosure will promote the informed use of credit and more effective advance notice of settlement costs and will enable consumers to better understand the costs, benefits, and risks associated with mortgage transactions.

Proposed comment 1026.37(a)(3)–1 would have cross-referenced § 1026.17(d) and comment 17(d)–1 and clarified that, in transactions with multiple creditors, only the creditor making the disclosure must be identified. Proposed comment 37(a)(3)–2 would have stated that, in transactions where the loan is originated by a mortgage broker, the name of the creditor, if known, must still be provided even if the mortgage broker provides the disclosure to the consumer.

The Bureau did not receive any public comments on proposed § 1026.37(a)(3). Because the Bureau continues to believe that disclosure of the identity of the creditor making the disclosure will, for the reasons discussed, effectuate the purposes of TILA and RESPA, it is adopting § 1026.37(a)(3) and its associated commentary substantially as proposed, based on the authority described in the proposal and above. The Bureau is revising comment 37(a)(3)–2 for clarity and to provide additional guidance for the mortgage broker if the name of the creditor is not known at the time the Loan Estimate is completed.

37(a)(4) Date Issued

Appendix C to Regulation X requires creditors to provide the date of the RESPA GFE. Proposed § 1026.37(a)(4) would have mirrored this requirement by mandating disclosure of the date the Loan Estimate is mailed or delivered to the consumer. Proposed comment 1026.37(a)(4)–1 would have clarified that the ''date issued'' is the date the creditor delivers the Loan Estimate to the consumer and is not affected by the creditor's method of delivery.

The Bureau proposed this requirement pursuant to its authority under TILA section 105(a) and RESPA section 19(a) because, as stated in the proposal, the Bureau believed disclosure of the date the Loan Estimate is issued will promote the informed use of credit and more effective advance disclosure of settlement costs, which are purposes of TILA and RESPA respectively, by enabling consumers to compare the Loan Estimate with any revised Loan Estimates that may be issued. In addition, the Bureau stated in the proposal that it believed this comparison will enable consumers to identify changes in loan terms and costs and thereby understand the costs, benefits, and risks associated with the mortgage transaction, consistent with Dodd-Frank Act section 1032(a).

The Bureau did not receive any comments on proposed § 1026.37(a)(4). The Bureau continues to believe mandating disclosure of the date the Loan Estimate is delivered will, for the reasons discussed, effectuate the purposes of both TILA and RESPA. Accordingly, the Bureau is adopting § 1026.37(a)(4) as proposed, based on the authority described in the proposal and above. The Bureau is revising comment 37(a)(4)–1 to increase clarity by providing examples of the date disclosed. The Bureau is adding new comment 37(a)(4)–2 to provide guidance on the date disclosed when a transaction involves a mortgage broker.

37(a)(5) Applicants

Appendix C to Regulation X requires disclosure of the name of the applicants for the mortgage loan transaction. Similarly, pursuant to TILA section 105(a), RESPA section 19(a), and Dodd-Frank Act section 1032(a), proposed § 1026.37(a)(5) would have required creditors to disclose the name and mailing address of the applicants for the loan transaction. The Bureau stated in the proposal that it believed that by enabling consumers to confirm that the Loan Estimate is intended for them, this disclosure will promote the informed use of credit and more effective advance notice of settlement costs and will enable consumers to better understand the costs, benefits, and risks associated with mortgage transactions. Proposed comment 37(a)(5)–1 would have clarified that where there are multiple consumers, the names and addresses of all consumers for the mortgage loan must be disclosed on the form and that if the form cannot accommodate the names of all the consumers, the creditor may attach to the back of the form a separate page listing the remaining consumers.

Several national trade associations representing mortgage lenders requested clarification regarding the scope of the term ''consumer'' under proposed § 1026.37(a)(5). The commenters noted that the definition of consumer in a rescindable transaction includes non-applicant co-owners who have the right to cancel and recommended that individuals who are not applicants but

[265] Appendix C to Regulation X requires the following statement on the RESPA GFE under the heading ''Purpose'': ''This GFE gives you an estimate of your settlement charges and loan terms if you are approved for this loan. For more information, see HUD's *Special Information Booklet* on settlement charges, your *Truth-in-Lending Disclosures,* and other consumer information at *www.hud.gov/respa.* If you decide you would like to proceed with this loan, contact us.''

who have the right to cancel need not be disclosed, because doing so would be onerous and not fit in the space provided in form H–24. Several national trade associations representing mortgage lenders also noted that where there are multiple consumers, proposed comment 37(a)(5)–1 would have explained that § 1026.37(a)(5) required disclosure of each consumer's address, even though proposed comment 17(d)–2 would have stated that delivery of the disclosures may be made only to consumers with primary liability on the obligation. Those commenters suggested that only the addresses of consumers to whom the Loan Estimate will be delivered should be disclosed.

With respect to consumers in rescindable transactions, the Bureau understands that disclosing the names of non-applicant co-owners could be unnecessarily difficult, particularly because at the time the Loan Estimate is delivered, a title search likely will not have been completed and thus, the creditor would not know with certainty the names of non-applicant co-owners. Further, listing non-applicant co-owners with rights of rescission on the Loan Estimate has little benefit for those co-owners given that they will typically not receive a copy of the Loan Estimate. Accordingly, the Bureau is revising § 1026.37(a)(5) to require disclosure of the name and mailing address only of the consumer applying for the credit. As discussed in the section-by-section analysis of § 1026.17(d), the Bureau is finalizing amendments to comment 17(d)–2 that clarify that § 1026.2(a)(11) provides a specific definition of ''consumer'' for purposes of rescission under §§ 1026.15 and 1026.23 that would include a non-applicant co-owner of a principal dwelling, and provides guidance regarding the provision of disclosures to such consumers. Regarding the proposal's requirement to list each consumer's address, the Bureau believes that listing the addresses of consumers to whom the Loan Estimate is not delivered because they are not primarily liable is unnecessary, and is therefore revising comment 37(a)(5)–1 accordingly.

For the aforementioned reasons, the Bureau continues to believe that disclosure of the name and mailing address of the applicant will effectuate the purposes of TILA and RESPA and thus, is adopting § 1026.36(a)(5) as revised to require disclosure of the name and mailing address of the consumer applying for the credit, pursuant to the authority described in the proposal and above. The Bureau is adopting comment 37(a)(5)–1 with a revision to state that disclosure of a mailing address is required only for consumers to whom the Loan Estimate will be delivered.

37(a)(6) Property

Appendix C to Regulation X requires at the top of the RESPA GFE the ''address or location of the property'' for which the financing is sought. Appendix A to Regulation X requires the RESPA settlement statement to include the street address of the property being sold or if there is no street address, a brief legal description or other location of the property. Appendix A to Regulation X further requires disclosure of a zip code on the RESPA settlement statement in all cases. The Bureau proposed to use its authority in TILA section 105(a), RESPA section 19(a), and section 1032(a) of the Dodd-Frank Act to impose a similar requirement for the Loan Estimate required by § 1026.19(e). The Bureau stated in the proposal that it believed that, by providing the consumer with basic information about the property that is the subject of the loan transaction, this disclosure will promote the informed use of credit and more effective advance notice of settlement costs and will enable consumers to better understand the costs, benefits, and risks associated with mortgage transactions.

Accordingly, proposed § 1026.37(a)(6) would have required the creditor to disclose the street address or location of the property that secures the transaction that is the subject of the Loan Estimate. Proposed comment 37(a)(6)–1 would have instructed creditors to provide a legal description or other locator for the property in cases where there is no street address. The proposed comment also would have clarified that a zip code would be required in all instances.

Several national trade associations representing mortgage lenders commented that requiring disclosure of the property address is problematic for consumers seeking preapproval for a transaction for which the property address is not yet known. Several national trade associations representing mortgage lenders and a document preparation company commented that when disclosing an alternative property address as described by proposed comment 37(a)(6)–1, sample form H–24 does not contain enough space to include a legal description of the property given that legal descriptions are often paragraphs long. A GSE requested in an ex parte meeting that the Bureau clarify how to disclose personal property that secures a transaction.

With respect to preapprovals, the Bureau does not believe that requiring disclosure of a property address in such a situation is problematic. While the property address is one of the six elements of an application under § 1026.2(a)(3)(ii) as finalized, without which the requirement to deliver a Loan Estimate is not triggered, a creditor is permitted to deliver a Loan Estimate without collecting a property address from the consumer. In that case, the Loan Estimate would be subject to § 1026.19(e) and the creditor would be presumed to have collected the address, as described in comment 19(e)(3)(iv)(A)–3. As further described by that comment, the subsequent receipt of a property address would not be considered a changed circumstance pursuant to § 1026.19(e)(3)(iv)(A) or (B). Under proposed § 1026.37(a)(6), the creditor would not have been required to disclose the street address, as would have been clarified by proposed comment 37(a)(6)–1. Comment 37(a)(6)–1 would have stated, however, that a zip code is required in all instances. In addition, to the extent that a creditor does not want to provide a Loan Estimate for a preapproval before a property address is known, the creditor could instead deliver a written estimate of terms or costs specific to that consumer, provided that the written estimate contained the disclaimer required by § 1026.19(e)(2)(ii). Accordingly, the Bureau believes § 1026.37(a)(6) does not need to be revised to address preapprovals. However, to provide additional flexibility for creditors to use the Loan Estimate for preapprovals where the property address is unknown, the Bureau is revising comment 37(a)(6)–1 to state that while the disclosure of a zip code is required in all instances, the creditor may disclose multiple zip codes if the consumer is investigating home purchase opportunities in multiple zip codes.

In response to the commenters' concerns about disclosing a legal description of real property, the Bureau understands that a legal description would be unlikely to fit in the space provided for the disclosure required by § 1026.37(a)(6) and has revised comment 37(a)(6)–1 to delete the reference to a legal description. With respect to disclosing personal property, the Bureau recognizes that personal property may, in some cases, also secure a transaction. Accordingly, the Bureau is adding comment 37(a)(6)–2 to address the disclosure of personal property. The Bureau also believes additional clarity

regarding the disclosure requirements will facilitate compliance for industry.

For the reasons stated above, and pursuant to the authority stated in the proposal and above, the Bureau is adopting § 1026.36(a)(6) substantially as proposed, but with modifications to increase clarity regarding the information to be disclosed. The Bureau is revising § 1026.36(a)(6) to require disclosure of the address, including the zip code, of the property that secures or will secure the transaction, or if the address is unavailable, the location of such property including a zip code. The Bureau is further revising comment 37(a)(6)–1 to delete the reference to a legal description, to provide for the disclosure of multiple zip codes, and to clarify that a creditor complies with § 1026.37(a)(6) by disclosing a complete address for purposes of the U.S. Postal Service. The Bureau is adding comment 37(a)(6)–2 which clarifies that where personal property secures a transaction, a description of the personal property may be disclosed pursuant to § 1026.37(a)(6) to the extent that it fits in the space provided for this disclosure on form H–24. Comment 37(a)(6)–2 explains, however, that the creditor is not permitted to add additional pages to the Loan Estimate to disclose personal property. The Bureau is concerned that adding an additional page to list personal property may risk information overload to the consumer and believes that such risk outweighs the benefit of such disclosure, given its comparatively lesser importance to a description of the real property that secures the transaction. Personal property that secures a credit transaction would also be disclosed on the Closing Disclosure pursuant to § 1026.38(l)(6). The Bureau is further adding comment 37(a)(6)–3 to provide guidance on a transaction secured by more than one property. The Bureau adopts the revision to comment 37(a)(6)–1 and new comments 37(a)(6)–2 and –3 pursuant to its authority in TILA section 105(a), RESPA section 19(a), and section 1032(a) of the Dodd-Frank Act.

37(a)(7) Sale Price

Proposed § 1026.37(a)(7)(i) would have required disclosure of the contract sale price for the property identified in § 1026.37(a)(6). For transactions that do not involve a seller, proposed § 1026.37(a)(7)(ii) would have required disclosure of the estimated value for the property identified in § 1026.37(a)(6). The disclosure of the contract sale price and estimated property value, as applicable, is a new requirement, which the Bureau proposed pursuant to its authority under TILA section 105(a), RESPA section 19(a), and section 1032(a) of the Dodd-Frank Act for transactions subject to proposed § 1026.19(e). The Bureau stated in the proposal that it believed that including the contract sales price or estimated property value in the Loan Estimate will help promote the informed use of credit and more effective advance notice of settlement costs and will enable consumers to better understand the costs, benefits, and risks associated with mortgage transactions by ensuring that consumers have in a single location all the information needed to decide whether to enter into a legal obligation. Proposed comment 37(a)(7)–1 would have provided guidance regarding the requirement to provide the estimated value of the property in transactions where there is no seller.

A regional bank commented that even in transactions where there is a seller, the sale price of the property may not be known at the time the Loan Estimate is delivered, especially because a sales contract is not one of the elements of an application, as defined in § 1026.2(a)(3), that triggers delivery of the Loan Estimate. A national trade association representing mortgage lenders requested guidance on which appraisal or valuation to use for an estimated property value where the creditor has obtained multiple appraisals or valuations but has not yet decided which one to use during underwriting. A GSE requested guidance in an ex parte meeting on whether to disclose the value of personal property in transactions where such property is valued separately from real property.

With respect to the comment that the sale price of the property may not be known, the Bureau recognizes that there may be transactions that involve a seller where the sale price of the property is not yet known at the time the Loan Estimate is delivered. Accordingly, the Bureau is revising proposed comment 37(a)(7)–1 to clarify that disclosure of an estimated sales price in transactions that involve a seller where the contract sale price is not yet known is permissible if it is the estimated property value used by the creditor in making the disclosures in the Loan Estimate. For example, if the creditor has issued disclosures with origination charges based on a particular loan-to-value ratio, the creditor should disclose a sale price that it used to determine that loan-to-value ratio. With respect to the comment that a creditor may not know which of multiple appraisals it obtained it will use for underwriting the transaction, the Bureau recognizes that proposed § 1026.37(a)(7) did not address which valuation to disclose in this circumstance and is further revising comment 37(a)(7)–1 to state that where a creditor has obtained multiple appraisals or valuations but has not yet decided which one to use, a creditor may disclose any appraisal or valuation it reasonably believes it may use in underwriting the transaction.

With respect to personal property, the Bureau recognizes that proposed § 1026.37(a)(7) did not address how to disclose personal property that may be part of the sale price of a transaction. The Bureau is adopting comment 37(a)(7)–2 to provide that where personal property is separately valued from real property, only the value of the real property should be disclosed pursuant to § 1026.37(a)(7). Comment 37(a)(7)–2 further clarifies that where personal property is included in the sale price of the real property, § 1026.37(a)(7) permits disclosure of the aggregate price without any reduction for the appraised or estimated value of the personal property.

Because the Bureau continues to believe that disclosure of the contract sale price or estimated property value will effectuate the purposes of TILA and RESPA, it is adopting § 1026.37(a)(7)(i) and (ii) substantially as proposed with minor revisions for clarity, based on the legal authority described in the proposal and above. For the reasons discussed, the Bureau is adopting comment 37(a)(7)–1 as revised and is adopting comment 37(a)(7)–2, pursuant to its authority under TILA section 105(a), RESPA section 19(a), and section 1032(a) of the Dodd-Frank Act.

37(a)(8) Loan Term

Existing appendix C to Regulation X requires the loan originator to disclose the loan term as part of the ''Summary of Your Loan'' disclosure. Regulation Z does not have a similar requirement, although TILA provides for such a disclosure. TILA section 128(a)(6) requires disclosure of the ''number, amount, and due dates or period'' of periodic payments which, in effect, makes disclosure of the loan term a statutory requirement. Section 1026.18(g) implements TILA section 128(a)(6) for non-mortgage transactions, but there is no corresponding disclosure requirement for mortgage loan transactions in existing § 1026.18(s). In the proposal, the Bureau stated its intent to implement TILA section 128(a)(6) by requiring disclosure of the loan term for mortgages in proposed § 1026.37(a)(8). Proposed § 1026.37(a)(8) essentially would have mirrored appendix C to Regulation X and would have required the creditor to disclose the term to maturity of the credit.

The Bureau proposed § 1026.37(a)(8) pursuant to its authority under TILA section 105(a), RESPA section 19(a), and section 1032(a) of the Dodd-Frank Act to implement TILA section 128(a)(6). The Bureau stated in the proposal that it believed disclosing the loan term will help promote the informed use of credit and more effective advance notice of settlement costs and will enable consumers to better understand the costs, benefits, and risks associated with mortgage transactions. The Bureau noted that the prototype mortgage disclosures used at the Bureau's consumer testing displayed the loan term expressed in years, and consumers were able to understand and evaluate easily the term to maturity. The Bureau stated in the proposal that it believed that this unit of time provides a frame of reference to consumers that they use more regularly and that is easier to understand than months, which may result in large numbers that are unfamiliar to consumers, such as 180 or 360 months. The Bureau stated that, accordingly, it proposed § 1026.37(a)(8), which would have required the loan term to be expressed in years. The Bureau stated in the proposal that it understood from industry feedback provided in connection with the Bureau's stakeholder outreach that some adjustable rate loans may be structured so that the periodic principal and interest payment is fixed such that increases in the interest rate cause increases of the loan term instead of the periodic payment. The Bureau stated that, accordingly, it proposed comment 37(a)(8)–1, which would have provided guidance regarding compliance with the requirement of proposed § 1026.37(a)(8) if the term to maturity is adjustable under the terms of the legal obligation.

Several national trade associations representing mortgage lenders and several document preparation companies commented that neither proposed § 1026.37(a)(8) nor its accompanying commentary provided guidance on how to disclose loan terms that were not whole years, such as a term of 185 months. Further, two GSEs commented that identifying the term to maturity of the transaction was confusing in the case of a ''construction-to-permanent'' transaction which has two distinct transaction phases. The commenters requested guidance on whether proposed § 1026.37(a)(8) requires disclosure of the term of the two phases combined or of the permanent phase only and suggested that only the permanent loan term be disclosed.

To address the commenters' requests for guidance regarding how to disclose loan terms that are not whole years, the Bureau is revising § 1026.37(a)(8) and adopting new comment 37(a)(8)–1. Revised § 1026.37(a)(8) requires disclosure of the term stated in years or months, or both, as applicable and comment 37(a)(8)–1.i clarifies that where the term to maturity of the credit transaction is 24 months or more but does not equate to a number of whole years, § 1026.37(a)(8) requires disclosure of the number of whole years in the term to maturity followed by the designation ''yr.,'' and then the remaining number of months, followed by the designation ''mo.'' For example, if the term to maturity of the transaction is 185 months, the correct disclosure would be ''15 yr. 5 mo.'' Comment 37(a)(8)–1.ii further clarifies that, if the term to maturity does not equal a whole number of years and is less than 24 months, the disclosure required is the number of months, and provides additional examples.

With regard to the comment suggesting that only the permanent phase of a construction-to-permanent loan should be required to be disclosed, the Bureau notes that existing § 1026.17(c)(6)(ii) and its accompanying commentary address how to disclose construction-to-permanent transactions. That provision provides that ''[w]hen a multiple-advance loan to finance the construction of a dwelling may be permanently financed by the same creditor, the construction phase and the permanent phase may be treated as either one transaction or more than one transaction.'' Accordingly, the disclosure required by § 1026.37(a)(8) would be the term of the combined phases if the construction-to-permanent transaction were disclosed as one transaction or the term of the individual phase, if disclosed as two transactions. The Bureau notes that the amendments to appendix D to Regulation Z in this final rule, as described below, provide additional guidance regarding the disclosure of construction-to-permanent transactions.

The Bureau continues to believe that disclosing the loan term will, for the reasons discussed, effectuate the purposes of TILA and RESPA. Accordingly, based on the authority described in the proposal and above, the Bureau is adopting § 1026.37(a)(8) as revised. The Bureau did not receive any comments regarding proposed comment 37(a)(8)–1 and is adopting that comment substantially as proposed, with minor modifications for clarity, and renumbered as comment 37(a)(8)–2. For the reasons described above, the Bureau adopts new comment 37(a)(8)–1 pursuant to its authority under TILA sections 105(a) and 128(a)(6), RESPA section 19(a), and section 1032(a) of the Dodd-Frank Act.

37(a)(9) Purpose

Neither Regulation Z nor Regulation X currently requires disclosure of the purpose of the loan. With the number of loan products available on the market, some of which are targeted for a particular purpose, the Bureau stated its belief in the proposal that inclusion of this information on the Loan Estimate will promote the informed use of credit and more effective advance notice of settlement costs and will enable consumers to better understand the costs, benefits, and risks associated with mortgage transactions. Accordingly, the Bureau proposed to use its authority under TILA section 105(a), RESPA section 19(a), and section 1032(a) of the Dodd-Frank Act to require creditors to disclose the intended purpose of the extension of credit.

Under proposed § 1026.37(a)(9), the creditor would have been required to disclose as the purpose of the loan one of the following: (1) purchase; (2) refinance; (3) construction; or (4) home equity loan. Proposed comment 37(a)(9)–1 would have provided general guidance on identifying the most accurate loan purpose and would have clarified that, in disclosing the loan purpose, the creditor must consider all relevant information available to the creditor at the time of the disclosure and that, if there is uncertainty, the creditor may rely on the consumer's stated purpose. In the proposal, the Bureau sought comment on whether additional loan purposes should be added to proposed § 1026.37(a)(9).

Several national trade associations representing mortgage lenders and two large banks commented that the loan purposes required by proposed § 1026.37(a)(9) differ from those required to be disclosed under Regulation C, 12 CFR 1003, *et seq.,* which implements the Home Mortgage Disclosure Act, 12 U.S.C. 2801 *et seq.* Those commenters suggested that defining loan purpose differently for Regulation C and for the integrated TILA–RESPA disclosures would create unnecessary regulatory complexity and increase the compliance burden for industry. One regional bank commenter, however, stated that the loan purpose categories proposed in § 1026.37(a)(9) were sufficient. A document preparation company requested that the Bureau add temporary financing or ''bridge'' loans as a loan purpose.

Regarding the definition of loan purpose, the Bureau recognizes that using the same definition in two of its

regulations may ease some compliance burden for industry. However, Regulation C and the integrated disclosures implement different statutes and have entirely different purposes. The purpose of the integrated disclosures set forth by the Dodd-Frank Act is to aid consumers' understanding of their loan transactions. Regulation C, by contrast, is intended to provide the public with loan data, which data is typically used by regulatory agencies to study the mortgage market and for compliance purposes. 12 CFR 1003.1. Given the different purposes of the integrated disclosures and Regulation C, the Bureau declines to revise § 1026.37(a)(9) to conform with Regulation C.

With respect to adding other loan purposes, in choosing the purposes proposed in § 1026.37(a)(9), the Bureau intended to describe only the most common and basic loan purposes, recognizing that it would be impossible to list every conceivable specific purpose that a consumer has in obtaining a loan. The Bureau is satisfied that the purposes proposed will adequately describe the transactions covered by the final rule and declines to add temporary financing or ''bridge'' loans to § 1026.37(a)(9). Accordingly, pursuant to the authority discussed above and in the proposal and for the reasons described, the Bureau is adopting § 1026.37(a)(9) as proposed.

37(a)(9)(i) Purchase

Proposed § 1026.37(a)(9)(i) would have required the creditor to disclose that the loan is a ''Purchase,'' if the credit is obtained to finance the acquisition of the property that is the subject of the loan transaction. Proposed comment 37(a)(9)–1.i would have clarified the meaning of the term ''purchase.''

A GSE requested that the Bureau clarify that in order for a loan to be considered a purchase loan, none of the borrowers can currently hold an ownership interest in the property. The commenter noted that such a clarification would align the meaning of purchase for the disclosure required by § 1026.37(a)(9) with current industry standards. The Bureau believes that the general understanding of a ''purchase'' loan is one where the consumer does not already hold an interest in the property. Further, the Bureau believes that the proposed regulatory text is sufficient to convey such meaning, because it states that the disclosure applies to the ''acquisition'' of the property, and one cannot acquire what one already owns. Accordingly, the Bureau is adopting § 1026.37(a)(9)(i) as proposed and comment 38(a)(9)–1.i substantially as proposed with minor modifications for clarity.

37(a)(9)(ii) Refinance

Proposed § 1026.37(a)(9)(ii) would have required the creditor to disclose that the loan is for a ''Refinance'' if, consistent with § 1026.20(a) other than with regard to the identity of the creditor, the credit is to refinance an existing obligation already secured by the property that is the subject of the transaction. As under § 1026.20(a), whether a transaction is a refinancing under proposed § 1026.37(a)(9)(ii) would have depended on whether the original obligation has been satisfied or extinguished and replaced by a new obligation, based on the parties' contract and applicable law. The proposal stated that this may include an obligation under which amounts other than principal remain due under the existing obligation and are to be paid with the new obligation to satisfy the existing obligation. Proposed comment 37(a)(9)–1.ii would have clarified the meaning of the term ''refinance'' and explained that the consumer may or may not receive cash from the transaction. Proposed comment 37(a)(9)–1.ii also would have provided a description of a refinancing with and without cash provided and provided an example of how a consumer may use cash received in a refinancing transaction with cash provided. Proposed comment 37(a)(9)–2 would have clarified that proposed § 1026.37(a)(9)(ii), unlike § 1026.20(a), applies to all such transactions even if the refinancing is undertaken by a new creditor.

Two GSEs commented that the proposed definition of refinance does not align with common industry usage in that it fails to include credit secured by a dwelling not previously subject to a security interest. The proposed definition of refinance in § 1026.37(a)(9)(ii) is not a new definition, however; it is the existing definition under § 1026.29(a) that is used throughout Regulation Z. Though the Bureau understands the GSEs' desire to define a refinance transaction in a way that aligns with current industry usage, the purposes of the integrated disclosures are to aid consumer understanding of the transaction and facilitate compliance with the disclosure requirements, and the Bureau believes that using the existing Regulation Z definition of refinance sufficiently informs consumers while facilitating compliance for creditors. Using the existing definition in Regulation Z avoids adding regulatory complexity through the creation of a new definition of that term. Accordingly, the Bureau declines to revise the proposed definition.

However, as described below, the Bureau understands that additional clarity is necessary for situations in which more than one loan purpose could be used to describe a particular transaction. Accordingly, the Bureau is revising § 1026(a)(9)(ii) to provide that the ''Refinance'' disclosure is applicable only if the credit is not for the purpose described in § 1026.37(a)(9)(i). The Bureau is further revising § 1026.37(a)(9)(ii) and comment 37(a)(9)–2 to state that a transaction is for a refinance without regard to whether the creditor is the original creditor or a holder or servicer. For the reasons discussed above, the Bureau is adopting § 1026.37(a)(9)(ii) and comment 37(a)(9)–2 as revised, and comment 37(a)(9)–1.ii as proposed.

37(a)(9)(iii) Construction

If the extension of credit is to finance the construction of a dwelling on the property, proposed § 1026.37(a)(9)(iii) would have required the creditor to disclose that the loan is for ''Construction.'' Proposed comment 37(a)(9)–1.iii would have clarified that the creditor is required to disclose that the loan is for ''Construction'' both in transactions where the extension of credit is to cover the costs of a construction project only (construction-only loan), whether it is a new construction or a renovation project, and in transactions where a multiple advance loan may be permanently financed by the same creditor (construction-to-permanent loan). The proposed comment also would have clarified that, in construction-only transactions, the consumer may be required to make interest only payments during the construction phase of the project with the loan balance due at the completion of the construction project. Finally, proposed comment 37(a)(9)–1.iii would have cross-referenced § 1026.17(c)(6)(ii) and comments 17(c)(6)–2 and –3 for further guidance regarding construction-to-permanent transactions.

A GSE and two document preparation companies commented that disclosing a transaction for the purpose of a renovation, no matter how small, as a construction loan, does not align with common industry usage and would be confusing to consumers. The Bureau understands that disclosing the extension of credit for a renovation project as a construction loan could be confusing to the consumer because it is not aligned with common usage of the term, as well as industry usage.

Accordingly, the Bureau is revising comment 37(a)(9)–1.iii to refer to initial construction and to clarify that this disclosure does not apply to renovations. The Bureau is further revising § 1026.37(a)(9)(iii) to state that a loan is for ''Construction'' only if it will be used to finance the initial construction of a dwelling and is not for one of the purposes described in § 1026.37(a)(9)(i) or (ii), for the reasons discussed in the section-by-section analysis of § 1026.37(a)(9)(ii). Accordingly, credit obtained for the purpose of renovation shall be disclosed as a refinance or home equity loan, as applicable.

37(a)(9)(iv) Home Equity Loan

If the extension of credit does not involve the purchase of real property as described in § 1026.37(a)(9)(i) or the construction of a dwelling as described in § 1026.37(a)(9)(iii) and will not be used to refinance an existing obligation as described in § 1026.37(a)(9)(ii), proposed § 1026.37(a)(9)(iv) would have required the creditor to state that the extension of credit is for a ''Home Equity Loan.'' Proposed comment 37(a)(9)(iv)–1.iv would have clarified that the home equity loan disclosure applies whether the transaction will be secured by a first or subordinate lien on the property. The Bureau did not receive any comments on § 1026.37(a)(9)(iv). The Bureau is adopting § 1026.37(a)(9)(iv) and comment 37(a)(9)–1.iv substantially as proposed but with minor modifications for clarity.

37(a)(10) Product

Pursuant to TILA section 128(b)(2)(C)(ii), under existing § 1026.18(s), the creditor is required to provide certain information about the interest rate and payments, which is based on the loan product. In proposed § 1026.37(a)(10), the Bureau would have required a description of the loan product. The Bureau proposed this new requirement pursuant to its authority under TILA section 105(a), RESPA section 19(a), section 1032(a) of the Dodd-Frank Act, and section 1405(b) of the Dodd-Frank Act with respect to residential mortgage loans. The Bureau stated in the proposal that it believed that requiring the disclosure of the loan product on the Loan Estimate promotes the informed use of credit and more effective advance disclosure of settlement charges by providing consumers with key loan terms early in the transaction and in a clear and conspicuous manner. The Bureau further stated in the proposal that this disclosure would enable consumers to better understand the costs, benefits, and risks associated with mortgage transactions. In addition, the Bureau stated its belief that disclosure of the loan product may improve consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures, and is in the interest of consumers and in the public interest.

Specifically, proposed § 1026.37(a)(10)(i) would have required the creditor to identify the type of loan product for which the consumer has applied and proposed § 1026.37(a)(10)(ii) would have required a description of certain loan features added to the loan product that may change the consumer's periodic payment. Proposed § 1026.37(a)(10)(iii) would have provided instructions on how to disclose loan products that contain one or more loan features, would have stated that the creditor may disclose only one loan feature, and cross-referenced proposed § 1026.37(a)(10)(ii) as establishing the following hierarchy to be adhered to when disclosing a loan product with more than one loan feature: (1) Negative amortization; (2) interest only; (3) step payment; (4) balloon payment; and (5) seasonal payment. Proposed § 1026.37(a)(10)(iv) would have required that the disclosure of any loan product or loan feature be preceded by any introductory rate periods, adjustable features, and applicable time periods. This aspect of the proposal would not have applied to fixed rate loans with no additional features. Finally, comments to proposed § 1026.37(a)(10) would have provided further descriptions and examples of the loan products and features to be disclosed.

A national trade association representing mortgage lenders commented that requiring the disclosure of loan features was confusing as part of the loan product name and recommended instead that the loan features be disclosed in the ''loan terms'' section of the Loan Estimate. A large bank commented that disclosing only one loan feature was misleading to the consumer and prevented useful shopping for loan products; instead the commenter suggested disclosing all applicable features.

As discussed above, the Bureau has extensively tested the integrated disclosures and concluded that consumers are able to use them to compare and make sophisticated trade-offs between various loan products. *See* Kleimann Testing Report at 278. The Bureau believes that the general design of the loan product disclosure is beneficial for consumers and has determined not to change the structure of proposed § 1026.37(a)(10). Accordingly, the Bureau is finalizing § 1026.37(a)(10) substantially as proposed, with minor modifications for clarity, based on the authority described in the proposal and above.

37(a)(10)(i)

Proposed § 1026.37(a)(10)(i) would have required disclosure of one of three product types: Adjustable rate, step rate, or fixed rate, as defined in that paragraph as the product for which the consumer has applied. Proposed comment 37(a)(10)–1 would have clarified the proper format for disclosure of the product types listed. The Bureau did not receive any comments regarding proposed § 1026.37(a)(10)(i) and is adopting it as proposed. The Bureau is adopting comment 37(a)(10)–1 as revised to clarify that only the first adjustment period shall be disclosed for any loan without the features described in § 1026.37(a)(10)(ii), for the reasons discussed in the section-by-section analysis of § 1026.37(a)(10)(iv), below.

37(a)(10)(i)(A) Adjustable Rate

If the interest rate may increase after consummation, but the rates that will apply or the periods for which they will apply are not known at consummation, proposed § 1026.37(a)(10)(i)(A) would have required that the loan be disclosed as an ''Adjustable Rate.'' Proposed comment 37(a)(10)–1.i would have clarified that the proper format for disclosure of an adjustable rate product is the length of any introductory period, followed by the frequency of the adjustment periods thereafter preceding the loan product. For example, where the loan product is an adjustable rate with an introductory rate that remains the same for the first five years of the loan term and then adjusts every three years starting in year six, proposed comment 37(a)(10)–1.i would have explained that the disclosure required by § 1026.37(10) is ''5/3 Adjustable Rate.''

Several industry commenters requested guidance regarding how to disclose adjustable loan rate products that have multiple adjustment intervals. One national trade association representing mortgage lenders requested guidance for how to disclose an adjustable rate loan where the introductory period may be within a certain range of months but is not yet known.

The Bureau recognizes that the proposal did not address how to disclose such products. Accordingly, the Bureau is adopting

§ 1026.37(a)(10)(i)(A) as proposed, but is expanding comment 37(a)(10)–1.i to address comments requesting guidance on how to disclose adjustable rate loan products which have multiple adjustment intervals. Comment 37(a)(10)–1.i is revised to clarify that disclosure of only the first adjustment period is required for the reasons discussed in the section-by-section analysis of § 1026.37(a)(10)(iv), below. To further address the numerous potential adjustable rate products, the Bureau is adding comment 37(a)(10)–1.i.A to explain that where an adjustable rate loan product has no introductory period, the creditor is required to disclose a ''0'' followed by the first adjustment period. The Bureau also is adding comment 37(a)(10)–1.i.B to clarify, in response to the comment received regarding unknown introductory periods, that where the introductory period is not yet known, § 1026.37(a)(10) requires disclosure of the shortest potential introductory period.

37(a)(10)(i)(B) Step Rate

Under proposed § 1026.37(a)(10)(i)(B), the loan product would have been required to be disclosed as a ''Step Rate'' if the interest rate will change after consummation and the applicable rates and the periods for the applicable rates are known. Proposed comment 37(a)(10)–1.ii would have clarified the proper format for disclosure of a step-rate product.

A regional bank and a document preparation company both requested guidance on how to disclose preferred rate transactions under proposed § 1026.37(a)(10). One document preparation company commenter requested clarification of whether a transaction subject to a third-party buydown would be disclosed as a step rate transaction pursuant to proposed § 1026.37(a)(10)(i)(B). The Bureau also received comments from varied sources questioning the logic of requiring the disclosure of multiple adjustment intervals for the step rate product example in proposed comment 37(a)(10)–1.ii.

With respect to the request for guidance regarding preferred rate transactions, the Bureau notes that existing comment 17(c)(1)–11.iii provides guidance regarding preferred rate loans, which applies to the disclosures required by § 1026.37(a)(10). In a preferred rate transaction, the terms of the legal obligation provide that the initial underlying rate is fixed but will increase upon the occurrence of some event, and the note reflects the preferred rate. As the terms of the legal obligation reflect the preferred rate, the disclosures are to be based on the preferred rate. The Bureau additionally notes that if the preferred rate under the terms of the legal obligation were set to expire at a defined future date, the disclosures required by § 1026.37 should reflect such expiration of the preferred rate as a scheduled interest rate adjustment. With respect to third-party buydowns, existing comment 1026.17(c)(1)–3 addresses how to treat such transactions, which guidance would apply to the disclosure required by § 1026.37(a)(10)(i)(B).

The Bureau is adopting § 1026.37(a)(10)(i)(B) as proposed but is revising comment 37(a)(10)–1.ii to clarify that disclosure of only the first adjustment interval is required, for the reasons discussed in the section-by-section analysis of § 1026.37(a)(10)(iv). In response to the comments received regarding the proposed step rate example, the Bureau is also revising comment 37(a)(10)–1.ii to clarify how to disclose a step rate product without an introductory rate.

37(a)(10)(i)(C) Fixed Rate

Proposed § 1026.37(a)(10)(i)(C) would have required the creditor to disclose the loan product as a ''Fixed Rate'' if the product is neither an Adjustable Rate nor a Step Rate, as described in § 1026.37(a)(10)(i)(A) and (B), respectively. Proposed comment 37(a)(10)–1.iii would have provided guidance regarding the disclosure required by § 1026.37(a)(10)(i)(C). The Bureau did not receive any comments on proposed § 1026.37(a)(10)(i)(C) describing fixed rate loan products or its accompanying comment, proposed comment 37(a)(10)–1.iii. Accordingly, the Bureau is adopting proposed § 1026.37(a)(10)(i)(C) and its accompanying comment as proposed.

37(a)(10)(ii)

Proposed § 1026.37(a)(10)(ii) would have required the disclosure of loan features that may change the consumer's periodic payment. As noted above, although structured differently, § 1026.18(s) requires a similar disclosure. Proposed § 1026.37(a)(10)(ii) would have required the consumer to disclose one of the following features, as applicable: Negative amortization, interest only, step payment, balloon payment, or seasonal payment. Where a transaction has more than one of the loan features described in that paragraph, proposed § 1026.37(a)(10) would have required disclosure only of the first applicable feature in the order the features are listed in § 1026.37(a)(10)(ii).

Proposed comment 37(a)(10)–2 would have clarified the requirements of proposed § 1026.37(a)(10)(iii) and (iv) with respect to the feature that is disclosed and the time period or the length of the introductory period and the frequency of the adjustment periods, as applicable, that preceded the feature. The proposed comment would have provided as examples: An adjustable rate product with an introductory rate that is interest only for the first five years and then adjusts every three years starting in year six would be disclosed as ''5 Year Interest Only, 5/3 Adjustable Rate''; a step-rate product with an introductory interest rate that lasts for seven years, and adjusts every year thereafter for the next five years at a predetermined rate would be disclosed as ''7/1 Step Rate''; and a fixed rate product that is interest only for ten years with a balloon payment due at the end of the ten-year period would be disclosed as ''10 Year Interest Only, Fixed Rate.'' The proposal noted that the balloon payment feature, however, also would be disclosed elsewhere on the form.

One trade association representing banks requested guidance on how to disclose a loan that had multiple features. As stated in the proposal, where a transaction has more than one of the features listed, § 1026.37(a)(10)(iii) requires disclosure of only one feature, the first applicable feature in the order they are listed in the regulation. The Bureau is adopting § 1026.37(a)(10)(ii) substantially as proposed but with a minor modification for clarity. The Bureau is revising comment 37(a)(10)–2 to clarify that where a transaction feature has multiple adjustment periods, only the first adjustment period must be disclosed for the reasons discussed in the section-by-section analysis of § 1026.37(a)(10)(iv), below.

37(a)(10)(ii)(A) Negative Amortization

Proposed § 1026.37(a)(10)(ii)(A) would have required that the creditor disclose a ''Negative Amortization'' loan feature if, under the terms of the legal obligation, the loan balance may increase. Proposed comment 37(a)(10)–2.i would have provided an example of the disclosure of a loan product with a negative amortization feature. The Bureau did not receive any comments on proposed § 1026.37(a)(10)(ii)(A) or its accompanying commentary and is adopting § 1026.37(a)(10)(ii)(A) as proposed. The Bureau is adopting comment 37(a)(10)–2.i substantially as proposed but with a minor modification for clarity.

37(a)(10)(ii)(B) Interest Only

Proposed § 1026.37(a)(10)(ii)(B) would have required that the creditor disclose an ''Interest Only'' loan feature if, under the legal obligation, one or more regular periodic payments may be applied only to interest accrued and not to the loan principal. Proposed comment 37(a)(10)–2.ii would have provided an example of the disclosure of a loan product with an interest only feature. The Bureau did not receive any comments on proposed § 1026.37(a)(10)(ii)(B) or its accompanying commentary and is adopting § 1026.37(a)(10)(ii)(B) as proposed. The Bureau is adopting comment 37(a)(10)–2.ii substantially as proposed but with a minor modification for clarity.

37(a)(10)(ii)(C) Step Payment

Proposed § 1026.37(a)(10)(ii)(C) would have required that the creditor disclose a ''Step Payment'' loan feature if the terms of the legal obligation include a feature that involves scheduled variations in the periodic payment during the term of the loan that are not caused by changes in the interest rate. Proposed comment 37(a)(10)–2.iii would have clarified that the term ''step payment'' is sometimes also called a ''graduated payment'' and provided an example and guidance on the format to be used when disclosing a loan product with a Step Payment feature. The Bureau did not receive any comments on proposed § 1026.37(a)(10)(ii)(C) and is adopting it as proposed. The Bureau is adopting comment 37(a)(10)–2.iii substantially as proposed but with a minor modification for clarity.

37(a)(10)(ii)(D) Balloon Payment

Proposed § 1026.37(a)(10)(ii)(D) would have required that the creditor disclose a ''Balloon Payment'' loan feature if the transaction includes a balloon payment as defined in proposed § 1026.37(b)(5). Proposed comment 37(a)(10)–2.iv would have clarified that the term ''balloon payment'' has the same meaning as in proposed § 1026.37(b)(5) and provided further guidance on the format to be used when disclosing a loan product with a balloon payment feature. The Bureau did not receive any comments on proposed § 1026.37(a)(10)(ii)(D) and is adopting it substantially as proposed with a revision to state that the feature should be disclosed if the terms of the obligation include it, to conform to the language used in § 1026.37(a)(10)(ii)(E). The Bureau is adopting comment 37(a)(10)–2.iv as revised to clarify that if a transaction includes more than one balloon payment, only the earliest year that a balloon payment is due must be disclosed.

37(a)(10)(ii)(E) Seasonal Payment

Proposed § 1026.37(a)(10)(ii)(E) would have required that the creditor disclose whether the terms of the legal obligation expressly provide that regular periodic payments are not scheduled for specified unit-periods on a regular basis, disclosed as a ''Seasonal Payment'' feature. The Bureau stated in the proposal that it understands from industry feedback provided in connection with the Bureau's stakeholder outreach that some loans, which may be more prevalent in the community bank market, may be structured so that periodic principal and interest payments are not scheduled to be made by the consumer in between specified unit-periods on a regular basis. The proposal provided as an example that such a loan may be structured so that payments are not required to be made by the consumer during the months of June through August each year of the loan term. The proposal noted that these loans are sometimes called ''teacher loans.'' Proposed § 1026.37(a)(10)(ii)(E) would have provided for the disclosure of such a product feature. Proposed comment 37(a)(10)–2.v would have provided guidance regarding this requirement. The Bureau did not receive any comments on proposed § 1026.37(a)(10)(ii)(E) and is adopting it and comment 37(a)(10)–2.v as proposed.

37(a)(10)(iii)

Proposed § 1026.37(a)(10)(iii) would have required that if more than one loan feature is applicable to the transaction, the creditor disclose only the first applicable loan feature from the order in which they are presented in proposed § 1026.37(a)(10)(ii). The proposal stated that this proposed order of loan features prioritizes the loan features to ensure that consumers receive information about potential costs and risks in a readily visible format, understanding that consumers will receive information about some applicable features elsewhere in the Loan Estimate. The proposal provided as an example that the existence of a balloon payment also would have been disclosed under both proposed § 1026.37(b) and (c), and thus, is later in the order of loan features under proposed § 1026.37(a)(10)(iii). In addition, the Bureau stated its belief in the proposal that seasonal payments do not pose as great a risk to consumers as do negatively amortizing or non-amortizing payments, and thus, disclosure of these features is earlier than seasonal payments in the order under proposed § 1026.37(a)(10)(iii).

Several document preparation companies and a large bank commented that the proposal was not clear with regard to how to disclose construction-to-permanent loans, which often have an adjustable rate phase followed by a fixed rate phase. As discussed above in the section-by-section analysis of § 1026.37(a)(8), existing § 1026.17(c)(6)(ii) and its accompanying commentary address how to disclose construction-to-permanent transactions. Section 1026.17(c)(6)(ii) provides that ''[w]hen a multiple-advance loan to finance the construction of a dwelling may be permanently financed by the same creditor, the construction phase and the permanent phase may be treated as either one transaction or more than one transaction.'' Accordingly, a creditor may disclose a construction-to-permanent loan as separate transactions with distinct loan product types. Should a creditor choose to treat the construction-to-permanent transaction as one, however, the Bureau notes that the disclosure of a Fixed Rate product type is only permitted under § 1026.37(a)(10) if the product does not otherwise fall within the definition of Adjustable Rate or Step Rate product under § 1026.37(a)(10)(i)(A) or (B). Accordingly, where a construction-to-permanent transaction has an adjustable rate construction phase followed by a fixed rate permanent phase, § 1026.37(a)(10) would require it to be disclosed as an adjustable rate product because the adjustable rate phase would fall within the Adjustable Rate product determination. The Bureau is adopting § 1026.37(a)(10)(iii) as proposed.

37(a)(10)(iv)

Finally, proposed § 1026.37(a)(10)(iv) would have required the creditor to include in the disclosures required by § 1026.37(a)(10)(i) and (ii) information regarding any introductory rate period, adjustment period, or time period, as applicable, and that this information should precede both the loan product and any features disclosed, as applicable.

The Bureau received comments from a document preparation company and a national trade association representing mortgage lenders requesting clarification regarding the disclosure of transactions where there are multiple adjustment periods. Specifically, the commenters asked for explanation of proposed comment 37(a)(10)–1.ii, which would have addressed step rate loan products. That proposed comment stated that, for example, if a step rate loan had an introductory interest rate

that lasts for 10 years and adjusts every year thereafter for the next five years, and then adjusts every three years for the next 15 years, the disclosure required by § 1026.37(a)(10) is ''10/1/3 Step Rate.'' Further, a document preparation company and a national trade association representing mortgage lenders commented that proposed § 1026.37(a)(10) was silent on how to disclose product types and features that change after a period of months or days that do not correspond to whole years.

The Bureau has considered these comments and has determined that, given the possibility of multiple adjustment periods over the course of a single transaction, § 1026.37(a)(10)(iv) should be revised to limit the number of periods to be disclosed. The Bureau has determined that disclosing every adjustment period as part of the loan product could be confusing to consumers and difficult to implement. As mentioned in the proposal and above in part III, the Bureau is concerned about the risk to consumers of information overload. The Bureau believes that the first period of adjustment of a loan feature would aid consumer understanding of that feature without potentially causing information overload. Accordingly, the Bureau is revising § 1026.37(a)(10)(iv) to require that the loan product be preceded by a description of any introductory rate period, and only the first adjustment period, as applicable, and to provide additional clarity.

With respect to the comment regarding product types and features that have introductory periods or adjustment periods that do not equate to a number of whole years, the Bureau believes, after considering this comment, that it would facilitate compliance with the disclosure requirements to address this possibility in the commentary. Accordingly, the Bureau is adding comment 37(a)(10)–3 to clarify how to disclose product types and features that have periods that do not equate to a number of whole years. Comment 37(a)(10)–3 also clarifies how to disclose product types and features that have adjustment periods that change more frequently than monthly.

37(a)(11) Loan Type

Existing appendix A to Regulation X requires disclosure of the loan type in section B of the RESPA settlement statement. The Bureau proposed to use its authority under TILA section 105(a), RESPA section 19(a), and Dodd-Frank Act 1032(a) to require a similar disclosure. The types of transactions disclosed under proposed § 1026.37(a)(11) would have permitted disclosure of different cost structures or underwriting requirements. The Bureau stated its belief in the proposal that the disclosure of the type of transaction enables consumers to evaluate whether it is the type of transaction that is best suited for their personal situation. The Bureau stated that it believed that including information regarding the type of transaction for which the consumer has applied will promote the informed use of credit and more effective advance disclosure of closing costs, and will enable consumers to better understand the costs, benefits, and risks associated with mortgage transactions by providing consumers with information regarding important characteristics of the loan early in the transaction. Accordingly, under proposed § 1026.37(a)(11), creditors would have been required to disclose one of the following loan types: Conventional, FHA, VA, or Other. The Bureau did not receive any comments on proposed § 1026.37(a)(11) and is adopting it as proposed, based on the legal authority described above and in the proposal.

37(a)(11)(i) Conventional

If the loan is not guaranteed or insured by a Federal or State government agency, proposed § 1026.37(a)(11)(i) would have required the creditor to disclose that the loan is a ''Conventional.'' The Bureau did not receive any comments on proposed § 1026.37(a)(11)(i) and is adopting it as proposed.

37(a)(11)(ii) FHA

If the loan is insured by the Federal Housing Administration, proposed § 1026.37(a)(11)(ii) would have required the creditor to disclose that the loan is an ''FHA.'' The Bureau did not receive any comments on proposed § 1026.37(a)(11)(ii) and is adopting it as proposed.

37(a)(11)(iii) VA

If the loan is guaranteed by the U.S. Department of Veterans Affairs, proposed § 1026.37(a)(11)(iii) would have required the creditor to disclose that the loan is a ''VA.'' The Bureau did not receive any comments on proposed § 1026.37(a)(11)(iii) and is adopting it as proposed.

37(a)(11)(iv) Other

For federally-insured or guaranteed loans that do not fall within the categories described in proposed § 1026.37(a)(11)(i) through (iii) and loans insured or guaranteed by a State agency or other entity, proposed § 1026.37(a)(11)(iv) would have required the creditor to disclose the loan type as ''Other'' and provide a brief description of the loan. Proposed comment 37(a)(11)–1 would have provided details on the type of loans that would be categorized as ''Other'' and an example of an acceptable description of a loan that falls within that category.

A document preparation company commenter requested that § 1026.37(a)(11) add USDA loans as an additional loan type. A large bank and a national title company asked for guidance on how to describe ''other loans'' and whether additional pages could be attached to the Loan Estimate to do so where the space provided was not adequate. Another document preparation company asked for a list of all possible loan types.

Regarding USDA loans, the Bureau notes that it specifically explained in proposed comment 37(a)(11)–1, that a loan guaranteed or funded by the Rural Housing Service of the USDA would have to be disclosed as ''Other.'' Given the space constraints of the Loan Estimate and the Closing Disclosure and the risk of information overload to the consumer, the Bureau believes it appropriate to create check boxes for the most common loan types and a general space for other types labeled as ''Other.'' With respect to the description of ''Other'' loans, the Bureau does not believe that adding a page for a description of loan type that does not fit into the space provided on form H–24 would benefit consumers, given the risk of information overload. The Bureau believes that creditors should be able to concisely describe the loan type in the space provided and that appending additional pages to the Loan Estimate for this disclosure could cause consumer confusion. Accordingly, the Bureau declines to revise § 1026.37(a)(11)(iv) or comment 37(a)(11)–1 to permit the use of an additional page for the disclosure of ''other'' loan types. With respect to the request for a list of permissible loan types, as stated in the proposal, the permissible loan types under § 1026.37(a)(11) are conventional, FHA, VA, and other. Because the Bureau continues to believe that a disclosure of loan type will, for the reasons discussed, effectuate the purposes of both TILA and RESPA, it is adopting § 1026.37(a)(11)(iv) as proposed. Comment 37(a)(11)–1 is adopted substantially as proposed with minor modifications for clarity.

37(a)(12) Loan Identification Number (Loan ID #)

Appendix A to Regulation X requires the settlement agent to provide the

''loan number'' in the RESPA settlement statement. The Bureau proposed to use its authority in TILA section 105(a), RESPA section 19(a), and Dodd-Frank Act section 1032(a) to require disclosure of the loan number on the Loan Estimate. The Bureau stated its belief in the proposal that including this information in a prominent position on the Loan Estimate will promote the informed use of credit and more effective advance disclosure of settlement costs and will enable consumers to better understand the costs, benefits, and risks associated with mortgage transactions by providing consumers with access to information they may use repeatedly throughout the transaction.

Accordingly, proposed § 1026.37(a)(12) would have required the creditor to provide a unique number that may be used by the lender, consumer, and other parties to identify the loan transaction, labeled as ''Loan ID #.'' Proposed comment 37(a)(12)–1 would have clarified that the lender has the discretion to create the unique loan identification number and that different and unrelated loan transactions with the same creditor may not share the same loan identification number.

The Bureau did not receive any comments on proposed § 1026.37(a)(12) or comment 37(a)(12)–1. Because the Bureau continues to believe that disclosure of a loan identification number will, for the reasons discussed, effectuate the purposes of TILA and RESPA, it is adopting § 1026.37(a)(12) substantially as proposed, based on the authority described above and in the proposal, with modifications for clarity. In order to ensure that a particular transaction retains the same loan identification number throughout the loan application process, the Bureau is revising proposed comment 37(a)(12)–1 to clarify that where a creditor issues a revised Loan Estimate for a transaction, the loan identification number must remain the same as on the initial Loan Estimate. The Bureau further notes and is revising comment 37(a)(12)–1 to clarify that the identification number disclosed under § 1026.37(a)(12) must be a unique ''number'' to enable parties to identify the particular transaction using such number, and that the ''number'' may be composed of any alpha-numeric characters and need not be limited to numbers. The Bureau adopts comment 37(a)(12)–1 as revised pursuant to its authority in TILA section 105(a), RESPA section 19(a), and Dodd-Frank Act section 1032(a).

37(a)(13) Rate Lock

Existing appendix C to Regulation X requires the loan originator to disclose information regarding the expiration date for the interest rate, charges, and related terms offered by the originator in the RESPA GFE. As stated in the proposal, the Bureau believed that this information is critical to the consumer's ability to understand the transaction and avoid the uninformed use of credit. Furthermore, the Bureau stated its belief in the proposal that disclosure of this information would promote more effective advance disclosure of settlement costs and will enable consumers to better understand the costs, benefits, and risks associated with mortgage transactions. Thus, the Bureau proposed to use its authority under TILA section 105(a), RESPA section 19(a), and Dodd-Frank Act section 1032(a) to require creditors to provide the rate lock information currently provided in the RESPA GFE.

Consistent with this requirement, proposed § 1026.37(a)(13) would have required the creditor to disclose whether the interest rate identified under proposed § 1026.37(b)(2) has been locked by the consumer and, if set, proposed § 1026.37(a)(13)(i) would have required disclosure of the date and time (including the applicable time zone) the locked rate would expire. Proposed § 1026.37(a)(13)(ii) would have stated that the ''rate lock'' statement required by proposed § 1026.37(a)(13) is to be accompanied by a statement notifying the consumer that the interest rate, points, and lender credits provided in the Loan Estimate are subject to change unless the rate has been set by the consumer and the date and time (including the applicable time zone) all estimated closing costs provided in the Loan Estimate will expire. Proposed comment 37(a)(13)–1 would have clarified that for purposes of proposed § 1026.37(a)(13), a disclosed interest rate is set for a specific period of time even if subject to conditions set forth in the rate-lock agreement between the creditor and consumer. Proposed comment 37(a)(13)–2 would have clarified that the information provided under proposed § 1026.37(a)(13)(ii) related to estimated closing costs is required whether or not the transaction is consummated or the terms are otherwise not accepted or extended. Proposed comment 37(a)(13)–3 would have stated that all times provided in the disclosure must reference the applicable time zone and provided an example of an appropriate disclosure of the applicable time zone.

A State trade association representing banks requested clarification regarding how to disclose an interest rate in the situation where a creditor has a policy to honor the rate quoted on the Loan Estimate but does not require the consumer to sign a rate lock agreement. Several national trade associations representing mortgage lenders commented that proposed comment 37(a)(13)–2 referred to an ''expiration date'' but did not identify whether that expiration date related to the interest rate or the closing costs. Several varied types of commenters questioned the specific wording of the rate lock disclosure on form H–24 and suggested alternative language that the commenters believed to be more clear.

Regarding the situation where the creditor has a policy to honor the rate quoted without a rate lock agreement, both proposed § 1026.37(a)(13) and comment 37(a)(13)–1 expressly contemplate a rate that is locked for a specific period of time pursuant to a rate lock agreement. Accordingly, where a creditor has a policy to honor the quoted rate, but does not lock the rate pursuant to a written agreement with the consumer, the creditor would disclose ''no'' pursuant to § 1026.37(a)(13)(i). The Bureau believes this disclosure is appropriate to aid the consumer's understanding of the transaction, because the creditor would not be bound by an agreement to provide the interest rate to the consumer at consummation.

With respect to the suggested confusion over proposed comment 37(a)(13)–2's reference to an expiration date, the Bureau notes that § 1026.37(a)(13) states that the disclosure must state the date and time at which the ''estimated closing costs'' expire. The Bureau also notes that § 1026.19(e)(3)(iv)(E) provides the closing costs disclosed on the Loan Estimate are not subject to the limitations on increases under § 1026.19(e)(3), if the consumer does not express an intent to proceed within 10 business days after the disclosures are provided. The Bureau believes the statement as proposed provides consumers with enough information regarding the possibility that the estimated closing costs may not be available. Accordingly, the Bureau believes that the comment does not require revision to clarify that it refers to the expiration of the closing costs under § 1026.19(e)(3)(iv)(E).

Regarding the rate lock disclosure on proposed form H–24, the proposed language would have stated: ''Before closing, your interest rate, points, and lender credits can change unless you

lock the interest rate. All other estimated closing costs expire on ___'' As discussed above, the Bureau has tested the integrated disclosures extensively and that testing confirmed that consumers were able to understand and adequately use the information on page 1 of the Loan Estimate, including the disclosure required by § 1026.37(a)(13) as proposed. *See* Kleimann Testing Report at 195. Accordingly, because the Bureau continues to believe that disclosure of the rate lock period is critical to the consumer's ability to understand the transaction and avoid the uninformed use of credit, it is adopting § 1026.37(a)(13) and comments 37(a)(13)–1 and –2 substantially as proposed but with minor modifications to refer to an interest rate as locked instead of set, for consistency with form H–24 of appendix H to Regulation Z. The Bureau is further modifying comments 37(a)(13)–1 and –2 for clarity and is adopting comment 37(a)(13)–3 as proposed.

37(b) Loan Terms

To shop for and understand the cost of credit, consumers must be able to identify and understand the key loan terms offered to them. As discussed below, the Bureau's research before the proposal informed the Bureau that the following are key loan terms that consumers recognize and expect to see on closed-end mortgage disclosures, together with their settlement charges: Loan amount; interest rate; periodic principal and interest payment; whether the loan amount, interest rate, or periodic payment can increase; and whether the loan has a prepayment penalty or balloon payment. *See* Macro 2009 Closed-End Report at 6.

As discussed in the proposal, TILA requires the disclosure of some of these key loan terms, but not all. Notably, the loan amount and interest rate are currently not specifically required to be disclosed by TILA section 128. 15 U.S.C. 1638. Although Regulation Z currently requires the interest rate to be disclosed in the payment schedule required by § 1026.18(s), it does not require the loan amount to be disclosed for non-HOEPA loans, and does not require a summary table identifying these key loan terms for closed-end credit secured by real property. 12 CFR 1026.18. For federally related mortgage loans, § 1024.7(d) of Regulation X currently requires the RESPA GFE to contain a table on page 1, labeled ''Summary of your loan terms,'' which contains the following information: (i) Initial loan amount; (ii) loan term; (iii) initial interest rate; (iv) initial monthly amount owed for principal, interest, and mortgage insurance; (v) whether the interest rate can rise, and if so, the maximum interest rate and the date of the first interest rate change; (vi) whether the loan balance can rise, and if so, the maximum loan balance; (vii) whether the monthly amount owed for principal, interest, and mortgage insurance can rise, and if so, the payment amount at the first change and the maximum payment; (viii) whether the loan has a prepayment penalty and the maximum prepayment penalty; and (xi) whether the loan has a balloon payment, the amount, and when it is due. 12 CFR 1024.7(d).

Pursuant to its authority under TILA section 105(a), RESPA section 19(a), and Dodd-Frank Act section 1032(a), the Bureau proposed to require creditors to provide the key loan terms described above in a summary table as part of the integrated Loan Estimate required by proposed § 1026.19(e) for closed-end transactions secured by real property (other than reverse mortgages). As described in the proposal, at the Bureau's pre-proposal consumer testing, participants were able to use the summary table to identify and compare easily the key loan terms for different loans. The Bureau stated in the proposal its belief, based on its consumer testing, that a concise loan summary table will improve consumer understanding of the loan terms presented, such as an understanding of whether the consumer can afford the loan, will enable comparisons of different credit terms offered by the same or multiple creditors, and will enable consumers to verify information about the loan provided by the creditor orally or in some other form, such as a worksheet. The Bureau stated in the proposal that it believed this disclosure will effectuate the purposes of TILA by promoting the informed use of credit and assuring a meaningful disclosure to consumers, including more effective advance disclosure of settlement costs. Furthermore, the Bureau stated that, consistent with section 1032(a) of the Dodd-Frank Act, this disclosure would ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

The Bureau proposed § 1026.37(b), which would have required a separate table that includes the information and follows the requirements specified in § 1026.37(b)(1) through (8). As proposed, the table would have appeared under the heading ''Loan Terms'' to enhance visibility. The individual items of information in the table also would have been labeled to enhance visibility. The format would have provided consumers with a bold ''yes'' or ''no'' answer to the questions of whether the loan amount, interest rate, or periodic payment can increase, and whether the loan has a prepayment penalty or balloon payment. The Bureau stated in the proposal that it believed that the format of the Loan Terms table will help consumers quickly and easily identify their key loan terms.

The Bureau proposed comment 37(b)–1 to provide additional guidance to creditors regarding the Loan Terms table. Comment 37(b)–1 would have clarified that the Loan Terms table should reflect the terms of the legal obligation that the consumer will enter into, based on information the creditor knows or reasonably should know. The Bureau did not receive any comments on proposed § 1026.37(b) or comment 37(b)–1. Because the Bureau continues to believe disclosing the key loan terms that the Bureau's research and consumer testing demonstrate are important to and used by consumers to evaluate and understand loan terms, it is adopting § 1026.37(b) substantially as proposed but with minor modifications for clarity, based on the legal authority described in the proposal and above.

Under §§ 1026.37(o)(1)(ii) and 1026.38(t)(1)(ii), all disclosures under §§ 1026.37 and 1026.38 are required to be made in the same order, and positioned relative to the master headings, headings, subheadings, labels, and similar designations in the same manner, as shown in forms H–24 and H–25, respectively. Further, under §§ 1026.37(o)(3) and 1026.38(t)(3), form H–24 and form H–25, respectively, are required to be used for federally related mortgage loans. For example, because form H–24 contains the heading of the Loan Terms table required under § 1026.37(b) in a black rounded tab (as form H–24 does for certain other headings required under § 1026.37), the black rounded tab on form H–24 is required to be used for the ''Loan Terms'' heading under § 1026.37(o) for federally related mortgage loans. A tab that uses a white background with black font, or that does not use rounded corners as illustrated on form H–24 would not comply with § 1026.37(b). As noted above, the heading is intended to enhance visibility of the Loan Terms table required under § 1026.37(b). The Bureau believes the enhanced visibility will aid consumer understanding of these key loan terms. Indeed, the Bureau's Quantitative Study concluded

that consumer participants who used the Bureau's integrated disclosures performed statistically significantly better than those who used the current disclosures with respect to the disclosure of the key loan terms in the Loan Terms table, including the loan amount, interest rate, and monthly payments. *See* Kleimann Quantitative Study Report at 53–56. The Bureau is adopting comment 37(b)–1 substantially as proposed but with minor modifications for clarity. A discussion of the specific items included in the table follows.

37(b)(1) Loan Amount

Neither TILA nor RESPA specifically requires the disclosure of the loan amount for the transaction. TILA section 128(a)(2) requires disclosure of the amount financed, of which the principal amount of the loan is the most significant component, but the section does not require a separate disclosure of the principal amount of the loan. 15 U.S.C. 1638(a)(2). Regulation Z § 1026.32(c)(5) currently requires the disclosure of the total amount the consumer will borrow, as reflected by the face amount of the note, for loans subject to HOEPA. For federally related mortgage loans under RESPA, § 1024.7(d) of Regulation X currently requires the disclosure of the loan amount in the summary table on page 1 of the RESPA GFE with the text, ''Your initial loan amount is.''

The Bureau stated its belief in the proposal, based on its consumer testing, that the loan amount is important to consumers to understand readily, compare, and verify the amount of credit offered to them. The Bureau further stated that the principal amount of the loan is a basic element of the transaction that should be disclosed to consumers. Pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and RESPA section 19(a), the Bureau proposed to require a disclosure of the principal amount of the transaction for closed-end transactions secured by real property (other than reverse mortgages). The Bureau proposed this requirement to effectuate the purposes of TILA to promote the informed use of credit and ensure a meaningful disclosure of credit terms to consumers. In addition, consistent with section 1032(a) of the Dodd-Frank Act, the Bureau stated its belief in the proposal that the disclosure of the loan amount in the Loan Terms table may ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances. Further, the Bureau stated that, like HUD, it believed the loan amount is necessary to understanding the transaction and its disclosure would effectuate the purposes of RESPA.

Proposed § 1026.37(b)(1) would have required creditors to disclose the ''loan amount,'' which is defined as the amount of credit to be extended under the terms of the legal obligation. This disclosure would have been labeled ''Loan Amount'' to enhance visibility. The proposal stated that disclosing the loan amount may also alert the consumer to fees that are financed in addition to the amount of credit sought for the consumer's purchase, refinance, or other purpose. The Bureau did not receive any comments on proposed § 1026.37(b)(1). Accordingly, because the Bureau continues to believe that disclosure of the loan amount will effectuate the purposes of both TILA and RESPA, it is adopting § 1026.37(b)(1) as proposed, pursuant to the authority stated in the proposal and described above.

37(b)(2) Interest Rate

TILA section 128(a)(3) and (4) requires disclosure of the finance charge and the annual percentage rate, for which the interest rate is a factor in the calculation. 15 U.S.C. 1638(a)(3), (4).[266] However, the statute does not require a separate disclosure of the interest rate. Currently, Regulation Z requires creditors to disclose the interest rate only in the interest rate and payment summary table required by § 1026.18(s). For federally related mortgage loans, § 1024.7(d) of Regulation X requires that the RESPA GFE state the interest rate with the text ''your initial interest rate is'' in the summary table on page 1. The Bureau stated its belief in the proposal that the interest rate is an important loan term that consumers should be able to locate readily on the disclosure, because it is the basis for the periodic payments of principal and interest that the consumer will be obligated to make. The Bureau further stated in the proposal that participants in the Bureau's consumer testing used the interest rate as one of the primary factors when evaluating, comparing, and verifying loan terms.

The Bureau proposed to use its authority under TILA section 105(a) to require disclosure of the interest rate for the transaction to effectuate the purposes of TILA to promote the informed use of credit and ensure a meaningful disclosure of credit terms to consumers. In addition, the Bureau stated that, consistent with section 1032(a) of the Dodd-Frank Act, the Bureau believes that the disclosure of the interest rate in the Loan Terms table may ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances. Further, like HUD, which required disclosure of the interest rate in its good faith estimate form, the Bureau proposed to use its authority under RESPA section 19(a) to require disclosure of the interest rate, because the interest rate is important to consumer understanding of the transaction. Proposed § 1026.37(b)(2) would have required disclosure of the initial interest rate that will be applicable to the transaction, labeled the ''Interest Rate.'' The proposal also would have required that if the initial interest rate may adjust based on an index, the creditor must disclose the fully-indexed rate, which is defined within that paragraph. Proposed comment 37(b)(2)–1 would have provided guidance regarding how to calculate the fully-indexed rate to be disclosed.

The Bureau received many comments from industry seeking guidance on how to disclose the interest rate in an adjustable rate transaction in compliance with proposed § 1026.37(b)(2). Several national trade associations representing mortgage lenders, a large bank, and a document preparation company submitted comments based on their understanding that the proposal would have required disclosure of the fully-indexed interest rate in all circumstances for adjustable rate transactions, even if the transactions included an introductory discounted interest rate. These commenters stated that such a disclosure would be confusing for the majority of consumers who receive discounted rates that are in effect at the time of consummation. A national trade association representing banks requested guidance on how to disclose transactions without simple interest rates, such as precomputed rates, add-on interest rates, discount rates and even split interest rates (where the interest rates are precomputed based on different rates applying to different

[266] As discussed below, the finance charge disclosure is implemented in § 1026.38(o)(2). The APR disclosure is implemented in §§ 1026.37(l)(2) and 1026.38(o)(4).

portions of the precomputed loan amount). A community bank from Oklahoma commented that the label ''interest rate'' may be confusing because people in that State typically refer to it as the ''note rate.''

With respect to the commenters that believed the proposal would have required disclosure of the fully-indexed rate in all circumstances, the Bureau did not intend to require disclosure of the fully-indexed rate in all circumstances. The Bureau notes that the language in proposed § 1026.37(b)(2) requiring disclosure of the ''initial interest rate'' is identical to that in the existing RESPA GFE instructions in Regulation X. See 12 CFR part 1024, app. C. The Bureau's intent in the proposal was to require disclosure of the fully-indexed rate only if the initial interest rate may adjust based on an index. In other words, the intent of proposed § 1026.37(b)(2) was to require disclosure of the fully-indexed rate where the initial rate at consummation was not known at the time of the disclosure because it depended on an external index, *i.e.,* where there was no introductory rate period. The Bureau recognizes, however, that the intent of proposed § 1026.37(b)(2) was unclear to the commenters and is making modifications to it in this final rule to conform to the language of current § 1026.18(s) for the requirement to disclose the interest rate, rather than current Regulation X.

With respect to precomputed rates, as clarified by revised final § 1026.37(b)(2), the interest disclosed in that circumstance would be the interest rate at consummation, which would be known as a function of the note. Section 1026.37(b)(2) requires disclosure of the interest rate at consummation and thus, if multiple interest rates applied to different portions of a loan's principal balance in a precomputed transaction, the disclosure required would be the one interest rate that is a composite of the different interest rates applicable to the transaction, based on the portions of the amount to which each interest rate applies. To the extent that the rate may change after consummation, the required disclosures are set forth in § 1026.37(b)(6)(ii), discussed below. With respect to the commenter's suggestion to change the label to ''note rate,'' as discussed above, the Bureau conducted extensive consumer testing of the integrated disclosures in many different locations throughout the country and there was no evidence that consumers, in any region, were confused by the label ''interest rate.'' Accordingly, the Bureau is adopting that label as proposed in § 1026.37(b)(2).

The Bureau is further adopting § 1026.37(b)(2) and comment 37(b)(2)–1 with modifications to provide clarity regarding the interest rate disclosure where the initial interest rate may not be known. Section 1026.37(b)(2) as revised requires disclosure of the interest rate at consummation, rather than the initial interest rate, to clarify that the date of consummation is the relevant one for purposes of the disclosure. The Bureau is further revising the second sentence of § 1026.37(b)(2) to provide that the fully-indexed rate shall be disclosed only when the interest rate at consummation is not known. The Bureau notes that this may be the case for adjustable rate loans that do not include an introductory discounted interest rate. Final § 1026.37(b)(2) also states that the fully-indexed rate means the interest rate calculated using the index value and margin at the time of consummation. The Bureau is further revising proposed comment 37(b)(2)–1 to clarify that the fully-indexed rate need not be disclosed if the contract provides for a delay in the implementation of changes in an index value, in which case any index during the delay period (lookback period) may be used.

37(b)(3) Principal and Interest Payment

TILA section 128(a)(6) requires disclosure of the number, amount, and due dates or period of payments scheduled to repay the loan. 15 U.S.C. 1638(a)(6). TILA section 128(b)(2)(C)(ii) requires the maximum principal and interest payment and examples of other potential principal and interest payments to be disclosed when the ''annual rate of interest is variable . . . or the regular payments may otherwise be variable.'' 15 U.S.C. 1638(b)(2)(C)(ii). Currently, for closed-end transactions secured by real property or a dwelling, Regulation Z requires creditors to disclose the periodic principal and interest payment only in the interest rate and payment summary table required by § 1026.18(s). For federally related mortgage loans, § 1024.7(d) of Regulation X requires the RESPA GFE to contain the initial periodic payment for principal and interest and mortgage insurance with the text ''Your initial monthly amount owed for principal, interest, and any mortgage insurance is.''

The Bureau stated its belief in the proposal that, like the interest rate, the periodic principal and interest payment is a key loan term that consumers should be able to locate readily on the form. As described in the proposal, the Bureau's consumer testing indicated that consumers use the periodic principal and interest payment of the loan as a primary factor in evaluating and comparing a loan. The Bureau stated its belief that a specific disclosure of the periodic principal and interest payment in the Loan Terms table will assist consumers in readily evaluating, comparing, and verifying possible loan terms. As stated in the proposal, the Bureau believed that disclosing this payment would enable consumers to compare loans of one or multiple creditors based on the same measure, rather than a payment that may include estimates for escrow payments for property costs or mortgage insurance. The Bureau proposed § 1026.37(b)(3) to require the Loan Terms table to include the periodic principal and interest payment simply labeled ''Principal & Interest,'' with an indication of the applicable unit-period. Under proposed § 1026.37(b)(3), if the initial periodic payment may adjust based on changes to an index, the payment disclosed would have been required to be based on the fully-indexed rate disclosed under proposed § 1026.37(b)(2). The proposal noted that the unit-period that is applicable to a transaction is currently described in appendix J to Regulation Z. Proposed comment 37(b)(3)–1 would have clarified that the label of the periodic principal and interest payment should reflect the appropriate unit-period for the transaction. Proposed comment 37(b)(3)–2 would have provided guidance regarding how to calculate the payment to be disclosed if the initial interest rate is adjustable based on an index.

The Bureau stated its belief in the proposal that the total periodic payment the consumer would be responsible to make to the creditor, including any required mortgage insurance and escrow payments, is also important for the consumer to consider when evaluating a loan offer. The Bureau believed that this amount allows a consumer to determine the affordability of the credit transaction and underlying real estate transaction. Accordingly, the Bureau proposed to include with the principal and interest payment a statement referring the consumer to the total periodic payment, including estimated amounts for any escrow and mortgage insurance payments, which is disclosed in the Projected Payments table under proposed § 1026.37(c), immediately below the Loan Terms table.

The Bureau proposed to use its authority under TILA section 105(a) to require disclosure of the periodic principal and interest payment, along with a reference to the total periodic payment, in the Loan Terms table to

effectuate the purposes of TILA to promote the informed use of credit and ensure a meaningful disclosure of credit terms to consumers. In addition, consistent with section 1032(a) of the Dodd-Frank Act, the Bureau stated its belief in the proposal that this disclosure may ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances. Further, the Bureau proposed to use its authority under RESPA section 19(a) to require this disclosure because the disclosure will improve consumer understanding of the transaction, including settlement costs. The Bureau also proposed this requirement pursuant to its authority under section 1405(b) of the Dodd-Frank Act. The Bureau stated its belief in the proposal that this disclosure may improve consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures, and is in the interest of consumers and in the public interest.

Several different industry commenters, including a large bank, a non-depository lender, and a national trade association representing mortgage lenders commented that the Loan Terms and Projected Payments table required by § 1026.37(c) should be either combined or rearranged in some manner. The commenters believed that consumers would find it confusing for the ''principal and interest'' disclosure in the Loan Terms table to be separated from the ''mortgage insurance'' and ''estimated escrow'' disclosures in the Projected Payments table. In addition, a GSE commented that the reference to the ''Total Monthly Payment'' disclosed under § 1026.37(c) as illustrated by form H–24 should instead use the same term that is used in form H–24 in the table required by § 1026.37(c), ''Estimated Total Monthly Payment.''

The Bureau does not believe that consumers will be confused by the Loan Terms table as proposed. The ''monthly principal and interest'' disclosure is repeated in the Projected Payments table and the disclosure requires a statement that refers the consumer to that table to find the total monthly payment. Indeed, as described above, the Bureau conducted extensive consumer testing of the integrated disclosures, both before and after the proposal. Consumers at the Bureau's testing were able to understand both the Loan Terms and Projected Payments tables. *See* Kleimann Testing Report at 282. However, the Bureau believes that modifying the term in the reference statement illustrated in form H–24 to use the same term as in the Projected Payments table will increase consistency within the form, and thus, has determined to modify form H–24 accordingly. In addition, to increase readability of the reference statement, the Bureau has modified the statement to use a sentence capitalization structure. The Bureau tested these modifications to the Loan Estimate with consumers in its post-proposal quantitative testing and found that consumers were better able to understand their monthly payments using the proposed Loan Estimate than using the current disclosures. *See* Kleimann Quantitative Study Report at 55.

Accordingly, the Bureau is adopting § 1026.37(b)(3) and comment 37(b)(3)–2 with conforming changes to correspond to § 1026.37(b)(2) as finalized based on the authority stated in the proposal and above. The Bureau is revising § 1026.37(b)(3) and comment 37(b)(3)–2 to clarify that disclosure of the principal and interest payment should be based on the fully-indexed interest rate only where the interest rate at consummation is not known, for example, when it is based on an external index. Comment 37(b)–1 is adopted substantially as proposed but with a minor modification for clarity. The Bureau is modifying the reference statement as illustrated by form H–24 of appendix H to Regulation Z, which is discussed in more detail in section-by-section analysis of appendix H below.

37(b)(4) Prepayment Penalty

Currently, TILA section 128(a)(11), 15 U.S.C. 1638(a)(11), and Regulation Z § 1026.18(k)(1) require the creditor to disclose whether or not a penalty may be imposed if the obligation is prepaid in full for a transaction that includes a finance charge computed from time to time by application of a rate to the unpaid principal balance. For federally related mortgage loans, § 1024.7(d) of Regulation X requires the summary table on page 1 of the RESPA GFE to state whether or not the loan has a prepayment penalty with the text, ''Does your loan have a prepayment penalty?''

The Bureau stated in the proposal that its consumer testing indicates that consumers use the existence of a prepayment penalty as an important factor in understanding and evaluating loan offers. Accordingly, because of the importance of prepayment penalties to consumers, proposed § 1026.37(b)(4) would have required disclosure of whether the loan has a prepayment penalty in the Loan Terms table, labeled ''Prepayment Penalty.'' As discussed below, under proposed § 1026.37(b)(7), the existence or non-existence of a prepayment penalty provision in the loan contract would be indicated by an affirmative or negative answer (designed as a simple ''yes'' or ''no'') to the question, ''Does the loan have these features?'' As described in the proposal, in the Bureau's consumer testing, consumers were able to use this disclosure to determine easily if the loan had a prepayment penalty.

The Bureau proposed to require disclosure of whether the transaction includes a prepayment penalty under TILA section 128(a)(11), its implementation authority under TILA section 105(a), and RESPA section 19(a). The Bureau believed, as stated in the proposal, that this additional information would promote consumer understanding of the cost of credit and more effective disclosure of the terms of the credit.

Definition of Prepayment Penalty

TILA establishes certain disclosure requirements for transactions for which a penalty is imposed upon prepayment, but does not define the term ''prepayment penalty.'' TILA section 128(a)(11) requires that the transaction-specific disclosures for closed-end consumer credit transactions disclose whether (1) a consumer is entitled to a rebate of any finance charge upon refinancing or prepayment in full pursuant to acceleration or otherwise, if the obligation involves a precomputed finance charge, and (2) a ''penalty'' is imposed upon prepayment in full if the obligation involves a finance charge computed from time to time by application of a rate to the unpaid principal balance. 15 U.S.C. 1638(a)(11). Also, TILA section 128(a)(12) requires that the transaction-specific disclosures state that the consumer should refer to the appropriate contract document for information regarding certain loan terms or features, including ''prepayment rebates and penalties.'' 15 U.S.C. 1638(a)(12).

Current § 1026.18(k) implements (and largely mirrors) TILA section 128(a)(11). Section 1026.18(k)(1) provides that ''when an obligation includes a finance charge computed from time to time by application of a rate to the unpaid principal balance,'' the creditor must disclose ''a statement indicating whether or not a penalty may be imposed if the obligation is prepaid in full.'' Comment 18(k)(1)–1 clarifies that such a ''penalty'' includes, for example, ''interest charges for any period after prepayment in full is made'' and a minimum finance charge, but does not

include, for example, loan guarantee fees. Section 1026.18(k)(2) provides for the disclosure of a statement indicating whether or not the consumer is entitled to a rebate of any finance charge if the obligation is prepaid in full when an obligation includes a finance charge other than the finance charge described in § 1026.18(k)(1). Comment 18(k)(2)–1 clarifies that § 1026.18(k)(2) applies to any finance charges that do not take account of each reduction in the principal balance of an obligation, such as recomputed finance charges and charges that take account of some but not all reductions in principal.

In addition, TILA section 129(c)(1) limits the circumstances in which a high-cost mortgage may include a prepayment penalty where the consumer pays all or part of the principal before the date on which the principal is due. 15 U.S.C. 1639(c)(1)(A). In the high-cost mortgage context, any method of computing a refund of unearned scheduled interest is a prepayment penalty if it is less favorable than the actuarial method, as defined by section 933(d) of the Housing and Community Development Act of 1992. 15 U.S.C. 1639(c)(1)(B). Section 1026.32(d)(6) implements these TILA provisions.

As described in the proposal, although the disclosure requirements under current § 1026.18(k) apply to closed-end mortgage and non-mortgage transactions, in its 2009 Closed-End Proposal, the Board proposed to establish a new § 226.38(a)(5) for disclosure of prepayment penalties for closed-end mortgage transactions. *See* 74 FR 43334, 43413. In proposed comment 38(a)(5)–2, the Board stated that examples of prepayment penalties include charges determined by treating the loan balance as outstanding for a period after prepayment in full and applying the interest rate to such ''balance,'' a minimum finance charge in a simple-interest transaction, and charges that a creditor waives unless the consumer prepays the obligation. 74 FR 43413. In addition, the Board's proposed comment 38(a)(5)–3 listed loan guarantee fees and fees imposed for preparing a payoff statement or other documents in connection with the prepayment as examples of charges that are not prepayment penalties. *Id.* The Board's 2010 Mortgage Proposal included amendments to existing comment 18(k)(1)–1 and proposed comment 38(a)(5)–2 stating that prepayment penalties include ''interest'' charges after prepayment in full even if the charge results from interest accrual amortization used for other payments in the transaction. *See* 75 FR 58756, 58781.[267]

The Bureau noted in the proposal that prepayment penalties were also addressed in the Board's 2011 ATR Proposal implementing sections 1411, 1412, and 1414 of the Dodd-Frank Act (codified at 15 U.S.C. 1629c), which expand the scope of the ability-to-repay requirement under TILA and establish ''qualified mortgage'' standards for complying with such requirement. *See* 76 FR 27482, 27491. Specifically, the Board's proposed § 226.43(b)(10) generally followed the current Regulation Z guidance on prepayment penalties (*i.e.,* comment 18(k)(1)–1) and the proposed definitions and guidance in the Board's 2009 Closed-End Proposal and 2010 Mortgage Proposal. However, the Board's 2011 ATR Proposal differed from the prior proposals and current guidance in the following respects: (1) proposed § 226.43(b)(10) defined prepayment penalty with reference to a payment of ''all or part of'' the principal in a transaction covered by the provision, while § 1026.18(k) and associated commentary and the Board's 2009 Closed-End Proposal and 2010 Mortgage Proposal referred to payment ''in full,'' (2) the examples provided omitted reference to a minimum finance charge and loan guarantee fees,[268] and (3) proposed § 226.43(b)(10) did not incorporate, and the Board's 2011 ATR Proposal did not otherwise address, the language in § 1026.18(k)(2) and associated commentary regarding disclosure of a rebate of a precomputed finance charge, or the language in § 1026.32(b)(6) and associated commentary concerning prepayment penalties for high-cost mortgages.

Based on the Bureau's consideration of the existing statutory and regulatory definitions of ''penalty'' and ''prepayment penalty'' under TILA sections 128(a) and 129(c) and §§ 1026.18(k) and 1026.32(d)(6), the Board's proposed definitions of prepayment penalty, and the Bureau's authority under TILA section 105(a) and Dodd-Frank Act sections 1032(a) and, for residential mortgage transactions, 1405(b), the Bureau proposed to define ''prepayment penalty'' in § 1026.37(b)(4) for transactions subject to § 1026.19(e) and (f) as a charge imposed for paying all or part of a transaction's principal before the date on which the principal is due. The proposed definition of prepayment penalty, as applicable to the transactions subject to § 1026.19(e) and (f), would have broadened the existing statutory and regulatory definitions under TILA section 128(a)(11) and § 1026.18(k), and thereby may result in more frequent disclosures of prepayment penalties to consumers than would be made under the existing definitions. Therefore, the Bureau stated its belief in the proposal that the disclosures of prepayment penalties under proposed § 1026.37(b)(4) will effectuate the purposes of TILA and RESPA by facilitating the informed use of credit and more effective advance disclosure of settlement costs. In addition, the Bureau stated that it believed the revised disclosures will ensure that the features of mortgage loan products initially and over their terms are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the loan products in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). Furthermore, the Bureau stated its belief in the proposal that these disclosures will improve consumers' awareness and understanding of residential mortgage transactions, which is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

The definition of prepayment penalty in proposed § 1026.37(b)(4) and associated commentary substantially would have incorporated the definitions of and guidance on prepayment penalty from the Board's 2009 Closed-End Proposal, 2010 Mortgage Proposal, and 2011 ATR Proposal and, as necessary, reconciled their differences. For example, the Bureau proposed that the prepayment penalty definition in proposed § 1026.37(b)(4) refer to payment of ''all or part of a covered transaction's principal,'' rather than merely payment ''in full,'' because it believed that knowledge of whether a partial prepayment triggers a penalty is important for consumers. Also, the Bureau proposed to incorporate the language from the Board's 2009 Closed-

[267] The preamble to the Board's 2010 Mortgage Proposal explained that the proposed revisions to current Regulation Z commentary and the proposed comment 38(a)(5) from the Board's 2009 Closed-End Proposal regarding interest accrual amortization were in response to concerns about the application of prepayment penalties to certain FHA and other loans (*i.e.,* when a consumer prepays an FHA loan in full, the consumer must pay interest through the end of the month in which prepayment is made). *See* 75 FR 58586.

[268] The preamble to the Board's 2011 ATR Proposal addressed why the Board chose to omit these two items. The Board reasoned that a minimum finance charge need not be included as an example of a prepayment penalty because such a charge typically is imposed with open-end, rather than closed-end, transactions. The Board stated that loan guarantee fees are not prepayment penalties because they are not charges imposed for paying all or part of a loan's principal before the date on which the principal is due. *See* 76 FR 27416.

End Proposal and 2010 Mortgage Proposal but omitted in the Board's 2011 ATR Proposal listing a minimum finance charge as an example of a prepayment penalty and stating that loan guarantee fees are not prepayment penalties, because similar language is found in longstanding Regulation Z commentary.

Proposed comment 37(b)(4)–1 would have clarified that the disclosure of the prepayment penalty under § 1026.37(b)(4) applies to transactions where the terms of the loan contract provide for a prepayment penalty, even though it is not certain at the time of the disclosure whether the consumer will, in fact, make a payment to the creditor that would cause imposition of the penalty. This proposed comment also would have clarified that if the transaction includes a prepayment penalty, proposed § 1026.37(b)(7) sets forth the information that must be disclosed under proposed § 1026.37(b)(4). Proposed comment 37(b)(4)–2.i through –2.iv would have given the following examples of prepayment penalties: (1) A charge determined by treating the loan balance as outstanding for a period of time after prepayment in full and applying the interest rate to such ''balance,'' even if the charge results from interest accrual amortization used for other payments in the transaction under the terms of the loan contract; (2) a fee, such as an origination or other loan closing cost, that is waived by the creditor on the condition that the consumer does not prepay the loan; (3) a minimum finance charge in a simple interest transaction; and (4) computing a refund of unearned interest by a method that is less favorable to the consumer than the actuarial method, as defined by section 933(d) of the Housing and Community Development Act of 1992, 15 U.S.C. 1615(d). Proposed comment 37(b)(4)–2.i would have further clarified that ''interest accrual amortization'' refers to the method by which the amount of interest due for each period (*e.g.,* month) in a transaction's term is determined and notes, for example, that ''monthly interest accrual amortization'' treats each payment as made on the scheduled, monthly due date even if it is actually paid early or late (until the expiration of any grace period). The proposed comment also would have provided an example where a prepayment penalty of $1,000 is imposed because a full month's interest of $3,000 is charged even though only $2,000 in interest was earned in the month during which the consumer prepaid.

Proposed comment 37(b)(4)–3 would have clarified that a prepayment penalty does not include: (1) Fees imposed for preparing and providing documents when a loan is paid in full, whether or not the loan is prepaid, such as a loan payoff statement, a reconveyance document, or another document releasing the creditor's security interest in the dwelling that secures the loan; or (2) loan guarantee fees. Proposed comment 37(b)(4)–4 would have clarified that, with respect to an obligation that includes a finance charge that does not take into account each reduction in the principal balance of the obligation (*e.g.,* precomputed finance charges), § 1026.37(b)(4) requires disclosure of whether or not the consumer is entitled to a rebate of any finance charge if the obligation is prepaid in full or part. The comment further would have clarified that if the transaction involves both a precomputed finance charge and a finance charge computed by application of a rate to an unpaid balance, disclosures about both the prepayment rebate and the prepayment penalty are made under § 1026.37(b)(4) as one disclosure to the question required by proposed § 1026.37(b)(7). The comment would have provided the example that, if in such a transaction, a portion of the precomputed finance charge will not be provided as a rebate and also a prepayment penalty based on the amount prepaid is provided for by the loan contract, both disclosures are made under proposed § 1026.37(b)(4) as one aggregate amount, stating the maximum amount and time period under proposed § 1026.37(b)(7). The comment would have further clarified that if the transaction instead provides a rebate of the precomputed finance charge upon prepayment, but imposes a prepayment penalty based on the amount prepaid, the disclosure that would have been required by proposed § 1026.37(b)(4) is an affirmative answer and the information required by proposed § 1026.37(b)(7). This proposed comment would have incorporated existing guidance in Regulation Z commentary regarding disclosure of whether the consumer is entitled to a rebate of finance charges that do not take into account each reduction in principal balance. *See* comments 18(k)–2 and –3 and 18(k)(2)–1. The Bureau also proposed comment 37(b)(4)–5, which would have referenced comment 18(k)–1 for additional guidance on prepayment penalties.

In the proposal, the Bureau stated its expectation to coordinate the definition of prepayment penalty in proposed § 1026.37(b)(4) with the definitions in the Bureau's other pending rulemakings mandated by the Dodd-Frank Act concerning ability-to-repay, high-cost mortgages under HOEPA, and mortgage servicing. Since the proposal, the Bureau has finalized each of those rulemakings and the 2013 ATR Final Rule included a definition of prepayment penalty for closed-end transactions which was cross-referenced by the 2013 HOEPA Final Rule and the 2013 TILA Mortgage Servicing Final Rule. The Bureau stated its belief in the proposal that, to the extent consistent with consumer protection objectives, adopting a consistent definition of ''prepayment penalty'' across its various pending rulemakings affecting closed-end mortgages will facilitate compliance.

The definition of prepayment penalty as finalized in the 2013 ATR Final Rule is substantially similar to the definition proposed in the Board's 2011 ATR proposal and thus to the one proposed in the TILA–RESPA Proposal as § 1026.37(b)(4). That definition, adopted as § 1026.32(b)(6)(i) is:

> For a closed-end credit transaction, *prepayment penalty* means a charge imposed for paying all or part of the transaction's principal before the date on which the principal is due, other than a waived, bona fide third-party charge that the creditor imposes if the consumer prepays all of the transaction's principal sooner than 36 months after consummation, provided, however, that interest charged consistent with the monthly interest accrual amortization method is not a prepayment penalty for extensions of credit insured by the Federal Housing Administration that are consummated before January 21, 2015.

There are two significant differences between the definition proposed in § 1026.37(b)(4) and the one adopted in the 2013 ATR Final Rule. First, the ATR Final Rule definition excludes a bona fide third-party charge that the creditor imposes if the consumer prepays all of the transaction's principal sooner than 36 months after consummation. This clause was intended to permit creditors to grant consumers conditional fee waivers at closing that the creditors could recoup if the consumer repaid the loan in full early. 78 FR 6407, 6444 (Jan. 30, 2013). The 2013 ATR Final Rule included this clause after receiving comments from industry, particularly credit unions, arguing that conditional fee waivers benefitted consumers and that creditors should be able to recoup them upon a consumer's prepayment to compensate for fixed costs associated with originating the loan transaction. *Id.* The Bureau received similar comments from industry regarding the definition of

prepayment penalty in proposed § 1026.37(b)(4).

The second difference in the definition of prepayment penalty adopted by the 2013 ATR Final Rule is the exclusion of interest charged consistent with the monthly interest accrual amortization method for extensions of credit insured by the FHA that are consummated before January 21, 2015. That clause was intended to address industry comments noting that credit insured by the FHA treats the loan balance as outstanding for a period of time after prepayment in full and would always meet the proposed definition of prepayment penalty. 78 FR 6407, 6445 (Jan. 30, 2013). The 2013 ATR definition of prepayment penalty in § 1026.32(b)(6)(i) excludes FHA loans consummated before January 21, 2015, based on HUD's representations to the Bureau that HUD will engage in rulemaking to end its practice of imposing interest charges on consumers for the balance of the month in which consumers prepay in full by that date. *Id.* The Bureau also received comments from industry regarding the fact that the definition of prepayment penalty in proposed § 1026.37(b)(4) would apply to all FHA loans.

In accordance with the Bureau's intent, as stated in the proposal, to coordinate the definition of prepayment penalty for the integrated disclosures with other Bureau rulemakings, and in light of the fact that the definition of prepayment penalty adopted by the 2013 ATR Final Rule addresses comments also received in response to the definition proposed in § 1026.37(b)(4), the Bureau is revising § 1026.37(b)(4) to conform to the definition of prepayment penalty in § 1026.32(b)(6)(i), as amended by the 2013 ATR Final Rule. The Bureau is adopting revised § 1026.37(b)(4) pursuant to the legal authority described above and in the proposal. Revised § 1026.37(b)(4) provides that a prepayment penalty is a charge imposed for paying all or part of a transaction's principal before the date on which the principal is due, other than a waived, bona fide third-party charge that the creditor imposes if the consumer prepays all of the transaction's principal sooner than 36 months after consummation. The Bureau is also revising comment 37(b)(4)–2.ii to similar effect. The Bureau is not including in revised § 1026.37(b)(4), however, the exclusion in § 1026.32(b)(6) for FHA loans in which interest charges are imposed on consumers for the balance of the month in which consumers prepay in full. This final rule must be implemented by August 1, 2015, which is after the January 21, 2015 date by which HUD has stated it will amend its rules related to this practice. Accordingly, the Bureau expects that by the time § 1026.37(b)(4) is effective (see part VI above for a discussion of the effective date of this rulemaking), FHA loans will no longer meet the definition of prepayment penalty as a matter of course. To the extent that HUD's rulemaking plans change, the Bureau will revisit § 1026.37(b)(4).

One industry commenter requested guidance on whether the definition of prepayment penalty includes monthly interest due when a loan is paid off. Another industry commenter objected to the Bureau's inclusion of a minimum finance charge in a simple interest transaction in proposed comment 37(b)(4)–2.iii because such charges are ''soft charges'' that reflect the cost of doing business. With respect to monthly interest due when a loan is paid off, interest charges already due under the terms of the legal obligation, as long as not applied to any principal after the consumer's prepayment, would not meet the definition of prepayment penalty in § 1026.37(b)(4), as adopted. Regarding ''soft charges,'' the Bureau is not persuaded that because such a charge is a ''cost of doing business,'' it should not be disclosed as a prepayment penalty.

The Bureau did not receive any comments regarding proposed comments 37(b)(4)–1 through 5 and is adopting them substantially as proposed, except that the Bureau is making minor modifications to comments 37(b)(4)–1 and –4 for clarity and is revising comment 37(b)(4)–2.ii to provide that the term prepayment penalty does not include a waived bona fide third-party charge imposed by the creditor if the consumer pays all of a covered transaction's principal before the date on which the principal is due sooner than 36 months after consummation, in accordance with revised § 1026.37(b)(4). Similarly, in order to coordinate the definition of prepayment penalty in this final rule with other Bureau rulemakings for the reasons discussed above, the Bureau is revising comment 37(b)(4)–3 non-substantively only to conform it to comment 1026.32(b)(6)–2 as finalized in the 2013 ATR Final Rule. The Bureau sought comment in the proposal on whether a minimum finance charge should be listed as an example of a prepayment penalty and whether loan guarantee fees should be excluded from the definition of prepayment penalty. The Bureau did not receive any comments regarding loan guarantee fees. As an additional part of this effort to adopt a consistent regulatory definition of ''prepayment penalty,'' the Bureau is also adopting certain conforming revisions to § 1026.18(k) and associated commentary, as discussed earlier in the section-by-section analysis of the revised § 1026.18(k).

For the reasons stated and based on the legal authority discussed above and in the proposal, the Bureau is adopting § 1026.37(b)(4) as revised. For the reasons stated above, the Bureau is further revising comments 37(b)(4)–1, –2.ii, –3 and –4. The Bureau is adopting comments 37(b)(4)–2.i, –2.iii, and –2.iv as proposed.

37(b)(5) Balloon Payment

TILA section 128(a)(6) requires disclosure of the number, amount, and due dates or period of payments scheduled to repay the loan. Currently, for closed-end transactions secured by real property or a dwelling, Regulation Z requires balloon payments to be disclosed only in connection with the interest rate and payment summary table required by § 1026.18(s). For federally related mortgage loans, § 1024.7(d) of Regulation X requires the RESPA GFE to state in the summary table on page 1 whether or not the loan has a balloon payment with the text, ''Does your loan have a balloon payment?''

Pursuant to its authority under TILA section 128(a)(6), TILA section 105(a), RESPA section 19(a), and Dodd-Frank Act section 1032(a), the Bureau proposed § 1026.37(b)(5), which would have required disclosure of whether the credit transaction requires a balloon payment, as defined within the provision. This disclosure would have been provided in the Loan Terms table, labeled ''Balloon Payment.'' As discussed below, under proposed § 1026.37(b)(7), the existence or non-existence of a balloon payment provision is indicated by a ''yes'' or ''no'' answer to the question, ''Does the loan have these features?'' In the proposal, the Bureau stated that in its consumer testing, consumers were able to determine readily whether a loan had a balloon payment. The Bureau's consumer testing further indicated that consumers consider whether a loan has a balloon payment to be an important factor in evaluating loans. The Bureau stated its belief in the proposal that this disclosure will effectuate the purposes of TILA and RESPA because it will promote the informed use of credit and assure a meaningful disclosure to consumers, and thus, will benefit consumers and the public and result in more effective advance disclosure.

Definition of Balloon Payment

Sections 1412 and 1432(b) of the Dodd-Frank Act both define ''balloon payment'' as ''a scheduled payment that is more than twice as large as the average of earlier scheduled payments.'' These definitions are incorporated into TILA sections 129C(b)(2)(A)(ii) and 129(e), respectively. 15 U.S.C. 1639c(b)(2)(A)(ii), 1639(e). Regulation Z § 1026.18(s)(5)(i), however, defines ''balloon payment'' as ''a payment that is more than two times a regular periodic payment.''

The Board's 2011 ATR Proposal implementing section 1412 of the Dodd-Frank Act incorporates Regulation Z's existing definition of ''balloon payment'' in § 1026.18(s)(5)(i) rather than the definition in section 1412. *See* proposed § 226.43(e)(2)(i)(C), 76 FR 27390, 27484. The Board noted that this definition is substantially similar to the statutory one, except that it uses as its benchmark any regular periodic payment rather than the average of earlier scheduled payments. 76 FR 27455. The Board also reasoned that incorporating the Regulation Z, rather than Dodd-Frank Act, definition of ''balloon payment'' facilitates compliance by affording creditors a single definition of the term within Regulation Z. *Id.* at 27456.

As described in the proposal, by defining ''balloon payment'' in the 2011 ATR Proposal based on the Regulation Z definition, the Board proposed to adjust the Dodd-Frank Act statutory definition. In doing so, the Board stated that it was relying on TILA section 105(a) authority to make such adjustments for all or any class of transactions as in the judgment of the Board are necessary or proper to facilitate compliance with TILA. *Id.;* 15 U.S.C. 1604(a). The class of transactions for which the adjustment was proposed encompassed all transactions covered by the 2011 ATR Proposal, *i.e.,* closed-end consumer credit transactions that are secured by a dwelling. The Board, however, solicited comment on the appropriateness of the proposed adjustment. The Board also stated that the proposed adjustment was supported by the Board's authority under TILA section 129B(e) to condition terms, acts, or practices relating to residential mortgage loans that the Board finds necessary or proper to facilitate compliance. 15 U.S.C. 1639b(e).

In view of the different definitions of ''balloon payment'' between the Dodd-Frank Act and Regulation Z and the approach taken by the Board in the 2011 ATR Proposal, and based on the Bureau's authority under TILA section 105(a) and Dodd-Frank Act sections 1032(a), and for residential mortgage loans, Dodd-Frank Act section 1405(b), the Bureau proposed a definition of ''balloon payment'' in § 1026.37(b)(5) that largely incorporates the existing Regulation Z definition in § 1026.18(s)(5)(i), *i.e.,* a payment that is more than two times a regular periodic payment. For the reasons discussed below, the Bureau stated its belief in the proposal that the proposed definition will promote the informed use of credit and facilitate compliance with TILA, consistent with TILA section 105(a). In addition, the Bureau stated its belief that this definition will enhance consumer understanding of the costs, benefits, and risks associated with the transaction in light of the facts and circumstances (consistent with Dodd-Frank Act section 1032(a)), and improve consumers' awareness and understanding of residential mortgage transactions, which is in the interest of consumers and the public (consistent with Dodd-Frank Act section 1405(b)).

The proposed definition in § 1026.37(b)(5) would have revised the current regulatory language in § 1026.18(s)(5)(i) to state that a balloon payment cannot be a regular periodic payment. This revision was intended to prevent a regular periodic payment following a scheduled or permitted payment increase under the terms of a loan contract (*e.g.,* based on a rate adjustment under an adjustable rate loan) from being characterized as a balloon payment. The proposed definition would have applied to all transactions subject to proposed § 1026.19(e). The Bureau stated in the proposal that it recognized that this proposed definition deviates from that prescribed in the Dodd-Frank Act. However, for the reasons set forth in the 2011 ATR Proposal, the Bureau stated its belief that adopting a consistent definition within Regulation Z will promote the informed use of credit and facilitate compliance and, therefore, will also benefit consumers and the public. *See* 76 FR 27456.

Proposed comment 37(b)(5)–1 would have clarified that the ''regular periodic payment'' used to determine whether a payment is a ''balloon payment'' for purposes of § 1026.37(b)(5) is the payment of principal and interest (or interest only, depending on the loan features) payable under the terms of the loan contract for two or more unit-periods in succession. The comment also would have clarified that all regular periodic payments during the loan term are used to determine whether a particular payment is a balloon payment, regardless of whether the regular periodic payments change during the loan term due to rate adjustments or other payment changes permitted or required under the loan contract. In other words, proposed comment 37(b)(5)–1 would have clarified that if the particular payment is more than two times any one regular periodic payment during the loan term, it is disclosed as a balloon payment under § 1026.37(b)(5) unless the particular payment itself is a regular periodic payment. Proposed comment 37(b)(5)–1.i would have given an example of a step-rate mortgage with two different regular periodic payment amounts. Proposed comment 37(b)(5)–1.ii would have clarified the definition of ''regular periodic payment'' in the context of a loan with an adjustable rate, where, under the terms of the loan contract, the regular periodic payments may increase after consummation, but the amounts of such payment increases (if any) are unknown at the time of consummation. In such instance, the proposed comment would have clarified that the ''regular periodic payments'' are based on the fully-indexed rate, except as otherwise determined by any premium or discounted rates, the application of any interest rate adjustment caps, or any other known, scheduled rates under the terms specified in the loan contract. The proposed comment also would have referred to the analogous guidance provided in current comments 17(c)(1)–8 and –10, and given an example of an adjustable rate mortgage with two different periodic payment amounts.

Proposed comment 37(b)(5)–1.iii would have clarified that for a loan with a negative amortization feature, the ''regular periodic payment'' does not take into account the possibility that the consumer may exercise an option to make a payment greater than the minimum scheduled periodic payment. Proposed comment 37(b)(5)–1.iv would have clarified that, for purposes of § 1026.37(c), § 1026.37(b)(5) governs the threshold determination of whether a loan has a balloon payment feature, but § 1026.37(c) governs the disclosure of balloon payments in the ''Projected Payments'' table under that section. The definition of balloon payment in proposed § 1026.37(b)(5) would have included the payments of a single or double payment transaction. Proposed comment 37(b)(5)–2 would have provided clarification regarding such single and double-payment transactions, which require a single payment due at maturity or only two payments during the loan term, and do not require regular periodic payments. The comment would

have clarified that a single payment transaction does not have regular periodic payments, because regular periodic payments must be made two or more unit-periods in succession (*see* proposed comment 37(b)(5)–1, described above). The comment would have further clarified that while a loan with only two scheduled payments, depending on the circumstances, may have regular periodic payments (*e.g.,* if the two payments are made during the last month of years one and two of a two-year loan term), there is no third payment that could potentially be the balloon payment (*i.e.,* a payment that is more than twice the amount of the regular periodic payments). The Bureau stated its belief in the proposal that the payments of such transactions are essentially equivalent, economically and practically, from the perspective of a consumer, to a balloon payment. The proposed comment would have clarified that notwithstanding the fact that there is no regular periodic payment to compare such single or double payments to, any payment in a single payment transaction or a transaction with only two scheduled payments is a ''balloon payment'' under § 1026.37(b)(5). In the proposal, the Bureau sought comment on whether the definition of balloon payment in proposed § 1026.37(b)(5) should be revised to exclude any particular type of payment.

A document preparation company commented that the clarification in proposed comment 37(b)(5)–1 that a payment is a balloon payment if it is more than two times *any one* regular periodic payment is a departure from the existing definition of balloon payment in § 1026.18(s)(5) which defines balloon payment as one that is more than two times *a* regular periodic payment. The commenter requested that the definition adopted in § 1026.37(b)(5) conform with the existing definition. A document preparation company requested guidance on how to disclose an adjustable rate transaction, which does not adjust the regular periodic payment but would, if the rate increased, increase only the final payment. In response to the Bureau's solicitation of comments on whether any particular payments should be excluded from the definition, several industry commenters noted that the proposed balloon payment definition and commentary would render a final payment that is only slightly higher than a regular periodic payment because of rounding a balloon payment. Those commenters opined that such a result would be confusing to the consumer and could produce inconsistent results within different sections of the integrated disclosures because proposed comment 37(c)(1)(i) treated such rounded final payments as regular periodic payments for purposes of the Projected Payments table.

In the proposal, the Bureau stated its intent to coordinate the definition of balloon payment in proposed § 1026.37(b)(5) with the definitions of balloon payment in the Bureau's other pending rulemakings under the Dodd-Frank Act concerning ability-to-repay and high-cost mortgages under HOEPA. As noted above regarding prepayment penalty, since the proposal, the Bureau has issued both the 2013 ATR Final Rule and the 2013 HOEPA Final Rule. The 2013 ATR Final Rule did not include its own definition of balloon payment but instead cross-referenced the existing definition in § 1026.18(s)(5)(i). The 2013 HOEPA Final Rule revised another definition of balloon payment found in § 1026.32(d)(1), but the final HOEPA definition in that section is identical to the one in existing § 1026.18(s)(5)(i). In order to coordinate with and use the same definition of balloon payment across these rulemakings, the Bureau is revising proposed § 1026.37(b)(5) to delete the requirement that a balloon payment cannot itself be a periodic payment. The definition of balloon payment as adopted in § 1026.37(b)(5) is now identical to the existing definition in § 1026.18(s)(5)(i). The Bureau is retaining the clarification that a balloon payment cannot itself be a periodic payment in final comment 37(b)(5)–1, however, because it believes such fact is inherent in its definition.

With respect to the comment that the proposed definition of balloon payment is a departure from the existing definition in § 1026.18(s)(5)(i), the Bureau does not believe that the definition as adopted § 1026.37(b)(5), and as clarified in comment 37(b)(5)–1, differs in any material way from that in existing § 1026.18(s)(5)(i). Indeed, the definition of balloon payment as finalized in § 1026.37(b)(5) is identical to that in § 1026.18(s)(5)(i). Moreover, the commenter admitted that the existing definition in § 1026.18(s)(5)(i) is not clear regarding which payment is the baseline for purposes of the balloon payment definition when periodic payments change over time, such as where the transaction has an adjustable rate. The Bureau interprets existing § 1026.18(s)(5)(i) as defining balloon payment as a payment that is more than two times *any one* periodic payment. The Bureau is simply clarifying that understanding in comment 37(b)(5)–1 for purposes of the integrated disclosure requirements.

As noted in the proposal, the Bureau recognized that these additional clarifications may result in more payments being disclosed as balloon payments than under the current regulatory definition. The Bureau stated its belief in the proposal, however, that more frequent disclosure of balloon payment terms facilitates the informed use of credit, ensures that the features of mortgage loan products initially and over their terms are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the loan products in light of the facts and circumstances, and improves consumers' awareness and understanding of residential mortgage transactions, which is in the interest of consumers and the public. Furthermore, the Bureau stated in the proposal its belief that a payment that is twice any one regular periodic payment using the regulatory definition, as revised in the proposed rule, would be equal to or less than a payment that is twice the average of earlier scheduled payments using the statutory definition.

The Bureau notes that the range of scheduled payment amounts under the first approach is more limited and defined. For example, if the regular periodic payment is $200, a payment of greater than $400 would constitute a balloon payment. Under the statutory definition, however, the threshold amount for a balloon payment could be greater than $400 if, for example, the regular periodic payments were increased by $100 each year. Under this scenario, the amount constituting a ''balloon payment'' could increase with the incremental increase of the average of earlier scheduled payments. The Bureau stated its belief in the proposal that under the existing regulatory definition, as revised by the proposed rule, consumers would have a better understanding of the highest possible regular periodic payment in a repayment schedule and may experience less ''payment shock'' as a result. Therefore, the Bureau stated its belief that the existing regulatory definition may better protect consumers and would be in their interest. In addition, the Bureau stated its belief in the proposal that the definition of ''balloon payment'' based on the existing regulatory definition would facilitate and simplify compliance by eliminating the need to average earlier scheduled payments.

To address the commenter's concern about disclosing adjustable rate transactions that do not adjust the

regular periodic payment but only increase the final payment, the Bureau is revising comment 37(b)(5)–1.ii to clarify that the amount of the final payment for purposes of the balloon payment determination is based on the fully-indexed rate, except as otherwise determined by any premium or discounted rate caps, or any other known, scheduled rates under the terms specified in the loan contract.

With respect to the comment that the proposed definition of balloon payment could include rounded final payments, the Bureau believes that disclosing a final payment that differs from a regular periodic payment only because of rounding as a balloon payment would not be beneficial for consumers. Accordingly, the Bureau is adding comment 37(b)(5)–1.iv, which tracks the language in comment 37(c)(1)(i)–1 and clarifies that a final payment that differs from other regular periodic payments because of rounding to account for payment amounts including fractions of cents is still a regular periodic payment and need not be disclosed as a balloon payment.

For the reasons discussed, and pursuant to the authority discussed in the proposal and above, the Bureau is adopting § 1026.37(b)(5) as revised to conform the definition of balloon payment with that in existing § 1026.18(s)(5)(i). The Bureau is adopting comment 37(b)(5)–1 substantially as proposed but with minor modifications for clarity. For the reasons discussed above, the Bureau is revising comment 37(b)(5)–1.ii to address an adjustable interest rate loan that adjusts only the final payment and not the regular periodic payments. As discussed above, the Bureau is adopting new comment 37(b)(5)–1.iv to address a final payment that differs from other regular periodic payments because of rounding. The Bureau did not receive any comments regarding proposed comments 37(b)(5)–1.i, –1.iii, –1.iv or –2 and is adopting them as proposed, except that proposed comment 37(b)(5)–1.iv is renumbered as comment 37(b)(5)–1.v.

37(b)(6) Increases After Consummation

TILA section 128(b)(2)(C)(ii) requires, for closed-end credit transactions secured by a dwelling in which the interest rate or payments may vary, the disclosure of examples of adjustments to the regular required payment based on changes in the interest rates, including the maximum payment amount of the regular required payments based on the maximum interest rate under the contract. TILA section 128(b)(2)(C)(ii) also requires the Bureau to conduct consumer testing to determine the appropriate format for providing the disclosures required under this subparagraph so that such disclosures can be easily understood, including the fact that the initial regular payments are for a specific time period and will end on a certain date, that payments may adjust afterwards to a higher amount, and that there is no guarantee that the borrower will be able to refinance to a lower amount. Currently, Regulation Z's disclosures for closed-end credit transactions secured by real property or a dwelling require information about whether the interest rate, periodic principal and interest payment, and loan amount can change. The disclosures are given in the interest rate and payment table required by § 1026.18(s). For federally related mortgage loans, § 1024.7(d) of Regulation X requires this information to be disclosed in the summary table on page 1 of the RESPA GFE, as affirmative or negative answers to the questions ''Can your interest rate rise,'' ''Even if you make payments on time, can your loan balance rise,'' and ''Even if you make payments on time, can your monthly amount owed for principal, interest, and any mortgage insurance rise?''

As discussed above and described in the proposal, the Bureau conducted consumer testing of prototype mortgage disclosures over ten rounds prior to issuing the TILA–RESPA Proposal. During each round of testing, consumers placed significant emphasis when evaluating loans on whether the loan amount, interest rate, or periodic principal and interest payment could increase, the amount and timing of such increases, and whether they were scheduled increases or only potential increases. Accordingly, the Bureau stated its belief in the proposal that this information should be disclosed so that consumers can easily find and understand it.

The Bureau proposed § 1026.37(b)(6) to require that this information be disclosed in the Loan Terms table. Specifically, proposed § 1026.37(b)(6) would have required disclosure of whether the amounts required to be disclosed by § 1026.37(b)(1) through (3) may increase. If those amounts may increase, the creditor also would have been required to disclose, as applicable: (i) The maximum principal balance for the transaction and the date when the last payment for which the principal balance is permitted to increase will occur; (ii) the frequency of interest rate adjustments, the date when the interest rate begins to adjust, the maximum interest rate under the terms of the transaction, and the first adjustment that could result in the maximum interest rate; (iii) the frequency of adjustments to the periodic principal and interest payment, the date when the principal and interest payment begins to adjust, the maximum principal and interest under the transaction, and the first adjustment that can result in the maximum principal and interest payment; and (iv) the periods of any features that permit the periodic principal and interest payment to adjust without an adjustment to the interest rate, such as information about interest only periods. The Bureau also stated in the proposal that it understands from industry feedback provided in connection with the Bureau's stakeholder outreach that some adjustable rate loans, which may be more prevalent in the community bank market, may be structured so that the periodic principal and interest payment is fixed and increases in the interest rate increase the loan term instead of the payment. Accordingly, the information required by proposed § 1026.37(b)(6)(ii) also would have included a statement of that fact for transactions that contain such a feature.

The Bureau proposed a format that provides this information as affirmative or negative answers to one comprehensive question, ''Can this amount increase after closing?'' Under the proposal, the answers to this question would have been capitalized and in bold font. In addition, bullet-pointed text immediately to the right of these answers would have provided the maximum amounts, frequencies of changes, references to more detailed information disclosed elsewhere on the form, and other relevant information. Bold text would have been used for important information in these statements, to enable consumers to see it quickly. Proposed form H–24 of appendix H to Regulation Z would have illustrated the disclosure of such information, including the bullet-pointed text required and the portions of such text that are to be bolded. The Bureau tested prototype versions of this table in its consumer testing prior to issuing the proposal. During testing, consumers were able to understand and use this information in the proposed format when evaluating and comparing terms of credit. Based on these results, the Bureau stated its belief in the proposal that this format will enable consumers to find the information readily, to use it for evaluating and comparing terms of credit, and to understand the information.

Pursuant to TILA section 128(b)(2)(C)(ii) and the Bureau's

authority under TILA section 105(a), RESPA section 19(a), Dodd-Frank Act section 1032(a), and Dodd-Frank Act 1405(b), the Bureau proposed § 1026.37(b)(6) to require this information in the Loan Terms table and in the format required to be used by proposed § 1026.37(o). In the proposal, the Bureau stated that it believed that this disclosure will effectuate the purposes of TILA because it will promote the informed use of credit and assure a meaningful disclosure to consumers, and thus, will benefit consumers and the public. The Bureau stated its belief in the proposal that this information improves consumer awareness and understanding of residential mortgage loans and is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b). The Bureau also stated its belief that, consistent with Dodd-Frank Act section 1032(a), this requirement may ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances. In addition, like HUD, the Bureau stated in the proposal that it believed this information is important to consumer understanding of the transaction and as a result, will promote more effective advance disclosure of settlement costs and should be provided on the disclosure.

A document preparation company and a national trade association representing mortgage lenders requested guidance on how to disclose interest rates that adjust at multiple intervals. A document preparation company also requested guidance on how to disclose preferred rate transactions, third-party buydowns, and construction loans with different features for the construction and permanent phases under § 1026.37(b)(6). A document preparation company requested guidance on whether the bullet points and bolded font used in form H–24 at appendix H to Regulation Z are required by § 1026.37(b)(6). The commenter requested that such formatting not be required because both bullets and selective bolding can be difficult and expensive to program.

With respect to interest rates that adjust at multiple intervals, consistent with the Bureau's revisions to the loan product disclosure required by § 1026.37(a)(10) and described in the section-by-section analysis of § 1026.37(a)(10) above, the Bureau is adding commentary to § 1026.37(b)(6)(ii) to clarify that if there are multiple periods of adjustment in a transaction, § 1026.37(b)(6)(ii) requires disclosure of only the frequency of the first interest rate adjustment. Regarding disclosure of preferred rate transactions, consistent with existing commentary to § 1026.17(c), the disclosures required by § 1026.37(b)(6) should reflect the terms of the legal obligation. Similarly, with regard to third-party buydowns, existing comment 17(c)–3 governs disclosure of such transactions and would require disclosure of the rate reflected in the credit contract between the consumer and the creditor. If the rate disclosed pursuant to comment 17(c)–3 can change after consummation, § 1026.37(b)(6) requires disclosure of that fact.

Lastly, regarding construction-to-permanent loans that contain multiple transaction phases, existing § 1026.17(c)(6)(ii) and its accompanying commentary address how to disclose construction-to-permanent transactions. Section 1026.17(c)(6)(ii) provides that ''[w]hen a multiple-advance loan to finance the construction of a dwelling may be permanently financed by the same creditor, the construction phase and the permanent phase may be treated as either one transaction or more than one transaction.'' Accordingly, a creditor may disclose a construction-to-permanent loan as separate transactions, with different disclosures for § 1026.37(b)(6) regarding whether the interest rate increases after consummation. Should the creditor choose to treat the construction-to-permanent transaction as one transaction, however, § 1026.37(b)(6) would require disclosure of whether the rate, during any phase of the complete transaction, would increase from the rate at consummation.

The Bureau is adding commentary to § 1026.37(b)(6)(iii) to clarify that if there are multiple periods of adjustment in a transaction, § 1026.37(b)(6)(iii) requires disclosure of the frequency of only the first adjustment to the periodic principal and interest payment. The Bureau is further clarifying that § 1026.37(b)(6)(iii) requires that the first adjustment be disclosed, regardless of the basis for the first adjustment. In other words, where the periodic principal and interest payment may change because of more than one factor and such adjustments are on different schedules, the frequency disclosed is the adjustment of whichever factor adjusts first. For example, where the interest rate for a transaction is fixed until year six and then adjusts every three years but also has a negative amortization feature that ends in year seven, § 1026.37(b)(6)(iii) requires disclosure that the interest rate will adjust every three years starting in year six, because the periodic principal and interest payment adjusts based on the interest rate before it adjusts based on loan amount. The Bureau is further adding comment 37(b)(6)–1 which cross-references comment 37(a)(10)–3 for guidance on how to disclose adjustments after consummation that occur after a period that does not equate to a number of whole years.

For the reasons discussed and based on the legal authority discussed above and in the proposal, the Bureau is adopting § 1026.37(b)(6), (b)(6)(ii), and (b)(6)(iii) substantially as proposed, with minor modifications for clarity. The Bureau is revising § 1026.37(b)(6)(i) to move to comment 37(b)(6)(i)–1 the particular phrases that comply with the requirement to indicate in the Loan Terms table whether the maximum principal balance is potential or scheduled to occur. The Bureau is further revising the phrase that describes a scheduled increase to ''Goes as high as'' rather than ''Will go as high as'' to use more plain language for the integrated disclosures. The Bureau is also adding comments 37(b)(6)(ii)–1 and 37(b)(6)(iii)–1 to clarify the phrases that comply with the requirements of § 1026.37(b)(6)(ii) and (iii), respectively, and to include additional information regarding changes to the interest rate and periodic principal and interest payment.

As addressed more fully in § 1026.37(o)(1)(ii) and § 1026.38(t)(1)(ii), all disclosures must be made in the same order, and positioned relative to the master headings, headings, subheadings, labels, and similar designations in the same manner, as shown in form H–24. And under §§ 1026.37(o)(3) and 1026.38(t)(3), forms H–24 and H–25, respectively, are required to be used for federally related mortgage loans. Because form H–24, as illustrated by forms H–24(B) through (F), contains bullet points and bolded font in the Loan Terms table described in § 1026.37(b)(6), and the form is required to be used under § 1026.37(o) for federally related mortgage loans, the bullet points and bolded font are required for such transactions. Comments 37(b)(6)(i)–1, 37(b)(6)(ii)–1, and 37(b)(6)(iii)–1 provide additional guidance that the formatting of the phrases in form H–24 of appendix H is required for federally related mortgage loans pursuant to § 1026.37(o)(3).

In the Bureau's pre-proposal consumer testing of the integrated disclosures, consumers found the

disclosures required by § 1026.37(b)(6) beneficial. *See* Kleimann Testing Report at 161. The Bureau's Quantitative Study of the integrated disclosures concluded that the format of the disclosures performed significantly better than the current disclosure format at enabling consumers to identify and compare the key loan terms, including the interest rate and monthly payment. *See* Kleimann Quantitative Study Report at 67. Accordingly, the Bureau believes that the benefits to consumers of this formatting which highlights the relevant information outweighs the cost of implementation. Further, for the reasons discussed, the Bureau is adding comments 37(b)(6)–1, 37(b)(6)(ii)–2, and 37(b)(6)(iii)–2 to clarify how to disclose periods that are not in whole years, interest rates that adjust at multiple intervals, and periodic principal and interest payments that adjust at multiple intervals.

37(b)(7) Details About Prepayment Penalty and Balloon Payment

Currently, for closed-end credit transactions secured by real property or a dwelling, § 1026.18(k) of Regulation Z does not require the disclosure of the maximum prepayment penalty that may be charged. While § 1026.18(s) currently requires the balloon payment that may be charged on a loan to be disclosed, it is not required to be disclosed with other key terms of the transaction. For federally related mortgage loans, § 1024.7(d) of Regulation X currently requires the maximum prepayment penalty and balloon payment in the summary table on page 1 of the RESPA GFE with the text, ''your maximum prepayment penalty is $__'' and ''you have a balloon payment of $__due in __years.''

Proposed § 1026.37(b)(7) would have required the information in proposed § 1026.37(b)(4) and (5) to be disclosed as an affirmative or negative answer to the question ''Does the loan have these features?'' The section also would have required disclosure of the maximum prepayment penalty, the period in which a prepayment penalty may be imposed, the maximum amounts of any balloon payments and the dates of such payments. Like the information required to be disclosed by proposed § 1026.37(b)(6), the format required for this information by proposed § 1026.37(o) emphasizes the maximum amounts by using bold text, to enable consumers to find these amounts quickly. Proposed comment 37(b)(7)(i)–1 would have provided guidance regarding calculating the maximum amount of the prepayment penalty.

In the Bureau's consumer testing prior to the proposal, consumers were able to use this disclosure to determine easily if the loan had a prepayment penalty, the maximum amount, and the period during which the penalty applied, and the amount and time of a balloon payment. *See* Kleimann Testing Report at 121–2. As described in the proposal, the Bureau's consumer testing indicated that consumers place significant emphasis when evaluating loans on the potential for large balloon or prepayment penalty amounts.

The Bureau proposed to use its authority under TILA sections 105(a), Dodd-Frank Act section 1032(a), and RESPA section 19(a) to require disclosure of this information in the Loan Terms table of the Loan Estimate. In the proposal, the Bureau stated its belief that placing these details about prepayment penalties and balloon payments in the summary table with bold text for the maximum amounts allows consumers to find this information easily, enabling consumers to understand and evaluate loans, promoting meaningful disclosure of credit terms to consumers. The Bureau further stated that it believed this disclosure will effectuate the purposes of TILA because it will promote the informed use of credit and assure a meaningful disclosure to consumers, and thus, will benefit consumers and the public. In addition, the Bureau stated in the proposal that, like HUD, it believed that this information is important to consumer understanding of the transaction and as a result, will promote more effective advance disclosure of settlement costs and should be provided on the disclosure.

A national trade association representing mortgage lenders requested guidance regarding whether to use a premium or discounted interest rate, rather than the fully-indexed rate, when calculating the maximum prepayment penalty pursuant to § 1026.37(b)(7)(i). A large bank requested guidance on how to calculate the maximum prepayment penalty, asking whether it is determined by treating the loan balance as outstanding for a period of time after prepayment in full and applying the interest rate to such balance, as described in comment 37(b)(4)–2.i. Regarding whether to use the premium or discounted interest rate, as stated in proposed comment 37(b)(7)(i)–1, the maximum prepayment penalty must be calculated based on the terms of the legal obligation and thus the interest used to calculate the disclosure required by § 1026.37(b)(7)(i) would be the discounted interest rate if it were in effect during the prepayment penalty period. With respect to treating the loan balance as outstanding after prepayment in full, as stated in proposed comment 37(b)(7)(i)–1, the disclosure is the maximum possible amount of the prepayment penalty and thus would be calculated assuming the consumer prepaid in full on the first day of the period for which the loan balance would be treated as outstanding.

The Bureau continues to believe that disclosure of the maximum prepayment penalty will effectuate the purposes of both TILA and RESPA. Accordingly, the Bureau is adopting § 1026.37(b)(7) substantially as proposed but with minor revisions for clarity, based on the legal authority discussed above and in the proposal. Based on that same authority, the Bureau is adopting comment 37(b)(7)(i)–1 substantially as proposed, except that it is removing the example for a negatively amortizing loan because a prepayment penalty generally would be prohibited for such a transaction under § 1026.43(g) as adopted by the 2013 ATR Final Rule. The Bureau is further adding comments 37(b)(7)(i)–2 and 37(b)(7)(ii)–1 to clarify the phrases that must be used in the loan terms table to indicate the additional information required to be disclosed by § 1026.37(b)(7)(i) regarding the prepayment penalty and by § 1026.37(b)(7)(ii) regarding the balloon payment, respectively. Comment 37(b)(7)(ii)–1 also clarifies that if a transaction includes more than one balloon payment, the disclosure required is the highest balloon payment and the due date of that payment.

37(b)(8) Timing

As described in the proposal, the Bureau believes the references to the dates required to be disclosed by proposed § 1026.37(b)(6) and (7) are easily understood by consumers if disclosed in whole years. The prototype mortgage disclosures used at the Bureau's consumer testing displayed these dates as years, and consumers were able to understand and evaluate the risks posed by these maximum amounts. The Bureau stated its belief in the proposal that this unit of time provides a frame of reference to consumers that they use more regularly and that is easier to understand than ''payments'' or high-number values of ''months,'' such as 60 months.

The Bureau proposed § 1026.37(b)(8), pursuant to its authority under TILA section 105(a), Dodd-Frank section 1032(a), and RESPA section 19(a), which would have required the information required to be disclosed by § 1026.37(b)(6) and (7) to be disclosed by stating the number of the year in

which the payment or adjustment occurs, counting from the date that interest for the regularly scheduled periodic payment begins to accrue. Proposed comment 37(b)(8)–1 would have provided examples of how to disclose dates using the timing rules of proposed § 1026.37(b)(8). The Bureau stated its belief in the proposal that this disclosure provides a meaningful disclosure of credit terms, promotes the informed use of credit by consumers, and may ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

Several national trade associations representing mortgage lenders commented that proposed § 1026.37(b)(8) defined ''year'' differently than in comment 37(c)(3)(ii)–1 which provided guidance regarding the completion of the projected payments table required by § 1026.37(c). These commenters suggested that disclosing the same rate and payment adjustments under the Loan Terms section as occurring in different years than in the Projected Payments table would be confusing for consumers. The Bureau believes that the likelihood is low that these disclosures would require the statement of a different year, because changes in the periodic payment would generally occur only one month after the interest rate change occurred for most transactions, which month would fall within the same 12-month period. However, the Bureau believes that using different timing conventions for certain disclosure requirements may increase compliance burden. Accordingly, the Bureau is revising § 1026.37(b)(8) to conform the applicable timing conventions to § 1026.37(c) and to add new § 1026.37(b)(8)(ii) and (iii). As revised, § 1026.37(b)(8)(ii) provides that for the disclosures required by § 1026.37(b)(6)(i), with respect to increases in the loan amount, by § 1026.37(b)(6)(iii), with respect to increases in the periodic payment, and by § 1026.37(b)(7)(ii), with respect to the date of a balloon payment, the date disclosed is the year in which the event occurs, counting from the due date of the initial periodic payment. This conforms to § 1026.37(c)(3)(ii) with respect to the timing convention in the Projected Payments table. The Bureau is further adding § 1026.37(b)(8)(iii) to provide that for the disclosure required by § 1026.37(b)(7)(i) with respect to the period of a prepayment penalty, the date disclosed is the year in which the event occurs, counting from the date of consummation. The Bureau is making this revision to correspond with the timing convention for the prohibition on prepayment penalties in the 2013 ATR Final Rule which provides in § 1026.43(g)(2) that a prepayment penalty must not apply after the three-year period following consummation.

The Bureau is retaining the timing convention proposed in § 1026.37(b)(8), renumbered as § 1026.37(b)(8)(i) and revised to apply only the disclosure required by § 1026.37(b)(6)(ii), related to the interest rate. Final § 1026.37(b)(8)(i) requires disclosure of changes in the consumer's interest rate to be disclosed as the year in which the event occurs, counting from the date that interest for the first scheduled periodic payment begins to accrue after consummation. The Bureau is adopting § 1026.37(b)(8) as revised.

The Bureau is also revising proposed comment 37(b)(8)–1 to reflect the revisions described above and to provide examples for the disclosures required by § 1026.37(b)(6). The Bureau is further revising comment 37(b)(8)–1 in response to requests for guidance on how to disclose dates that are not whole years. Accordingly, comment 37(b)(8)–1, as revised, clarifies how to disclose adjustments that occur after a period of whole years. The Bureau is also adding comment 37(b)(8)–2, which cross-references comment 37(a)(10)–3 and clarifies how to disclose adjustments that occur after a number of months less than 24 that do not equate to a number of whole years or after a number of days. For the reasons discussed and pursuant to the legal authority described in the proposal and above, the Bureau is adopting § 1026.37(b)(8) and comments 37(b)(8)–1 as revised and adding comment 37(b)(8)–2.

37(c) Projected Payments

TILA section 128(a)(6) requires creditors to disclose the number, amount, and due dates or period of payments scheduled to repay the total of payments. 15 U.S.C. 1638(a)(6). TILA section 128(b)(2)(C)(ii) requires the disclosure of certain payment-related information for closed-end variable-rate transactions, or transactions where the regular payment may otherwise be variable, that are secured by a dwelling, including examples of payments. 15 U.S.C. 1638(b)(2)(C)(ii). Specifically, creditors must provide examples of adjustments to the regular required payment on the extension of credit based on the change in the interest rates specified by the contract for such extension of credit. *Id.* Among the examples required is one that reflects the maximum payment amount of the regular required payments on the extension of credit, based on the maximum interest rate allowed under the contract. *Id.* TILA section 128(b)(2)(C)(i) also provides that these examples must be in conspicuous type size and format and that the payment schedule be labeled ''Payment Schedule: Payments Will Vary Based on Interest Rate Changes.'' Section 128(b)(2)(C)(ii) requires the Bureau to conduct consumer testing to determine the appropriate format for providing the disclosures to consumers so that the disclosures can be easily understood.

In addition, TILA section 128(a)(16)(A), added to TILA by section 1419 of the Dodd-Frank Act, provides that, for variable-rate residential mortgage loans for which an escrow account will be established, the creditor must disclose both the initial monthly principal and interest payment, and the initial monthly principal and interest payment including any amount deposited in an escrow account for the payment of applicable taxes, insurance, and assessments. 15 U.S.C. 1638(a)(16)(A). New TILA section 128(a)(16)(B) also requires that, for variable-rate residential mortgage loans for which an escrow account will be established, the creditor disclose the amount of the fully-indexed monthly payment due under the loan for the payment of principal and interest, and the fully-indexed monthly payment including any amount deposited in an escrow account for the payment of applicable taxes, insurance, and assessments. 15 U.S.C. 1638(a)(16)(B). TILA section 128(b)(4)(A), added by section 1465 of the Dodd-Frank Act, provides that, in the case of any consumer credit transaction secured by a first mortgage on the principal dwelling of the consumer, other than an open-end credit plan or reverse mortgage, for which an escrow account has been or will be established, the disclosures required by TILA section 128(a)(6) must take into account the amount of any monthly payment to such account, in accordance with section 10(a)(2) of RESPA.[269] 15 U.S.C. 1638(b)(4)(A); 12 U.S.C. 2609(a)(2). New TILA section 128(b)(4)(B) generally

[269] Section 10(a)(2) of RESPA prohibits the lender, over the life of the escrow account, from requiring the borrower to make payments to an escrow account that exceed one-twelfth of the total annual escrow disbursements that the lender reasonably anticipates paying from the escrow account during the year, plus the amount necessary to maintain a one-sixth cushion. 12 U.S.C. 2609(a)(2).

requires creditors to take into account the taxable assessed value of the property during the first year after consummation, including the value of any improvements constructed or to be constructed on the property, if known, and the replacement costs of the property for hazard insurance, when disclosing taxes and insurance escrows pursuant to TILA section 128(b)(4)(A). 15 U.S.C. 1638(b)(4)(B).

Current § 1026.18(s) implements the requirements of TILA sections 128(a)(6) and 128(b)(2)(C) for all closed-end transactions secured by real property or a dwelling, other than transactions secured by the consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D). Section 1026.18(s) requires creditors to disclose the contract interest rate, regular periodic payment, and any balloon payment. For adjustable rate or step-rate amortizing mortgages, the creditor must disclose up to three interest rates and corresponding periodic payments. If payments are scheduled to increase independent of an interest-rate adjustment, the creditor must disclose the increased payment. If a borrower may make one or more payments of interest only, all payment amounts disclosed must be itemized to show the amount that will be applied to interest and the amount that will be applied to principal. Current § 1026.18(s) requires special interest rate and payment disclosures for loans that permit negative amortization. Also under current § 1026.18(s), creditors must separately itemize an estimate of the amount for taxes and insurance, including mortgage insurance, if the creditor will establish an escrow account for the payment of such amounts. The Board adopted this requirement pursuant to its authority under TILA section 105(a), based on consumer testing which indicated that consumers compare loans based on the monthly payment amount and that escrow payment information is necessary for consumers to understand the monthly amount they will pay. MDIA Interim Rule, 75 FR 58476–77 (Sept. 24, 2010). Current § 1026.18(s) also requires the disclosure of total periodic payments. Creditors must provide the information about interest rates and payments in the form of a table, and creditors are not permitted to include other, unrelated information in the table.

Current § 1026.18(s) expands the scope of TILA section 128(b)(2)(C) to all closed-end transactions secured by real property or a dwelling, other than transactions secured by the consumer's interest in a timeshare plan, including transactions in which the interest rate and regular payments do not vary and those that are secured by real property that does not include a dwelling. The Board adjusted the scope of this provision pursuant to its authority under TILA section 105(a). The Board reasoned that providing examples of increased interest rates and payments will help consumers understand the risks involved in certain loans, and that consistent disclosure requirements for all mortgage-secured, closed-end consumer credit transactions, whether or not they include a dwelling, would ease compliance burden for mortgage creditors. MDIA Interim Rule, 75 FR 58470, 58473–74. The Board also stated that applying § 1026.18(s) to transactions where the interest rate or regular payments do not vary would simplify compliance for creditors and make it easier for consumers to compare different loan products. For all other closed-end credit transactions, § 1026.18(g) provides the rules for disclosing the payment schedule.

Pursuant to its authority under TILA section 105(a) and Dodd-Frank Act sections 1032(a) and 1405(b), the Bureau proposed to incorporate the requirements of current § 1026.18(s) into new § 1026.37(c), for closed-end mortgages subject to proposed § 1026.19(e), with certain adjustments that are outlined below. As stated in the proposal, the Bureau believed that these requirements are necessary and proper to effectuate the purposes of TILA by promoting the informed use of credit. Accordingly, proposed § 1026.37(c) would have implemented the requirements of TILA sections 128(a)(6) and 128(b)(2)(C), and also would have implemented the requirements of new TILA sections 128(a)(16) and (b)(4), for closed-end mortgages subject to proposed § 1026.19(e). For all other closed-end transactions, § 1026.18(g) and (s) would have continued to apply.

Like existing § 1026.18(s), proposed § 1026.37(c) would have required creditors to disclose, in a separate table, an itemization of each separate periodic payment or range of payments required after consummation under the terms of the legal obligation. Proposed § 1026.37(c) also would have required disclosure of an estimate of taxes, insurance, and assessments and the payments to be made with escrow account funds. Specifically, the table required by proposed § 1026.37(c) would have contained the projected principal and interest, mortgage insurance, estimated escrowed taxes and insurance, estimated total monthly payment, and estimated taxes, insurance, and assessment disclosures, required by § 1026.37(c)(1) through (4). Pursuant to proposed § 1026.37(o) and form H–24, the table required by proposed § 1026.37(c) would have appeared on the first page of the Loan Estimate. The Bureau proposed that, as under § 1026.18(s), the table required by proposed § 1026.37(c) would have been disclosed in all transactions subject to proposed § 1026.19(e), even in transactions where the interest rate will not vary and those that are secured by real property that does not include a dwelling. Unlike current § 1026.18(s), the projected payments table required by proposed § 1026.37(c) would have applied to transactions secured by the consumer's interest in a timeshare plan but would not have applied to transactions secured by a dwelling that is not real property, for the reasons discussed in the section-by-section analysis of proposed § 1026.19.

The Bureau proposed to require the information disclosed pursuant to proposed § 1026.37(c) to appear under the heading ''Projected Payments.'' As discussed above, TILA section 128(b)(2)(C)(i) requires the payment schedule to be labeled ''Payment Schedule: Payments Will Vary Based on Interest Rate.'' The proposed rule stated that the Bureau believed that ''Projected Payments'' conveys the same substantive meaning, in plainer and simpler language, and is a more accurate heading for the table required by proposed § 1026.37(c) since payment amounts may vary for reasons other than interest rate, such as in graduated-payment plans or due to the termination of mortgage insurance under applicable law. The heading also performed well in consumer testing. Using the table under the heading ''Projected Payments,'' participants in the Bureau's consumer testing were able to readily identify that their monthly payments might change in the future. Furthermore, the proposed rule stated that the Bureau believed that the Loan Terms table required by proposed § 1026.37(b) would effectively disclose when payments and interest rate will vary, and that consumers would not benefit from disclosure of that information in multiple places on the form. Accordingly, the Bureau believed that this proposed adjustment would promote the informed use of credit, improve consumer awareness and understanding of transactions involving residential mortgage loans, and is in the interest of consumers and the public, consistent with the purpose of TILA and with Dodd-Frank Act section 1405(b). In addition, the proposal noted that the Bureau believes that this disclosure would ensure that the features of consumer credit

transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances, consistent with section 1032(a) of the Dodd-Frank Act. Proposed comment 37(c)–1 would have provided that, for purposes of proposed § 1026.37(c), the terms ''adjustable rate,'' ''fixed rate,'' ''negative amortization,'' and ''interest only'' have the meanings prescribed in § 1026.37(a)(10).

The Bureau understands from comments and informal feedback received prior to the proposal that consumer advocacy groups and some members of the financial services industry generally support requiring creditors to disclose the projected payments table, which would include the maximum possible payment under the terms of the legal obligation. In addition, the Bureau's qualitative consumer testing showed that consumers are able to use the projected payments table to identify how different elements of their periodic payments for principal and interest, taxes, and insurance can change over time. *See* Kleimann Testing Report at xxiv–v. Even if consumers could not fully understand why their payments changed, they understood that the payments would change and easily used the maximum possible payment amounts to judge their maximum payments over time. *Id.* at xxv. Consumers were also able to use the projected payments table to find elements of unpredictability in a loan and to compare the levels of predictability in the loans presented to them. *Id.* The Bureau's Quantitative Study similarly showed that consumers were better able to understand and answer questions about their total monthly payments, how the amount of monthly payment may change over time, and the various components of their monthly payments using the projected payments table than they were using the current disclosures. *See* Kleimann Quantitative Study Report at 55–56. Although the Bureau did not receive specific comment on the proposed introductory text to § 1026.37(c), including the heading ''Projected Payments,'' or on proposed comment 37(c)–1, one large provider of mortgage origination software suggested the Bureau clarify that the projected payments table represents a payment schedule that is a material disclosure for purposes of § 1026.23. For the reasons discussed above and in the proposed rule, the Bureau is finalizing the introductory text to § 1026.37(c) and comment 37(c)–1 as proposed. The introductory text under § 1026.37(c) requires creditors to disclose in a separate table under the heading ''Projected Payments,'' an itemization of each separate periodic payment or range of payments. This requirement pertains to such payments during the loan term, and thus, applies to future anticipated payments under the terms of the legal obligation, in addition to the initial periodic payment. For example, under § 1026.37(c)(1)(i)(A), one of the events requiring disclosure of an additional separate period payment or range of payments is if the periodic principal and interest payment or range of such payments may change. This would occur in an adjustable rate loan for which the promissory note provides for an interest rate change date after the date of consummation, which change is based on an external index, that requires monthly payments of principal and interest, and for which a new monthly payment is required beginning on the first monthly payment due date after the interest rate change date. The date the monthly payment may change is an event requiring disclosure, and the disclosure would reflect the monthly payments possible under the terms of the legal obligation, based on the minimum and maximum interest rates for such change. This range would be disclosed even though, in fact, the interest rate may not change on the interest rate change date, and thus, the monthly payment due after such change date would remain the same as the previous monthly payment.

The Bureau has considered the comment requesting clarification regarding whether the projected payments table is a material disclosure for purposes of § 1026.23. Although the Bureau is not adopting such a clarification in the rule, for consistency with the approach in current Regulation Z, the Bureau notes that the projected payments table required by §§ 1026.37(c) and 1026.38(c) is a ''payment schedule'' for purposes of § 1026.23, for the reasons discussed above in the section-by-section analysis of § 1026.18(s).

37(c)(1) Periodic Payment or Range of Payments

37(c)(1)(i)

Proposed § 1026.37(c)(1)(i) would have provided rules regarding the separate periodic payments or ranges of payments to be disclosed on the table required by § 1026.37(c). Specifically, proposed § 1026.37(c)(1)(i) would have provided that the initial periodic payment or range of payments is a separate periodic payment or range of payments and, except as otherwise provided in § 1026.37(c)(1)(ii), the following events would have required the disclosure of additional separate periodic payments or ranges of payments: (A) the periodic principal and interest payment or range of such payments may change; (B) a scheduled balloon payment; and (C) the creditor must automatically terminate mortgage insurance coverage, or any functional equivalent, under applicable law.

Proposed comments 37(c)(1)(i)–1, 37(c)(1)(i)(A)–1 through –3, 37(c)(1)(i)(B)–1, and 37(c)(1)(i)(C)–1 through –3 would have provided guidance to creditors on the events requiring the disclosure of a separate periodic payment or range of payments. Proposed comment 37(c)(1)(i)–1 would have clarified that, for purposes of § 1026.37(c)(1)(i), the periodic payment is the regularly scheduled payment of principal and interest, mortgage insurance, and escrow payments described in § 1026.37(c)(2) without regard to any final payment that differs from other payments because of rounding to account for payment amounts including fractions of cents. Proposed comment 37(c)(1)(i)(A)–1 would have provided that periodic principal and interest payments may change when the interest rate, applicable interest rate caps, required periodic principal and interest payments, or ranges of such payments may change. Minor payment variations resulting solely from the fact that months have different numbers of days would not have been classified as changes to periodic principal and interest payments. For a loan that permits negative amortization, proposed comment 37(c)(1)(i)(A)–2 would have clarified that periodic principal and interest payments may change at the time of a scheduled recast of the mortgage loan and when the consumer must begin making fully amortizing payments of principal and interest. The comment also would have provided that the disclosure of an event requiring disclosure of additional separate periodic payments or ranges of payments should be based on the assumption that the consumer will make only the minimum payment required under the terms of the legal obligation, for the maximum amount of time permitted, taking into account changes to interest rates that may occur under the terms of the legal obligation, and that the table required by § 1026.37(c) should reflect any balloon payment that would result from making

the minimum payment required under the terms of the legal obligation. In a loan that permits payment of only interest for a specified period, proposed comment 37(c)(1)(i)(A)–3 would have clarified that periodic principal and interest payments may change for purposes of § 1026.37(c)(1)(i)(A) when the consumer must begin making fully amortizing periodic payments of principal and interest.

Proposed comment 37(c)(1)(i)(B)–1 would have stated that, for purposes of § 1026.37(c)(1)(i)(B), whether a balloon payment occurs is determined pursuant to § 1026.37(b)(5) and its commentary. Although the existence of a balloon payment would have been determined pursuant to § 1026.37(b)(5) and its commentary, balloon payment amounts to be disclosed under § 1026.37(c) would have been calculated in the same manner as periodic principal and interest payments under § 1026.37(c). For example, for a balloon payment amount that can change depending on previous interest rate adjustments that are based on the value of an index at the time of the adjustment, the balloon payment amounts would have been calculated using the assumptions for minimum and maximum interest rates described in proposed § 1026.37(c)(1)(iii) and its commentary, and should be disclosed as a range of payments.

Proposed comments 37(c)(1)(i)(C)–1 through –3 would have provided guidance to creditors regarding the disclosure of mortgage insurance. Proposed comment 37(c)(1)(i)(C)–1 would have stated that ''mortgage insurance'' means insurance against the nonpayment of, or default on, an individual mortgage, and that, for purposes of proposed § 1026.37(c), ''mortgage insurance or any functional equivalent'' would have included any mortgage guarantee that provides coverage similar to mortgage insurance (such as a United States Department of Veterans Affairs or United States Department of Agriculture guarantee), even if not technically considered insurance under State or other applicable law. The Bureau stated in the proposal that it understands that some governmental loan programs impose an annual guarantee fee, and that creditors typically collect a monthly escrow for the payment of such amounts. Current § 1026.18(s) requires creditors to disclose whether mortgage insurance is included in monthly escrow payments, but industry uncertainty exists as to whether it is permissible to identify such guarantees as mortgage insurance on the disclosure required by § 1026.18(s). Although the proposed rule recognized that such guarantees are legally distinguishable from mortgage insurance, it also noted that they are functionally very similar. Accordingly, proposed comment 37(c)(1)(i)(C)–1 would have clarified that creditors should disclose any mortgage guarantee that provides coverage similar to mortgage insurance, even if not considered insurance under State or other applicable law, as mortgage insurance on the disclosure required by proposed § 1026.37(c). Proposed comment 37(c)(1)(i)(C)–1 would have been consistent with the treatment of mortgage guarantee fees under proposed comment 18(s)(3)(i)(C)–2.

Proposed comment 37(c)(1)(i)(C)–2 would have provided guidance to creditors on the calculation and termination of mortgage insurance premiums for purposes of determining the occurrence of an event requiring disclosure of additional separate periodic payments or ranges of payments by providing that, for purposes of proposed § 1026.37(c)(1)(i)(C), mortgage insurance premiums should be calculated based on the declining principal balance that will occur as a result of changes to the interest rate and payment amounts, assuming the fully-indexed rate at consummation, taking into account any introductory rates. Finally, proposed comment 37(c)(1)(i)(C)–3 would have clarified that the table required by proposed § 1026.37(c) reflected the consumer's mortgage insurance payments until the date on which the creditor must automatically terminate coverage under applicable law, even though the consumer may have a right to request that the insurance be cancelled earlier. Unlike termination of mortgage insurance, a subsequent decline in the consumer's mortgage insurance premiums would not have been, by itself, an event that requires the disclosure of additional separate periodic payments or ranges of payments in the table required by § 1026.37(c). For example, some mortgage insurance programs annually adjust premiums based on the declining loan balance. Such annual adjustment to the amount of premiums would not have required a separate disclosure of a periodic payment or range of payments.

Industry commenters requested technical clarifications on this portion of the proposed rule. For example, one large creditor and several industry trade association commenters asked for clarification as to whether the disclosed payments should be based on the actual initial interest rate or the fully-indexed rate, and suggested that the appropriate approach is to require use of the actual interest rate. A law firm commenter representing a mortgage origination software provider requested clarification that an irregular first payment based on a short or long number of days until the first regular payment should be disregarded and should not be an event that requires the disclosure of additional separate periodic payments or ranges of payments. That commenter also requested clarification on the appropriate disclosure of monthly payment amounts in the case of construction and bridge loans where payment amounts tend to vary each month. One large provider of mortgage origination software noted that the varying number of columns in the projected payments table is the most significant programming challenge in the proposed rule and suggested that, due to this complexity, it would require at least one year to implement.

A large consumer advocacy group commenter suggested changes to the rule on calculation of the maximum payment in loans with negative amortization features. As noted above, the proposed rule included guidance for calculating the maximum payment in two separate places. For loans that permit negative amortization, proposed comment 37(c)(1)(i)(A)–2, which would have provided guidance on negative amortization loans for purposes of determining the occurrence of an event requiring disclosure of additional separate periodic payments or range of payments, would have provided that the disclosure should be based on the assumption that the consumer will make only the minimum payment required under the legal obligation. Proposed § 1026.37(c)(1)(iii) and comment 37(c)(1)(iii)–1, however, would have provided that, for adjustable rate loans, the maximum disclosed payment amounts are determined by assuming that the interest rate in effect throughout the loan term is the maximum possible rate and that the creditor assumes the interest rate will rise as rapidly as possible after consummation. Proposed § 1026.37(c)(1)(iii) did not contain specific guidance on loans with negative amortization features. The commenter stated that if a creditor were to apply both provisions to an adjustable rate loan with a negative amortization feature, it would produce a payment that is less than the maximum possible payment.

Several industry commenters also requested clarifications regarding the termination of mortgage insurance, or any functional equivalent, under § 1026.37(c)(1)(i)(C). For example, one large provider of mortgage origination

software requested clarification as to whether ''mortgage insurance or any functional equivalent'' for purposes of § 1026.37(c) requires disclosure of upfront or financed mortgage insurance premiums, such as the funding fee on loans guaranteed by the U.S. Department of Veterans Affairs. Similarly, a large consumer advocacy group commenter argued that creditor-paid mortgage insurance should also be disclosed on the table required by proposed § 1026.37(c) because those amounts are generally paid in the form of higher origination fees or a higher interest rate. Several industry trade association commenters and a large national lender also requested clarification regarding the calculation of the date that mortgage insurance, or any functional equivalent, would terminate for purposes of § 1026.37(c)(1)(i)(C). In particular, for an adjustable rate loan with a premium or discounted initial rate, those commenters stated that it is not clear whether mortgage insurance premiums would be calculated based on the actual interest rate or would be based on an assumption that the initial rate is equal to the fully-indexed rate. Several industry trade association commenters also noted that it is not clear what was meant by proposed comment 37(c)(1)(i)(C)–2, which would have provided that the termination of mortgage insurance should be calculated based on the declining principal balance that would occur as a result of changes to the interest rate and payment amounts, assuming the fully-indexed rate applies at consummation, taking into account any introductory rates. A small bank commenter also argued that the rule should expressly state that the calculation of mortgage insurance may be based on the estimated value of the property provided by the consumer and loan amount, since appraised values may differ significantly from estimates.

For the reasons discussed in the proposed rule and below, the Bureau is adopting § 1026.37(c)(1)(i) and its commentary as proposed, with the following revisions and clarifications.

First, the final rule contains an additional cross-reference to the exceptions from the general rule that the events described in § 1026.37(c)(1)(i)(A) through (D) require disclosure of additional separate periodic payments or ranges of payments. As noted above, proposed § 1026.37(c)(1)(i) would have provided that the initial periodic payment or range of payments is a separate periodic payment or range of payments and would have specified events that require disclosure of additional separate periodic payments or ranges of payments, subject to certain exceptions in proposed § 1026.37(c)(1)(ii). However, as adopted and discussed below in the section-by-section analysis of § 1026.37(c)(1)(iii), § 1026.37(c)(1)(iii) also contains exceptions to the general rule in § 1026.37(c)(1)(i) regarding the disclosure of additional separate periodic payments or ranges of payments in cases where multiple events described in § 1026.37(c)(1)(i) are combined and disclosed as a range of payments. For this reason, § 1026.37(c)(1)(i), as adopted, contains an additional cross-reference to the exceptions in § 1026.37(c)(1)(iii). Specifically, § 1026.37(c)(1)(i) provides that the initial periodic payment or range of payments is a separate periodic payment or range of payments, and specifies certain events that require disclosure of additional separate periodic payments or ranges of payments, subject to exceptions in § 1026.37(c)(1)(ii) and (iii).

Second, the Bureau is adding comment 37(c)(1)(i)–2, which clarifies the rule regarding the disclosure of the initial periodic payment or range of payments, in response to commenter requests for clarification as to whether the disclosure should be based on the actual initial interest rate or the fully-indexed rate, as described above. As adopted, comment 37(c)(1)(i)–2 clarifies that § 1026.37(c)(1)(i) requires the creditor to disclose the initial periodic payment or range of payments, which is the actual periodic payment or range of payments that corresponds to the interest rate that will apply at consummation, including any initial discounted or premium interest rate. The comment cross-references comment 17(c)(1)–10.v for examples of discounted and premium rate transactions and comments 17(c)(1)–3 through 5 for guidance regarding whether the disclosure should reflect a buydown. The comment also clarifies that, if the initial periodic payment or range of payments may vary based on an adjustment to an index value that applies at consummation, § 1026.37(c)(1)(i) requires that the disclosure of the initial periodic payment or range of payments be based on the fully-indexed rate disclosed under § 1026.37(b)(2). The comment cross-references comment 37(b)(2)–1 for guidance regarding calculating the fully-indexed rate.

Third, the Bureau is making adjustments to comment 37(c)(1)(i)(A)–2, which clarifies the rule regarding the events requiring disclosure of additional separate periodic payments or ranges of payments due to a change to the periodic principal and interest payment in loans that contain negative amortization features. The Bureau is revising comment 37(c)(1)(i)(A)–2 to explain that, in a loan that contains a negative amortization feature, periodic principal and interest payments or the range of such payments may change for purposes of § 1026.37(c)(1)(i)(A) at the time the negative amortization period ends under the terms of the legal obligation, meaning the consumer must begin making payments that do not result in an increase of the principal balance. As noted above, a large consumer advocacy group commenter stated that the proposed guidance could result in a disclosure of a separate periodic payment or range of payments at a time when the payment has not reached the maximum payment under the terms of the legal obligation. To address this concern, the comment clarifies that the occurrence of an event requiring disclosure of additional separate periodic payments or ranges of payments should be based on the assumption that the consumer will make payments as scheduled or, if applicable, elect to make the periodic payments that would extend the negative amortization period to the latest time permitted under the terms of the legal obligation. The comment further clarifies that the occurrence of all subsequent events requiring disclosure of additional separate periodic payments or ranges of payments should be based on this assumption, and that the table required by § 1026.37(c) should also reflect any balloon payment that would result from such scheduled payments or election. The comment references § 1026.37(c)(1)(ii)(A) for special rules regarding disclosure of balloon payments.

The Bureau believes that the guidance provided in the final rule regarding events requiring disclosure of additional separate periodic payments or ranges of payments in loans that contain a negative amortization feature provides additional clarity for creditors while providing meaningful disclosure to consumers of the risks of payment shock associated with loans that contain negative amortization features. The guidance in revised comment 37(c)(1)(i)(A)–2, however, pertains only to the occurrence of an event requiring disclosure of additional separate periodic payments or ranges of payments in a loan with a negative amortization feature. Separate rules regarding the disclosure of the amount payable for principal and interest are found in § 1026.37(c)(2)(i) and its

commentary, which includes a special rule for the disclosure of principal and interest for adjustable rate loans that contain negative amortization features in § 1026.37(c)(2)(i)(B). For a discussion of this provision, see the section-by-section analysis of § 1026.37(c)(2)(i), below.

The Bureau is also adopting clarifying adjustments to comment 37(c)(1)(i)(A)–3, which provides guidance regarding events requiring disclosure of additional separate periodic payments or ranges of payments in loans with interest only features. That comment provides that, in a loan that contains an interest only feature, periodic principal and interest payments may change for purposes of § 1026.37(c)(1)(i)(A) when the interest only period ends, meaning the consumer must begin making payments that do not defer repayment of principal. As proposed, comment 37(c)(1)(i)(A)–3 provided that periodic principal and interest payments may change when the consumer must begin making fully amortizing periodic payments of principal and interest. However, the proposed comment would not have accounted for the possibility that a loan may require the consumer to begin making payments that do not defer repayment of principal, but that those payments may not be fully amortizing. Although the Bureau understands that such transactions may not be common, the Bureau, through public comments and stakeholder outreach prior to the proposal, received feedback regarding the extensive variability of credit and real estate transactions, and thus has revised the comment to account for such possibility. The Bureau believes that such periodic payment adjustments should be reflected as separate periodic payments or ranges of payments on the projected payments table in order to provide a more meaningful and accurate disclosure to consumers, and has revised comment 37(c)(1)(i)(A)–3 accordingly.

The Bureau is not providing specific guidance in § 1026.37(c) regarding whether the periodic principal and interest disclosure should be based on an average 30-day month or some other measure. Under current § 1026.17(c)(3)–1.iii, creditors may base their disclosures on calculation tools that assume that all months have an equal number of days, even if their practice is to take account of the variations in months for purposes of collecting interest. Because this guidance applies generally to the disclosures required by § 1026.37, the Bureau does not believe it is necessary or appropriate to provide such guidance in § 1026.37(c).

In addition to the changes to § 1026.37(c)(1)(i)(A), the Bureau is adding a reference to the definition of balloon payment in § 1026.37(b)(5) to § 1026.37(c)(1)(i)(B) to clarify that, for purposes of determining the occurrence of an event requiring the disclosure of additional separate periodic payments or ranges of payments, ''balloon payment'' is defined pursuant to § 1026.37(b)(5). The Bureau is also revising comment 37(c)(1)(i)(B)–1 to clarify that separate rules apply to determining the existence of a balloon payment for purposes § 1026.37(c)(1)(i) (events requiring disclosure of additional separate periodic payments) and to determining the amount of a balloon payment to disclose under § 1026.37(c)(2)(i). To clarify the distinction between the two provisions, the Bureau is moving guidance regarding the amount of a balloon payment to disclose for purposes of § 1026.37(c)(2)(i) to comment 37(c)(2)(i)–3 and placing a cross reference to that comment in comment 37(c)(1)(i)(B)–1.

The Bureau is making clarifying changes to comment 37(c)(1)(i)(C)–1, which generally defines mortgage insurance for purposes of § 1026.37(c). As proposed, that comment would have provided that ''mortgage insurance'' means insurance against the nonpayment of, or default on, and individual mortgage. As finalized, however, the comment provides that ''mortgage insurance or any functional equivalent'' means the amounts identified in § 1026.4(b)(5). The Bureau believes that referencing the component of the finance charge in § 1026.4, rather than adopting a new definition, will facilitate compliance for creditors and avoid regulatory complexity, since the definition in § 1026.4(b)(5) is a longstanding part of Regulation Z. This change is consistent with the definition of ''mortgage-related obligations'' in the Bureau's 2013 ATR Final Rule, with § 1026.37(c)(4)(ii), regarding the disclosure of estimated taxes, insurance, and assessments, described below, and with the definition of mortgage insurance or any functional equivalent in § 1026.18(s), described above. Consistent with the proposal, comment 37(c)(1)(i)(C)–1 also clarifies that, for purposes of § 1026.37(c), ''mortgage insurance or any functional equivalent'' includes any mortgage guarantee that provides coverage similar to mortgage insurance (such as a United States Department of Veterans Affairs or United States Department of Agriculture guarantee), even if not technically considered insurance under State or other applicable law.

In addition, the Bureau is making clarifying adjustments to the headings of comments 37(c)(1)(i)(C)–2 and –3, which provide guidance regarding the calculation and disclosure of the date that mortgage insurance terminates for purposes of § 1026.37(c)(1)(i), to clarify that the guidance in those comments applies only to the date that mortgage insurance terminates for purposes of § 1026.37(c)(1)(i), and not to the amount of mortgage insurance to disclose in the table required by § 1026.37(c). For this same reason, the Bureau is revising comment 37(c)(1)(i)(C)–2 to contain a cross-reference to § 1026.37(c)(2)(ii) and its commentary. The Bureau is also revising comment 37(c)(1)(i)(C)–2 to address commenter requests for clarification, described above, as to whether mortgage insurance termination would be calculated based on the actual interest rate or the fully-indexed rate.

As adopted, comment 37(c)(1)(i)(B)–2 provides that, for purposes of § 1026.37(c)(1)(i)(C), mortgage insurance premiums should be calculated based on the declining principal balance that will occur as a result of changes to the interest rate and payment amounts, applying the interest rates applicable to the transaction. Such calculation should take into account any initial discounted or premium interest rate. The comment provides an example of an adjustable rate transaction that has an initial discounted interest rate during an initial five-year period. In such a transaction, the creditor makes the calculation using a composite rate based on the rate in effect during the initial five-year period and thereafter, the fully-indexed rate, unless otherwise required by applicable law. The comment cross references § 1026.37(c)(2)(ii) and its commentary for guidance on calculation of the amount of mortgage insurance premiums to disclose on the table required by § 1026.37(c) and cross-references comment 37(b)(2)–1 for guidance on calculation of the fully-indexed rate.

The Bureau has also considered other comments related to the disclosure of the termination of mortgage insurance, but does not believe the comments should be specifically addressed in the rule. With respect to the request for clarification as to whether the table requires disclosure of upfront mortgage insurance premiums, the Bureau notes that § 1026.37(c) requires only disclosure of the ''periodic'' payment or range of payments. Upfront mortgage insurance premiums are not paid on a periodic basis, and so are not required to be disclosed on the table required by

§ 1026.37(c). Furthermore, § 1026.37(c)(2)(iii) specifies that the creditor discloses the maximum amount payable for mortgage insurance premiums corresponding to the principal and interest payment disclosed. Because upfront mortgage insurance premiums are not paid on a periodic basis, they would not be disclosed on the table required by § 1026.37(c). For these same reasons, creditor-paid mortgage insurance would not be disclosed on the table required by § 1026.37(c). In addition, to the extent that creditor-paid mortgage insurance premiums are paid by the consumer in the form of a higher interest rate, those charges are disclosed on the table required by § 1026.37(c) through the consumer's projected payments for principal and interest as well as in the interest rate disclosure required by § 1026.37(b)(2). To the extent that creditor-paid mortgage insurance premiums are paid by the consumer in the form of higher origination fees, those amounts would be disclosed as origination charges under § 1026.37(f)(1). The purpose of the projected payments table is to illustrate how consumers' periodic payments will change over time and the Bureau believes that attempting to disclose creditor-paid mortgage insurance premiums, which are not paid by the consumer on a periodic basis, on the projected payments table could result in consumer confusion.

Finally, the Bureau is adopting a new § 1026.37(c)(1)(i)(D), which describes an event that requires disclosure of additional separate periodic payments or ranges of payments that was not specifically listed in the proposed rule. As adopted, § 1026.37(c)(1)(i)(D) provides that the anniversary of the due date of the initial periodic payment or range of payments that immediately follows the occurrence of multiple events described in § 1026.37(c)(1)(i)(A) during a single year is an event that requires the disclosure of additional separate periodic payments or ranges payments. This provision clarifies the rule regarding the appropriate disclosure of separate periodic payments or ranges of payments in the table required by § 1026.37(c), and is not intended to be a substantive change from the proposed rule. As noted below, § 1026.37(c)(1)(iii)(B), as adopted, contains a special rule regarding the disclosure of periodic principal and interest payments when multiple periodic principal and interest payments would apply during a single year. That section requires creditors to disclose the range of payments that would apply during the year in which such events occur. To highlight for consumers the periodic principal and interest payment that would apply after the year during which multiple periodic principal and interest payments changes occur, § 1026.37(c)(1)(i)(D) requires creditors to disclose the periodic payment or range of payments that would apply as of the anniversary following such combined range of payments as a separate periodic payment or range of payments. The Bureau believes this requirement assures that consumers are provided with a disclosure that clearly and accurately reflects future changes to periodic payments and clarifies the rule for creditors, facilitating compliance for industry. For further clarity, the Bureau is also adopting comment 37(c)(1)(i)(D)–1, which provides a cross-reference to comment 37(c)(1)(iii)(B)–1 for an example of the application of § 1026.37(c)(1)(i)(D).

37(c)(1)(ii)

Proposed § 1026.37(c)(1)(ii) would have contained special rules for the disclosure of separate periodic payments or ranges of payments described in § 1026.37(c)(1)(i). Specifically, proposed § 1026.37(c)(1)(ii) would have provided that the table required by § 1026.37(c) shall not disclose more than four separate periodic payments or ranges of payments. For all events requiring disclosure of additional separate periodic payments or ranges of payments described in proposed § 1026.37(c)(1)(i) after the second to occur, the separate periodic payments or ranges of payments would have been disclosed as a single range of payments, subject to the special rules listed in proposed § 1026.37(c)(1)(ii)(A) through (C).

Proposed § 1026.37(c)(1)(ii)(A) would have contained a special rule for final balloon payments. That section would have required that a final balloon payment shall always be disclosed as a separate periodic payment or range of payments and that, if a final balloon payment is disclosed, no more than three other separate periodic payments or ranges of payments are disclosed. Proposed comment 37(c)(1)(ii)(A)–1 would have clarified that § 1026.37(c)(1)(ii)(A) would have been an exception to the general rule in proposed § 1026.37(c)(1)(ii), and would have required that a balloon payment that is scheduled as a final payment under the terms of the legal obligation is always disclosed as a separate periodic payment or range of payments. Balloon payments that are not final payments, such as a balloon payment due at the scheduled recast of a loan that permits negative amortization, would have been disclosed pursuant to the general rule in proposed § 1026.37(c)(1)(ii). Proposed § 1026.37(c)(1)(ii)(B) would have provided a special rule for disclosure of mortgage insurance premiums, requiring that the automatic termination of mortgage insurance, or any functional equivalent, under applicable law shall be disclosed as a separate periodic payment or range of payments only if the total number of events that require disclosure of additional separate periodic payments or ranges of payments described in § 1026.37(c)(1)(i), other than the termination of mortgage insurance or any functional equivalent, does not exceed two.

Finally, proposed § 1026.37(c)(1)(ii)(C) would have provided a special rule for events that require disclosure of additional separate periodic payments or ranges of payments that occur during the same year. Under proposed § 1026.37(c)(1)(ii)(C), if changes to periodic principal and interest payments described in proposed § 1026.37(c)(1)(i)(A) would have required more than one separate disclosure during a single year, such periodic payments would have been disclosed as a single range of payments.

One large bank commenter stated that the rule should require that all known or scheduled periodic payment changes be disclosed to the consumer, rather than limiting to four the number of separate periodic payments or ranges of payments. That commenter argued that disclosing all payment changes would benefit consumers and would decrease creditors' risk of liability under certain State laws. Several industry commenters requested clarifications regarding the special rules related to events that require disclosure of additional separate periodic payments under the proposed rule. These commenters generally requested further guidance on how to determine the number of columns that would appear on the disclosure required by § 1026.37(c) under certain specific conditions. For example, one industry trade association commenter requested clarification regarding proposed § 1026.37(c)(ii)(C), which would have required creditors to disclose as one range of payments multiple events that occur during a single year, and two industry trade association commenters requested clarification on the disclosure rules in transactions where the balloon payment is the final payment under the terms of the legal obligation.

For the reasons discussed in the proposed rule and below, the Bureau is adopting § 1026.37(c)(1)(ii) and its commentary substantially as proposed, with the following revisions and clarifications. First, as adopted, § 1026.37(c)(1)(ii) provides that the table required by § 1026.37(c) shall not disclose more than four separate periodic payments or ranges of payments and that, for all events requiring disclosure of additional separate periodic payments or ranges of payments described in § 1026.37(c)(1)(i)(A) through (D) occurring after the third separate periodic payment or range of payments disclosed, the separate periodic payments or ranges of payments shall be disclosed as a single range of payments, subject to certain exceptions. The purpose of this provision is to limit to four the number of columns, which each reflect a separate periodic payments or range of payments, that appear on the table required by § 1026.37(c) and to establish rules for how creditors disclose the periodic payments or ranges of payments if the total number of columns would otherwise exceed four. Whereas proposed § 1026.37(c)(1)(ii) would have referred to all events requiring disclosure of additional separate periodic payments or ranges of payments ''after the second to occur'' when describing how a creditor discloses the periodic payments or ranges of payments if the total number of columns would otherwise exceed four, the final rule refers to the actual disclosed periodic payments or ranges of payments. The Bureau is making this change from the proposed rule in response to commenter requests for clarification, described above. The Bureau believes that § 1026.37(c)(1)(ii), as adopted, provides clearer guidance for creditors regarding the disclosure of periodic payments or ranges of payments in transactions where the total number of columns that appear on the table required by § 1026.37(c) would otherwise exceed four.

Second, the final rule makes certain clarifying changes to § 1027.37(c)(1)(ii)(A). As adopted, § 1026.37(c)(1)(ii)(A) provides an exception to the general rule in § 1026.37(c)(1)(ii) for transactions with a ''balloon payment scheduled as a final payment.'' Whereas proposed § 1026.37(c)(1)(ii)(A) would have referred to a ''final balloon payment,'' the final rule refers to a ''balloon payment that is a final payment under the terms of the legal obligation.'' The Bureau believes this formulation more clearly conveys that the provision relates to balloon payments that are the last scheduled payment under the terms of the legal obligation, rather than the last balloon payment to occur in a series of balloon payments. In addition, § 1026.37(c)(1)(ii)(A), as adopted, contains instructions on how to disclose events that require disclosure of additional separate periodic payments or ranges of payments in transactions with balloon payments scheduled as the final payment and where the rule would otherwise require disclosure of more than four columns on the table required by § 1026.37(c). In particular, the final rule provides that, in such a case, all events requiring disclosure of additional separate periodic payments or ranges of payments described in § 1026.37(c)(1)(i)(A) through (D) occurring after the second separate periodic payment or range of payments disclosed, other than the final balloon payment, shall be disclosed as a single range of payments. The Bureau is adding this language to § 1026.37(c)(1)(ii)(A) in response to commenter requests for clarification regarding the number of columns that would appear on the disclosure required by § 1026.37(c) in transactions where the balloon payment is scheduled as the final payment, which are described above. The Bureau believes that § 1026.37(c)(1)(ii)(A), as adopted, provides additional clarity to creditors regarding disclosure of periodic payments in transactions with balloon payments scheduled as the final payment under the terms of the legal obligation. Comment 37(c)(1)(ii)(A)–1, as adopted, also explains that a balloon payment that is a final payment is disclosed as a single payment and is not combined with other changes to periodic principal and interest payments and disclosed as a range. For further clarity, the Bureau is adopting comment 37(c)(1)(ii)(A)–2, which provides an example of the application of the special rule in § 1026.37(c)(1)(ii)(A). The example provided in comment 37(c)(1)(ii)(A)–2 clarifies that, although the balloon payment that is scheduled as the final payment under the terms of the legal obligation occurs after the third separate periodic payment or range of payments, the creditor discloses the final balloon payment as a separate event requiring disclosure of additional periodic payments or range of payments in the fourth column, and discloses the payment or range of payments that would apply after the second and third interest rate adjustments as a single range of payments in the third column. In contrast, if the final rule did not contain the special rule in § 1026.37(c)(1)(ii)(A), the creditor would have been required to disclose in the first column the initial periodic payment or range of payments, in the second column the periodic payment or range of payments that would apply after the first interest rate adjustment, in the third column the periodic payment or range of payments that would apply after the second interest rate adjustment, and in the fourth column the periodic payment or range of payments that would apply after the third and final interest rate adjustment through the final balloon payment as a single range of payments. The Bureau believes that the information regarding the final balloon payment will be more useful to consumers when disclosed as a separate payment, because it will make the fact that a final balloon payment exists and the amount of the final balloon payment more easily visible by consumers, and thus, is adopting the special rule under § 1027.37(c)(1)(ii)(A) substantially as proposed, with the clarifying changes described above.

Third, as adopted, § 1026.37(c)(1)(ii)(B) provides that the automatic termination of mortgage insurance or any functional equivalent under applicable law shall require disclosure of an additional separate periodic payment or range of payments only if the total number of separate periodic payments or ranges of payments otherwise disclosed pursuant § 1026.37(c)(1) does not exceed three. The purpose of this provision is to provide an exception to the general rule in § 1026.37(c)(1)(ii) regarding the disclosure of a range of payments for each event occurring after the third separate periodic payment or range of payments disclosed. Whereas proposed § 1026.37(c)(1)(ii)(B) would have referred to the number of ''events requiring disclosure of additional separate periodic payments'' in describing how to disclose mortgage insurance in transactions that would otherwise require more than four columns in the table required by § 1026.37(c), the final rule refers to the actual disclosure of additional separate periodic payments or ranges of payments. The Bureau believes that § 1026.37(c)(1)(ii)(B), as adopted, provides clearer guidance for creditors regarding disclosure of periodic payments or ranges of payments in transactions where mortgage insurance is required to be disclosed and where the total number of columns in the table required by § 1026.37(c) would otherwise exceed four.

In response to commenter requests for additional clarification regarding the

disclosure of mortgage insurance termination, the Bureau is also finalizing a new comment 37(c)(1)(ii)(B)–1, which did not appear in the proposed rule. As adopted, that comment explains that § 1026.37(c)(1)(ii)(B) is an exception to the general rule in § 1026.37(c)(1)(ii), and requires that the automatic termination of mortgage insurance under applicable law is disclosed as a separate periodic payment or range of payments only if the total number of separate periodic payments or ranges of payments otherwise disclosed does not exceed three. The comment further clarifies that where the automatic termination of mortgage insurance under applicable law is not disclosed as a separate periodic payment or range of payments, the absence of a required mortgage insurance payment is disclosed with the next disclosed event requiring disclosure of additional separate periodic payments or ranges of payments, as applicable. For further clarification, the Bureau is also adopting new comment 37(c)(1)(ii)(B)–2, which provides two examples of the application of the special rule regarding the disclosure of the automatic termination of mortgage insurance.

The Bureau is not adopting § 1026.37(c)(1)(ii)(C). As proposed, § 1026.37(c)(1)(ii)(C) would have provided, as an exception to the general rule in § 1026.37(c)(1)(ii), that if changes to periodic principal and interest payments would require more than one separate disclosure of additional separate periodic payments or ranges of payments during a single year, such periodic payments shall be disclosed as a single range of payments. The Bureau believes that the language in proposed § 1026.37(c)(1)(ii)(C) would provide clearer guidance to creditors if located in § 1026.37(c)(1)(iii), which generally provides rules regarding the disclosure of a range of payments in the table required by § 1026.37(c). See the section-by-section analysis of § 1026.37(c)(1)(iii), below, for additional discussion of proposed § 1026.37(c)(1)(ii)(C).

Finally, the Bureau has considered the comment requesting that all scheduled periodic payment changes be disclosed to the consumer, rather than limiting the amount to four, but declines to adopt such a requirement. The Bureau's consumer testing indicates that consumers are generally able to evaluate the payment changes that will occur over the life of the loan using the projected payments table that is limited to four columns. Kleimann Quantitative Study Report at 55–56. Moreover, the Bureau believes that a requirement to disclose all future periodic payment changes would result in information overload to consumers.

37(c)(1)(iii)

Proposed § 1026.37(c)(1)(iii) would have provided rules for the disclosure of ranges of payments. Under the proposed rule, a range of payments would have been disclosed when the periodic principal and interest payment may adjust based on index rates at the time an interest rate adjustment may occur or multiple events are combined in a range of payments pursuant to proposed § 1026.37(c)(1)(ii). When a range of payments is required, the creditor would have been required to disclose the minimum and maximum possible payment amount for both the principal and interest payment under proposed § 1026.37(c)(2)(i) and the total periodic payment under proposed § 1026.37(c)(2)(iv). In the case of an interest rate adjustment, the maximum payment amounts would have been determined by assuming that the interest rate in effect throughout the loan term is the maximum possible interest, and the minimum payment amounts would have been determined by assuming that the interest rate in effect throughout the loan term is the minimum possible interest rate.

Proposed comment 37(c)(1)(iii)–1 would have clarified that a range of payments must be disclosed when the periodic principal and interest payments are not known at the time the disclosure is provided because they are subject to changes based on index rates at the time of an interest rate adjustment or when multiple events are disclosed as a range of payments pursuant to proposed § 1026.37(c)(1)(ii). For such transactions, proposed § 1026.37(c)(3)(iii) would have required the creditor to disclose both the minimum and maximum periodic principal and interest payments, expressed as a range. In disclosing the maximum possible interest rate for purposes of § 1026.37(c), the creditor would have assumed that the interest rate will rise as rapidly as possible after consummation, taking into account the terms of the legal obligation, including any applicable caps on interest rate adjustments and lifetime interest rate cap. For a loan with no lifetime interest rate cap, the maximum rate would have been determined by reference to other applicable laws, such as State usury law. In disclosing the minimum possible interest rate for purposes of § 1026.37(c), the creditor would have assumed that the interest rate will decrease as rapidly as possible after consummation, taking into account any introductory rates, caps on interest rate adjustments, and lifetime interest rate floor. For an adjustable rate mortgage based on an index that has no lifetime interest rate floor, the minimum interest rate would have been equal to the margin. Proposed comment 37(c)(1)(iii)–2 would have clarified that, when a range of payments is required, the amount required to be disclosed for mortgage insurance premiums pursuant to proposed § 1026.37(c)(2)(ii) and the amount payable into escrow pursuant to proposed § 1026.37(c)(2)(iii) shall not be disclosed as a range. Proposed comment 37(c)(1)(iii)–3 would have provided guidance to creditors on the disclosure of ranges of payments in adjustable rate mortgages.

As noted above, several industry trade association commenters requested that the final rule provide further clarification and guidance on the disclosure of periodic payments or ranges of payments when multiple events requiring disclosure of additional separate periodic payments or ranges of payments occur during the same year. The Bureau has considered these comments and, for the reasons discussed in the proposed rule and below, is adopting § 1026.37(c)(1)(iii) and its commentary substantially as proposed, with the following revisions and clarifications.

First, the Bureau has restructured the introductory language to § 1026.37(c)(1)(iii) to first provide the general rule that when a range of payments is required to be disclosed under § 1026.37(c)(1), the creditor must disclose the minimum and maximum amount for both the principal and interest payment under § 1026.37(c)(2)(i) and the total periodic payment under § 1026.37(c)(2)(iv). The rule then provides a list of when a range of payments is required to be disclosed under § 1026.37(c)(1). The introductory language to § 1026.37(c)(1)(iii), as adopted, does not contain substantive changes from the proposed rule, but is revised for clarity.

Second, the final rule adds § 1026.37(c)(1)(iii)(A). As adopted, that section provides that a range of payments is required to be disclosed when multiple events described in § 1026.37(c)(1)(i) are combined in a single range of payments pursuant to § 1026.37(c)(1)(ii), as described above. This language is adopted from proposed § 1026.37(c)(1)(iii) and does not contain substantive changes from the proposed rule.

Third, the final rule adds § 1026.37(c)(1)(iii)(B). As adopted, that section provides that a range of payments is required to be disclosed

when multiple events described in § 1026.37(c)(1)(i)(A) occur during a single year or an event described in § 1026.37(c)(1)(i)(A) occurs during the same year as the initial periodic payment or range of payments, in which case the creditor discloses the range of payments that would apply during the year in which the events occur. This provision is adopted from proposed § 1026.37(c)(1)(ii)(C), which would have provided that if changes to periodic principal and interest payments described in § 1026.37(c)(1)(i)(A) would require more than one separate disclosure during a single year, such periodic payments shall be disclosed as a single range of payments. As discussed above, the Bureau believes that the rule that would have appeared in proposed § 1026.37(c)(1)(ii)(C) would provide clearer guidance to creditors if placed in § 1026.37(c)(1)(iii), which generally provides rules regarding the disclosure of a range of payments in the table required by § 1026.37(c). The final rule also contains additional language in § 1026.37(c)(1)(iii)(B) to clarify that changes to periodic principal and interest payments that occur during the first year of the loan are also combined and disclosed as a range of payments that would apply during the year in which the events occur. The Bureau is making these changes to the proposed rule in response to commenter requests for clarification regarding the disclosure of separate periodic payments or ranges of payments that occur during the same year.

For additional clarity, the Bureau is also adopting comment 37(c)(1)(iii)(B)–1 to provide guidance to creditors regarding the disclosure of separate periodic payments or ranges of payments when multiple events occur during a single year. That comment clarifies that if changes to periodic principal and interest payments would result in more than one separate periodic payment or range of payments in a single year, § 1026.37(c)(1)(iii)(B) requires the creditor to disclose the range of payments that would apply during the year in which the events occur. The comment also provides an example that assumes a loan with a 30-year term with a payment that adjusts every month for the first 12 months and is fixed thereafter, where mortgage insurance is not required, and where no escrow account would be established for the payment of charges described in § 1026.37(c)(4)(ii). Under this example, the creditor discloses as a range of payments the initial periodic payment and the periodic payment that would apply after each payment adjustment during the first 12 months and would also disclose, as an additional separate range of payments, the periodic principal and interest payment or range of payments that would apply after the payment becomes fixed. The comment provides a second example that assumes instead a loan with a 30-year term with an interest rate that provides for a payment adjustment after three months and after six months and is fixed thereafter, where mortgage insurance is not required, and where no escrow account would be established for the payment of charges described in § 1026.37(c)(4)(ii). Under this example, the creditor discloses as a range of payments the initial periodic payment and the periodic payment that would apply after the payment adjustment that occurs after six months, which represent the minimum payment and maximum payment, respectively, which would apply during the first year of the loan. Pursuant to § 1026.37(c)(1)(i)(D), the creditor also discloses as an additional separate periodic payment or range of payments, the principal and interest payment that would apply after the payment adjustment that would apply on the anniversary of the initial periodic payment, which is the periodic payment that occurs after the six month payment adjustment.

In addition, the final rule adds § 1026.37(c)(1)(iii)(C). As adopted, that section provides that a range of payments is required to be disclosed when the periodic principal and interest payment may adjust based on index rates at the time an interest rate adjustment may occur. This language is adopted from proposed § 1026.37(c)(1)(iii) and does not contain substantive changes from the proposed rule.

The Bureau is not adopting proposed comment 37(c)(1)(iii)–1, which would have provided guidance to creditors regarding the disclosure of the minimum and maximum principal and interest payments in transactions where principal and interest payments are not known at the time the disclosure is provided because they are subject to changes based on index rates at the time of an interest rate adjustment. For clarity, the Bureau is providing this guidance in commentary to § 1026.37(c)(2), which is discussed below.

37(c)(2) Itemization

Proposed § 1026.37(c)(2) would have required that each separate periodic payment or range of payments included in the table required by proposed § 1026.37(c) must be itemized to include the following: (1) the amount payable for principal and interest, labeled as ''Principal & Interest,'' including the term ''only interest'' if the payment or range of payments includes any interest only payment; (2) the maximum amount payable for mortgage insurance premiums corresponding to the principal and interest payment disclosed pursuant to proposed § 1026.37(c)(2)(i), labeled ''Mortgage Insurance''; (3) the amount payable into an escrow account to pay for some or all of the charges described in proposed § 1026.37(c)(4)(ii)(A) through (E), labeled ''Estimated Escrow,'' including a statement that the amount disclosed can increase over time; and (4) the total periodic payment, calculated as the sum of the amounts disclosed pursuant to proposed § 1026.37(c)(2)(i) through (iii), labeled ''Total Monthly Payment.'' As discussed in the Kleimann Testing Report, the Bureau's consumer testing indicated that consumers understand the table and can identify the components of their total monthly payment using this itemization of payments. *See* Kleimann Testing Report at 283.

Proposed comment 37(c)(2)(ii)–1 would have clarified that mortgage insurance payments should be reflected on the disclosure required by proposed § 1026.37(c) even if no escrow account is established for the payment of mortgage insurance premiums. If the consumer is not required to purchase mortgage insurance, the creditor would have disclosed the mortgage insurance premium as ''0.'' Proposed comment 37(c)(2)(ii)–2 would have clarified that the creditor must disclose mortgage insurance payments pursuant to proposed § 1026.37(c)(2)(ii) on the same periodic basis that payments for principal and interest would have been disclosed pursuant to proposed § 1026.37(c)(2)(i), even if mortgage insurance premiums are actually paid on some other periodic basis.

The Bureau proposed to implement TILA sections 128(a)(16) and 128(b)(4)(A) pursuant to its implementation authority under TILA section 105(a) and require creditors to disclose the amount of estimated escrow payments, as well as pursuant to its authority under Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). As discussed above, TILA section 128(a)(16) requires that, for variable-rate residential mortgage loans for which an escrow account will be established, the creditor must disclose the initial total monthly payment, including escrow payments for taxes and insurance. The Bureau proposed to modify this requirement to cover all transactions

subject to proposed § 1026.19(e) for which an escrow account will be established, including fixed rate loans. Additionally, TILA section 128(b)(4)(A) requires that, for any consumer credit transaction secured by a first lien on the principal dwelling of the consumer for which an escrow account will be established, the creditor must take into account escrow payments when making the disclosures required by TILA section 128(a)(6). The Bureau also proposed to modify the scope of this requirement to cover all transactions subject to proposed § 1026.19(e) for which an escrow account will be established. The Bureau proposed these modifications pursuant to its authority to implement TILA sections 128(a)(16) and 128(b)(4)(A) under TILA section 105(a), as well as its authority under Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). The proposal stated that these modifications are consistent with the purposes of TILA, as they may promote the informed use of credit by allowing consumers to more readily compare loans. Further, the proposal stated that applying a single disclosure rule to all transactions subject to proposed § 1026.19(e) may ease compliance burden for creditors. Accordingly, the proposal stated that these modifications will improve consumer awareness and understanding of residential mortgage loans and are in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b). In addition, consistent with section 1032(a) of the Dodd-Frank Act, the proposal noted that this disclosure would ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

Further, the Bureau proposed to require creditors to disclose the maximum periodic payment for mortgage insurance premiums corresponding to the periodic principal and interest payment disclosed pursuant to § 1026.37(c)(2)(i), separately from other escrowed amounts, pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b), even if no escrow account is established for the payment of such amounts. Current § 1026.18(s) requires creditors to include mortgage insurance in the disclosure of the amounts required to be paid into escrow. However, § 1026.18(s) does not require creditors to separately disclose payments for mortgage insurance. The proposal stated that the Bureau believes that consumers would benefit from disclosure of the periodic amount of mortgage insurance payments required by the creditor, and believes that consumers would benefit from the disclosure of any required mortgage insurance payments even if no escrow account for the payment of such amounts will be established. The proposal also stated that the Bureau believes that requiring such disclosure in all cases may facilitate comparison between loans and improve overall understanding of credit terms. Accordingly, the proposal stated that this requirement promotes the informed use of credit, will improve consumer awareness and understanding of transactions involving residential mortgage loans, and is in the interest of consumers and the public, consistent with the purpose of TILA and with Dodd-Frank Act section 1405(b). Further, consistent with section 1032(a) of the Dodd-Frank Act, the proposal stated that this disclosure would have ensured that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

In addition, the Bureau understands that some mortgage insurance plans are structured such that periodic mortgage insurance payments decrease over time. Accordingly, the Bureau proposed to require creditors to disclose the maximum amount payable for mortgage insurance premiums, or any functional equivalent, corresponding to the periodic principal and interest payment disclosed pursuant to proposed § 1026.37(c)(2)(i). The proposal stated that the Bureau believes this disclosure will enhance consumer understanding of and facilitate comparison between loans by more accurately reflecting the amount of mortgage insurance payments over time. Proposed comment 37(c)(2)(iii)–1 would have clarified that the disclosure of taxes and insurance described in proposed § 1026.37(c)(2)(iii) is required only if the creditor will establish an escrow account for the payment of the amounts described in proposed § 1026.37(c)(4)(ii)(A) through (E), consistent with TILA section 128(b)(4)(A) and current § 1026.18(s).

Several industry commenters, including one large national mortgage lender, requested that the Bureau eliminate the proposed requirement that creditors disclose both the minimum and maximum payment range and, instead, require that future payment changes be based on maximum interest rates and payments only. These commenters stated that such a change would streamline the regulation, such as the rules for calculation of the date of termination of mortgage insurance. Several industry trade association commenters noted that proposed § 1026.37(c)(2)(iii) would not have required disclosure of estimated escrow if no escrow account would be established, but that the taxes, insurance, and assessments disclosure under § 1026.37(c)(4) would have been required even in the absence of an escrow account. These commenters suggested that the requirements are inconsistent and that the ''estimated escrow'' payments should be included even if no escrow account is established so that consumers are not misled about their costs and can better compare Loan Estimates. Similarly, a title company commenter suggested that the two disclosures could be confusing if no escrow account is established for the payment of taxes, insurance, and assessments. Finally, a large mortgage origination software provider commenter requested that the rule specify how the lack of an escrow account is to be disclosed to ensure a uniform approach in the industry.

For the reasons discussed in the proposed rule and below, the Bureau is adopting § 1026.37(c)(2) and its commentary substantially as proposed, with the following revisions and clarifications. First, the Bureau is finalizing rules regarding the disclosure of minimum and maximum payments in loans with adjustable interest rates and loans with adjustable interest rates that also contain a negative amortization feature in § 1026.37(c)(2)(i)(A) and (B). As discussed above in the section-by-section analysis of § 1026.37(c)(1)(i), a large consumer advocacy group commenter stated that if a creditor were to follow the proposed rule for the disclosure of adjustable rate loans in the case of an adjustable rate loan that permits negative amortization, it would produce a payment that is less than the maximum payment. As described above, proposed § 1026.37(c)(1)(iii) would have provided that the maximum payment amounts are determined by assuming that the interest rate in effect throughout the loan term is the maximum possible interest rate and comment 37(c)(1)(iii)–1 would have provided that the creditor assumes that the interest rate will rise as rapidly as possible after

consummation. The commenter noted that, in an adjustable rate loan that contains a negative amortization feature, the requirement in § 1026.37(c)(1)(iii) would produce a payment that is less than the maximum payment permitted under the terms of the legal obligation. The commenter argued that, in adjustable rate loans that permit negative amortization, the maximum payment depends on the interaction of the permissible amount of negative amortization, the highest interest rate, and the latest date at which payments become fully amortizing. For such loans, the commenter asserted that the maximum payment is triggered when the maximum interest rate is applied to the maximum loan balance for the shortest amortization period, which will happen when the onset of fully amortizing payments is delayed as long as possible. The commenter asserted that, for adjustable rate loans that permit negative amortization until a contract term triggers a switch to fully amortizing payments, the maximum payment should be calculated by applying the maximum interest rate to the maximum allowed principal balance for the minimum possible number of periodic payments that remain at the end of the time when non-amortizing payments are allowed.

The Bureau has considered this comment and believes that additional guidance is necessary regarding the calculation of the maximum payment amount in adjustable rate loans with negative amortization features. Accordingly, to ensure that consumers are fully informed of the risk of payment increases associated with adjustable rate loans that also contain a negative amortization feature and to clarify the rules regarding the disclosure of maximum payment amounts in such loans, the Bureau is adopting § 1026.37(c)(2)(i)(A) and (B). As adopted, § 1026.37(c)(2)(i)(A) provides that, in the case of a loan that has an adjustable interest rate, the maximum principal and interest payment amounts are determined by assuming that the interest rate in effect throughout the loan term is the maximum possible interest rate, and the minimum amounts are determined by assuming that the interest rate in effect throughout the loan term is the minimum possible interest rate. This provision is adopted from proposed § 1026.37(c)(1)(iii), is adopted in § 1026.37(c)(2)(i) for clarifying purposes only, and is not intended to be a substantive change to the proposed rule. By contrast, § 1026.37(c)(2)(i)(B) provides that, in the case of a loan that has an adjustable interest rate and also contains a negative amortization feature, the maximum principal and interest payment amounts after the negative amortization period ends are determined by assuming the maximum principal amount permitted under the terms of the legal obligation at the end of the negative amortization period and the minimum amounts are determined pursuant to § 1026.37(c)(2)(i)(A).

The final rule also adopts comments 37(c)(2)(i)–1 and –2 to provide additional guidance to creditors on the disclosure of minimum and maximum payments in adjustable rate loans and adjustable rate loans with negative amortization features. Comment 37(c)(2)(i)–1 is generally adopted from proposed comment 37(c)(1)(iii)–3 and is not intended to be a substantive change from the proposed rule. As adopted, the comment provides that, for adjustable rate loans, in disclosing the maximum possible payment for principal and interest under § 1026.37(c), the creditor assumes that the interest rate will rise as rapidly as possible after consummation, taking into account the terms of the legal obligation, including any applicable caps on interest rate adjustments and lifetime interest rate cap. The comment also provides that, for a loan with no lifetime interest rate cap, the maximum rate is determined by reference to other applicable laws, such as State usury law. In disclosing the minimum payment for purposes of § 1026.37(c), the comment provides that the creditor assumes that the interest rate will decrease as rapidly as possible after consummation, taking into account any introductory rates, caps on interest rate adjustments, and lifetime interest rate floor. For an adjustable rate mortgage based on an index that has no lifetime interest rate floor, the minimum interest rate is equal to the margin.

Comment 37(c)(2)(i)–2, in contrast, contains guidance on the special rule in § 1026.37(c)(2)(i)(B) for calculation of the maximum principal and interest payment in an adjustable rate loan that contains a negative amortization feature. The comment notes that § 1026.37(c)(2)(i)(B) provides that the maximum amounts payable for principal and interest after the negative amortization period ends are calculated using the maximum principal amount permitted under the terms of the legal obligation at the end of the negative amortization period, and contains a cross-reference to § 1026.37(c)(1)(i)(A) and associated commentary for guidance regarding when the negative amortization period ends for purposes of § 1026.37(c). For example, if the maximum principal balance for the last payment in the negative amortization period is achieved at an interest rate that is not the maximum interest rate permitted under the terms of the legal obligation before the negative amortization period ends, future events requiring disclosure of additional, separate periodic payments or ranges of payments assume that the interest rate in effect at the end of the negative amortization period was such interest rate, and not the maximum possible interest rate. After the end of the negative amortization period, the general rule under § 1026.37(c)(2)(i)(A) regarding assumptions of interest rate changes for the maximum principal and interest payment to be disclosed applies from such interest rate. The minimum payment in an adjustable rate loan that contains a negative amortization feature is determined pursuant to the general rule under § 1026.37(c)(2)(i)(A). The Bureau believes that the guidance in comment 37(c)(2)(i)–2 regarding the calculation of the maximum payment amount in adjustable rate loans that contain a negative amortization feature ensures that consumers are informed of the risks of payment shock associated with such loans.

In addition, the Bureau is adopting comment 37(c)(2)(i)–3, which is generally adopted from proposed § 1026.37(c)(1)(i)(B)–1 and not intended to be a substantive change from the proposed rule. It provides guidance to creditors on the disclosure of balloon payment amounts on the table required by § 1026.37(c). As adopted, comment 37(c)(2)(i)–3 provides that although the existence of a balloon payment is determined pursuant to § 1026.37(b)(5) and its commentary, balloon payment amounts to be disclosed under § 1026.37(c) are calculated in the same manner as periodic principal and interest payments under § 1026.37(c)(2)(i). The comment provides an example that, for a balloon payment amount that can change depending on previous interest rate adjustments that are based on the value of an index at the time of the adjustment, the balloon payment amounts are calculated using the assumptions for minimum and maximum interest rates described in § 1026.37(c)(2)(i) and its commentary, and should be disclosed as a range of payments.

The Bureau is also adopting clarifying changes to comment 37(c)(2)(ii)–1, regarding the disclosure of mortgage insurance, in response to commenter requests for additional clarification. As proposed, that comment stated that if the consumer is not required to purchase mortgage insurance, the

creditor discloses the mortgage insurance premium as ''0.'' In response to commenter requests for clarification, the Bureau is revising comment 37(c)(2)(ii)–1 to also provide that the creditor discloses the automatic termination of mortgage insurance and the absence of mortgage insurance after coverage has terminated as ''—.'' This change from the proposed rule is consistent with the proposed model forms in appendix H. As adopted, therefore, comment 37(c)(2)(ii)–1 provides that mortgage insurance premiums should be reflected on the disclosure required by § 1026.37(c) even if no escrow account is established for the payment of mortgage insurance premiums, that if the consumer is not required to purchase mortgage insurance the creditor discloses the mortgage insurance premium as ''0,'' and that if the creditor is disclosing the automatic termination or the absence of mortgage insurance after coverage has terminated, the creditor discloses the mortgage insurance premium as ''—.''

Finally, the Bureau is amending § 1026.37(c)(2)(iii) and comment 37(c)(2)(iii)–1 for consistency with the estimated taxes, insurance, and assessments disclosure required by § 1026.37(c)(4)(ii), described below. As adopted, § 1026.37(c)(2)(iii) provides that the creditor must disclose the amount payable into an escrow account to pay some or all of the charges described in § 1026.37(c)(4)(ii), as applicable, labeled ''Estimated Escrow,'' together with a statement that the amount disclosed can increase over time. To increase the clarity of the rule, the Bureau is deleting the word ''Estimated'' from the label required under § 1026.37(c)(2)(iii) so that the label is revised to ''Escrow,'' because the word ''Estimated'' is incorporated into the label by the rule in § 1026.37(o)(2). The word ''Estimated'' is also incorporated into the label by § 1026.38(t)(2) for the table required on the Closing Disclosure under § 1026.38(c). Comment 37(c)(2)(iii)–1 provides that the escrow disclosure described in § 1026.37(c)(2)(iii) is required only if the creditor will establish an escrow account for the payment of some or all of the charges described in § 1026.37(c)(4)(ii) and that, if no escrow account for the payment of some or all such charges will be established, the creditor discloses the mortgage insurance premium as ''0.'' These changes are technical, for consistency with the final rule regarding the disclosure of estimated taxes, insurance, and assessments required by § 1026.37(c)(4)(ii), and are not intended to be substantive changes from the proposed rule. In addition, the Bureau is modifying the design of the statement that the amount can increase over time, required by § 1026.37(c)(2)(iii) as illustrated by form H–24 of appendix H to Regulation Z (discussed in more detail in section-by-section analysis of appendix H below). The revised design uses a sentence capitalization structure for increased readability. In both the Bureau's pre-proposal qualitative consumer testing and the Quantitative Study, consumers were able to use the Loan Estimate, including the Projected Payments and Loan Terms tables, to understand their transactions and compare loans, including information about their monthly payments. *See* Kleimann Testing Report at 277–279 and 282–284; *see also* Kleimann Quantitative Study Report at 55–56.

37(c)(3) Subheadings

Proposed § 1026.37(c)(3)(i) would have provided that the labels required pursuant to § 1026.37(c)(2) must be listed under the subheading ''Payment Calculation.'' Proposed § 1026.37(c)(3)(ii) would have provided that each separate, itemized periodic payment or range of payments to be disclosed under § 1026.37(c) must be disclosed under a subheading that states the number of years of the loan during which that payment or range of payments will apply and that those subheadings must be stated in a sequence of whole years from the date that the first such payment is due. Proposed comment 37(c)(3)(ii)–1 would have provided additional guidance on the disclosure of the number of years of the loan during which the payment or range of payments will apply, and proposed comment 37(c)(3)(ii)–2 would have provided guidance on disclosure of the years of the loan for transactions with variable terms, such as transactions where the loan term may increase based on an adjustment of the interest rate.

Several industry commenters requested clarification regarding the disclosure of the number of years of the loan during which the payment or range of payments will apply. Several industry commenters, including industry trade associations and a large credit union, argued that the rule should permit creditors to disclose the number of months or months and years during which the payment or range of payments will apply, in order to accommodate situations where the payments or ranges of payments do not equate to whole years. One large provider of mortgage origination software suggested that the final rule should provide additional guidance on disclosing ''years'' in construction-only loans with terms of less than one year.

Another industry commenter noted the difference between the definition of year in proposed § 1026.37(b) and § 1026.37(c). That commenter noted that it may be confusing to consumers to see the rate and payment adjustment occurring during different years, and that keeping track of multiple definitions would increase compliance burden. One law firm commenter, on behalf of a mortgage origination software provider commenter, noted that proposed form H–24(E) would have used the term ''final payment'' in the final column for a loan with a balloon payment as a final payment, but that there is no direct authorization in proposed rule for such a subheading. That commenter requested clarification regarding the use of ''final payment'' as a subheading. That commenter also suggested that the rule provide specific guidance about subheadings in construction-to-permanent loans. That commenter suggested that the construction phase of a construction-to-permanent loan should be identified using a unique column heading, such as ''construction phase.''

For the reasons discussed in the proposed rule and below, the Bureau is adopting § 1026.37(c)(3) and its commentary substantially as proposed, with the following revisions and clarifications. First, the final rule contains several changes to § 1026.37(c)(3)(ii) in response to commenter requests for clarification regarding the disclosure of the number of years of the loan during which the payment or range of payments will apply. To provide additional clarity to creditors and to ensure that consumers receive a disclosure that clearly and accurately discloses future changes to their periodic payments, § 1026.37(c)(3)(ii), as adopted, provides that, except as provided in § 1026.37(c)(3)(iii) (which contains a special rule for the subheadings required for the disclosure of balloon payments that are final payments), each separate periodic payment or range of payments to be disclosed under § 1026.37(c) must be disclosed under a subheading that states the years of the loan during which that payment or range of payments will apply. The subheadings must be stated in a sequence of whole years from the due date of the initial periodic payment. As proposed, § 1026.37(c)(3)(ii) would have provided that the subheadings must be stated in a sequence of whole years from the ''date that the first such payment is due.'' Although § 1026.37(c)(3)(ii), as adopted, would not alter the disclosure

provided for in the proposed rule when an event requiring disclosure of additional separate periodic payments or ranges of payments occurs on the anniversary of the due date of the initial periodic payment, the final rule does result in a different disclosure when such an event occurs on a date other than the anniversary of the due date of the initial periodic payment. Under the proposed rule, the periodic payment that would have applied after an event requiring disclosure of additional separate periodic payments or ranges of payments that occurred on a date other than the anniversary of the initial periodic payment may not have been fully disclosed to the consumer.

An example in proposed comment 37(c)(3)(ii)–1 explains this result. That comment would have provided, among other examples, that in a loan with a 30-year term that requires interest only payments for the first 54 months then requires fixed fully amortizing payments of principal and interest for the duration of the loan and that requires mortgage insurance that would automatically terminate under applicable law after the 100th month, the creditor would label the first disclosure of periodic payments or range of payments as ''Years 1–4,'' the second disclosure of periodic payments or range of payments as ''Years 5–8,'' and the third disclosure of periodic payments or ranges of payments as ''Years 9–30.'' Under this formulation of the rule, the consumer's required mortgage insurance payments would have continued until month 100 of the loan, which occurs during the ninth year, but would have been disclosed as continuing only until year eight of the loan. Under § 1026.37(c)(3)(ii) as adopted, however, the creditor would label the first disclosure of periodic payments as ''Years 1–5,'' the second disclosure of periodic payments or range of payments as ''Years 6–9,'' and the third disclosure of periodic payments or range of payments as ''Years 10–30.'' Under this formulation of the rule, the consumer's required mortgage insurance payments are disclosed as continuing through the ninth year of the loan.

The Bureau believes the approach in the final rule ensures that consumers receive a disclosure that clearly and accurately discloses future changes to periodic payments, while providing clarity to creditors regarding the disclosure rules for events that require disclosure of additional separate periodic payments or ranges of payments that occur on a date other than the anniversary of the due date of the initial periodic payment. The final rule also amends comment 37(c)(3)(ii)–1 to provide additional clarity to creditors and to conform to amended § 1026.37(c)(3)(ii). As adopted, comment 37(c)(3)(ii)–1 clarifies that if an event requiring the disclosure of an additional separate periodic payment or range of payments occurs on a date other than the anniversary of the due date of the initial periodic payment, because the previous separate periodic payments or range of payments will apply during that year, such event is disclosed beginning in the next year in the sequence. The final rule also amends the examples in that comment and provides an additional example of disclosure of the years of the loan in a fixed rate loan with a term of 124 months, in response to commenter requests for clarification regarding the proper disclosure of a loan with a term that does not end on the anniversary of the due date of the initial periodic payment.

The Bureau has considered the comments requesting that the disclosure required by § 1026.37(c) state the months, rather than years, of the loan during which the periodic payment or range of payments will apply. However, the Bureau believes consumers evaluating future payments over the life of their loan would benefit from a disclosure that states projected payments in years, which is a time-horizon that is readily understandable by consumers considering their payments over the typical life of a loan, and that disclosing payments in months could detract from consumers' ability to fully understand future payment changes. The Bureau's consumer testing indicated that the Projected Payments table, which stated the changes in a sequence of whole years, enabled consumers to evaluate the risks associated with payment changes over time. *See* Kleimann Testing Report at 282–3. In addition, the Bureau's Quantitative Study concludes that consumer participants using the integrated disclosures performed statistically significantly better than consumer participants using the current disclosures at answering questions about their monthly payments, including questions about how the monthly payment change would change over time. *See* Kleimann Quantitative Study Report at 55–56. The Bureau also believes that the final rule provides clear guidance to creditors on the disclosure rules for loans where the number of months of the loan do not equate to whole years and where an event requiring disclosure of additional separate periodic payments or ranges of payments occurs on a date other than the anniversary of the due date of the initial periodic payment or range of payments.

The Bureau has also considered commenters' concerns regarding the differing disclosure rules that were proposed to apply to the dates of future periodic payment and interest rate changes under proposed § 1026.37(b)(6) and (7) and the rules that would have applied to future periodic payment changes under proposed § 1026.37(c). As discussed above, proposed § 1026.37(b)(8) would have provided that the dates required to be disclosed by § 1026.37(b)(6) (adjustments after consummation) and (7) (details about prepayment penalty and balloon payments) would have been disclosed as the year in which the date occurs, counting from the date that the interest for the first scheduled periodic payment begins to accrue after consummation, whereas ''year,'' for purposes of § 1026.37(c) would have been defined as the twelve-month interval beginning on the due date of the first periodic payment. The Bureau acknowledges that consistent definitions would benefit consumers through a uniform disclosure and would benefit creditors by easing compliance burdens. However, the Bureau believes that different timing requirements are appropriate for disclosures that pertain to the timing of interest rate changes versus periodic payment changes. For future interest rate changes, the disclosure is properly counted from the date that interest for the first scheduled periodic payment begins to accrue after consummation. With respect to the timing of future changes to periodic payments, such as the disclosures required by § 1026.37(c), however, the Bureau believes the disclosure is properly based on the due date of the initial periodic payment because the purpose of the disclosure is to provide consumers with information about future periodic payment changes, which will not take effect until after a future interest rate change takes effect. For this reason and for the reasons discussed above in the section-by-section analysis of § 1026.37(b)(8), the Bureau is revising, for consistency with § 1026.37(c)(3), the timing requirement in § 1026.37(b)(8) with respect to the disclosures required by § 1026.37(b)(6)(i), (b)(6)(iii), and (b)(7), which pertain to future changes to periodic payments for principal and interest, but is retaining the timing requirement in § 1026.37(b)(8) with respect to the disclosure required by § 1026.37(b)(6)(ii), which pertains to the

timing of future interest rate adjustments.

Finally, the Bureau has considered the commenter suggestion that the construction phase of a construction-to-permanent loan should receive a unique column heading. However, the Bureau declines to adopt such a requirement in the final rule. The Bureau understands that consumers' periodic payments for principal and interest during the construction phase of a construction-to-permanent loan generally differ from the payment that applies during the permanent phase of the loan, because these loans are typically structured as loans with interest only introductory periods. The periodic principal and interest change that occurs at the time the loan converts from the construction phase to the permanent phase of the loan is an event that requires disclosure of additional separate periodic payments or ranges of payments pursuant to § 1026.37(c)(1)(i)(A). Therefore, the different payment amounts will be disclosed to consumers as two separate periodic payments or ranges of payments. The purpose of the projected payments table is to provide consumers with a broad understanding of how their periodic payments will change over time, and is not designed to provide consumers with details about the reasons for those changes, so the Bureau does not believe it is appropriate to provide special subheadings for the construction phase of a construction-to-permanent loan in the table required by § 1026.37(c). Providing such additional information in the projected payments table could result in information overload for consumers. Furthermore, the transaction will be disclosed as a ''construction'' loan under the ''General Information'' portion of the Loan Estimate pursuant to § 1026.37(a)(9)(iii), discussed above.

37(c)(4) Taxes, Insurance, and Assessments

As discussed above, the Bureau proposed to require creditors in transactions subject to proposed § 1026.19(e) to disclose estimated payments to escrow accounts, implementing TILA sections 128(a)(16), 128(b)(4)(A) pursuant to its implementation authority under TILA section 105(a), and pursuant to its authority under Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). The Bureau also proposed § 1026.37(c)(4) pursuant to this authority. Proposed § 1026.37(c)(4)(i) would have provided that creditors must disclose the label ''Estimated Taxes, Insurance & Assessments.'' Proposed § 1026.37(c)(4)(ii) would have required creditors to disclose the sum of property taxes, mortgage-related insurance premiums required by the creditor other than amounts payable for mortgage insurance premiums, homeowner's association, condominium or cooperative fees, ground rent or leasehold payments, and special assessments, as applicable, expressed as a monthly amount. The creditor would have been required to disclose this amount even if no escrow account for the payment of some or any such charges will be established. Proposed comments 37(c)(4)(ii)–1 and –2 would have provided guidance to creditors on the meaning of mortgage-related insurance premiums and special assessments.

Proposed § 1026.37(c)(4)(iii) would have required creditors to state that the amount disclosed pursuant to § 1026.37(c)(4)(ii) can increase over time. Proposed § 1026.37(c)(4)(iv) would have required creditors to state whether the amount disclosed pursuant to § 1026.37(c)(4)(ii) includes payments for property taxes, hazard insurance, and other amounts described in proposed § 1026.37(c)(4)(ii), along with a description of any such amounts, and an indication of whether such amounts will be paid by the creditor using escrow account funds. Proposed § 1026.37(c)(4)(v) would have required creditors to provide a statement that the consumer must pay separately any amounts described in proposed § 1026.37(c)(4)(ii) that are not paid by the creditor using escrow funds. Finally, proposed § 1026.37(c)(4)(vi) would have required creditors to provide a reference to the information disclosed pursuant to § 1026.37(g)(3).

Under proposed § 1026.37(c)(4), the disclosure of estimated taxes, insurance, and assessments would have been required even where no escrow account will be established for the payment of some or any such amounts. The Bureau proposed this requirement pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). As discussed in the Kleimann Testing Report, consumer testing indicates that consumers view the total monthly payment amount as a key piece of information and look for this amount when shopping for mortgage loans. *See* Kleimann Testing Report at xxiv, 282, and 285. The proposal noted that, even when no escrow account is established for the payment of taxes and insurance, the Bureau believes that this is an important measure of the consumer's ability to afford the transaction. For this reason, the proposal stated that the Bureau believes that consumers would benefit from the disclosure of the amounts that will be required to be paid for taxes, insurance, and assessments, even if no escrow account will be established for the payment of such amounts. Absent such a disclosure, consumers may not fully comprehend the cost of their home loan on a periodic basis, and may not be as readily able to compare credit terms and make an informed decision about whether to proceed with the transaction. Accordingly, the proposal stated that the Bureau believes this modification is consistent with the purpose of TILA to promote the informed use of credit, and will improve consumer awareness and understanding of residential mortgage loans and is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b). In addition, consistent with section 1032(a) of the Dodd-Frank Act, the proposal noted that this disclosure would ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

One large consumer advocacy commenter stated that the proposal to require creditors to disclose the amount payable for estimated taxes, insurance, and assessments even if no escrow account for the payment of such amounts would be established is an extremely important disclosure for consumers. That commenter noted that, without this information, it would be difficult to assess whether a transaction is affordable and that disreputable creditors have, in the past, used the absence of such a requirement to deceive consumers into believing a new loan was more affordable than existing loans or to confuse comparison of competing offers. Several industry commenters requested clarification on certain requirements of § 1026.37(c)(4). For example, several industry trade association commenters requested clarification regarding whether ''mortgage-related insurance premiums required by the creditor, other than amounts payable for mortgage insurance'' under proposed § 1026.37(c)(4)(ii)(B) has the same meaning as ''homeowner's insurance'' under proposed § 1026.37(c)(4)(iv). Similarly, a title company commenter suggested that the word ''assessments'' has different meanings and may cause confusion for consumers. Several

industry trade association commenters also requested additional guidance regarding the requirement under proposed § 1026.37(c)(4)(iv) that the creditor disclose a description of amounts required to be disclosed by § 1026.37(c)(4)(ii). Industry trade associations also requested clarification regarding the type and amounts of charges that should be disclosed § 1026.37(c)(4)(iv).

A national trade association representing community associations requested that the rule limit the information creditors request regarding assessment and other association-related information for purposes of filling out the Loan Estimate, due to concerns that requests for complete information on assessments and related charges could result in additional costs to buyers and sellers and additional liability for community associations. Alternatively, that commenter suggested that the rule permit creditors to rely on information regarding homeowner's association assessments and other charges provided by the buyer or seller when preparing the Loan Estimate. Several industry commenters suggested that the rule not require disclosure of amounts required to be paid to homeowner's associations.

Several industry commenters also requested specific guidance on the disclosure of estimated taxes, insurance, and assessments in the case of subordinate liens, noting that escrow accounts are rarely established for subordinate liens and that requiring disclosure of estimated taxes, insurance, and assessments would duplicate the information disclosed for a first lien. Finally, a large mortgage origination software provider and a large bank commenter requested further guidance on how a creditor would disclose amounts required to be disclosed by proposed § 1026.37(c)(4)(ii) other than payments for property taxes and homeowner's insurance if some items would be paid using escrow account funds and others would be paid directly by the consumer.

For the reasons discussed in the proposed rule and below, the Bureau is adopting § 1026.37(c)(4) and its commentary substantially as proposed, with the revisions and clarifications described below. The Bureau is revising § 1026.37(c)(4)(ii) to provide that the creditor must disclose the sum of the charges described in § 1026.43(b)(8), other than amounts identified in § 1026.4(b)(5), expressed as a monthly amount, even if no escrow account for the payment of some or any such charges will be established. As described above, the proposed rule contained a list of specific types of charges in § 1026.37(c)(ii)(A)–(E), the sum of which the creditor should disclose pursuant to § 1026.37(c)(4)(ii), and specifically excluded amounts payable for mortgage insurance premiums. The Bureau's proposed § 1026.37(c)(4)(ii) was substantially similar to the proposed definition of ''mortgage-related obligations'' in the Board's 2011 ATR Proposal, except that proposed § 1026.37(c)(4)(ii) would not have included amounts payable for mortgage insurance premiums. To address concerns and feedback, the Bureau's 2013 ATR Final Rule adopted a modified definition of mortgage-related obligations in § 1026.43(b)(8) by referring to premiums and similar charges identified in § 1026.4(b)(5), (7), (8), or (10), if required by the creditor, instead of the proposed language, which referred to ''mortgage-related insurance.'' The Bureau determined that referencing components of the definition of the finance charge in § 1026.4, rather than adopting a new definition of ''mortgage-related insurance,'' would facilitate compliance for creditors, since the definition of the finance charge is a long-standing part of Regulation Z. As adopted, § 1026.43(b)(8) defined mortgage-related obligations to mean property taxes, premiums and similar charges identified in § 1026.4(b)(5), (7), (8), or (10) that are required by the creditor; fees and special assessments imposed by a condominium, cooperative, or homeowner's association; ground rent; and leasehold payments. The Bureau's 2013 ATR Final Rule also significantly expanded the commentary regarding the definition of ''mortgage-related obligations'' to provide additional clarification and guidance.

To ease compliance burden and avoid regulatory complexity, § 1026.37(c)(4)(ii) cross-references the definition of mortgage-related obligations in § 1026.43(b)(8), rather than adopting a separate definition of the term. Like proposed § 1026.37(c)(4)(ii), however, amounts payable for mortgage insurance premiums are excluded because they are disclosed separately in the projected payments table. Therefore, as adopted, § 1026.37(c)(4)(ii) provides that the creditor must disclose the sum of the charges described in § 1026.43(b)(8), other than amounts identified in § 1026.4(b)(5), expressed as a monthly amount, even if no escrow account for the payment of some or any such charges will be established. The Bureau believes these adjustments address concerns expressed by some industry commenters regarding the meaning of the phrase ''mortgage-related insurance premiums required by the creditor, other than amounts payable for mortgage insurance'' and the term ''assessments'' in the proposed rule and will simplify compliance for creditors. The Bureau believes these revisions are clarifying in nature and do not alter the substance of the rule as proposed.

In addition, to increase clarity of the rule, the Bureau is deleting the word ''Estimated'' from the label in the regulatory text of § 1026.37(c)(4)(i) so that the label in the regulatory text is revised to ''Taxes, Insurance & Assessments, '' because the word ''Estimated'' is incorporated into the label by the rule in § 1026.37(o)(2). The word ''Estimated'' is also incorporated into the label by § 1026.38(t)(2) for the table required on the Closing Disclosure under § 1026.38(c).

As discussed above, proposed comments 37(c)(4)(ii)–1 and –2 would have provided guidance to creditors regarding the requirement to disclose mortgage-related insurance premiums and special assessments. The Bureau is not finalizing these comments as proposed due to the final rule's cross-reference to the definition of mortgage-related obligations in § 1026.43(b)(8). Instead, the Bureau is adopting a new comment 37(c)(4)(ii)–1 which provides that creditors should see the commentary under § 1026.43(b)(8) for guidance on the charges that are included in taxes, insurance, and assessments for purposes of § 1026.37(c)(4)(ii), except that commentary related to amounts identified in § 1026.4(b)(5) (mortgage insurance premiums) is inapplicable to the disclosure required by § 1026.37(c)(4)(ii).

The Bureau is also adopting additional commentary to § 1026.37(c)(4) to address requests for clarification raised by commenters. As noted above, commenters requested additional guidance regarding the descriptive statements to be used for amounts other than property taxes and homeowner's insurance. To address commenter concerns, the Bureau is adopting comment 37(c)(4)(iv)–1, which provides that, if the amount disclosed pursuant to § 1026.37(c)(4)(ii) requires the creditor to disclose a description of more than one amount other than amounts for payment of property taxes or homeowner's insurance, the creditor may disclose a descriptive statement of one such amount along with an indication that additional amounts are also included, such as by using the phrase ''and additional costs.''

As described above, commenters requested further guidance on how a

creditor would reflect the amounts required to be disclosed by proposed § 1026.37(c)(4)(ii), other than payments for property taxes and homeowner's insurance, if some items would be paid using escrow account funds and others would be paid directly by the consumer. As proposed, neither § 1026.37(c)(4)(ii) nor its commentary specifically addressed this issue. To provide clarity and to ease compliance burden, the Bureau is adopting comment 37(c)(4)(iv)–2, which provides that if the amount disclosed pursuant to § 1026.37(c)(4)(ii) requires the creditor to disclose a description of more than one amount other than amounts for payments of property taxes or homeowner's insurance and only some of those amounts will be paid by the creditor using escrow account funds, the creditor may indicate that only some of those amounts will be paid using escrow account funds, such as by using the word ''some.''

As previously noted, the Bureau also received comments requesting clarification as to whether the disclosure of estimated taxes, insurance, and assessment amounts applied to subordinate liens. These commenters suggested that the estimated taxes, insurance, and assessments disclosure would not be appropriate for subordinate liens because creditors do not typically establish escrow accounts for subordinate liens and because the disclosed amounts would already be disclosed with respect to the first lien. The Bureau acknowledges these commenters' concerns but, as noted above and in the proposed rule, the Bureau's consumer testing indicates that consumers view the total monthly payment amount as a key piece of information and look for this amount when shopping for mortgages. Therefore, as noted in the proposal, even when no escrow account is established for the payment of taxes and insurance, the Bureau believes that this is an important measure of the consumer's ability to afford the transaction. For this reason, the Bureau believes that consumers will benefit from the disclosure of the amounts that will required to be paid for taxes, insurance, and assessments, even if no escrow account will be established for the payment of such amounts. Although subordinate liens do not typically require escrow accounts under current industry practice, taxes, insurance, and assessment payments may make up a significant part of consumers' loan-related expenses. Absent such a disclosure, consumers may not fully comprehend the cost of their home loan on a periodic basis, and may not be as readily able to compare credit terms and make an informed decision about whether to proceed with the transaction. The Bureau does not believe that the fact that estimated taxes, insurance, and assessment information would be disclosed for both first and subordinate liens creates a risk of consumer confusion that outweighs these benefits for consumers.

Nor does the Bureau believe it is appropriate to adopt specific guidance in the final rule with respect to the information creditors request from community associations for assessment and other costs. The rule requires that creditors make good faith estimates of the disclosures on the Loan Estimate required by § 1026.37(c), *see* § 1026.19(e)(1)(i) and associated commentary above, and that the Loan Estimate contains a number of disclosure requirements related to third-party costs, including information related to community association costs and assessments. The Bureau believes that creditors will determine appropriate methods to make good faith estimates of such amounts, and that it is not appropriate to prescribe by rule the exact method that creditors must use to make such estimates. For this reason, the Bureau is not adopting a provision in the rule that would dictate how creditors will make good faith estimates of community association assessments and other costs.

The Bureau is modifying the design of the statements that the disclosed amount can increase over time, required by § 1026.37(c)(4)(iii) as illustrated by form H–24 of appendix H to Regulation Z (discussed in more detail in section-by-section analysis of appendix H below). The revised design uses a sentence capitalization structure for increased readability. Indeed, in both the Bureau's pre-proposal qualitative consumer testing and the Quantitative Study, consumers were able to use the Loan Terms and Projected Payments tables on page 1 of the Loan Estimate to understand their transactions and compare loans, including information about their total monthly costs and estimated taxes and insurance. *See* Kleimann Testing Report at 282–286; Kleimann Quantitative Study Report at 42–45 and 52–53.

37(c)(5) Calculation of Taxes and Insurance

As previously discussed, section 1465 of the Dodd-Frank Act added to TILA new section 128(b)(4)(A), which provides that, in the case of any consumer credit transaction secured by a first mortgage on the principal dwelling of the consumer, other than an open-end credit plan or reverse mortgage, for which an escrow account has been or will be established in connection with the transaction for the payment of property taxes, homeowner's (also referred to and including hazard) and flood insurance premiums, as applicable, or other periodic payments with respect to the property, the disclosures required by TILA section 128(a)(6) must take into account the amount of any monthly payment to such account, in accordance with section 10(a)(2) of RESPA. In addition, new TILA section 128(b)(4)(B) requires that the amount taken into account under TILA section 128(b)(4)(A) for the payment of property taxes, hazard or flood insurance premiums, or other periodic payments or premiums with respect to the property shall reflect the taxable assessed value of the real property securing the transaction after consummation of the transaction. That amount must include the value of any improvements on the property or to be constructed on the property, if known, even if such construction costs are not financed from the proceeds of the transaction, and the replacement costs of the property for hazard insurance, in the initial year after the transaction.

Pursuant to the Bureau's implementation authority under TILA section 105(a), proposed § 1026.37(c)(5) would have implemented this requirement for transactions subject to proposed § 1026.19(e) and required that the estimated escrow and estimated taxes, insurance, and assessments disclosures required pursuant to proposed § 1026.37(c)(2)(iii) and (4)(ii), respectively, reflect (1) the taxable assessed value of the real property securing the transaction after consummation, including the value of any improvements on the property or to be constructed on the property, whether or not such construction will be financed from the proceeds of the transaction, if known, for property taxes; and (2) the replacement costs of the property during the initial year after the transaction, for hazard and flood insurance.

Pursuant to its authority under TILA section 105(a) and Dodd-Frank Act sections 1032(a) and 1405(b), the Bureau proposed to expand the requirements of TILA section 128(b)(4)(A) and (B) to cover all transactions subject to proposed § 1026.19(e), including transactions where no escrow account will be established for the payment of property taxes or hazard insurance, transactions that are secured by real property that does not include the principal dwelling of the consumer, and

transactions secured by subordinate liens. The proposal noted that these modifications are consistent with the purposes of TILA, as they may promote the informed use of credit by allowing consumers to more readily compare loans. Further, applying a single disclosure rule to all transactions subject to proposed § 1026.19(e) may ease compliance burden for creditors. Accordingly, the proposal noted that these modifications will improve consumer awareness and understanding of residential mortgage loans and are in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b). In addition, consistent with section 1032(a) of the Dodd-Frank Act, the proposal noted that the proposed disclosure would ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

One large consumer advocacy commenter suggested that the requirements of § 1026.43(c)(5) be supplemented with a requirement that creditors calculate the estimated taxes based on what the consumer will pay after consummation, rather than what the seller pays. The commenter noted that, in many states, homeowners may be eligible for exemptions or abatements that reduce their property taxes, but for which the buyer may be ineligible. The commenter noted that, if a creditor bases the estimate for property taxes on what the seller is paying, the estimate may be too low. The commenter noted a similar problem with loans that fund construction that will increase the value of the property. Several industry commenters expressed concern regarding the proposed requirement that estimated property taxes reflect the taxable assessed value of the real property securing the transaction after consummation, including the value of any improvements to the property or to be constructed on the property, if known, even if such construction would not be financed from the proceeds of the transaction. Several industry trade associations expressed concern over the ''if known'' requirement in the proposed rule, stating that creditors would need to protect themselves against future claims that they knew about the improvements and should have projected higher taxes. Several industry commenters suggested that creditors should be able to rely on a statement from the consumer that no improvements are planned for the property. A large bank commenter expressed similar concerns, and suggested that the better course would be for the rule to provide that, for refinancings, the disclosures should be based on current taxes and insurance costs and that, with regard to purchase and construction loans, the disclosures should be based on the best known actual taxes and insurance costs.

For the reasons discussed in the proposed rule, the Bureau is adopting § 1026.37(c)(5) as proposed, except that the reference to homeowner's insurance in § 1026.37(c)(5)(ii) is revised for consistency with § 1026.37(c)(4)(ii). As described above, § 1026.37(c)(5) implements the requirement in TILA section 128(b)(4)(B), which requires that the amount taken into account under TILA section 128(b)(4)(A) for the payment of property taxes, hazard or flood insurance premiums, or other periodic payments or premiums with respect to the property shall reflect the taxable assessed value of the real property securing the transaction after consummation of the transaction. Under the statute, that amount must include the value of any improvements on the property or to be constructed on the property, if known, even if such construction costs are not financed from the proceeds of the transaction, and the replacement costs of the property for hazard insurance, in the initial year after the transaction.

The Bureau recognizes industry commenters' concerns regarding the requirement that the disclosure of estimated property taxes be based on the taxable assessed value of the real property securing the transaction after consummation, including the value of any improvements on the property or to be constructed on the property, if known, whether or not such construction will be financed from the proceeds of the transaction. However, the requirement is statutory, and the Bureau believes that the purpose of the statutory provision is to provide consumers with reliable estimates of their future property taxes when comparing and assessing the affordability of their loans. The Bureau believes that consumers would benefit from a disclosure that accounts for planned future improvements on the property, even if the improvements will not be financed with the loan proceeds. Further, the Loan Estimate requires only that creditors disclose a good faith estimate of the disclosures required by § 1026.37 (*see* § 1026.19(e)(1)(i) and associated commentary), that such estimates are based on the best information reasonably available to the creditor at the time of the disclosure, and that the ''reasonably available'' standard requires the creditor, acting in good faith, to exercise due diligence in obtaining the information. *See* comments 17(c)(2)(i)–1 and 19(e)(1)(i)–1.

The Bureau believes that creditors will determine appropriate and efficient methods to make good faith estimates of such amounts based on the best information reasonably available, and that it is not appropriate to prescribe by rule the exact method that creditors must use to make such estimates.

37(d) Costs at Closing

The Bureau proposed § 1026.37(d) which would have required the disclosure of an estimate of the cash needed from the consumer at consummation of the transaction, with a breakdown of the amounts of loan costs, other costs, and lender credits associated with the transaction. The Bureau did receive comments regarding the calculation of these amounts in response to proposed paragraphs (f), (g) and (h), which are discussed below in connection with the respective paragraphs.

Several commenters stated that the cash to close amount should not be listed on the first page of the Loan Estimate, or at all, as the amount should not be a basis by which consumers analyze loans. To the contrary, consumer testing conducted by the Bureau prior to issuing the proposal indicated that consumers are able to use the cash to close amount, together with the other disclosed information on the first page of the Loan Estimate, to evaluate the affordability of a transaction, and to make sophisticated trade-offs among closing costs, interest rate, and payments based on personal situations. *See* Kleimann Testing Report at 277–80.

As more fully discussed in the section-by-section analysis of §§ 1026.37(h) and 1026.38(d) and (e), below, several industry and consumer advocacy group commenters stated that the cash to close amount would be difficult for consumers to understand, especially in the case of a cash-out refinance where the cash to close amount disclosed under proposed § 1026.37(d)(1) would have been negative. These commenters stated that consumers would have difficulty in understanding negative numbers in this context. In response to these comments, the Bureau conducted consumer testing after issuance of the proposal on an alternative method of disclosing the total cash to close amount and the calculation of the cash to close amount

for transactions without a seller to remove the possibility of a negative disclosure in cash-out refinance transactions. This consumer testing focused on the cash to close disclosure on page 1 of the Loan Estimate, as required by § 1026.37(d), as well as other related parts of the Loan Estimate and Closing Disclosure. The testing consisted of three rounds of qualitative testing of revised Loan Estimates and Closing Disclosures for refinance transactions, and included 21 consumers. *See* Kleimann Post-Proposal Testing Report at 51–72. The results indicated that consumers were able to readily and easily understand the nature of the transaction using the revised cash to close disclosure specifically designed for transactions without sellers being finalized under § 1026.37(d)(2), especially in the context of a cash-out refinance. *See* Kleimann Post-Proposal Testing Report at 58, 71.

Some industry commenters also stated that consumers using the cash to close table on page 1 of the proposed Loan Estimate could experience confusion between the amount of closing costs associated with their loan and the amount of cash that the consumer would have to pay at closing In addition, based on the results from the Bureau's Quantitative Study with respect to consumers' ability to identify the amount of the estimated total closing costs, the Bureau determined that this area of the Loan Estimate could be improved to enable consumers to identify their total closing costs more readily. For almost all of the questions in the Bureau's Quantitative Study, consumer participants using the Bureau's integrated disclosures performed statistically significantly better than those who used the current disclosures under TILA and RESPA. For only one question out of the 39 key questions of the study did consumers using the current disclosures perform statistically significantly better than those who used the integrated disclosures. This one question asked respondents using the current early TILA disclosure and RESPA GFE: ''How much are your settlement charges?'' and asked respondents using the Bureau's integrated disclosures: ''How much are your closing charges?'' For respondents using the current disclosures, 86.2 percent answered this question correctly, but only 46.3 percent of respondents using the integrated disclosure answered this question correctly. However, for the integrated disclosures, 51.6 percent of the respondents provided the cash to close amount, meaning that only 2.1 percent of respondents provided an answer other than the cash to close or total closing costs. *See* Kleimann Quantitative Study Report at 74. The Bureau believes from these results that the respondents were using the proper location on the integrated disclosure, but provided the amount that the disclosure design emphasized, instead of reviewing the text to the right of the cash to close number to identify the total closing costs (the amount of the total closing costs was embedded within the text to the right of the cash to close amount on the proposed Loan Estimate).[270]

In light of the comments received regarding the cash to close table and the above-mentioned results from the Bureau's Quantitative Study, the Bureau determined to develop a revised format of the cash to close table for all transactions. The Bureau revised the table to place more emphasis on the total closing costs, so that equal emphasis is placed on the cash to close with this revision the Bureau believed consumers can more readily identify the estimated total closing costs. The Bureau tested the revised table with consumers at its qualitative consumer testing conducted after issuance of the proposal (see part III.G above) and found that the table enabled consumers to identify readily the estimated closing costs as well as use the estimated cash to close to evaluate the affordability of the transaction.

Accordingly, the Bureau is revising § 1026.37(d) to reflect the new heading for the table, ''Costs at Closing,'' in the heading of the section. The Bureau also is revising the format of the Costs at Closing table to contain two rows underneath the new heading, as illustrated by form H–24 of appendix H to Regulation Z. The first row, under final § 1026.37(d)(1)(i), will contain the estimated closing costs, including separate disclosures of the total loan costs, other costs, and lender credits associated with the transaction, as well as a reference to the closing costs details required by § 1026.37(f) and (g) (disclosed on page 2 of the Loan Estimate). The second row, under final § 1026.37(d)(1)(ii), will contain the estimated cash to close, a statement that the amount includes closing costs, and a reference to the calculating cash to close table required by § 1026.37(h) (disclosed on page 2 of the Loan Estimate). The table required under § 1026.37(d)(1) will be required for all transactions subject to § 1026.19(e) and (f) and use cross-references from the provisions of § 1026.37(h)(1) for the amounts to be disclosed.

As noted above, the Bureau also is revising § 1026.37(d) to provide for an optional alternative cash to close disclosure under § 1026.37(d)(2) to address commenters' concerns regarding disclosure of a negative cash to close number in cash-out refinances. The revisions provide an optional alternative cash to close disclosure for transactions without a seller under § 1026.37(d)(2), which will use cross-references from the provisions of § 1026.37(h)(2) for the amounts to be disclosed. The Bureau also is adopting comments 37(d)(2)–1, which clarifies that the use of the alternative table under § 1026.37(d)(2) must be used in conjunction with the alternative calculating cash to close table under § 1026.37(h)(2); and 37(d)(2)–2, which provides an example of how to disclose whether the cash is due from or to the consumer with the use of check boxes as shown in form H–24(D) of appendix H to Regulation Z.

Pursuant to its authority under TILA section 105(a), RESPA section 19(a), and Dodd-Frank Act section 1032(a), the Bureau is requiring creditors to provide the estimated total closing costs imposed upon the consumer and the estimated amount of cash needed at consummation from the consumer under § 1026.37(d). This disclosure will effectuate the purposes of TILA by promoting the informed use of credit and will ensure the features of the mortgage transaction are fully, accurately and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, because it will indicate to the consumer the amount the consumer will have to pay at consummation of the credit transaction and closing of the real estate transaction.

37(e) Web Site Reference

The Bureau proposed § 1026.37(e) which would have required creditors to include a statement on the Loan Estimate notifying the consumer that additional information and tools regarding mortgage loans may be found at the Bureau's Web site and a reference to the link or uniform resource locator (URL) address for the Bureau's Web site. 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

[270] In contrast, the RESPA GFE places emphasis on the amount of settlement charges on page 1, but does not include the amount of cash the consumer needs to close the transaction.

Information Booklet on settlement charges, your Truth-in-Lending Disclosures, and other consumer information at *www.hud.gov/respa*.'' Regulation Z does not contain a similar provision for the early TILA disclosure. The Bureau believed that a disclosure in the Loan Estimate directing consumers to additional information and tools on its 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. At the Bureau's consumer testing of the proposed language directing consumers to the Web site for general information and tools, consumers stated that they would access the Bureau's Web site address disclosed at the bottom of page 1 of the Loan Estimate. *See* Kleimann Testing Report at 149. The Bureau did not receive comments concerning the information disclosed pursuant to proposed § 1026.37(e). Accordingly, the Bureau is adopting § 1026.37(e) as proposed, with a technical change to state the full term ''uniform resource locator'' instead of the abbreviation of ''URL'' in the regulatory text to provide greater clarity, and to change the address of the Web site, because the Bureau will publish a dedicated Web site for information relating to the Loan Estimate and the mortgage application and shopping process generally.

The Bureau is using its authority under TILA section 105(a), RESPA section 19(a), and Dodd-Frank Act section 1032(a) to require disclosure of the Bureau's Web site in proposed § 1026.37(e). As stated above, the Bureau believes that a disclosure in the Loan Estimate directing consumers to additional information and tools on its 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).

37(f) Closing Cost Details; Loan Costs

Under section 5(c) of RESPA creditors must provide applicants for federally related mortgage loans with a good faith estimate of the amount or range of charges for specific settlement services the applicant is likely to incur in connection with the settlement of the loan. 12 U.S.C. 2604(c). Section 1024.7 of Regulation X currently implements this mandate by requiring creditors and mortgage brokers to provide the RESPA GFE, which must be completed in accordance with the instructions in appendix C to Regulation X. Appendix C sets out specific instructions for the information that must be disclosed on the RESPA GFE, including the loan costs that must be included and how to identify those costs on the disclosure.

As discussed above, Dodd-Frank Act section 1032(f) requires that the Bureau propose rules to combine these RESPA disclosures with the disclosures required by TILA. In addition to existing TILA disclosure requirements, section 1419 of the Dodd-Frank Act amended TILA section 128(a) to require, in the case of a residential mortgage loan, disclosure of the aggregate amount of settlement charges for all settlement services provided in connection with the loan and the aggregate amount of other fees or required payments in connection with the loan. 15 U.S.C. 1638(a)(17).

The Bureau proposed to require creditors to provide the loan costs and other costs imposed upon the consumer in tables as part of the integrated Loan Estimate. Proposed § 1026.37(f) and (g) would have implemented these early disclosure requirements of TILA and RESPA by setting out details relating to the costs for consummating the mortgage loan, separated into two categories: loan costs and other costs. Based on its consumer testing, the Bureau believed that early disclosure of estimated loan costs and other costs, as set forth in proposed § 1026.37(f) and (g), would have improved consumer understanding of the credit and property transactions. The Bureau believed that these disclosures would have effectuated the purpose of TILA by promoting the informed use of credit and assuring a meaningful disclosure to consumers. The Bureau believed that the disclosures also would have satisfied the RESPA requirement to provide a consumer with a good faith estimate of the amount or range of charges for specific settlement services the consumer is likely to incur in connection with the settlement. In addition, these disclosures would have ensured that the features of the mortgage loan transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage loan transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a).

In particular, proposed § 1026.37(f) would have required the creditor to itemize, as ''Loan Costs,'' its fees and other charges to the consumer for extending the credit or that compensate a mortgage broker for originating the transaction. The creditor would have been required to disclose the individual itemized charges, including charges to third parties for services required by the creditor or mortgage broker for consummation, along with subtotals for prescribed categories of those itemized charges, and the total of all such itemized charges. In general, these charges are currently required to be disclosed—as itemized or aggregate charges and amounts—on the RESPA GFE, the RESPA settlement statement, or both.[271]

Proposed comment 37(f)–1 would have explained that the items disclosed as Loan Costs pursuant to § 1026.37(f)

[271] The Bureau acknowledged in the proposal that, on June 20, 2012, HUD's Office of Policy Development and Research and the Urban Institute released a study entitled ''*What Explains Variation in Title Charges? A Study of Five Large Markets,*'' available at *http://www.huduser.org/portal/publications/hsgfin/title_charges_2012.html*, which observed a positive association between the number of items listed and net service fees was statistically significant after taking home prices into account. *See Id.* at 29. The study was based on RESPA settlement statements of FHA loans originated in 2001. *See Id.* at 13. However, the report could not determine whether this indicates additional value to the consumer or additional costs to the settlement agent due to limitations of the data. *Id.* The study states that ''there is no way to ascertain from the data whether an itemized cost is an attempt to confuse consumers or the provision of an additional, valuable service that the homebuyer is willing to pay for. Both interpretations are plausible.'' *Id.* Under the proposal, itemization would have been permitted on the Loan Estimate, but highly visible subtotals in gray shading and bold font are displayed above the itemized charges for specific categories of costs. Based on its consumer testing, the Bureau believed that the highly visible subtotals, along with the highly visible ''Services You Can Shop For'' subcategory of Closing Costs on the Loan Estimate, would inform consumers that they can shop for their own service providers and provide them with readily comparable cost categories to shop for between creditors and service providers. Such shopping for settlement service providers, according to the study, could provide ''significant benefits to consumers.'' *See Id.* at 28. At the Bureau's Quantitative Study, the Bureau's integrated disclosure performed better than the current RESPA GFE and early TILA disclosures at informing consumers that they can shop for certain settlement service providers. *See* Kleimann Quantitative Study Report at 68.

are those that the creditor or mortgage broker require for consummation. Proposed comment 37(f)–2 would have provided a cross-reference to the commentary under proposed § 1026.19(e)(1)(ii), which would have discussed the requirements and responsibilities of mortgage brokers that provide the disclosures required under §§ 1026.19(e) and 1026.37(f).

Commenters had three general comments related to the itemization of cost for services provided by or required to be obtained by or for the creditor in § 1026.37(f). First, two national trade associations and some other industry commenters stated that settlement charges that are offset by lender credits or rebates, either from an increased interest rate or as a matter of accommodation, should not be required to be itemized on the Loan Estimate at all. However, section 1419 of the Dodd-Frank Act amended TILA section 128(a) to require, in the case of a residential mortgage loan, disclosure of the aggregate amount of settlement charges for all settlement services provided in connection with the loan and the aggregate amount of other fees or required payments in connection with the loan. 12 U.S.C. 1638(a)(17). If any settlement charges are not included on the Loan Estimate because they are paid from an increased interest rate or from a contractually provided credit or rebate from the creditor, then the aggregate amount of settlement charges for all settlement services provided in connection with the loan would not be disclosed on the Loan Estimate, thereby frustrating the requirement of section 1419 of the Dodd-Frank Act. Eliminating some settlement charges from the Loan Estimate also would reduce the ability of consumers to identify the settlement services that they could shop for, to negotiate the charges, and to compare such services and charges between creditors. *See* Kleimann Testing Report at 288. The Bureau believes that, to improve consumer understanding of the nature and charges associated with the transaction, consumers should be provided information on the services required by the creditor, and the cost of those services, even if the creditor is providing credits to offset the cost of those required services.

Second, one national trade association suggested that the layout of proposed § 1026.37(f) should track the categories established by proposed § 1026.19(e)(3) to determine whether a charge is disclosed in good faith on the Loan Estimate. The Bureau believes that these categories can only be determined by an analysis of whether or not a consumer shopped for a particular service in the category of service for which the consumer is permitted to shop. This can be determined only at the end of the underwriting process. *See* the section-by-section analysis of § 1026.19(e)(3)(i) and (ii), above. Determining the placement of charges on the Loan Estimate by reference to criteria that can be established only by events occurring after the Loan Estimate is disclosed would be unworkable. In addition, the Bureau's consumer testing and Quantitative Study established that consumers are able to determine the charges that they can shop for and negotiate other fees using the layout as proposed. *See* Kleimann Testing Report at 85, 104, 126, 134, and 240; Kleimann Quantitative Study Report at 45.

Lastly, a title insurance company commenter stated that additional lines should be provided for the itemization under the respective subparagraphs of proposed § 1026.37(f) because creditors, secondary market participants, and others will want to see more itemization than the proposed Loan Estimate permits. The comment, however, focused on itemization of charges on the Closing Disclosure, which does not contain the limitations on itemization that are present on the Loan Estimate. The limitations on itemization present under proposed § 1026.37(f) were designed to prevent information overload for consumers, as well as to provide consumers with a detailed list of their closing costs on a single page, to aid consumers' understanding of their transactions, and to enable consumers to easily compare the fees and charges of different loans between one creditor or multiple creditors. Accordingly, the Bureau is adopting the general requirement that an itemized list of fees and charges be disclosed and § 1026.37(f) and its accompanying commentary generally as proposed, except to the extent that amendments are made to the subparagraphs and accompanying commentary as described below.

37(f)(1) Origination Charges

Under the Bureau's proposed § 1026.37(f)(1), charges that would have been included on the Loan Estimate under the subheading of ''Origination Charges'' are those that the consumer will pay to the creditor and any loan originator for originating and extending the credit. In addition, proposed § 1026.37(f)(1) would have required the creditor to include under the subheading ''Origination Charges'' the points that the consumer will pay to reduce the interest rate separately itemized as both the percentage of the loan amount, and the resulting calculation of the dollar amount. The line's label would have read: ''_ % of Loan Amount (Points),'' and the blank before the percentage sign would have been filled in with the applicable number.

Proposed comment 37(f)(1)–1 would have clarified that charges that are included under the subheading ''Origination Charges'' pursuant to § 1026.37(f)(1) are those charges paid by the consumer for which the amount is paid to the creditor or loan originator for originating and extending the mortgage credit. The comment would have included cross-references to § 1026.37(o)(4) for rules on rounding amounts disclosed, comment 19(e)(3)(i)–2 for a discussion of when a fee is considered to be ''paid to'' a person, and comment 36(a)–1 for a discussion of the meaning of ''loan originator.'' Proposed comment 37(f)(1)–2 would have clarified that only loan originator charges paid directly by the consumer are included in the items listed pursuant to § 1026.37(f)(1), but states that charges paid by the creditor through the interest rate are disclosed on the Closing Disclosure pursuant to § 1026.38(f)(1). Proposed comment 37(f)(1)–3 would have provided examples of the items that might be disclosed under the subheading ''Origination Charges'' on the Loan Estimate. Proposed comment 37(f)(1)–4 would have explained that if the consumer is not charged any points for the loan, the creditor may leave blank the percentage of points required by § 1026.37(f)(1)(i), but must disclose the dollar amount of ''$0.'' Proposed comment 37(f)(1)–5 would have clarified that the creditor may decide the level of itemization of origination charges that is appropriate, subject to the limitations in § 1026.37(f)(1)(ii) on the number of lines.

The Bureau noted in the proposal that TILA section 128(a)(18), as added by Dodd-Frank Act section 1419, requires the creditor to disclose, for residential mortgage loans, the aggregate amount of fees paid to the mortgage originator in connection with the loan, the amount of such fees paid directly by the consumer, and any additional amount received by the originator from the creditor. In the discussion of proposed § 1026.37(l) in the proposal, the Bureau noted that research regarding consumer comprehension and behavior and the results of the Bureau's consumer testing suggest that an effective disclosure regime minimizes the risk of consumer distraction and information overload by providing only information that will assist most consumers. The Bureau

evaluated the usefulness to consumers and others at early stages of the loan process of the disclosures required by TILA section 128(a)(18), as added by Dodd-Frank Act section 1419. Based on that evaluation, and as discussed further below, the Bureau proposed to use its authority under TILA section 105(a) and (f), RESPA section 19(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b), to exempt transactions subject to proposed § 1026.19(e) from certain of the itemized disclosures required by TILA section 128(a)(18). In particular, for transactions subject to proposed § 1026.19(e), proposed § 1026.37(f)(1) would have required the creditor to disclose the amounts of origination fees paid by the consumer to creditors and loan originators in connection with the loan, but not any amounts received by a loan originator from the creditor. However, as discussed in the proposal with respect to proposed § 1026.38(f)(1), the full disclosure required by TILA section 128(a)(18) would have been included in the disclosure requirements for transactions subject to proposed § 1026.19(f). In other words, although certain TILA section 128(a)(18) disclosures would not have been included in the Loan Estimate, they would have been provided in the Closing Disclosure.

The RESPA GFE currently required by Regulation X aggregates all compensation paid to all loan originators and includes a separate item that reflects as a ''credit'' to the consumer fees received by mortgage brokers from the creditor rather than the consumer. A major goal of the RESPA GFE disclosure requirements was to provide consumers with a clear disclosure of any interest rate-based payments being made by creditors to mortgage brokers who may be working with the consumer. Regulation X provides generally that lender and mortgage broker origination charges are to be included on page 2 of the RESPA GFE, in Block 1 (''Our origination charge''), Block 2 (''Your credit or charge (points) for the specific interest rate chosen''), and Line A (''Your Adjusted Origination Charges''). *See* 12 CFR part 1024, appendix C (instructions for ''Your Adjusted Origination Charges''). Under the disclosure requirements in Regulation X, all charges for services related to the creation of the mortgage loan are to be included on the RESPA GFE in the single amount stated in Block 1 and the single amount in Block 2, as applicable. The RESPA GFE disclosure requirements prohibit creditors and mortgage brokers from separately charging any fees for originating the loan that are in addition to the amounts included in Blocks 1 and 2. *Id.* (instructions for ''Block 1'').

The requirements related to the disclosures in Blocks 1 and 2 of the RESPA GFE have been a source of uncertainty for creditors, mortgage brokers, and consumers. HUD provided informal guidance to address some of the uncertainty in a number of its HUD RESPA FAQs and HUD RESPA Roundups, much of which involved where and how to disclose compensation paid directly and indirectly to mortgage brokers.

In 2010, subsequent to the issuance of HUD's 2008 RESPA Final Rule, the Board established by regulation in § 1026.36 of Regulation Z restrictions on the compensation of loan originators, including mortgage brokers. *See* 75 FR 58509 (Sept. 24, 2010). The Board adopted these restrictions only after concluding that disclosure of creditor-paid compensation did not provide sufficient protection for consumers.[272] The Bureau noted in the proposal that it believes consumers may not benefit from any disclosure of interest rate-based compensation, citing the Board's Regulation Z restrictions on the compensation of loan originators. The Bureau's proposal also noted that it was engaged in six other rulemakings (*i.e.,* the Title XIV Rulemakings) that related to mortgage credit and intended that the rulemakings function collectively as a whole, and that the Bureau may have to modify aspects of the proposed rule to maintain consistency with final determinations made after opportunity for public comment in the other, related rulemakings. *See* 77 FR 51116, 51209 (August 23, 2012). Specifically, Dodd-Frank Act section 1403 amended TILA section 129B(c)(2) to prohibit an origination fee or charge that is paid to a mortgage originator by any person other than the consumer, unless the mortgage originator does not receive compensation directly from the consumer and the consumer does not make an upfront payment of discount points, origination points, or fees (other than certain third-party fees). 15 U.S.C. 1639b(c)(2)(B). TILA section 129B(c)(2) as amended also provides the Bureau with the authority to waive or create exemptions from this prohibition with respect to the clause against the consumer making an upfront payment of discount points, origination points, or fees, where doing so is in the interest of consumers and in the public interest. In the 2013 Loan Originator Final Rule, the Bureau exercised its authority under TILA section 129B(c)(2) and created an exemption from the upfront payment of discount points, origination points or fees (other than third-party fees). *See* 78 FR 11280, 11370 (February 15, 2013). Therefore, the disclosure of discount points under proposed § 1026.37(f)(1) has not been rendered moot by the Title XIV Rulemakings.

The Bureau sought comment on how, in light of amended TILA section 129B(c)(2), the Bureau should refine or modify the way in which origination charges are disclosed under proposed § 1026.37(f)(1). The Bureau did not receive comments on issue. The Bureau also sought comment on whether the final rule should require that fees received by loan originators from the creditor be included in the Loan Estimate. In addition, the Bureau sought comment on whether other limits on itemization, as well as the proposed limits on the number of charges that may be itemized pursuant to proposed § 1026.37(f)(1), should be included in the final rule and, if so, what those limits should be.

In response, commenters generally sought clarification related to where certain charges and credits would be disclosed pursuant to proposed § 1026.37(f)(1). Many of the comments questioned the degree to which the proposal deviated from current regulation, specifically the current instructions for completing a GFE pursuant to appendix C to Regulation X relating to the aggregation of origination charges. Proposed § 1026.37(f)(1) only limited the itemization for charges paid to each creditor and loan origination for originating and extending the credit on the Loan Estimate to thirteen total itemized charges under proposed § 1026.37(f)(1)(ii). Creditors themselves could determine the level of itemization they wished to provide, except that the first itemized charge must be for any charge to reduce the interest rate under

[272] The Board's 2010 Compensation Final Rule discussed the history of efforts by the Board to address concerns regarding consumers' understanding of fees received by mortgage brokers from creditors. Before issuing that final rule, the Board considered proposed disclosures of such compensation, but had withdrawn the proposed disclosures because of concern that they could confuse consumers and undermine their decisionmaking rather than improve it. 75 FR 58509, 58511 (Sept. 24, 2013). A 2008 study referenced in the Board's 2010 Compensation Final Rule indicated additional disclosures may not help consumers understand and avoid financial incentives for loan originators that may be contrary to consumer interests. *Id.* The study found that consumers were confused by, and in some cases did not appropriately apply, the information provided in disclosures about mortgage broker compensation arrangements. Macro Int'l Inc., *Consumer Testing of Mortgage Broker Disclosures* (July 10, 2008), available at *http://www.federalreserve.gov/newsevents/press/bcreg/20080714regzconstest.pdf.*

proposed § 1026.37(f)(1)(i). The last itemized line could be used to disclose an aggregate of the remaining itemized charges with the label ''Additional Charges'' when the itemized charges exceeded the thirteen permitted under proposed § 1026.37(f)(6)(i). One large bank commenter sought clarity on ''negative discount points,'' or offsetting credits associated with an interest rate. Under the proposal, only charges would have been disclosed under proposed § 1026.37(f)(1), and lender credits would have been disclosed pursuant to proposed § 1026.37(g)(6). A national trade association commenter queried whether services related to origination, but that were provided by third parties, would be included in the itemization under proposed § 1026.37(f)(1). These charges would have been disclosed pursuant to proposed § 1026.37(f)(2), as services required by the creditor but provided by third parties that the consumer could not shop for unless the creditor does, in fact, permit the consumer to shop for the third-party services, which the Bureau understands would be extremely rare. A GSE commenter stated that the extent of the itemization permitted under § 1026.37(f)(1), especially in relation to the itemization of payments made directly by a consumer to a loan originator, was unclear.

Two GSE commenters stated in comment letters and in an ex parte meeting that the proposal was silent as to how to disclose loan-level pricing adjustments or delivery fees paid by creditors to the GSE commenters, and requested guidance regarding the disclosure of such fees. They stated that the creditor sometimes will require these amounts to be paid upfront by consumers, rather than adjusting the interest rate to be charged in relation to the mortgage loan transaction, and the amounts are disclosed to consumers as third-party charges, discount points, or as an adjustment to the creditor's origination charge. The GSE commenters stated that, under the proposed rule, it would seem that these fees could be disclosed pursuant to proposed § 1026.37(f)(2), but they sought clarification of the location of these charges and stated that there should be consistency among creditors with relation to disclosure of these charges.[273] To the extent that these third-party charges are passed onto the consumer, the loan-level pricing adjustments and delivery fees would be properly disclosed under § 1026.37(f)(1) of the final rule and the Bureau is providing an example in comment 35(f)(1)–5 of the final rule regarding the disclosure of such fees on the Loan Estimate to provide additional clarity.

Accordingly, the Bureau is adopting § 1026.37(f)(1) and its accompanying commentary substantially as proposed, except for certain modifications for clarity and consistency with form H–24 of appendix H to Regulation Z. The Bureau is modifying § 1026.37(f)(1)(i) to require that the disclosures required by § 1026.37(f)(1)(i) be left blank if no points are to be charged to the consumer in order to obtain the interest rate disclosed on the Loan Estimate, and is modifying comment 37(f)(1)–5 to indicate expressly the limits to a creditor's discretion to itemize charges under § 1026.37(f)(1). The Bureau believes that requiring that the disclosure of points to be left blank if no points are being charged to the consumer for the interest rate disclosed will reduce the potential of information overload for consumers. In addition, the Bureau is revising § 1026.37(f)(1)(i) to delete references to the points required to be disclosed under that paragraph as being paid by the consumer. The disclosure must reflect the terms of the legal obligation, and if a seller paid points to reduce the interest that the consumer was obligated to pay under the terms of the legal obligation, the disclosure required by § 1026.37(f)(1)(i) is the amount of points the consumer is obligated to pay under the terms of the legal obligation, including those paid by the seller. The seller's payment of the points under a separate contractual agreement with the consumer would be disclosed as a seller's credit under § 1026.37(h), to the extent known by the creditor, consistent with the good faith requirement under § 1026.19(e). *See* comments 17(c)(1)–1 and –3. The Bureau also is revising comment 37(f)(1)–5 to provide additional examples of origination charges, including loan-level pricing adjustments, in response to commenters' requests for additional guidance.

The Bureau is adopting the requirements in § 1026.37(f)(1) pursuant to its implementation authority under TILA section 105(a) and RESPA section 19(a) because disclosure of the points, component charges, and total origination charges will promote the informed use of credit and more effective advance disclosure of settlement costs, which are purposes of TILA and RESPA, respectively. Dodd-Frank Act sections 1032(a) and 1405(b) are also sources of authority for the requirements in § 1026.37(f)(1). The information disclosed under § 1026.37(f)(1) will enable consumers to understand and negotiate fees, shop for origination services, and compare the Loan Estimate with any revised Loan Estimate and the Closing Disclosure, thereby ensuring that the features of the mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a).

In adopting § 1026.37(f)(1) substantially as proposed, the Bureau is using its authority under TILA section 105(a) and (f), RESPA section 19(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b), to exempt transactions subject to § 1026.19(e) from the itemized disclosures required by TILA section 128(a)(18), as added by Dodd-Frank Act section 1419, of the aggregate amount of fees paid to the mortgage originator in connection with the loan, and the amount paid to the mortgage originator by the creditor. In particular, for transactions subject to § 1026.19(e), § 1026.37(f)(1) requires the creditor to disclose the amounts of origination fees paid by the consumer to creditors and loan originators in connection with the loan, but not any amounts received by a loan originator from the creditor. However, as discussed below with respect to § 1026.38(f)(1), the full disclosure required by TILA section 128(a)(18) is included in the disclosure requirements for transactions subject to § 1026.19(f). Accordingly, although certain TILA section 128(a)(18) disclosures are not included in the Loan Estimate, they are included in the Closing Disclosure.

Consistent with Dodd-Frank section 1405(b), disclosure of only the direct charges the consumer will pay will reduce both consumer confusion and the possibility of information overload,

[273] The GSE commenters also stated that loan-level pricing adjustments or delivery fees are not viewed as third-party charges under the 2013 ATR Final Rule in relation to the definition of points and fees, rather they are considered as part of the interest rate pricing for the loan. The determination of points and fees is required to determine if a mortgage is considered to be a qualified mortgage pursuant to § 1026.43(e). However, many of the charges that are required to be disclosed under § 1026.37(f) and (g) are not included in the points and fees test for various reasons, including to avoid double-counting of charges in relation to the maximum amount of points and fees for a qualified mortgage. The items listed on the Loan Estimate and Closing Disclosure must also be used for all mortgage loan transactions, not just for qualified mortgages. Therefore, the manner in which the loan-level pricing adjustments or delivery fees are considered in the definition of points and fees under § 1026.32(b)(1), used for § 1026.43(e), is not relevant to how they are disclosed on the Loan Estimate under § 1026.37 or the Closing Disclosure under § 1026.38.

improve consumer understanding of the Loan Estimate, and make it easier for creditors or mortgage brokers to complete the estimates of closing costs, which is in the interest of consumers and in the public interest. In addition, consistent with TILA section 105(a) and RESPA section 19(a), the disclosure will effectuate the purposes of TILA and RESPA by promoting the informed use of credit and more effective disclosure of settlement costs by allowing consumers to focus only on the amounts they will pay. Furthermore, consistent with section 1032(a) of the Dodd-Frank Act, § 1026.37(f)(1) will ensure that the origination costs for consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

As stated above, § 1026.37(f)(1) is being adopted pursuant to the Bureau's exemption authority under TILA section 105(f) to exempt the creditor from the disclosure of loan originator compensation from the creditor, as required by TILA section 128(a)(18). The Bureau has considered the factors in TILA section 105(f) and determined that, for the reasons discussed above, an exception is appropriate under that provision. Specifically, the Bureau believes that the exemption is appropriate for all affected borrowers, regardless of their other financial arrangements and financial sophistication and the importance of the loan to them. Similarly, the Bureau believes that the exemption is appropriate for all affected loans, regardless of the amount of the loan and whether the loan is secured by the principal residence of the consumer. Furthermore, the Bureau believes that, on balance, the exemption will simplify the credit process without undermining the goal of consumer protection or denying important benefits to consumers. Accordingly, the Bureau is exempting the disclosures required pursuant to § 1026.19(e) from the requirement in TILA section 128(a)(18) to itemize fees received by loan originators from the creditor.

37(f)(2) Services You Cannot Shop for

Currently, Regulation X provides that third-party services required by the creditor and for which the creditor does not permit the consumer to shop are to be included, as applicable, in Blocks 3 (''Required services that we select'') and 4 (''Title services and lender's title insurance'') on the RESPA GFE. Regulation X also provides that charges for title services, like charges for origination services, are not itemized on the RESPA GFE, but are disclosed only as a total. *See* appendix C to Regulation X (instructions for Blocks 3, 4 ''all fees for title searches, examinations, and endorsements, for example, would be included in this total,'' and 6).

Under the Bureau's proposal, the fees and charges listed under the subheading ''Services You Cannot Shop For'' pursuant to proposed § 1026.37(f)(2) would have been for services that the creditor requires in connection with the transaction, but that would be provided by persons other than the creditor or mortgage broker. Only items for which the creditor does not permit the consumer to shop in accordance with § 1026.19(e)(1)(vi)(A) would have been listed under this subheading. As discussed above, § 1026.19(e)(3)(ii) would have applied the same criterion in determining whether a creditor is considered to permit the consumer to shop for the particular service.

Pursuant to § 1026.37(f)(2), each item that would have been disclosed under the subheading ''Services You Cannot Shop For'' must include a descriptive name and the estimated charge, and the creditor must provide a subtotal of all such items. All items for which the charges relate to the provision of title insurance and the handling of the closing would have been required to be identified beginning with ''Title –.'' The creditor would have been able to use up to 13 lines to itemize charges under the subheading for ''Services You Cannot Shop For.''

Proposed comment 37(f)(2)–1 would have cross-referenced comments 19(e)(1)(iv)–1, 19(3)(i)–1, and 19(e)(3)(iv)–1 through –3 for discussions of the factors relevant to determining whether a consumer is permitted to shop and whether a creditor has exercised good faith in providing estimates of charges. Proposed comment 37(f)(2)–2 would have provided examples of the services that might be listed under ''Services You Cannot Shop For.'' Proposed comment 37(f)(2)–3 would have provided examples of services that would be listed using a phrase beginning with ''Title—.'' Proposed comment 37(f)(2)–4 would have clarified that the amount listed for the lender's title insurance coverage is the amount of the premium without any adjustment that might be made for the simultaneous purchase of an owner's title insurance policy, and cross-referenced comment 37(g)(4)–1 for the disclosure of the premium for owner's title insurance.

The Bureau sought comment on whether other limits on itemization, in addition to the proposed limits on the number of charges that may be itemized pursuant to § 1026.37(f)(2), should be included in the final rule and, if so, what those limits should be. The Bureau did not receive comments on the information sought by the Bureau, but did receive comments that sought clarification related to where and the manner in which certain charges would be disclosed pursuant to proposed § 1026.37(f)(2). Several national trade association commenters representing real property appraisers, as well as a number of individual appraiser commenters, stated that any charge for an appraisal management company (AMC) should be required to be separately itemized in § 1026.37(f)(2). As noted in the Bureau's proposal, section 1475 of the Dodd-Frank Act permits the optional disclosure of the charges made by an AMC, but does not require separate itemization. *See* 77 FR 51116, 51134 (August 23, 2012). These commenters stated that the AMC charges should be mandated to be disclosed separately, instead of permitting the creditor to determine whether the AMC charge is disclosed separately. These commenters argued that consumers should be made aware that the amount paid to the appraiser is different than the charge for the appraisal on the disclosure forms. These commenters stated that they believe that the Bureau has the authority to mandate this disclosure. These commenters stated that failure to mandate such disclosure would perpetuate existing practices where consumers are deprived of crucial information that would open up options available to them if they understood the differences in the range of costs of a professional appraisal as well as the range of qualifications and depth of experience of the individuals performing the appraisal, depending on whether the appraisal is or is not ordered through an AMC. It is unclear from these comments, however, that a breakout of the AMC's charge from the appraisal would or could lead to the stated result sought by the commenters: that a consumer would utilize the different charges to question and seek an appraisal directly from an appraiser, rather than through the use of an AMC. The Bureau is not aware of any data or information supporting the commenters' belief that this disclosure would achieve their desired results, nor did the commenters supply any such data or information.

Appraisals are third-party reports prepared for the benefit of the creditor as part of an evaluation of the value of the collateral being secured by the

property. RESPA recognizes that creditors are the parties that are obtaining the service, and explicitly provides an exemption from constraints on requiring the use of an affiliate for appraisals. 12 U.S.C. 2607(c). In addition, many of the concerns identified by commenters have been the subject of other rulemakings directly concerning disclosures and information provided to the consumer in relation to appraisals, namely the 2013 ECOA Appraisals Final Rule and the 2013 Interagency Appraisals Final Rule. *See* 78 FR 7215 (January 31, 2013) and 78 FR 10367 (February 13, 2013). The Bureau believes that, absent data or other information supporting the commenters' beliefs, it would be inappropriate to use its authority to modify the statutory disclosure provision of Dodd-Frank Act section 1475, because requiring breakouts of such charges to be disclosed in all cases may tend to produce information overload.[274]

One national trade association commenter stated that there are some charges that cannot be viewed logically as ''shoppable'' or ''not shoppable'' and that they should, rather, be disclosed pursuant to proposed § 1026.37(g). The charges listed were subordination or release fees charged in connection with a prior loan, or fees charged by a homeowner's association, condominium, or co-operative, the provider of which cannot be selected by the consumer. However, the charges discussed by the commenter are not related to other aspects of a residential real estate transaction, such as homeowner's association dues, but rather charges that are being incurred and passed along to the consumer based on services or reports being requested by the creditor during the underwriting process. For example, the referenced subordination charge is the result of a creditor's requirement that the loan being originated receive priority in relation to the loan being subordinated. Thus, the charge is not a result of other services requested or required to be paid by the consumer pursuant to State law or contract, but rather due to the creditor's requirements. Likewise, a charge from a homeowner's association for the service of providing documents and financial reports related to the homeowner's association to the creditor for its review is directly the result of the creditor's requirements, and not based on a service requested by the consumer or required to be paid by the consumer pursuant to State law or contract. If charges from the subordinating lender or the homeowner's association are unrelated to the creditor's requirements to originate the loan, such as outstanding homeowner's dues on the property, they would be disclosed under § 1026.37(g) to the extent they are known to the creditor. For § 1026.37(f)(2), regardless of the identity of the third party, the items disclosed are for charges incurred due to a creditor's requirements for which a consumer cannot select the provider of the service. Charges from a creditor associated with its preparing or negotiating a subordination agreement with a junior lienholder would be disclosed under § 1026.37(f)(1).

As discussed in connection with respect to § 1026.37(f)(1), consumer testing performed on the Loan Estimate indicated that itemization related to improved performance of the participants in understanding both the services provided and the charges imposed for those services. Participants appeared more likely to negotiate fees and shop for services when provided additional details that helped them to understand the nature of the services and the potential value of shopping for a particular service. *See* Kleimann Testing Report at 287–97.

Other commenters stated that other types of lender's title insurance policies, which have rates different from those of the basic lender's title policy premium, should be permitted to be listed on the Loan Estimate. The commenters stated that some creditors will require that the consumer will obtain an ''enhanced'' lender's title insurance policy. The Bureau believes that flexibility to address the possibility that a lender may require a policy other than a basic lender's title insurance policy is appropriate and is modifying comment 37(f)(2)–4 to address this possibility.

Two GSE commenters in an ex parte communication also stated that the proposal appeared to permit the disclosure of government program funding fees and upfront mortgage insurance charges that were not associated with a specific timeframe of coverage either under proposed § 1026.37(f)(2) or proposed § 1026.37(g)(4). These commenters sought clarification in order for creditors to disclose these items consistently. The Bureau believes that both the government program funding fees and upfront mortgage insurance charges referred to by the two commenters are services that the consumer must pay for and which are required by the creditor in connection with the loan program, and do not correlate to the provisions of § 1026.37(g)(4), as discussed below. Therefore, the Bureau is amending comment 37(f)(2)–2 to include explicitly these charges as examples of charges disclosed pursuant to § 1026.37(f)(2).

Accordingly, the Bureau is adopting § 1026.37(f)(2) and comments 37(f)(2)–1 and –3 as proposed. The Bureau is revising proposed comment 37(f)(2)–2 to reflect additional examples of services disclosed pursuant to § 1026.37(f)(2) to provide greater clarity in light of the comments received. The Bureau is revising proposed comment 37(f)(2)–4 to clarify that the creditor discloses under § 1026.37(f)(2) the premium of the type of lender's title insurance policy that it requires for the loan. The Bureau is adopting the requirements in § 1026.37(f)(2) pursuant to its authority under TILA section 105(a) and RESPA section 19(a) because disclosure of third-party services required by a creditor for consummation of the loan, their component and total charges, and the fact that the creditor will limit the choice of providers for those services will promote the informed use of credit and more effective advance disclosure of settlement costs, which are purposes of TILA and RESPA, respectively. Dodd-Frank Act sections 1032(a) and 1405(b) are also sources of authority for the proposed requirements in § 1026.37(f)(2). The information disclosed under § 1026.37(f)(2) will enable consumers to understand and negotiate fees, shop for a mortgage loan, and compare the Loan Estimate with any revised Loan Estimate and the Closing Disclosure, thereby ensuring that the features of the mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). Furthermore, for the reasons stated above in relation to residential mortgage loans, the disclosure is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

37(f)(3) Services You Can Shop for

Currently, Regulation X provides that third-party services required by the creditor but for which the creditor permits the consumer to shop are to be included, as applicable, in Blocks 4 (''Title services and lender's title insurance'') and 6 (''Required services that you can shop for'') on the RESPA

[274] *See* Julie Agnew and Lisa Szykman, ''Annuities, Financial Literacy and Information Overload,'' in *Financial Literacy: Implications for Retirement Security and the Financial Marketplace,* Oxford University Press, 2011, available at *http://ssrn.com/abstract=1707659.*

GFE. Regulation X also provides that charges for title services, like charges for origination services, are not itemized on the RESPA GFE, but are disclosed only as a total. *See* appendix C to Regulation X (instructions for Blocks 3, 4 (''all fees for title searches, examinations, and endorsements, for example, would be included in this total''), and 6).

Under the Bureau's proposal, the fees and charges listed under the subheading ''Services You Can Shop For'' pursuant to proposed § 1026.37(f)(3) would have been for services that the creditor would require in connection with its decision to make the loan, but that would be provided by persons other than the creditor or mortgage broker. Only items for which the creditor permits the consumer to shop in accordance with § 1026.19(e)(1)(vi)(A) would have been listed under this subheading. Thus, all Loan Costs that are not paid to the creditor or mortgage broker would have been itemized exclusively under either this subheading or the subheading ''Services You Cannot Shop For.''

As described below in the section-by-section analysis of § 1026.37(f)(5), each item disclosed under the subheading ''Services You Can Shop For'' would have been required to include a descriptive name and the estimated charge, and the creditor would have been required to provide a subtotal of all such items. All items for which the fees and charges relate to the provision of title insurance and the handling of the closing would have been required to be identified beginning with ''Title—.'' The creditor would have been able to use up to 14 lines to itemize charges under this subheading.

Proposed comment 37(f)(3)–1 would have provided cross-references to comments 19(e)(3)(ii)–1 through –3, 19(e)(3)(iii)–2, and 19(e)(3)(iv)–1 through –3 for discussions of determining good faith in estimating the costs for required services when the consumer is permitted to choose the provider of those services. Proposed comment 37(f)(3)–2 would have provided examples of the services that might be listed under ''Services You Can Shop For.'' Proposed comment 37(f)(3)–3 would have provided cross-references to comments 37(f)(2)–3 and –4 for guidance on services that would be labeled beginning with ''Title—'' and on calculating the amount disclosed for lender's title insurance, and provided cross-references to comment 37(g)(4)–1 for the disclosure of the premium for owner's title insurance.

As discussed in connection with proposed § 1026.37(f)(1) and (2), consumer testing performed on Loan Estimate forms indicated that itemization related to improved performance of the participants in understanding both the services charged and the costs of those services. Participants appeared more likely to negotiate fees and shop for services when provided additional details that helped them to understand the nature of the services and the potential value of shopping for a particular service.

The Bureau sought comment on whether other limits on itemization, in addition to the proposed limits on the number of charges that may be itemized pursuant to § 1026.37(f)(3), should be included in the final rule and, if so, what those limits should be. The Bureau did not receive comments concerning the information sought or otherwise related to proposed § 1026.37(f)(3).

Accordingly, the Bureau is adopting § 1026.37(f)(3) and its accompanying commentary as proposed. The Bureau is adopting the requirements in § 1026.37(f)(3) pursuant to its authority under TILA section 105(a) and RESPA section 19(a) because disclosure of third-party services required by a creditor for consummation of the loan, their component and total charges, and the fact that the creditor will permit the consumer to choose the providers for those services will promote the informed use of credit and more effective advance disclosure of settlement costs, which are purposes of TILA and RESPA respectively. Dodd-Frank Act sections 1032(a) and 1405(b) are also sources of authority for the proposed requirements in § 1026.37(f)(3). The information disclosed under § 1026.37(f)(3) will enable consumers to understand and negotiate fees, shop for a mortgage loan, and compare the Loan Estimate with any revised Loan Estimate and the Closing Disclosure, thereby ensuring that the features of the mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). Furthermore, for the reasons stated above in relation to residential mortgage loans, the disclosure is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

37(f)(4) Total Loan Costs

The Bureau's proposed § 1026.37(f)(4) would have required the creditor to disclose, with the label ''Total Loan Costs,'' the sum of the subtotals disclosed under proposed § 1026.37(f)(1) through (3) for Origination Charges, Services You Cannot Shop For, and Services You Can Shop For, respectively. This total would have generally represented all costs that the creditor and mortgage broker impose in connection with the transaction.

Although a comparable total is not required to be stated on the current RESPA GFE, the same costs are included in other subtotals on the RESPA GFE. The Bureau believed that grouping and subtotaling these items in this way would have provided better information to the consumer about costs that are specific to obtaining the mortgage loan from the creditor. Other costs that the consumer may encounter as part of the transfer of ownership of the property are generally related to items and requirements for which the amounts are controlled by other entities or persons, including governmental jurisdictions and the consumer, and were addressed in proposed § 1026.37(g).

The Bureau did not receive comments in relation to proposed § 1026.37(f)(4). Accordingly, the Bureau is adopting § 1026.37(f)(4) as proposed. The Bureau believes that grouping and subtotaling these items in this way will provide better information to the consumer about costs that are specific to obtaining the mortgage loan from the creditor. Other costs that the consumer may encounter as part of the transfer of ownership of the property are generally related to items and requirements for which the amounts are controlled by other entities or persons, including governmental jurisdictions and the consumer, and are addressed in proposed § 1026.37(g). Accordingly, disclosure of this information will promote the informed use of credit and more effective advance notice of settlement costs, consistent with TILA section 105(a) and RESPA section 19(a). It will also ensure that the features of the mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to better understand the costs, benefits, and risks associated with mortgage transactions, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). Furthermore, for the reasons stated above in relation to residential mortgage loans, the proposed disclosure is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

37(f)(5) Item Descriptions and Ordering

The Bureau's proposed § 1026.37(f)(5) would have required the creditor to use terminology that briefly and clearly

describes each item disclosed under § 1026.37(f). Except for the item for points that the consumer will pay, which would have been required to be listed as the first item under the subheading ''Origination Charges,'' all items would have been required to be listed in alphabetical order under the applicable subheading. The proposal would have required the creditor to use consistent descriptions and list the charges in the same sequential order on the Closing Disclosure pursuant to proposed § 1026.38(h)(4). The current RESPA GFE and early TILA disclosure do not include a similar requirement. The Bureau believed that a consistent listing of the costs that appear on the Loan Estimate and the Closing Disclosure will facilitate the consumer's comparison of the two disclosure documents and understanding of the transaction as a whole.

Commenters generally did not prefer the requirement to list the items in alphabetical order under the applicable subheading, and instead stated that an alternative method of ordering the items by hard coding the location of each item should be used, similar to how some items are hard coded on the current RESPA settlement statement. Since the descriptions can vary from jurisdiction to jurisdiction and creditor to creditor, while still meeting the requirement that each item be described, there does not appear to be any method to order the items without defining every service provided in residential real estate transactions and requiring a specific description of such service on the disclosures. Some commenters stated that the Bureau should define these services and mandate standard descriptions. However, the Bureau did not propose any such definitions and does not believe it would be appropriate to finalize standard descriptions for real estate settlement services in this final rule. One large bank commenter requested additional clarity on whether abbreviations are permitted under proposed § 1026.37(f)(5). As long as the abbreviation is consistent with the requirements of § 1026.37(f)(5) and the abbreviation describes that item, an abbreviation could be utilized by the creditor in completing the Loan Estimate.

Accordingly, the Bureau is adopting § 1026.37(f)(5) substantially as proposed. The final provision does not contain the proposed requirement to describe the disclosed items briefly and clearly, because the Bureau believes that the clear and conspicuous standard in § 1026.17(a)(1) is sufficient to provide clarity concerning how to describe the items on the Loan Estimate. The Bureau also believes the additional clarity regarding compliance with this requirement would facilitate compliance, satisfying one of the purposes of the integrated disclosures under sections 1098 and 1100A of the Dodd-Frank Act, and thus, is adopting new comment 37(f)(5)–1, which provides guidance regarding the requirement to label items with terminology that describes each item. The Bureau believes that a consistent listing of the costs that appear on the Loan Estimate and the Closing Disclosure will facilitate the consumer's comparison of the two disclosure documents and the consumer's understanding of the transaction as a whole. Accordingly, this requirement will effectuate the purposes of TILA and RESPA by promoting the informed use of credit and more effective advance notice of settlement costs, consistent with TILA section 105(a) and RESPA section 19(a), and will ensure that the features of the mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to better understand the costs, benefits, and risks associated with mortgage transactions, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a).

37(f)(6) Use of Addenda

The Bureau's proposed § 1026.37(f)(6) would have provided that addenda may not be used to itemize disclosures required by § 1026.37(f)(1) or (2). If the creditor is not able to itemize all of the charges required to be disclosed in the number of lines provided under § 1026.37(f)(1)(ii) and (f)(2)(ii), the remaining charges would have been required to be disclosed as an aggregate amount in the last line permitted under the applicable paragraph. An addendum would have been permitted to be used to itemize disclosures required by § 1026.37(f)(3), or alternatively a creditor would have been permitted to disclose any remaining charges as an aggregate amount in the last line permitted under § 1026.37(f)(3).

Proposed comment 37(f)(6)–1 would have clarified that a creditor is permitted to provide additional disclosures that are required by State law, as long as those disclosures are provided on a document whose pages are separate from, and are not presented as part of, the disclosures provided in accordance with § 1026.37(f). Proposed comment 37(f)(6)–2 would have provided an example of a label that may be used to reference an addendum as permitted under § 1026.37(f)(6)(ii).

Commenters generally stated that the Loan Estimate did not provide enough lines for entries in the subparagraphs of proposed § 1026.37(f). Examples of additional charges that were provided by commenters included many charges that would be likely disclosed pursuant to proposed § 1026.37(f)(3), which permits the use of an addendum to itemize additional charges, reducing the need for more lines pursuant to the subparagraphs of proposed § 1026.37(f). In addition, the Bureau is concerned about the potential for information overload on the Loan Estimate. *See* Kleimann Testing Report at 7. The Bureau believes that the number of itemized charges permitted under proposed § 1026.37(f) is sufficient to aid consumer understanding of the services required by the creditor to obtain the mortgage loan, and to enable consumer negotiation. In addition, permitting the use of an addendum for services for which the consumer can shop for the service provider enables consumers to shop for and to negotiate the costs and quality of such services. However, because the consumer cannot shop for the services providers for the costs disclosed under § 1026.37(f)(1) and (2), the Bureau believes that it is appropriate, in light of its concern regarding information overload, that those charges in excess of the 13 permitted for each section be disclosed as an aggregate number.

Accordingly, the Bureau is adopting § 1026.37(f)(6) and its accompanying commentary as proposed. The Bureau is adopting the requirements in § 1026.37(f)(6) pursuant to its authority under TILA section 105(a) and RESPA section 19(a) because standardization of the information provided on the disclosures required under § 1026.19(e) will provide consistent information that consumers will be able to use to better understand the mortgage transaction, shop for loans, and compare the Loan Estimate with any revised Loan Estimate and the Closing Disclosure, thereby promoting the informed use of credit and more effective advance disclosure of settlement costs, which are purposes of TILA and RESPA, respectively. This standardization also will ensure that the features of the mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to more readily understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a), which is also a source of authority for the proposed requirements.

37(g) Closing Cost Details; Other Costs

Under section 5(c) of RESPA, lenders must provide applicants for federally related mortgage loans with a good faith estimate of the amount or range of charges for specific settlement services the applicant is likely to incur in connection with the settlement of the loan. 12 U.S.C. 2604(c). Section 1024.7 of Regulation X currently implements this mandate by requiring lenders and mortgage brokers to provide the RESPA GFE, which must be completed in accordance with the instructions in appendix C to Regulation X. Appendix C sets out specific instructions for the information that must be disclosed on the RESPA GFE, including which loan costs must be included and how to identify those costs on the RESPA GFE.

As discussed above, Dodd-Frank Act section 1032(f) requires the Bureau to propose rules to combine these RESPA disclosures with the pre-consummation disclosures required by TILA. In addition to existing TILA disclosure requirements, section 1419 of the Dodd-Frank Act amended TILA section 128(a) to require, in the case of a residential mortgage loan, disclosure of the aggregate amount of settlement charges for all settlement services provided in connection with the loan and the aggregate amount of other fees or required payments in connection with the loan. 15 U.S.C. 1638(a)(17).

The Bureau's proposed § 1026.37(g) would have required creditors to disclose as ''Other Costs'' on the Loan Estimate certain items that are in addition to the Loan Costs that are specifically required by the creditor before consummation of a credit transaction and are disclosed pursuant to § 1026.37(f). The ''Other Costs'' disclosed pursuant to § 1026.37(g) generally would have been those necessary to complete the real estate closing. These items usually concern payments for governmental requirements, insurance premiums, and items that are charged by parties involved in the property transaction other than the creditor. The creditor would have been required to disclose under four subheadings individual itemized charges, along with subtotals for categories of those itemized charges.

Proposed comment 37(g)–1 would have described the kinds of charges that are disclosed under § 1026.37(g). Proposed comment 37(g)–2 would have clarified that items that are paid at or before closing under the real estate contract are not disclosed on the Loan Estimate, except to the extent the creditor is aware of those charges at the time the Loan Estimate is issued. These items would have been required to be disclosed, however, in the Closing Disclosure pursuant to proposed § 1026.38(f), (g), (j) and (k).

The Bureau did not receive comments on proposed § 1026.37(g) in general, but did receive comments concerning the specific items disclosed pursuant to the subparagraphs of § 1026.37(g), which are discussed below. Accordingly, the Bureau is adopting § 1026.37(g) and its accompanying commentary generally as proposed, except to the extent that modifications are made to the subparagraphs and accompanying commentary, as described below.

Pursuant to its authority under Dodd-Frank Act section 1032(f), TILA section 105(a), and RESPA section 19(a), the Bureau is requiring creditors to disclose the loan costs and other costs imposed upon the consumer in tables as part of the integrated Loan Estimate. Section 1026.37(f) and (g) implement the early disclosure requirements in TILA and RESPA by requiring disclosure of costs associated with the consumer credit transaction, including loan costs and other costs. Based on its consumer testing, the Bureau believes that early disclosure of estimated loan costs and other costs, as set forth in § 1026.37(f) and (g), will improve consumer understanding of the credit and property transactions. *See* Kleimann Testing Report at 277–80, Kleimann Post-Proposal Testing Report at 71, Kleimann Quantitative Study at 51–52. The Bureau believes that these disclosures will effectuate the purpose of TILA by promoting the informed use of credit and assuring a meaningful disclosure to consumers. The Bureau believes that the disclosures also will satisfy the RESPA requirement to provide a consumer with a good faith estimate of the amount or range of charges for specific settlement services the consumer is likely to incur in connection with the closing. Dodd-Frank Act sections 1032(a) and 1405(b) are also sources of authority for § 1026.37(f) and (g). These disclosures will ensure that the features of the mortgage transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). Furthermore, for the reasons stated above in relation to residential mortgage loans, the rule is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

As discussed in more detail below in the section-by-section analysis of § 1026.37(g)(5) and (6), the final rule requires creditors to disclose under the heading ''Other Costs'' the totals of other costs, the total of loan costs plus other costs, lender credits, and the total closing costs. Consumer feedback from the Bureau's consumer testing indicated that clear amounts for the total costs of the loan and real estate closing were also important to consumers' understanding of the complete transaction. In general, all of these charges are currently required to be disclosed—as itemized or aggregate charges and amounts—on the RESPA GFE, the RESPA settlement statement, or both. Combining these charges and totals into the disclosures required by § 1026.19(e) will enable consumers to understand the services and charges related to the credit and real estate transactions, shop for the settlement services in connection with the transaction, and more easily compare the Loan Estimate with any revised Loan Estimate and the Closing Disclosure, thereby ensuring that the features of the mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a).

37(g)(1) Taxes and Other Government Fees

The Bureau's proposed § 1026.37(g)(1) would have required the disclosure of taxes and other government fees for recording of documents and transfer taxes assessed against the purchase price of a real estate contract or the loan amount under the subheading ''Taxes and Other Government Fees.'' Proposed § 1026.37(g)(1)(i) would have required the disclosure of the sums of all recording fees and other government fees and taxes, except transfer taxes, using the label ''Recording Fees and Other Taxes.'' Proposed § 1026.37(g)(1)(ii) would have required the disclosure of the sum of all transfer taxes using the label ''Transfer Taxes.''

Proposed comment 37(g)(1)–1 would have clarified that recording fees are assessed by a government authority in order to record and index documents related to property transfers under State or local law. Proposed comment 37(g)(1)–2 would have clarified that government charges that are not transfer taxes are disclosed with recording fees under § 1026.37(g)(1)(i). Proposed comment 37(g)(1)–3 would have explained that, in general, transfer taxes

are State and local government fees on mortgages and home sales that are based on the loan amount or sales price. Proposed comment 37(g)(1)–4 would have clarified that the only transfer taxes disclosed under § 1026.37(g)(1) are transfer taxes imposed on the consumer, as determined under State or local law, and that if unpaid transfer taxes can result in a lien being placed on the property of the consumer, the transfer tax is disclosed under § 1026.37(g)(1). The comment further clarifies that if State or local law is unclear, or does not specifically attribute the transfer tax, the creditor may use common practice in the locality of the property to apportion the amount of the transfer tax disclosed as paid by the consumer under § 1026.37(g)(1). Proposed comment 37(g)(1)–5 would have explained that although transfer taxes paid by the seller in a purchase transaction are not disclosed pursuant to § 1026.37(g), they are disclosed on the Closing Disclosure under § 1026.38(g)(1)(ii). Proposed comment 37(g)(1)–6 would have clarified that the lines and labels required under § 1026.37(g)(1) may not be deleted, and that additional items may not be listed under the subheading.

Commenters specifically provided information on the disclosure of transfer taxes. Two national industry trade associations stated that the allocation of transfer taxes between a consumer and a seller can vary based on State law and local custom, and that applicable laws often permit the consumer and seller to allocate the payment of transfer taxes between themselves during the real estate settlement process through negotiation and modification of their contract. The commenters stated that this could lead to differing approaches by creditors. These commenters raised a concern that many creditors would disclose transfer taxes if the consumer could possibly pay them, while less risk-adverse creditors would not disclose these transfer taxes. The commenters stated that this could make it more difficult to comparison shop, since the amount paid by the consumer at closing will depend on negotiations between the consumer and seller, which may change at any time prior to consummation. Thus, the commenters stated that it would be preferable to disclose always the transfer taxes if the consumer possibly could pay them, and if the real estate sales contract later confirms that the seller has agreed to pay some or all of those taxes, a revised disclosure can be provided under § 1026.19(e)(3)(iv).

Other industry commenters suggested that the method of disclosure of transfer taxes required under the current Regulation X on the RESPA GFE should be used, without any discussion of how that would differ from proposed § 1026.37(g)(1). One industry commenter suggested deleting the example in proposed comment 37(g)(1)–4 of State law attaching a lien on the consumer's acquired property if the transfer tax is not paid, as an example of a situation where the State law places responsibility on the consumer to pay the transfer tax.

The Bureau believes that the effect of proposed § 1026.37(g)(1) would have been to require creditors to disclose the amount of transfer taxes for which the consumer is liable, either from State or local law, or the real estate sales contract. Only if State or local law were unclear would common practice be used by creditors to determine the amounts to be disclosed. The Bureau believes this result is appropriate, because RESPA section 5(c) requires disclosure of good faith estimates of the charges ''the borrower is likely to incur in connection with the settlement . . . .'' 12 U.S.C. 2604(c). If State or local law, or the real estate contract is unclear, the Bureau believes the common practice in the locality of the property is an appropriate measure of the charge the consumer is likely to pay.

Accordingly, the Bureau is adopting § 1026.37(g)(1) and its accompanying commentary as proposed, except with a minor modification to require the amounts not charged to be left blank instead of disclosed as a zero dollar amount, to reduce the amount of numbers on the page and the potential for information overload. The Bureau is adopting the requirements in § 1026.37(g)(1) pursuant to its authority under TILA section 105(a) and RESPA section 19(a) because disclosure of taxes and government fees required to be paid in the real estate closing will educate consumers about costs they must be prepared to pay in the transaction, thereby promoting the informed use of credit and more effective advance disclosure of settlement costs, which are purposes of TILA and RESPA respectively. Dodd-Frank Act sections 1032(a) and 1405(b) are also sources of authority for the requirements in § 1026.37(g)(1). This information also ensures that the features of the mortgage transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). Furthermore, for the reasons stated above in relation to residential mortgage loans, the disclosure is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

37(g)(2) Prepaids

The Bureau's proposed § 1026.37(g)(2) would have required the disclosure under the subheading ''Prepaids'' of prepaid charges for real estate property taxes, insurance premiums, and other items that must be paid to insure the property or satisfy real estate tax obligations, as well as other charges that must be satisfied before consummation of the credit transaction and the real estate closing. Proposed § 1026.37(g)(2) also would have prescribed some of the items, and additional information about those items, that must be included under the subheading ''Prepaids.'' Proposed § 1026.37(g)(2)(i)-(iv) would have required the first four items to be disclosed with the labels of ''Homeowner's Insurance Premium (____months),'' ''Mortgage Insurance Premium (____months),'' ''Prepaid Interest (_____per day for ____days @ ____%),'' and ''Property Taxes,'' respectively, together with the corresponding total dollar amount to be paid.

Proposed comment 37(g)(2)–1 would have provided examples of other periodic charges that are required to be paid at consummation and are disclosed under § 1026.37(g)(2). Proposed comment 37(g)(2)–2 would have clarified that the interest rate disclosed under § 1026.37(g)(2)(iii) is the same interest rate that is disclosed under § 1026.37(b)(2). Proposed comment 37(g)(2)–3 would have clarified that the terms ''property taxes,'' ''homeowner's insurance,'' and ''mortgage insurance'' have the same meaning as those terms are used under § 1026.37(c) and its commentary. Proposed comment 37(g)(2)–4 would have clarified that the lines and labels required under § 1026.37(g)(2) may not be deleted.

Commenters stated that the subheading ''Prepaids'' could be confusing to consumers. Specifically, they were concerned that consumers could confuse the items disclosed under the subheading required by proposed § 1026.37(g)(2) with items included as the prepaid finance charge in the calculation of the finance charge and the APR under TILA. Prior studies conducted by other Federal agencies as well as consumer testing conducted by the Bureau, however, indicate that consumers do not readily understand the disclosures of the finance charge and APR on the current disclosures required under TILA or on some of the early prototypes of the integrated

disclosures. *See* Board-HUD Joint Report at 10; Board's 2009 Closed-End Proposal, 74 FR 43232, 43296–97; Kleimann Testing Report at 61, 84, 101. The Bureau does not believe that consumers will confuse the items charged pursuant to § 1026.37(g)(2) with the regulatory defined term finance charge, prepaid finance charge, or APR.

Several industry and national trade group commenters stated that the requirement to disclose any prepaid interest based on a fully-indexed rate pursuant to proposed § 1026.37(g)(2)(iii) would result in the amount disclosed to be inaccurate for all adjustable rate mortgages, in some cases too high and in others too low. Instead, they stated that the initial interest rate should be used instead of the fully-indexed rate for the amount of prepaid interest pursuant to proposed § 1026.37(g)(2)(iii). Several commenters were confused regarding the requirement to disclose the initial interest rate under proposed § 1026.37(b)(2). As discussed in the section-by-section analysis for proposed § 1026.37(b)(2), that provision would have required disclosure of the fully-indexed interest rate, if applicable, only if the initial interest rate were not known at consummation for an adjustable rate loan. Accordingly, proposed § 1026.37(g)(2)(iii) would have required the prepaid interest disclosure to be based on an introductory interest rate if one applied to the transaction in an adjustable rate loan. Several commenters, in response to § 1026.37(g)(2) as well as §§ 1026.37(g)(3) and 1026.38(g)(2) and (3), stated that the terms ''mortgage insurance,'' ''homeowner's insurance,'' and ''property taxes'' were unclear and that creditors may have difficulty in properly disclosing these amounts due to a general reference to other sections of the proposed rule.

Accordingly, the Bureau is adopting § 1026.37(g)(2) and comments 37(g)(2)–1, –2, and –4 as proposed. The Bureau is not modifying comment 37(g)(2)–2 because the Bureau is modifying § 1026.37(b)(2) to provide greater clarity regarding the interest rate to be disclosed. Comment 37(g)(2)–3 is being modified to provide more precise references to definitions of the terms ''mortgage insurance,'' ''homeowner's insurance,'' and ''property taxes'' in response to commenters' requests for more precise definitions.

The Bureau is adopting the requirements in § 1026.37(g)(2) pursuant to its authority under TILA section 105(a) and RESPA section 19(a) because disclosure of charges that must be satisfied as part of the mortgage transaction will educate consumers about costs they must be prepared to pay, thereby promoting the informed use of credit and more effective advance disclosure of settlement costs, which are purposes of TILA and RESPA respectively. Dodd-Frank Act sections 1032(a) and 1405(b) are also sources of authority for this requirement. This information ensures that the features of the mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). Furthermore, for the reasons stated above in relation to residential mortgage loans, the disclosure is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

37(g)(3) Initial Escrow Payment at Closing

Disclosure of the initial payment for the establishment of an escrow account currently is required under §§ 1024.7 and 1024.17 of Regulation X, and the items and amounts must be disclosed in Block 9 of the RESPA GFE. The Bureau's proposed § 1026.37(g)(3) would have required the disclosure of the initial payments to establish an escrow account to pay for future recurring charges. Proposed § 1026.37(g)(3) also would have prescribed some of the items, and additional information about those items, that must be included under the subheading ''Initial Escrow Payment at Closing.''

Proposed comment 37(g)(3)–1 would have clarified that, for any item required to be listed that is not charged to the consumer, the monthly payment amount and time period may be left blank, but the dollar amount for the item must be shown as zero. Proposed comment 37(g)(3)–2 would have clarified that the aggregate escrow account adjustment required for the RESPA settlement statement under Regulation X § 1024.17(d)(2) is not included on the Loan Estimate, but is included on the Closing Disclosure under § 1026.38(g)(3). Proposed comment 38(g)(3)–3 would have clarified that ''property taxes,'' ''homeowner's insurance,'' and ''mortgage insurance'' have the same meaning as those terms are used under § 1026.37(c) and its commentary. Proposed comment 37(g)(3)–4 would have clarified that the lines and labels required under § 1026.37(g)(3) may not be deleted.

Very few commenters provided comments on this subparagraph. A large bank commenter requested more clarity of when an amount is disclosed as prepaid under § 1026.37(g)(2) versus when it would be included under § 1026.37(g)(3), since the initial escrow payment will also be made in advance of the first payment due, as are prepaids under § 1026.37(g)(2). However, prepaids are payments made to the entity that imposes the charge, such as county governments for county-imposed real estate property taxes. The initial escrow payment to be made at closing pursuant to § 1026.37(g)(3) would be for payments made to the creditor, or its successor in interest, to establish an escrow or impound account for future payment of such charges pursuant to Regulation X in § 1024.17. A document preparation/software commenter stated that it believed that not enough lines were provided for the initial escrow account disclosure. However, the commenter did not provide any further reasons why three preprinted lines for the most common charges included in an escrow account: homeowner's insurance, mortgage insurance, and property taxes, together with five additional permissible lines for other charges included in an escrow or impound account, would be insufficient. The commenter also seemed to be under the impression that only three items were permitted to be disclosed under § 1026.37(g)(3), which does not take into account the five additional lines permitted under § 1026.37(g)(3)(v).

Another document preparation/software commenter stated that the aggregate adjustment required under Regulation X in § 1024.17(d)(2) also should be disclosed pursuant to § 1026.37(g)(3). However, the requirements of Regulation X in § 1024.17(d)(2) presuppose knowledge about the timing and amount of payments that may not be known to and verified by the creditor when the Loan Estimate is issued. An industry commenter stated that some jurisdictions have multiple taxes assessed against real property. In some cases, the commenter stated the dates of these taxes cover differing dates and are due at different times. The commenter stated that the proper way to address these occurrences would be to itemize the taxes separately pursuant to proposed § 1026.37(g)(3)(v). The Bureau acknowledges this issue and believes a separate itemization for taxes assessed for different periods would be necessary to perform an initial escrow account analysis pursuant to Regulation X

§ 1024.17(c)(2). The Bureau believes that proposed § 1026.37(g)(3) permits this itemization. However, for additional clarity, comment 37(g)(3)–5 is revised to explain expressly that this practice is permitted. Several commenters, in response to § 1026.37(g)(3) as well as §§ 1026.37(g)(2) and 1026.38(g)(2) and (3), stated that the terms ''mortgage insurance,'' ''homeowner's insurance,'' and ''property taxes'' were unclear and that creditors may have difficulty in properly disclosing these amounts due to a general reference to other sections of the proposed rule.

Accordingly, the Bureau is adopting § 1026.37(g)(3) and its comments 37(g)(3)–1, –2 and –4 as proposed, except with a minor modification to require the amount not charged to be left blank instead of disclosed as a zero dollar amount, to reduce the amount of numbers on the page. The Bureau is adopting comment 37(g)(3)–3 with modifications to provide more precise references to definitions of the terms ''mortgage insurance,'' ''homeowner's insurance,'' and ''property taxes'' in response to commenters' requests for more precise definitions. In addition, the Bureau is adopting comment 37(g)(3)–5, which clarifies that, when more than one tax is assessed on the real property that secures the loan and the taxes are not paid at the same time, the additional property tax may be separately itemized under § 1026.37(g)(3), in accordance with § 1024.17, as applicable.

The Bureau is adopting the requirements in § 1026.37(g)(3) pursuant to its authority under TILA section 105(a) and RESPA section 19(a) because disclosure of initial payments that consumers are required to make to establish escrow accounts for future recurring charges will educate consumers about costs they must be prepared to pay in the mortgage transaction, thereby promoting the informed use of credit and more effective advance disclosure of settlement costs, which are purposes of TILA and RESPA, respectively. Dodd-Frank Act sections 1032(a) and 1405(b) are also sources of authority for the proposed requirements. This information ensures that the features of the mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). Furthermore, for the reasons stated above in relation to residential mortgage loans, the disclosure is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

37(g)(4) Other

Currently, the only other disclosure required by Regulation X for closing costs not addressed under proposed § 1026.37(f) and (g)(1), (2), or (3) would be a disclosure for an owner's title insurance policy under the instructions in appendix C for Block 5. The Bureau's proposed § 1026.37(g)(4) would have required the disclosure of any other items that the consumer has become legally obligated to pay in connection with the transaction, to the extent that the existence of these items is known by the creditor at the time the Loan Estimate is issued. The label for any item that is a component of title insurance would have required the inclusion of the description ''Title—'' at the beginning. The label for all items for which the amounts disclosed are premiums for separate optional insurance, warranty, guarantee, or event-coverage products would have required the inclusion of the parenthetical ''(optional)'' at the end. The items that would have been disclosed under proposed § 1026.37(g)(4) are not required by the creditor. These items would not have included additional coverage or endorsements added to products required by the creditor. Accordingly, they would not have been disclosed under other paragraphs of proposed § 1026.37(f) or (g) and are disclosed under the subheading ''Other.'' These items are voluntary products that the consumer may be likely or may have already elected to purchase, and of which the creditor knows or is aware.

Proposed comment 37(g)(4)–1 would have clarified that any owner's title insurance policy premium disclosed under § 1026.37(g)(4) is based on a basic rate, and not an ''enhanced'' premium. Proposed comment 37(g)(4)–1 would have provided an example of a label for owner's title insurance and would have cross-referenced comment 37(f)(2)–4 for disclosure of the premium for lender's title insurance. Proposed comment 37(g)(4)–2 would have clarified that any title insurance policy disclosed on the Loan Estimate based on a simultaneous issuance calculation must be disclosed by adding the full owner's title insurance premium plus the simultaneous issuance premium, and then deducting the amount of the lender's title insurance at the full premium rate. Proposed comment 37(g)(4)–3 would have provided examples of products to which the description ''(optional)'' applies and cross-referenced comments 4(b)(7) and (b)(8)–1 through –3 and comments 4(b)(10)–1 and –2 for descriptions and guidance concerning disclosure of premiums for credit life, debt suspension, and debt cancellation coverage. Proposed comment 37(g)(4)–4 would have provided examples of other items that are disclosed under § 1026.37(g)(4) if known by the creditor at the time the Loan Estimate is issued and would have referred to comment 19(e)(3)(iii)–3 concerning application of the good faith requirement for services that are not required by the creditor.

Notation of an Owner's Title Insurance Policy Premium as ''(Optional)''

Many industry commenters stated that the disclosure under § 1026.37(g)(4) and § 1026.38(g)(4) of owner's title insurance premiums should not contain the notation ''(optional)'' and provided several reasons. Many stated that HUD and State governments have generally determined that an owner's title insurance policy is beneficial to the consumer. Others also stated that the notation may be confusing to consumers, and may even encourage consumers to forego obtaining an owner's title insurance policy and instead mistakenly rely on the lender's title insurance policy to provide coverage to the consumer. A law firm commenter stated that the owner's title insurance policy is the only product disclosed on the Loan Estimate that provides insurance for a consumer's interest in the real property. One commenter stated that the notation may require settlement agents to provide legal advice about the optional nature of an owner's title insurance policy, possibly in contravention of State laws related to the unauthorized practice of law.

One credit union commenter supported the notation. One State trade association commenter suggested that the owner's title insurance premium should be required to be disclosed on the Loan Estimate only when a creditor requires a consumer to obtain it. Another industry commenter indicated that the proposed notation of ''(optional)'' was preferable to ''(not recommended).'' Commenters did suggest alternatives to the ''(optional)'' notation, which included ''(recommended)'' or ''(optional—decline at your own risk).'' These suggested alternatives were only submitted with respect to the owner's title insurance premium, and not other optional insurance products.

Based on these comments, in particular the comment by the State trade association suggesting that

owner's title insurance be disclosed when required by the creditor, the Bureau considered removing any requirement to disclose a non-required owner's title insurance premium on the Loan Estimate for purchase transactions rather than merely revising the proposed notation associated with the owner's title insurance premium. This, however, would remove a sizeable cost from the Loan Estimate that a consumer may be likely to pay and thereby reduce the accuracy of the Loan Estimate. Additionally, if not disclosed on the Loan Estimate, the cost of an owner's title insurance policy would not be subject to any tolerance level under § 1026.19(e)(3), making the consumer protections related to the tolerance levels in applicable to a charge that frequently is a large dollar amount. Accordingly, the Bureau concludes that the owner's title insurance premium should be disclosed on the Loan Estimate in a purchase transaction if a consumer is likely to pay for it, regardless of whether the policy is required by the creditor.

Many commenters opposed to the proposed ''(optional)'' designation for the owner's title insurance premium were concerned that the ''(optional)'' designation is a signal to consumers that they do not need the service, and can safely reduce costs by declining the service. Commenters seemed to have assumed that the only information that consumers receive when obtaining a purchase money mortgage loan is the Loan Estimate. However, this view does not take into account the myriad sources of information related to the purchase of residential real estate. Other information, such as the special information booklet under § 1026.19(g) of this final rule, State disclosure requirements,[275] and marketing materials from title insurance agents and underwriters, all will provide consumers with additional information concerning an owner's title insurance policy that can lead a consumer to choose to obtain this insurance product. The rule only requires the ''(optional)'' designation for the purpose of informing the consumer that the creditor is not requiring that particular service, distinguishing such from the services required by the creditor under § 1026.37(f) and (g). Providing a stronger signal to consumers, whether by a notation of ''(recommended)'' or ''(decline at your own risk)'' would essentially amount to the Loan Estimate marketing this product to the consumer. However, the Bureau believes that the consumer should make a decision to obtain owner's title insurance coverage based on available information, and that an informed consumer should decide whether it is in his or her best interest. Accordingly, the Bureau is finalizing this aspect of the regulation as proposed.

Disclosing Title Insurance Policies Issued Simultaneously

A number of commenters objected to proposed comment 37(g)(4)–2, which would have clarified that any title insurance policy disclosed on the Loan Estimate based on a simultaneous issuance calculation must be disclosed by adding the full owner's title insurance premium plus the simultaneous issuance premium for lender's title insurance coverage, and then deducting the amount of a full premium rate for lender's title insurance coverage that would be charged in a transaction when a consumer declines the purchase of an owner's title insurance policy. The commenters generally raised concerns that this manner of disclosing the title insurance premiums would produce consumer confusion, as the amounts disclosed on the Loan Estimate would not correlate to the title insurance rates quoted by title insurance agents in accordance with State law or the common practice in a particular geographic area. However, as discussed below, the manner in which the simultaneous issuance calculation is made in some States can result in confusion to the consumer. If the simultaneous issuance calculations are disclosed, the amount disclosed for a lender's title insurance policy would be negligible or zero. In an instance where the consumer declines an owner's title insurance policy, the lender's title insurance policy premium can increase substantially, resulting in a higher total amount of closing costs than can be anticipated by the consumer. Consumers may thus be led to believe that the *incremental* cost of the owner's title insurance is much higher than disclosed on the Loan Estimate.

A national trade association commenter representing abstractors, title insurance agents, and title insurance underwriters stated that the proposed calculation methodology when a simultaneous issuance rate is utilized to calculate the owner's title insurance and lender's title insurance premiums would violate some State laws. Commenters recommended that title insurance policies should be disclosed on the Loan Estimate only in accordance with how they are to be quoted by title insurance agents pursuant to State law. A State trade association commenter stated that the amounts quoted should be in accordance with the purchase and sale agreement between the consumer and seller or common practice in a particular geographic area. A title insurance company commenter stated that there should be two Loan Estimate disclosures, one with the owner's title insurance policy and lender's title insurance policy simultaneous rates, and one with only the lender's title insurance policy rate.

Commenters' concerns related to the calculation of the owner's title insurance and lender's title insurance premiums under the proposed rule generally were that the calculation would not accord with State law or custom, leading to confusion for consumers, settlement agents, internal auditors, and State auditors. State laws may prohibit a title agent from quoting the costs in a manner different than ones prescribed by State law. However, the manners prescribed by State law vary based on differing State regulatory models as well as differing pricing systems employed by title insurance underwriters, sometimes in the same State. These differences can prevent the disclosure of those prices in a manner that can be readily understood by consumers, especially when the consumer obtains more than one Loan Estimate from different creditors to shop for mortgage loans in States where the pricing systems differ between title insurance underwriters.

The use of State law and custom introduces two issues. Ten States do not regulate, in any fashion, the rates charged for title insurance. A review of three title insurance underwriters[276] in

[275] Twenty-two States have disclosure requirements with respect to an owner's title insurance policy. *See, e.g.,* Ala. Code § 27–25–7; Ark. Code Ann. § 23–103–413; Cal. Civ. § 1057.6; Conn. Gen. Stat. § 38A–423; DC Code § 31–5031.12; Fla. Stat. Ann. § 627.798; La. Rev. Stat. Ann. § 22:531; Md. Code Ann., Ins. § 22–102; Mo. Ann. Stat. § 381.015; Mont. Code Ann. § 33–25–216; Neb. Rev. Stat. § 44–1992; Nev. Rev. Stat. Ann. § 692A–210; N.M Admin. Code tit. 13, § 13.14.7.8; N.Y. Real Property Law Journal, Winter 2009, Vol. 37, No. 1, at page 42; Ohio Rev. Code Ann. § 3953.30; 31 Pa. Code § 126.1; R.I. Gen. Laws Ann. § 27–2.6–12; S.C. Code Ann. Regs. 69–18(2)(B)(1)(I); Tenn. Code Ann. § 56–35–133; Tex. Ins. Code Ann. §§ 2704.051 and 2704.052; Va. Code Ann. § 38.2–4616; Wyo. Stat. Ann. § 26–23–331.

[276] The rates of three title insurance underwriters reviewed were from associated families of title insurance underwriters associated with Fidelity National Financial, First American Title Insurance Company, and Old Republic Title Insurance Company. These families of companies underwrote 73.73 percent of the total coverage amount of title insurance policies issued in the United States in 2012. *See* American Land Title Association, 2012 Market Share Data, available at: *http://www.alta.org/industry/12–04/2012_MarketShare_Family-CompanySummary.xls.* The title insurance policy rates were found at *http://*

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these States indicates that there is no standard calculation method used, which also appears to be the case in approximately 14 States that regulate title insurance. In some States, each underwriter uses a different method to calculate the owner's title insurance and lender's title insurance premiums. Accordingly, there is no verifiable way to determine the cost of either the owner's title insurance or lender's title insurance in these jurisdictions other than from the information provided by the underwriters themselves. Second, approximately 26 States, either by promulgated rates or by rates created and used by title underwriters, calculate the cost of lender's title insurance policy differently when a simultaneous owner's title insurance policy is issued.[277] A standard rate applies to the lender's title insurance policy when purchased alone, but is only an additional flat cost when an owner's title insurance policy is issued simultaneously. When a consumer only obtains a lender's title insurance policy, there are changes to two separately disclosed title insurance premiums that are used to determine the amounts disclosed on the Loan Estimate. This results in a potential aggregate decrease in settlement costs when a consumer declines to purchase an owner's title insurance policy, but it may appear to a consumer as an increase in the cost a lender's title insurance policy.[278]

Title insurance is governed by the individual States, which can regulate the providers of insurance products. As noted above, there is a great range of State regulations and pricing models in relation to title insurance. However, this final rule mandates the disclosures made by creditors to consumers pursuant to TILA. Thus, the commenters' points related to State law prohibitions and regulation of insurance are inapposite in a situation where the party providing the Loan Estimate, the creditor, is not subject to the legal requirements of State insurance laws. *See* McCarran-Ferguson Act, 15 U.S.C. 1012(b). The Bureau believes that a standard method of disclosing lender's and owner's title insurance premium amounts on the Loan Estimate under Regulation Z that shows consumers the incremental cost of purchasing an owner's title insurance policy in addition to a lender's title insurance policy will aid consumer understanding of the transaction, which is one of the purposes of the integrated disclosures set for by the Dodd-Frank Act in TILA and RESPA. *See* Dodd-Frank Act sections 1098 and 1100A.

To address these issues, proposed § 1026.37(g)(4) and its accompanying commentary would have required the calculation of owner's title insurance and lender's title insurance premiums to ensure that the lender's title insurance premium would not increase if the consumer declined an owner's title insurance premium. The calculation would have required that the lender's title insurance premium be disclosed at its full rate, and the owner's title insurance premium be disclosed as the difference between the owner's title insurance premium plus any additional flat simultaneous issuance rate, and the disclosed lender's title insurance premium.

For approximately 25 States,[279] this calculation methodology would result in disclosure of owner's title insurance and lender's title insurance premiums that would not be in accordance with the actual pricing; that is, the owner's title insurance and lender's title insurance premiums listed on the integrated disclosures always would be different than the actual rates charged. However, the calculation would result in providing every consumer in the United States with an accurate reflection of the *incremental* additional cost associated with obtaining an owner's title insurance policy at consummation. With this disclosure, consumers can determine if the additional cost for insurance to protect themselves from losses that result from a title defect and to provide a legal defense from challenges to their legal ownership of the property they are acquiring would be appropriate. There is no indication on the Loan Estimate that the owner's title insurance premium disclosed is an incremental cost to the consumer, and not the full rate. However, the creditor can communicate to those consumers who are confused that the total amount of the title insurance premiums shown on the Loan Estimate are the same as the total amount of the title insurance premiums calculated under State law or common practice that are disclosed or advertised by title underwriters and title agents.

The Bureau finds that the clear disclosure of the required cost for the lender's title insurance alone, and the additional incremental cost to be paid by the consumer for the optional owner's title insurance premium outweighs the benefit of a technical disclosure of the owner's and lender's title insurance premiums; such a technical disclosure can result in confusion about what the consumer actually may pay if the consumer does not obtain an owner's title insurance policy, as well as removing any need to provide two Loan Estimates, as one commenter suggested. The Bureau intends to address issues surrounding title insurance, including the differing technical manners in which title insurance premiums are calculated, as part of updates to the special information booklet prescribed by RESPA that the Bureau intends to revise prior to the effective date of this final rule. See the section-by-section analysis of § 1026.19(g) for more information about the special information booklet. The Bureau also may provide additional guidance to consumers about the nature of title insurance, its potential benefits and costs, and the manner in which premiums are calculated in other ways as part of its ongoing efforts to empower consumers to make financial choices that are in their best short- and long-term interests.

Other commenters stated that other types of owner's title insurance policies, which have rates different from those of the basic owner's title policy premium, should be permitted to be listed on the Loan Estimate. The commenters stated that some real estate sales contracts will designate that the consumer or seller will obtain an ''enhanced'' owner's title insurance policy. The Bureau believes that more flexibility to address the variation of residential real estate contracts is appropriate and is revising comment 37(g)(4)–1 to address this possibility.

www.oldrepublictitle.com/newnational/resources/locations.asp, *http://tfc.firstam.com/Calculator*, and *http://ratecalculator.fnf.com/*.

[277] The other manners in which title insurance rates are calculated include a proportional discount on both policy premiums, rates that do not include simultaneous issuance calculations, no additional premium for a lender's title insurance policy when an owner's title insurance policy is issued, and no additional premium for an owner's title insurance policy when a lender's title insurance policy is issued.

[278] While the aggregate amount paid for title insurance premiums would decrease when an owner's title policy is not purchased, the amount charged for the lender's title insurance can increase substantially from the amount disclosed when a simultaneous issuance rate is used. As an example, the lender's title insurance premium would increase by an amount between $15 and $1,455 in a transaction with a purchase price of $240,000 and with a purchase money loan of $211,000. These amounts assume that the title insurance policies obtained would be standard ALTA Loan and Owner policies without endorsements (or jurisdictional equivalents), excluding any applicable taxes and fees or other discounts. The amounts were determined by a review of publicly available title insurance rates from national title insurance underwriters, found at *http://www.oldrepublictitle.com/newnational/resources/locations.asp*, *http://tfc.firstam.com/Calculator*, and *http://ratecalculator.fnf.com/*.

[279] Maryland requires that title insurance agents provide a disclosure of the owner's title insurance premium and the lender's title insurance premium consistent with the manner that would have been mandated by proposed comment 37(g)(4)–2. *See* Md. Code Ann., Ins. § 22–102.

Final Rule

Accordingly, the Bureau is adopting § 1026.37(g)(4) and its comments 37(g)(4)–2, –3, and –4 as proposed. Comment 37(g)(4)–1 is being modified to permit the disclosure of an ''enhanced'' owner's title insurance policy premium when the creditor knows that an ''enhanced'' owner's title insurance policy is required by the real estate sales contract. The Bureau is adopting the requirements in § 1026.37(g)(4) pursuant to its authority under TILA section 105(a) and RESPA section 19(a) because disclosure of payments that consumers are likely to pay in a mortgage transaction will educate consumers about costs they must be prepared to pay at closing, thereby promoting the informed use of credit and more effective advance disclosure of settlement costs, which are purposes of TILA and RESPA, respectively. Dodd-Frank Act sections 1032(a) and 1405(b) are also sources of authority for this requirement. This information ensures that the features of the mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the transaction in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). Furthermore, for the reasons stated above in relation to residential mortgage loans, the disclosure is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

37(g)(5) Total Other Costs

The Bureau's proposed § 1026.37(g)(5) would have required disclosure under the subheading ''Total Other Costs'' of the sum of the subtotals disclosed pursuant to § 1026.37(g)(1) through (g)(4). The Bureau did not receive comments related to proposed § 1026.37(g)(5). Accordingly, the Bureau is adopting § 1026.37(g)(5) as proposed. The Bureau is adopting the requirements in § 1026.37(g)(5) pursuant to its authority under TILA section 105(a) and RESPA section 19(a) because disclosure of the total of the charges consumers must pay, in addition to charges for consummating the loan, will promote the informed use of credit and more effective advance disclosure of settlement costs, which are purposes of TILA and RESPA, respectively. Dodd-Frank Act sections 1032(a) and 1405(b) are also sources of authority for this requirement. This information ensures that the features of the mortgage transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). Furthermore, for the reasons stated above in relation to residential mortgage loans, the disclosure is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

37(g)(6) Total Closing Costs

The Bureau's proposed § 1026.37(g)(6) would have required the disclosure under the subheading ''Total Closing Costs'' of a subtotal of the items disclosed as ''Total Loan Costs'' and ''Total Other Costs'' pursuant to § 1026.37(f)(4) and (g)(5); the amount of any generalized lender credits to be provided at consummation, stated as a negative number; and the sum of the subtotal of loan and other costs and the negative amount of lender credits. Proposed comment 37(g)(6)(ii)–1 would have clarified that generalized lender credits not associated with a particular service are disclosed under § 1026.37(g)(6)(ii), but lender credits for specific items disclosed on the Loan Estimate are disclosed as paid by others on the Closing Disclosure under § 1026.38(f) and (g), as applicable.

Commenters had varying suggestions related to how to show lender credits on the Loan Estimate. One large bank commenter, along with other commenters, stated that these lender credits should be able to be itemized on the Loan Estimate, to indicate which charge under § 1026.37(f) and (g) would be offset by the lender credit. Other commenters suggested that the lender credits should offset the total of the loan costs disclosed under § 1026.37(f). A regional trade association commenter stated that there is no value in disclosing a cost and then providing an offsetting credit for the same amount if the creditor intends to cover the entire cost of the service. Rather, the regional trade association commenter stated it would be better if the charge for that service was omitted from the items disclosed under § 1026.37(f) or (g). A different State trade association stated that the disclosure of lender credits is much improved under § 1026.37. Some commenters questioned how what they described as ''no-cost'' loans, referring to loans for which the creditor provides a general credit to offset closing costs (which is typically recouped by the creditor with a higher interest rate), should be disclosed.

The disclosure of lender credits on the Loan Estimate points to a tension between having an accurate and comprehensive disclosure of the costs associated with the extension of credit and the fact that the Loan Estimate is disclosed early enough in the real estate settlement process that the exact extent of the services required, and services that may not be required, is not completely known by the creditor at the time the Loan Estimate is issued. To merely ignore services that are most likely going to be obtained if a creditor intends to pay for the service would be an unreliable standard for a consumer. Information regarding the services for which the consumer will be likely to pay, either directly or through a higher interest rate, may be useful to consumers when comparison shopping or understanding the nature of the mortgage loan transaction. The lack of specific credits on the Loan Estimate also facilitates comparison shopping, since a consumer would have to analyze the extent that specific credits are being utilized by the creditor to offset charges in the aggregate. Allowing specific credits on the Loan Estimate also could lead creditors to include charges with an offsetting credit even when the creditor does not require a specific service, increasing information overload and reducing the ability of consumers to identify loans with terms that are better for their particular situation. Ignoring specific credits for services the creditor intends to pay also can reduce the accuracy of the cash to close amount disclosed under § 1026.37(h).

Accordingly, the Bureau is adopting § 1026.37(g)(6) and its accompanying commentary substantially as proposed, except with minor modifications to provide clarity and to indicate that if there is no amount for lender credits disclosed under § 1026.37(g)(6), the disclosure should be left blank, to reduce the amount of numbers on one page and the potential for information overload. In addition, the Bureau is adopting additional comment 37(g)(6)(ii)–2 to clarify that any credit disclosed pursuant to § 1026.37(g)(6)(ii) should be sufficient to cover the total amount of closing costs disclosed under § 1026.37(f) and (g) that the creditor has represented to the consumer are covered by the credit under the terms of the loan.

The Bureau is adopting the requirements in § 1026.37(g)(6) pursuant to its authority under TILA section 105(a) and RESPA section 19(a) because disclosure of the total amounts consumers must pay to consummate the loan and close the property transaction will promote the informed use of credit and more effective advance disclosure of settlement costs, which are purposes

of TILA and RESPA respectively. Dodd-Frank Act sections 1032(a) and 1405(b) are also sources of authority for this requirement. This information ensures that the features of mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). Furthermore, for the reasons stated above in relation to residential mortgage loans, the disclosure is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

37(g)(7) Item Descriptions and Ordering

The Bureau's proposed § 1026.37(g)(7) would have required the creditor, in identifying the items listed as Other Costs, to use terminology that briefly and clearly describes the item. All items would have been required to be listed in alphabetical order following the items prescribed to be included under the subheading.

As with proposed § 1026.37(f)(6), commenters generally objected to the requirement to list the items in alphabetical order under the applicable subheading, but did not propose an alternative method of ordering the items. Since the descriptions can vary from jurisdiction to jurisdiction and creditor to creditor, while still meeting the requirement that each item be described, there does not appear to be any method to order the items without defining the services provided in residential real estate transactions. Some commenters stated that the Bureau should define these services. However, the Bureau did not propose any such definitions or standardized descriptions. Accordingly, as discussed above in the section-by-section analysis of § 1026.37(f)(6), the Bureau believes it would not be appropriate to finalize any such definition or standard descriptions in this final rule. The Bureau believes that the requirement as proposed will enable consumers to understand the charges, and locate charges more easily. At the Bureau's consumer testing, consumers were able to use the descriptions and order of the charges to identify and compare charges between Loan Estimates. *See* Kleimann Testing Report at 280–83.

Accordingly, the Bureau is adopting § 1026.37(g)(7) substantially as proposed, but as with § 1026.37(f)(5), is not adopting the requirement to briefly and clearly describe the disclosed items, because the Bureau believes that the clear and conspicuous standard in § 1026.17(a)(1) is sufficient to provide clarity concerning how to describe the items on the Loan Estimate. The Bureau is adopting the requirements in § 1026.37(g)(7) pursuant to its authority under TILA section 105(a) and RESPA section 19(a) because a consistent listing of the costs that appear on the Loan Estimate and the Closing Disclosure will facilitate the consumer's comparison of the two disclosure documents and understanding of the transaction as a whole, thereby promoting the informed use of credit and more effective advance disclosure of settlement costs, which are purposes of TILA and RESPA, respectively. This requirement also will ensure that the features of mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). The Bureau is also adopting new comment 37(g)(7)–1 to refer to comment 37(f)(5)–1 for guidance.

37(g)(8) Use of Addenda

The Bureau's proposed § 1026.37(g)(8) would have provided that addenda may not be used to itemize disclosures required by § 1026.37(g). If the creditor is not able to itemize all of the charges required to be disclosed in the number of lines provided under a subheading, the remaining charges would have been required to be disclosed as an aggregate amount in the last line permitted using the label ''Additional Charges'' under the applicable subheading. Proposed comment 37(g)(8)–1 would have clarified that a creditor is permitted to provide additional disclosures that are required by State law, as long as those disclosures are provided on a separate document whose pages are physically separate from, and are not presented as part of, the disclosures provided in accordance with § 1026.37.

The Bureau did not receive comments related to proposed § 1026.37(g)(8). Accordingly the Bureau is adopting § 1026.37(g)(8) and its accompanying commentary as proposed. The Bureau is adopting the requirements in § 1026.37(g)(8) pursuant to its authority under TILA section 105(a) and RESPA section 19(a) because standardization of the information provided on the disclosures required under § 1026.19(e) will provide consistent information that consumers will be able to use to better understand the mortgage transaction, shop for loans, and compare the Loan Estimate with any revised Loan Estimate and the Closing Disclosure, thereby promoting the informed use of credit and more effective advance disclosure of settlement costs, which are purposes of TILA and RESPA, respectively. This standardization will also ensure that the features of the mortgage transaction are fully, accurately, and effectively disclosed to consumers in a manner that permit consumers to more readily understand the costs, benefits, and risks associated with the mortgage transaction in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a), which is also a source of authority for the proposed requirements.

37(h) Calculating Cash To Close

The Bureau's proposed § 1026.37(h) would have required the disclosure of the calculation of an estimate of the cash needed from the consumer at consummation of the transaction using the heading ''Calculating Cash To Close.'' Proposed comment 37(h)–1 would have clarified that the labels to be used on the Loan Estimate for each amount must match its description in proposed § 1026.37(h)(1) to (7) and would have referred to form H–24(A) of appendix H for illustrations.

Several commenters generally said that the Calculating Cash To Close table disclosed under § 1026.37(h) was difficult to apply in a transaction that did not include a seller and provided several suggested alternatives to address the differing nature of these types of transactions. Several commenters also stated that the estimated cash to close would appear as a negative number for transactions where a consumer was receiving cash at consummation and stated that consumers generally have difficulty in understanding negative numbers. Two national industry trade association commenters provided examples of suggested replacement tables for transactions without a seller, both of which started with the loan amount and then deducted payoffs and closing costs from the loan amount.

Based on these comments and a review of the differing nature of transactions that do not include a seller, the Bureau developed an alternative table for these types of transactions that starts with the loan amount and then deducts closing costs and payoffs from the loan amount to determine the amount of cash to or from the consumer. The alternative Calculating Cash To Close table reduced the number of variables to only three in the calculation of the estimated cash to or from the consumer at consummation and used check boxes to indicate whether the amount would be paid to or from the consumer at consummation. The Bureau tested this alternative Calculating Cash To Close table in three rounds of

qualitative testing using a refinance transaction in which the consumer was receiving cash from the transaction, as well as a refinance transaction in which the consumer had to pay cash at consummation, to examine whether the shorter table was clearer to consumers. The testing compared the proposed table with the alternative table in such transactions. The testing established that consumers did understand the alternative table more readily in refinance transactions. While some consumers did realize that a negative number indicated the amount of cash that a consumer would receive at consummation in the proposed table, the alternative table provided the same information in a format that consumers more readily understood. *See* Kleimann Post-Proposal Testing Report at 54–55. The Bureau recognizes that either Calculating Cash To Close table can accurately disclose the amount of cash due to or from the consumer at consummation, and as such, is finalizing the alternative table as an option that a creditor can choose to provide, so long as it also provides the optional alternative disclosure under § 1026.37(d)(2), as well. In order to provide the optional disclosure, the Bureau is modifying the numbering of the provisions of proposed § 1026.37(h) to add for this optional alternative Calculating Cash To Close table under § 1026.37(h)(2).

One large bank commenter stated that it was unreasonable to require the creditor to know the amount of the deposit, payments to others, and funds that the consumer will have to pay at consummation. However, these amounts only have to be disclosed to the extent that the creditor knows the information at the time the Loan Estimate is delivered provided the creditor complies with the good faith requirement under § 1026.19(e)(1)(i). In addition, as discussed in the section-by-section analysis of § 1026.19(f), the cash to close can change before consummation.

The Bureau is adopting § 1026.37(h) as modified to add an optional calculation of cash to close for transactions that do not have a seller, as noted above, and described in further detail below. The Bureau is adopting the requirements in § 1026.37(h) pursuant to its authority under TILA section 105(a) and Dodd-Frank Act section 1032(a) because this disclosure will ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product, in light of the facts and circumstances.

37(h)(1) For All Transactions

37(h)(1)(i) Total Closing Costs

The Bureau's proposed § 1026.37(h)(1) would have required that the total closing costs be disclosed as calculated under § 1026.37(g)(6) as a positive number. Commenters did not provide any specific response to the inclusion of the total closing costs in the cash to close table. Accordingly, the Bureau is adopting proposed § 1026.37(h)(1) as § 1026.37(h)(1)(i).

37(h)(1)(ii) Closing Costs To Be Financed

The Bureau's proposed § 1026.37(h)(2) would have required that the amount of the closing costs to be paid from mortgage loan proceeds would be disclosed as a negative number. Commenters stated that proposed § 1026.37(h)(2) did not specify a method to calculate the amount of closing costs to be paid from mortgage loan proceeds. Accordingly, the Bureau is adopting proposed § 1026.37(h)(2) as § 1026.37(h)(1)(ii) and adopting comment 37(h)(1)(ii)–1 to clarify that the amount of closing costs financed is determined by subtracting the estimated total amount of payments to third parties not otherwise disclosed pursuant to § 1026.37(f) and § 1026.37(g) from the total loan amount. If the result of the calculation is positive, that amount is disclosed under § 1026.37(h)(1)(ii), but only to the extent that it does not exceed the total amount of closing costs disclosed under § 1026.37(g)(6). For example, assume that a mortgage loan amount is $250,000, the estimated amount of all outstanding mortgage loans secured by the real property total $200,000, and the total estimated closing costs disclosed under § 1026.37(g)(6) are $10,000; the amount disclosed under § 1026.37(h)(1)(ii) is −$10,000, since the result of the difference between the mortgage loan amount and the estimated amount of all outstanding mortgage loans secured by the real property is positive $50,000, but since there are only $10,000 in closing costs, the amount disclosed is limited to −$10,000.

37(h)(1)(iii) Downpayment and Other Funds From Borrower

The Bureau's proposed § 1026.37(h)(3) would have required disclosure of the amount of the downpayment and other funds from the consumer at consummation to be disclosed as a positive number. In a purchase transaction the downpayment would have been calculated as the difference between the purchase price of the property and the principal amount of the credit. In all other transactions, the funds from the consumer would have been calculated pursuant to proposed § 1026.37(h)(5).

One non-depository lender commenter supported the inclusion of the downpayment in the table. Other commenters did not comment on proposed § 1026.37(h)(3), except to the extent that any amount disclosed under proposed § 1026.37(h)(3) is based on the calculation provided under 1026.37(h)(5), as discussed below. Accordingly, the Bureau is adopting proposed § 1026.37(h)(3) as § 1026.37(h)(1)(iii) and also comment 37(h)(1)(iii)–1 to clarify that in the case of a transaction where the loan amount exceeds the purchase price of the property (other than a construction loan), the amount of the downpayment disclosed must be $0.

37(h)(1)(iv) Deposit

The Bureau's proposed § 1026.37(h)(4) would have required that the amount that is paid to the seller or held in trust or escrow by a third party pursuant to the terms of a contract for sale of real estate be disclosed as a negative number. Proposed comment 37(h)(4)–1 would have clarified that in any transaction other than a purchase transaction, the amount disclosed under proposed § 1026.37(h)(4) must be $0.

Two GSE commenters stated that the deposit disclosed under proposed § 1026.37(h)(4) should provide additional information concerning the source of funds that the consumer utilized to pay the seller or place in trust or escrow by a third party pursuant to the terms of a contract for sale of real estate. However, the source of funds is not a required disclosure under TILA or RESPA. It appears that the commenters proposed additional disclosures to establish a certification of the source of funds for the purpose of establishing compliance with their own requirements or enabling identification of fraudulent transactions more easily. The Bureau believes that the primary interest in a disclosure to a consumer is to disclose the transaction to the consumer and not to be a document to assist with the procedures of market participants. If the interests align or a modification can be made to align the interests without confusing consumers or making the disclosures more difficult to understand, the Bureau will consider such a modification. However, the Bureau believes any modification of this line of the Calculating Cash to Close table to indicate the source of funds likely would result in the need for

additional pages and information overload for consumers. Alternative information can be provided by the consumer in the course of the underwriting of the transaction to demonstrate compliance with secondary market requirements. Accordingly, the Bureau is adopting § 1026.37(h)(1)(iv) and comment 37(h)(4)–1 as proposed, but redesignating them § 1026.37(h)(1)(iv) and comment 37(h)(1)(iv)–1, respectively.

37(h)(1)(v) Funds for Borrower

The Bureau's proposed § 1026.37(h)(5) would have required that the amounts to be disclosed under both proposed § 1026.37(h)(3) and proposed § 1026.37(h)(5) are calculated by subtracting the amount of debt being satisfied by the real estate transaction from the amount of the credit extended by the new loan, excluding any amount under proposed § 1026.37(h)(2) because that amount of the credit extended already has been accounted for in the cash to close calculation by inclusion in proposed § 1026.37(h)(2). ''Funds for Borrower'' was intended to represent generally the amount anticipated to be disbursed to the consumer or used at the consumer's discretion at consummation of the transaction, such as in cash-out refinance transactions. The determination of whether the transaction will result in ''Funds for Borrower'' would have been made under proposed § 1026.37(h)(5). When the result of the calculation would have been positive, that amount would have been disclosed under proposed § 1026.37(h)(3), and $0 would have been disclosed under proposed § 1026.37(h)(5). When the result of the calculation would have been negative, that amount would have been disclosed under proposed § 1026.37(h)(5), and $0 would have been disclosed under proposed § 1026.37(h)(3). When the result would have been $0, $0 would have been disclosed in both proposed § 1026.37(h)(3) and proposed § 1026.37(h)(5).

Two national industry trade association commenters stated that they were confused concerning proposed § 1026.37(h)(5) when comparing the requirements to the examples provided in the forms and comments in appendix H to Regulation Z of the proposed rule. These commenters appear to have misunderstood that the calculation under proposed § 1026.37(h)(5) would apply only to the amounts disclosed under proposed § 1026.37(h)(3) in a transaction that is not disclosed as a ''purchase'' transaction under proposed § 1026.37(a)(9)(i). The confusion arose when the commenters applied the calculation under proposed § 1026.37(h)(5) to determine the amount disclosed under proposed § 1026.37(h)(3) in a sample purchase transaction, which would have been inconsistent with proposed § 1026.37(h)(3)(i). Other than these comments, commenters did not address the calculation method discussed in proposed § 1026.37(h)(5). Accordingly, the Bureau is adopting proposed § 1026.37(h)(5) as § 1026.37(h)(1)(v), and adopting comment 37(h)(1)(v)–1 to clarify that the calculation under § 1026.37(h)(1)(v) is used in a non-purchase transaction to determine the amount disclosed under § 1026.37(h)(1)(iii), and that, in a purchase transaction, other than a construction loan transaction, the result of the calculation under § 1026.37(h)(1)(v) will result in the amount of $0 being disclosed under § 1026.37(h)(1)(v).

37(h)(1)(vi) Seller Credits

The Bureau's proposed § 1026.37(h)(6) would have required that the amount of any seller credit, to the extent known by the creditor, is disclosed as a negative number. Proposed comment 37(h)(6)–1 would have clarified that seller credits known by the creditor at the time of application are disclosed under proposed § 1026.37(h)(6), and that seller credits that are not known by the creditor at that time are not disclosed under proposed § 1026.37(h)(6).

Three national industry trade association commenters questioned how to disclose seller credits for specific charges, to the extent they are known by the creditor at the time the Loan Estimate is provided. The Bureau believes that additional clarification should be provided, and is modifying proposed comment 37(h)(6)–1 and adding comment 37(h)(6)–2 to address this comment. One national industry trade association commenter stated, as an alternative suggestion, that any specific charges that are encompassed by a seller credit should mean that the item so covered should be omitted from disclosure on the Loan Estimate entirely. This, however, would work against the provision of early, accurate information to the consumer of the costs associated with the extension of credit. The amount and size of any and all credits, including credits from the seller and the creditor, can be and often are the subject of negotiation during the real estate settlement process. A consumer that does not have the basic knowledge of the cost of a particular service does not have the information needed to determine the value of an offered concession. In addition, section 1419 of the Dodd-Frank Act amended TILA to require that the creditor disclose ''the aggregate amount of settlement charges for all settlement services provided in connection with the loan . . .'' 15 U.S.C. 1638(a)(17). This requirement is not limited to those charges paid by the consumer, which are subject to separate disclosure pursuant to another clause of that section. In addition, the consumer ultimately would be liable to pay for many of the services if the seller did not provide the credit at closing for some reason, and thus, the Bureau believes the consumer should be provided the information about the required and likely costs of the transaction.

Accordingly, the Bureau is adopting proposed § 1026.37(h)(6) and proposed comment 37(h)(6)–1 as § 1026.37(h)(1)(vi) and comment 37(h)(1)(vi)–1, respectively, and also is adopting comment 37(h)(1)(vi)–2, which clarifies that seller credits for specific charges disclosed under § 1026.37(f) or § 1026.37(g) can be disclosed as the total of the estimated charge for those specific items that the seller has agreed to pay, to the extent known by the creditor.

37(h)(1)(vii) Adjustments and Other Credits

The Bureau's proposed § 1026.37(h)(7) would have required that the amount of other credits for all loan costs and other costs, to the extent known, that are to be paid by persons other than the loan originator, creditor, consumer, or seller be disclosed as a negative number. Proposed comment 37(h)(7)–1 would have clarified that amounts expected to be paid by third parties not involved in the transaction, such as gifts from family members and not otherwise identified under proposed § 1026.37(h), would be included in this amount to the extent known by the creditor. Proposed comment 37(h)(7)–2 would have clarified that the term ''persons'' as used in proposed § 1026.37(h)(7) includes all individuals and any entity, regardless of the legal structure of such entity. Proposed comment 37(h)(7)–3 would have clarified that only credits from parties other than the creditor or seller can be disclosed pursuant to proposed § 1026.37(h)(7). Seller credits and credits from the creditor would have been disclosed pursuant to proposed § 1026.37(h)(6) and § 1026.37(g)(6)(ii), respectively. Proposed comment 37(h)(7)–4 would have clarified that other credits known by the creditor at the time of application are disclosed under proposed § 1026.37(h)(7) and that other credits that are not known by the

creditor are not disclosed under proposed § 1026.37(h)(6).

A national industry trade association commenter requested further clarification as to the identity of any adjustments that would be included under proposed § 1026.37(h)(7). Another national industry trade association commenter stated that the proceeds from a subordinate-lien loan should be applied to the Calculating Cash to Close table, but did not specify the appropriate place for inclusion in the table. In some cases, subordinate financing may not be known or set at the time the Loan Estimate will be provided. Consumers also can use disclosures related to the amounts of the subordinate financing, whether through the use of integrated disclosures or other information provided from the source of the alternative financing if the subordinate financing is not subject to the integrated disclosures, in order to determine if the consumer can provide sufficient funds to complete the transaction.

Accordingly, the Bureau is adopting proposed § 1026.37(h)(7) and proposed comments 37(h)(7)–1, –2, and –3 as § 1026.37(h)(1)(vii) and comments 37(h)(1)(vii)–1, –2 and–3, respectively. The Bureau also is adopting proposed comment 37(h)(1)(vii)–4 with modification, and adopting new comments 37(h)(1)(vii)–5 and –6 to provide greater clarity regarding the items to be disclosed, and to clarify how to include proceeds from subordinate financing and adjustments to the amount disclosed under § 1026.37(h)(1)(vii).

37(h)(1)(viii) Estimated Cash To Close

The Bureau's proposed § 1026.37(h)(8) would have required that the total of the amounts disclosed under proposed § 1026.37(h)(1) to (7) be disclosed. Proposed comment 37(h)(8)–1 would have clarified that the sum total of proposed § 1026.37(h)(1) through (7) must be disclosed pursuant to proposed § 1026.37(h)(8) as either a positive number, a negative number, or zero. The comment would have further clarified that a positive number would have indicated the estimated amount that the consumer can be expected to pay at consummation to complete the transaction. A negative number would have indicated the estimated amount that the consumer can receive from the transaction at consummation. A result of zero would have indicated that the consumer is anticipated neither to pay any amount nor receive any amount from the transaction at consummation. Commenters did not address directly the disclosure of the total of the amounts disclosed under proposed § 1026.37(h)(1) to (7) or under proposed § 1026.37(h)(8), except to the extent that they stated that the disclosure of a negative number may be confusing to consumers, as discussed above. Accordingly, the Bureau is adopting proposed § 1026.37(h)(8) and comment 37(h)(8)–1 as § 1026.37(h)(1)(viii) and comment 37(h)(1)(viii)–1, respectively.

37(h)(2) Optional Alternative Calculating Cash To Close Table for Transactions Without a Seller

The Bureau, as discussed above, recognizes that in many transactions without a seller the level of detail of the Calculating Cash To Close table may not be necessary for such transactions because of the different nature of the transaction. For example, prorations of real property taxes between the consumer and seller, which would be disclosed to the extent known by the creditor under § 1026.37(h)(1)(vii) would not need to be disclosed in a transaction without a seller. In addition, there would not be a deposit under a purchase and sale contract for the real estate to be disclosed under § 1026.37(h)(1)(iv). Therefore, such items do not need to be reflected in the Calculating Cash To Close table in those types of transactions. As discussed in the section-by-section analysis of § 1026.37(d) above, the Bureau is responding to comments and the results of consumer testing the Bureau conducted after issuance of the proposal that indicate that negative numbers are confusing for consumers. In addition, the Bureau is responding to comments that stated that the loan amount would be an appropriate start for any disclosure of cash to close. The determination of cash to close in these transactions can be simplified to three elements in a straightforward calculation methodology to determine either the amount of cash the consumer needs to provide at consummation to complete the transaction or the amount of cash the consumer will receive at consummation. The loan amount less the sum total of closing costs and other payments from loan proceeds at consummation will provide the total amount of cash needed from the consumer or that is due to the consumer at consummation. Any determination of the amount of closing costs that are being financed is the result of a calculation, not a variable in the calculation. Closing costs are financed to the extent that the total amount of other payments made from loan proceeds are less than the loan amount. Any such amounts left over are utilized by the consumer to pay for closing costs, up to the full amount of closing costs.

Accordingly, the Bureau is adopting this optional alternative calculation methodology for the Calculating Cash To Close table as § 1026.37(h)(2), as further described below. The Bureau also is adopting comment 37(h)(2)–1, which clarifies that the optional cash to close table under § 1026.37(h)(2) can only be used in a transaction without a seller and is completely optional but must be used in conjunction with the alternative optional costs at closing table disclosure under § 1026.37(d)(2).

Pursuant to its authority under TILA section 105(a), RESPA section 19(a), and Dodd-Frank section 1032(a), the Bureau is requiring creditors to provide an estimated table in order to disclose to the consumer how the estimated amount of cash needed at consummation to or from the consumer is calculated. This disclosure will effectuate the purposes of TILA by promoting the informed use of credit and will ensure the features of the mortgage transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, because it will indicate to the consumer the amount the consumer will have to pay at consummation of the credit transaction and closing of the real estate transaction.

37(h)(2)(i) Loan Amount

The Bureau is adopting § 1026.37(h)(2)(i), which requires the disclosure of the loan amount as disclosed under § 1026.37(b)(1) on the first line of the optional table with the label ''Loan Amount.''

37(h)(2)(ii) Total Closing Costs

The Bureau is adopting § 1026.37(h)(2)(ii), which requires the disclosure of the total closing costs as disclosed under § 1026.37(g)(6) as a negative number on the second line of the optional table with the label ''Total Closing Costs.''

37(h)(2)(iii) Payoffs and Payments

The Bureau is adopting § 1026.37(h)(2)(iii), which requires the disclosure of the total of all payments to third parties as part of the transaction not otherwise disclosed pursuant to § 1026.37(f) and (g) as a negative number, to the extent known to the creditor at the time the Loan Estimate is being issued, on the third line of the optional table with the label ''Total Payoffs and Payments.'' The Bureau also

is adopting comment 37(h)(2)(iii)–1 to clarify the types of payoffs and payments disclosed by providing examples of such payoffs and payments.

37(h)(2)(iv) Cash To or From Consumer

The Bureau is adopting § 1026.37(h)(2)(iv), which requires that the absolute value of the sum of § 1026.37(h)(2)(i), (ii), and (iii) be disclosed with a statement of the estimated amount due to or from the consumer on the fourth line of the optional table with the label ''Cash to Close.'' The Bureau is also adopting comment 37(h)(2)(iv)–1 to clarify the method by which a creditor indicates the estimated amount of cash due to or from the consumer by the use of check boxes as illustrated by form H–24(D) in appendix H to Regulation Z.

37(h)(2)(v) Closing Costs Financed

The Bureau is adopting § 1026.37(h)(2)(v), which requires that the sum of the amounts disclosed under § 1026.37(h)(2)(i) and (iii) be disclosed, but only to the extent that the calculation results in a positive amount no greater, and only up to the total amount of closing costs disclosed under § 1026.37(g)(6), labeled as ''Closing Costs Financed (Paid from your Loan Amount).'' The Bureau is also adopting comment 37(h)(2)(v)–1 to clarify that the amount disclosed under § 1026.37(h)(2)(v) cannot exceed the total amount of closing costs disclosed under § 1026.37(g)(6), even if the calculation results in an amount in excess of the sum disclosed under § 1026.37(g)(6). This calculation subtracts the total payoffs and payments from the loan amount and attributes the loan funds remaining to the financing of closing costs, and accordingly, the disclosed amount cannot exceed the total amount of closing costs. Although not part of the optional alternative table, the disclosure of the estimated closing costs financed is required pursuant to Dodd-Frank Act section 1419, which modified TILA section 128(a)(17). Accordingly, the Bureau is requiring the disclosure of this amount under § 1026.37(h)(2)(v) in conjunction with the optional alternative Calculating Cash to Close table.

37(i) Adjustable Payment Table

For certain credit transactions secured by a dwelling, TILA section 128(b)(2)(C)(ii) requires the disclosure of examples of adjustments to the regular required payment on the extension of credit based on the change in the interest rates specified by the contract. Among the examples must be the maximum regular required payment based on the maximum interest rate allowed under the contract. While this section requires examples based on changes to the interest rates, the requirement is triggered if either the interest rate may change or the ''regular payments may otherwise be variable.'' 15 U.S.C. 1638(b)(2)(C)(ii). TILA section 128(b)(2)(C)(ii) does not, however, require the disclosure of the existence of loan terms that may cause the periodic payment to adjust without a change to the interest rate.

Proposed § 1026.37(i) would have required an Adjustable Payment (AP) table to disclose examples of the required periodic principal and interest payment, including the maximum possible required principal and interest payment, for loans with terms that allow the principal and interest payment to adjust not based on adjustments to the interest rate. In contrast, proposed § 1026.37(j) would have required provision of an Adjustable Interest Rate (AIR) table for credit transactions with terms that permit the interest rate to adjust after consummation. Proposed § 1026.37(i)(1) through (3) would have required the disclosure to state affirmatively or negatively whether the loan has an interest only, payment-option, or step-payment period, and the length of such period. Proposed § 1026.37(i)(4) also would have required the disclosure to state affirmatively or negatively whether the loan has a seasonal payment feature and the period during which periodic payments are affected by such feature. As discussed above with respect to proposed § 1026.37(a)(10), the Bureau stated in the proposal that it understood that some loans may be structured so that periodic principal and interest payments are not required to be made by the consumer in between specified unit-periods on a regular basis.

Proposed § 1026.37(i)(5) would have required disclosure of principal and interest payments, including: (i) The number of the payment of the first periodic principal and interest payment that may change; (ii) the frequency of subsequent changes to the periodic principal and interest payment; and (iii) the maximum periodic principal and interest payment that may occur during the term of the transaction, and the first payment that can reach such maximum. Proposed comment 37(i)(5)–1 would have clarified that the applicable unit-period should be disclosed in the subheading required by proposed § 1026.37(i)(5). Proposed comment 37(i)(5)–2 would have provided guidance on how to disclose the first payment adjustment required to be disclosed by § 1026.37(i)(5)(i) when the exact payment number is unknown at the time of the disclosure. Proposed comment 37(i)(5)–3 would have provided guidance regarding how to disclose the frequency of adjustments to the periodic principal and interest payment after the initial adjustment, as required by § 1026.37(i)(5)(ii). Proposed comment 37(i)(5)–4 would have provided guidance regarding how to calculate the maximum periodic principal and interest payment for purposes of the disclosure required by proposed § 1026.37(i)(5)(iii). Proposed comment 37(i)(5)–5 would have provided guidance regarding the disclosure of payments that do not pay principal.

Proposed comment 37(i)–1 would have clarified that under § 1026.37(i), the AP table may only be disclosed if the periodic principal and interest payment may change after consummation based on an adjustment that is not an adjustment to the interest rate, or if the transaction is a seasonal payment product as described in § 1026.37(a)(10)(ii)(E). As proposed, the creditor would not be permitted to disclose the table if the loan terms do not meet these requirements, even if the table were left blank. The format of the proposed table as required by § 1026.37(o), and as illustrated by form H–24, including sample form H–24(C) of appendix H, would have provided the affirmative or negative statement in bold text in the form of a question and answer. In addition, the examples of the periodic principal and interest payments would have been set apart from these answers by a subheading in bold font. The Bureau stated its belief in the proposal that, based on consumer testing, this format displays the information in a readily visible, clear, and understandable manner for consumers. Proposed comment 37(i)–1 further would have referenced comment 37–1, which, as finalized, clarifies that the general permission in proposed § 1026.37 to leave inapplicable disclosures blank is subject to the more specific prohibition in § 1026.37(i), which does not permit disclosure of the AP table when it is not applicable. Proposed comment 37(i)–2 would have provided guidance and examples of how the information required by proposed § 1026.37(i)(1) through (4) should be disclosed.

The format that would have been required by proposed § 1026.37(o), and illustrated by forms H–24, including a sample form H–24(C) of appendix H, provides that the information required by proposed § 1026.37(i) must be disclosed in a concise, organized table. This table would have appeared

immediately adjacent to the AIR Table required by proposed § 1026.37(j) for loans that also permit the interest rate to adjust after consummation. The AP table would have used bold font for the questions and capitalized ''yes'' and ''no'' text for the answers required by proposed § 1026.37(i)(1), (2), (3), and (4). The AP table also would have used bold text for the subheading required by proposed § 1026.37(i)(5). Based on its testing, the Bureau believes this format displays the information in a clear, readily visible, and understandable manner for consumers.

The Bureau stated its belief in the proposal that to promote the informed use of credit, loan terms that may cause the periodic principal and interest payment to adjust without a change to the interest rate (such as an optional payment loan), or may include a period during which the payment may not pay principal (such as an interest only period), or where the consumer is not required to make payments should be clearly disclosed to consumers. In the Bureau's pre-proposal consumer testing, participants generally were able to use this information to evaluate the credit terms of the loan disclosed. For example, the Bureau stated in the proposal that it provided mortgage disclosures for interest only loans to participants using a prototype of an ''adjustable payment table'' at its consumer testing. The proposed table would have displayed whether the loan had an interest only, optional-payment, or step-payment period; the length of such period; the amount of the periodic principal and interest payment at the first adjustment; the frequency and amounts of subsequent adjustments; and the maximum possible principal and interest payment under the terms of the loan. As stated in the proposal, participants were able to use this table to determine the presence of the interest only period and the length of the period, as well as how the principal and interest payments would change as a result. Also, participants were able to understand that the purpose of the table generally was to inform them about such features. As described in the proposal, participants also were able to determine from the prototype table that the credit terms did not include one of the other features, such as an optional-payment or step-payment period.

The Bureau proposed these requirements pursuant to TILA section 128(b)(2)(C)(ii), and its authority under TILA section 105(a), section 1032(a) of the Dodd-Frank Act, and, for residential mortgage loans, section 1405(b) of the Dodd-Frank Act. The Bureau proposed to use its authority under TILA section 105(a) to require this information to be disclosed for all transactions subject to § 1026.19(e) and (f). The Bureau believed, as stated in the proposal, that this information may effectuate the purposes of TILA by allowing consumers to compare more readily the different loan terms available to them, and specifically, whether they contain such adjustable or seasonal payment terms. In addition, consistent with section 1032(a) of the Dodd-Frank Act, the Bureau stated that this disclosure would have ensured that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks of the transaction. The Bureau further stated its belief in the proposal that this information may improve consumer awareness and understanding of transactions involving residential mortgage loans and is in the interest of consumers and in the public interest.

One large bank commenter stated that the AP table and the similar AIR table required by proposed § 1026.37(j) are vital for consumers and should be placed on the first page of the Loan Estimate and the Closing Disclosure. In contrast, a credit union commented that the AP and AIR tables were too detailed and would be confusing to consumers and thus should be eliminated from the integrated disclosures altogether. The Bureau received numerous comments from industry objecting to the requirement that the AP and AIR tables be included on the integrated disclosures only for certain transactions because doing so requires programming software for a ''dynamic'' form. These commenters noted that ''static'' forms which are the same for every transaction, such as the current RESPA GFE and RESPA settlement statement, are much less expensive to program. These commenters opined that requiring costly dynamic forms would force industry to pass such costs on to the consumer. Because the comments concern the required formatting of the various parts of the Loan Estimate, they are discussed in the section-by-section analysis of § 1026.37(o), below.

A document preparation company commented that consumers may be confused by the requirement in proposed comment 37(i)–2.iv, regarding seasonal payments, to disclose the months in which payments are *not* made. The commenter requested that instead of disclosing, for example, ''from June to August,'' the disclosure should be ''no payment from June to August.'' A document preparation company further requested guidance on how to disclose a preferred rate product in the AP table.

With respect to commenters' suggestions to either move or delete the AP and AIR tables altogether, based on the Bureau's extensive consumer testing of the integrated disclosures generally and the AP and AIR tables specifically, the Bureau believes that the tables provide valuable information to consumers. Indeed, the Bureau's testing confirms that consumers relied on the AP and AIR tables in making decisions regarding competing loan products. *See* Kleimann Testing Report at 144, 196. On the other hand, while the information disclosed on the AP and AIR tables is important, the Bureau has designed the integrated disclosures to place the information that is used most and that is the most easily understandable by consumers on the first page, with more detailed information provided on subsequent pages. *See* Kleimann Testing Report at xiii. Moreover, § 1026.37(b)(6) requires a statement on the first page of the Loan Estimate referring to the AP and AIR tables if the transaction has an adjustable interest rate or adjustable payment feature. Accordingly, the Bureau declines either to delete the AP and AIR tables or to move them to the first page of the disclosures.

With respect to commenters' criticism of the ''dynamic'' nature of the AP and AIR tables, the Bureau stated its belief in the proposal that the inclusion of the AP table in all transactions would be unduly distracting and confusing to a consumer and could contribute to information overload, especially if an entire table is included only to be left blank. Moreover, requiring disclosure of the AP and AIR tables only for transactions with adjustable interest rates or adjustable payment features makes it immediately obvious when transactions have those features and therefore easier for consumers to compare different loan products. Further, though the Bureau understands that dynamic programming may be more expensive for industry during the initial implementation of the integrated disclosures, software programming is a one-time cost that does not outweigh the expected benefit to consumers of including the AP and AIR tables only when applicable to the transaction.

With respect to the disclosure of months in which seasonal payments are not made, while the Bureau understands the commenter's concern over potential confusion, a seasonal payment loan is a unique product marketed to consumers who likely already understand its seasonal nature. At the very least, the disclosure of ''June to August'' would

put a consumer on notice of irregular payments and encourage a confused consumer to ask questions of the creditor or settlement agent concerning the payment terms. Further, there is limited space on the Loan Estimate and a longer disclosure does not fit in the allowable space. Regarding the request for guidance on preferred rate transactions, consistent with existing comment 17(c)(1)–2.i, where the creditor offers the consumer a preferred rate, the disclosures should reflect the terms of the legal obligation.

For the reasons discussed and pursuant to the legal authority described above and in the proposal, the Bureau is adopting § 1026.37(i), comments 37(i)–1 and –2 substantially as proposed but with minor modifications for clarity, and is adopting comments 37(i)(5)–1, –2 –3, and –5 as proposed. The Bureau is adopting comment 37(i)(5)–4 as proposed with a modification to clarify that in the example of a fixed interest rate optional-payment loan with scheduled payments that result in negative amortization, the maximum payment disclosed should be calculated assuming the consumer elects to make the periodic payment that would increase the principal balance to the maximum amount at the latest time possible.

37(j) Adjustable Interest Rate Table

Currently, TILA does not expressly require disclosure of the interest rate for closed-end credit. However, as noted above, for closed-end credit secured by a dwelling, TILA section 128(b)(2)(C)(ii) requires disclosure of examples of the periodic principal and interest payment based on changes to the interest rate, including the maximum principal and interest payment during the life of the loan. 15 U.S.C. 1638(b)(2)(C)(ii). Regulation Z § 1026.18(s) currently requires, for closed-end credit transactions with adjustable interest rates secured by real property or a dwelling, disclosure of examples of the interest rate and periodic principal and interest payments, including the maximum of these amounts under the terms of the loan. For federally related mortgage loans, § 1024.7(d) of Regulation X currently requires the summary table on page one of the RESPA GFE to disclose the initial interest rate, labeled ''Your initial interest rate is.'' Then below another row of the summary table stating the initial monthly payment, the RESPA GFE states whether the interest rate is adjustable as an affirmative or negative answer, labeled ''Can your interest rate rise?'' If the answer is affirmative, the RESPA GFE states the maximum interest rate and when the first change in the interest rate will occur within the following sentence: ''It can rise to a maximum of ____ %. The first change will be in ____.''

The Bureau stated its belief in the proposal that loan terms that can cause the interest rate to adjust should be clearly disclosed to consumers. At the Bureau's pre-proposal consumer testing, participants generally stated that information regarding potential changes to the interest rate was important in their evaluation of a loan. Participants generally understood that the interest rate affected the amount of interest due under the loan and used the information regarding potential changes to the interest rate to evaluate loans. Although proposed § 1026.37(b)(2) would have provided key information about interest rate adjustments, the Bureau stated in the proposal that it believed more detail regarding an adjustable interest rate is important because it would provide consumers with additional information regarding potential changes to the interest and periodic payments that may be useful in evaluating and comparing loans.

As described in the proposal, the Bureau provided mortgage disclosures for adjustable interest rate loans to participants using a prototype of an ''Adjustable Interest Rate Table'' at its consumer testing. The table displayed information about the index and margin applicable to the loan, the initial interest rate, the minimum and maximum interest rates during the life of the loan, the frequency of changes to the interest rate, and limits on the interest rate changes. Participants in the pre-proposal testing were able to understand that the purpose of the table generally was to inform them about the adjustable interest rate terms under the loan and often used the table to compare adjustable rate loans. The table, as proposed, enabled consumers to determine the interest rate terms of the transaction and to compare two adjustable rate loans with different terms.

Therefore, the Bureau proposed to use its authority under TILA section 105(a), section 1032(a) of the Dodd-Frank Act, and, for residential mortgage loans, section 1405(b) of the Dodd-Frank Act to require more detailed information regarding the terms of an adjustable interest rate to be disclosed in a separate table, called the AIR Table, under proposed § 1026.37(j). As stated in the proposal, the information regarding the index and margin applicable to the interest rate changes, the lifetime cap and floor on the interest rate, and limits on interest rate adjustments are not currently provided together to consumers in a clear, readily visible, and understandable manner. Consumers can find this information within the promissory note, but the Bureau stated in the proposal that consumers typically do not receive the promissory note until they are at the closing table. The Bureau stated its belief in the proposal that disclosure of this information in the Loan Estimate and Closing Disclosure will enable consumers to verify whether these terms have changed during the loan process. The Bureau believed that this is especially important if the index and margin have changed or the lifetime maximum interest rate has changed, because such changes can significantly affect the amounts of periodic payments over the life of the loan.

As described above and in the proposal, participants in the Bureau's pre-proposal consumer testing used much of this information and generally considered interest rate information to be an important factor in evaluating a loan. Participants were able to compare this information between loans and between the disclosures provided after application and prior to loan closing. As stated in the proposal, the Bureau believed this information may enable consumers to understand and compare credit terms more readily, effectuating the purposes of TILA. For similar reasons, the Bureau stated its belief that this disclosure will ensure that the features of the transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks, in light of the facts and circumstances, consistent with section 1032(a) of the Dodd-Frank Act. The Bureau also believed this information will improve consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures, and is in the interest of consumers and in the public interest.

Proposed § 1026.37(j)(1) would have required disclosure of the index and margin for an adjustable rate loan for which the interest rate will adjust according to an external index. For a loan with an interest rate that changes based on scheduled or pre-determined interest rate adjustments and does not also change based on the adjustment of an external index, such as a ''step-rate'' product, proposed § 1026.37(j)(2) would have required disclosure of the amount of any adjustments to the interest rate that are scheduled and their frequency. Pursuant to proposed § 1026.37(j)(3) through (6), the table also would have required disclosure of: (i) The interest rate at consummation of the loan transaction; (ii) the minimum and

maximum possible interest rates after the introductory rate expires; (iii) the maximum possible change for the first adjustment of the interest rate; (iv) the maximum possible change for subsequent adjustments of the interest rate; (v) the number of months after interest for the first regularly scheduled periodic principal and interest payment begins to accrue when the interest rate may first change; and (vi) the frequency of subsequent interest rate adjustments.

Proposed comment 37(j)–1 would have clarified that the table required by proposed § 1026.37(j) may only be provided in the Loan Estimate when the interest rate may change after consummation. The creditor is not permitted to disclose the table in the Loan Estimate if the interest rate will remain fixed, even if the table is left blank. Proposed comment 37(j)(1)–1 would have provided guidance regarding how the name of the index may be shortened. Proposed comment 37(j)(2)–1 would have clarified that the table discloses the information required by § 1026.37(j)(2) only if the loan does not also permit the interest rate to adjust according to an external index. Proposed comment 37(j)(3)–1 would have provided guidance regarding the initial interest rate that must be disclosed. Proposed comment 37(j)(4)–1 would have clarified how the minimum interest rate should be disclosed if the legal obligation does not state a minimum rate. Proposed comment 37(j)(4)–2 would have clarified how the maximum interest rate should be disclosed if the legal obligation does not state a maximum interest rate. While § 1026.30 currently provides that a creditor must include a maximum interest rate in any closed-end consumer credit contract secured by a dwelling for which the annual percentage rate may increase after consummation, that section applies only to transactions secured by a dwelling.

The disclosure required by proposed § 1026.37(j)(4) applies to transactions subject to § 1026.19(e), which includes consumer credit transactions secured by real property, which may not include a dwelling. Proposed comment 37(j)(5)–1 would have clarified that if the exact month of the first adjustment to the interest rate is not known at the time the disclosure is provided, the earliest possible month must be disclosed under proposed § 1026.37(j)(6). Proposed comment 37(j)(6)–1 would have clarified that when more than one limit applies to subsequent adjustments to the interest rate, the largest amount must be disclosed under proposed § 1026.37(j)(6). The format required by proposed § 1026.37(o), and illustrated by proposed form H–24, including sample form H–24(C) of appendix H, would have provided the information required by proposed § 1026.37(j) in a concise, single table. This table would have appeared immediately adjacent to the AP table required by proposed § 1026.37(i) for loans that permit the periodic principal and interest payment to adjust based on an adjustment other than an adjustment to the interest rate. The table would have used concise labels and bold subheadings for disclosures of the frequency of interest rate changes and the limits on interest rate changes. Based on its testing, the Bureau stated its belief in the proposal that this format displays the information in a clear, readily visible, and understandable manner for consumers.

As it did for the AP table, the Bureau received comments generally criticizing or praising the placement of the AIR table on the Loan Estimate. Comments related to the placement of the tables are discussed in the section-by-section analysis of § 1026.37(i), above. Moreover, the Bureau received comments from industry objecting to the dynamic nature of the AIR table disclosure because programming such a form is more expensive than programming a static form. The Bureau also received a comment from a document preparation company stating that referring to the Adjustable Interest Rate table as the ''AIR'' table would be confusing to industry because AIR is an acronym already used to refer to Appraiser Independence Requirements. A national trade association representing mortgage lenders commented that disclosing the index plus a margin is not useful for consumers and § 1026.37(j)(1) should instead require disclosure of the index value plus the margin. A trade association representing mortgage lenders commented that disclosure of the initial interest rate in the AIR table pursuant to § 1026.37(j)(3) would conflict with the requirement in proposed § 1026.37(b)(2) to disclose the fully-indexed rate in the Loan Terms table and would therefore confuse consumers. A trade association representing mortgage lenders commented that the starting date for calculating the first month in which the interest rate may change pursuant to proposed § 1026.37(j)(5)(i) was inconsistent with the starting date under proposed § 1026.37(b)(8) for disclosure of changes to the interest rate in the Loan Terms section of the Loan Estimate. A document preparation company commenter suggested that proposed § 1026.37(j)(6) seems to presume that interest rate cap adjustments would be equal for interest rate increases and for interest rate decreases. The commenter noted that this may not always be the case and requested guidance on how to disclose caps that differ for interest rate increases and decreases. The comments related to proposed § 1026.37(o) as they affect the formatting of the various parts of the Loan Estimate will be discussed in the section-by-section analysis of that provision.

With respect to the dynamic nature of the table, as more fully discussed above with respect to the AP table in § 1026.37(i), the Bureau believes that the inclusion of a blank AIR table in transactions where it is not applicable would be unduly distracting and confusing to a consumer and potentially cause information overload. Further, the dynamic nature of the form may better enable consumers to compare different loan products. Though it may be more costly for industry to implement dynamic forms, the one-time cost of implementation does not outweigh the consumer benefit of a dynamic AIR table. Accordingly, the Bureau is adopting comment 37(j)–1 as proposed. Regarding the acronym ''AIR,'' the Bureau received such a comment from only one source and does not believe that the acronym AIR as referring to Appraiser Independence Requirements is common enough to cause confusion with the Adjustable Interest Rate table acronym for consumers. The Bureau does not believe that industry will be confused by using the acronym in the context of the disclosures. Accordingly, the Bureau declines to revise the heading for the AIR table.

Regarding the requirement in § 1026.37(j)(1) that the index and margin be disclosed, the disclosure required is the index and not the index value, because the index value for an adjustable rate loan will change over the life of the loan and the Bureau believes it is useful for the consumer to understand that his or her interest rate is a function of an index plus a margin. Moreover, the only index value that could be disclosed on the Loan Estimate is the value on the date of the disclosure which is not useful to the consumer. The Bureau continues to believe that requiring disclosure of the external index used to determine an interest rate for an adjustable rate loan will benefit consumers and effectuate the purposes of both TILA and RESPA and accordingly is finalizing § 1026.37(j)(1) as proposed.

With respect to the comment that disclosure of the initial interest rate would conflict with the disclosure of

the interest rate required by § 1026.37(b)(2), as discussed more fully in the section-by-section analysis of § 1026.37(b)(2), the disclosure required in the Loan Terms table under § 1026.37(b)(2) is the initial interest rate and not the fully-indexed rate as some commenters believed. Accordingly, there is no conflict between the rates disclosed to the consumer in the Loan Terms and AIR sections of the Loan Estimate. With respect to caps being different for interest rate increases and decreases, § 1026.37(j)(6) requires disclosure of the maximum possible change that applies to the interest rate adjustments. Accordingly, a creditor would disclose the greater of the limits under § 1026.37(j)(6).

Regarding the beginning date for calculating the first month in which the interest rate may change pursuant to § 1026.37(j)(5)(i), as discussed more fully in the section-by-section analysis of § 1026.37(b)(8), the starting date for calculations related to the interest rate is different from those related to payments because interest payments are made in arrears in most mortgage loan transactions. The beginning date for the time required to be disclosed in the disclosure required by § 1026.37(j)(5)(i) and that for the disclosure required by § 1026.37(b)(8)(i) is intended to be the same date. However, to provide additional clarity, the Bureau is revising the language in final § 1026.37(j)(5)(i) to conform to the language in final § 1026.37(b)(8)(i).

The Bureau did not receive any comments regarding proposed § 1026.37(j)(2), (3), (4), or (6). The Bureau is adopting § 1026.37(j), (j)(1), (j)(2),(j)(3), (j)(4), and (j)(6) substantially as proposed, with minor modifications for clarity. The Bureau is revising § 1026.37(j)(5) as described above, based on the legal authority described above and in the proposal. The Bureau did not receive any comments regarding any of proposed comments 37(j)(1)–1, 37(j)(2)–1, 37(j)(3)–1, 37(j)(4)–1 or –2, 37(j)(5)–1, or 37(j)(6)–1. Accordingly, the Bureau is adopting those comments substantially as proposed, with minor modifications for clarity to comments 37(j)–1, 37(j)(4)–1 and –2, and 37(j)(5)–1.

37(k) Contact Information

Under TILA section 128(a)(1) and Regulation Z § 1026.18(a), the TILA disclosures must include the identity of the creditor. Comment 18(a)–1 clarifies that the ''identity'' of the creditor must include the name of the creditor, but may also include the creditor's address and/or telephone number. As stated in appendix C to Regulation X, the RESPA GFE must include the name, address, phone number, and email address (if any) of the loan originator.

TILA, RESPA, and their implementing regulations do not currently require the disclosure of contact information for the individual loan officer, however. Therefore, the Bureau proposed to require that the Loan Estimate contain certain contact information for the loan officer as set forth in proposed § 1026.37(k) based on its authority under TILA section 105(a), RESPA section 19(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). The Bureau stated in the proposal that it believed this contact information will effectuate the purposes of TILA and RESPA by facilitating the informed use of credit and ensuring that consumers are provided with greater and more timely information on the costs of the settlement process. The Bureau further stated its belief that providing consumers with multiple types of contact information for the loan officers with whom they interact on the transaction will allow consumers easier access to information relevant to the transaction (including costs), which in turn ensures that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the transaction in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). Moreover, the Bureau believed that such disclosure will improve consumers' awareness and understanding of residential mortgage transactions, which is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

In light of the differing requirements under TILA and RESPA with regard to the types of contact information disclosed on the early TILA disclosure and RESPA GFE, respectively, the Bureau also proposed § 1026.37(k) based on its mandate under sections 1032(f), 1098, and 1100A of the Dodd-Frank Act to propose rules and forms that combine the disclosures required under TILA and sections 4 and 5 of RESPA into a single, integrated disclosure for mortgage loan transactions covered by those laws. As discussed above, appendix C to Regulation X states that the RESPA GFE must include the name, address, phone number, and email address (if any) of the loan originator. Accordingly, as part of the Bureau's statutory mandate to integrate the TILA and RESPA disclosures, the Bureau stated in the proposal that it must integrate the disclosures currently required under Regulation X with the TILA-mandated disclosures of the creditor's identity, discussed above. Furthermore, TILA section 129B(b)(1)(B), 15 U.S.C. 1639b(b)(1)(B), which was added by section 1402(a)(2) of the Dodd-Frank Act, mandates that each mortgage originator include on all loan documents any unique identifier of the mortgage originator provided by the Nationwide Mortgage Licensing System and Registry (NMLSR or NMLS). TILA section 129B(b)(1)(B) has been implemented in a separate rulemaking, the Bureau's 2013 Loan Originator Final Rule, 78 FR 11279 (Feb. 15, 2013), as § 1026.36(g).

The Bureau proposed to use its authority under TILA section 105(a) and Dodd-Frank Act sections 1032(a) and, for residential mortgage loans, 1405(b) of the Dodd-Frank Act to propose § 1026.37(k) for transactions subject to proposed § 1026.19(e). Proposed § 1026.37(k) would have required creditors to provide certain contact and licensing information for themselves, the mortgage broker, and their respective loan officers, as applicable. In the proposal, the Bureau stated its expectation to harmonize the final rule with the rulemaking implementing TILA section 129B(b)(1)(B).

The Bureau stated its belief in the proposal that requiring on the Loan Estimate the disclosure of the name and NMLSR identification number (NMLSR ID) number, if any, for the creditor, mortgage broker, and the loan officers employed by such entities, as applicable (or, if none, the license number or other unique identifier, if any, issued by the applicable State, locality, or other regulatory body with responsibility for licensing and/or registering such entity's or individual's business activities) may provide consumers with the information they need to conduct the due diligence necessary to ensure that any creditor, mortgage broker, and associated loan officer selected to originate the loan is appropriately licensed. The Bureau further stated its belief that having this information may help consumers assess the risks associated with services and service providers retained in connection with the transaction, which in turn promotes the informed use of credit (consistent with TILA section 105(a)), ensures that consumers are provided with greater and more timely information on the costs of the settlement process (consistent with RESPA section 19(a)), ensures that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the transaction in light

of the facts and circumstances (consistent with Dodd-Frank Act section 1032(a)), and improves consumers' awareness and understanding of residential mortgage transactions, which is in the interest of consumers and the public (consistent with Dodd-Frank Act section 1405(b)).

Thus, under the master heading ''Additional Information About This Loan,'' proposed § 1026.37(k)(1) would have required the name and NMLSR ID, if any, for the creditor and the mortgage broker, if applicable. Proposed § 1026.37(k)(2) would have required the name and NMLSR ID for the loan officer associated with the creditor and mortgage broker identified in proposed § 1026.37(k)(1), if applicable. In the event the creditor, mortgage broker, or individual loan officer has not been assigned an NMLSR ID, proposed § 1026.37(k)(1) and (2) would have required the license number or other unique identifier issued by the applicable jurisdiction or regulating body with which the creditor or mortgage broker is licensed and/or registered to be disclosed, if any. Proposed § 1026.37(k)(3) would have required an email address and phone number for each loan officer identified in proposed § 1026.37(k)(2).

Proposed comment 37(k)–1 would have provided a description of the NMLSR ID. Proposed comment 37(k)–1 also referenced provisions of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) requiring individuals to register or obtain a license through the NMLSR, and clarifies that the information required in § 1026.37(k)(1) and (2) must be provided for any creditor, mortgage broker, and loan officer that has obtained an NMLSR ID. Proposed comment 37(k)–2 would have provided clarification as to the nature of the license or other unique identifier that is to be disclosed in the event the creditor, mortgage broker, or individual loan officer has not been assigned an NMLSR ID. Proposed comment 37(k)–3 would have clarified that the loan officer is the individual who interacts most frequently with the consumer and who has an NMLSR identification number or, if none, a license number, or other unique identifier to be disclosed under proposed § 1026.37(k)(2), as applicable.

Several trade associations representing mortgage lenders requested guidance on whether a creditor could provide a general email address and phone number for the creditor or loan originator organization, rather than for an individual loan officer in the event that the individual loan officer were unavailable. Two GSEs commented and stated in an ex parte meeting that disclosure of a State license identification number or other unique identifier will not be useful to industry or consumers without stating the State or locality which issued the license.

With respect to the commenter's request to provide a general phone number or email address, the Bureau believes that providing such a general phone number or email address for the loan officer's lender or mortgage broker, as applicable, would comply with § 1026.37(k)(3) if no such information is generally available for the loan officer and is adding comment 37(k)–4 to that effect. The Bureau is otherwise adopting § 1026.37(k)(3) as proposed.

In response to the comment that disclosure of a State license identification number would be more useful with a disclosure of which State issued the license, the Bureau is revising § 1026.37(k)(1) and (2) to require the disclosure of the abbreviation for the State of the applicable jurisdiction before the word ''License'' in the disclosure required by § 1026.37(k)(2). The Bureau is also revising § 1026.37(k)(2) to clarify that the loan officer must be disclosed for both the creditor and the mortgage broker, if there is a mortgage broker in the transaction. The Bureau is further revising comment 37(k)–2 to clarify how to disclose the State abbreviation.

For the reasons discussed and pursuant to the legal authority described above, the Bureau is adopting § 1026.37(k)(2) and comment 37(k)–2 as revised to clarify the requirement to disclose the loan officer for both the creditor and the mortgage broker, if any, and is further revising § 1026.37(k)(1), (2) and comment 37(k)–2 to require disclosure of the abbreviation for the applicable State issuing a license identification. The Bureau is also making a technical revision to § 1026.37(k)(1) to remove the requirement to disclose the name of the primary contact for the consumer because that requirement is already in § 1026.37(k)(2). The Bureau is adopting § 1026.37(k)(3) as proposed. The Bureau is adopting comments 37(k)–1 and –3 substantially as proposed but with minor modifications for clarity. The Bureau is adding comment 37(k)–4 to permit disclosure of a general email address and phone number under limited circumstances. The Bureau believes that final § 1026.37(k) and its accompanying commentary are consistent with § 1026.36(g) as adopted by the 2013 Loan Originator Final Rule, which implemented TILA section 129B(b)(1)(B) and requires a loan originator organization to include its name and NMLSR ID as well as the name and NMLSR ID of any individual loan originator with primary responsibility for the loan origination on certain specified loan documents for all consumer credit transactions secured by a dwelling.

37(l) Comparisons

TILA generally focuses on disclosing the long-term cost of credit. However, many of the disclosures required by the statute have proven confusing for consumers. As discussed below and in part II.D above, Federal agencies have long recognized that certain statutorily-required disclosures, such as the finance charge and amount financed, are of limited effectiveness for communicating the cost of credit to consumers and that, in some cases, the disclosures hinder consumers' ability to understand their credit terms. One problem with the TILA disclosures is consumer confusion between common contract terms, such as interest rate and loan amount, and the required statutory disclosures such as the annual percentage rate and the amount financed. For example, the Board-HUD Joint Report and consumer testing conducted by the Board and the Bureau indicate consumer confusion exists over the difference between the contract interest rate and the annual percentage rate (APR), in part because both are expressed in the form of a rate and in part because of the difficulty in communicating to consumers the meaning of the APR. The TILA disclosures also focus on the cost of credit based on the loan's contractual term, which for mortgages is typically 15 or 30 years. Because many consumers do not hold their mortgages to term, the TILA disclosures do not accurately reflect the cost of credit in these circumstances. As discussed below and in part III above, the results of the Bureau's consumer testing is consistent with these concerns.

The Bureau believes that providing consumers with useful tools to compare loans is critical to carrying out the purposes of TILA, RESPA, and the Dodd-Frank Act. Accordingly, for the reasons described below, the Bureau grouped several key metrics together on the first page of the Loan Estimate and shifted others to the last page of the Loan Estimate. In addition, the Bureau provided certain items only on the Closing Disclosure because they are less useful to consumers early in the lending process and create the risk of undermining the effectiveness of the Loan Estimate. The forms focused on presenting the basic loan terms and risk features to consumers first, because these disclosures are critical to

evaluating affordability and facilitating comparison of loans and are readily understandable to consumers, unlike other statutory disclosures. The Bureau adopted this approach to the TILA disclosures because consumer testing conducted by the Bureau, as well as prior testing conducted by the Board, strongly indicates that consumers benefit from a disclosure that highlights loan terms that are understandable and useful to consumers in evaluating the costs of credit and consumers' ability to afford those costs, such as the interest rate, monthly payment amount, and amount of cash needed to close the loan, and deemphasizes terms that have proven confusing or of limited use to consumers. *See* Kleimann Testing Report at 297–304.

Based on research regarding consumer comprehension and behavior and the results of the Bureau's consumer testing, the Bureau believes that the disclosure of the total payments (of principal, interest, mortgage insurance, and loans costs) a consumer will have made through the end of the 60th month after the due date of the first periodic payment (In 5 Years), the annual percentage rate (APR), and the total interest percentage (TIP) calculations on the final page of the Loan Estimate and apart from the key loan terms may enhance the overall understanding of the disclosures. The Bureau's consumer testing also confirmed that consumers are able to locate the longer-term measures of the cost of credit, notwithstanding the fact that the forms shift those disclosures from the first page of the disclosure. Moreover, the Bureau's consumer testing suggested that moving the disclosure of the APR away from the disclosure of the loan's contract interest rate and placing the APR with other long-term metrics may reduce consumer confusion and highlight the APR as a special tool for comparing costs over time. *See* Kleimann Testing Report at 297–304.

Accordingly, proposed § 1026.37(l) would have required creditors to disclose a table containing information required by TILA section 128(a)(4), (5), (8), and (19): (1) The total payments (principal, interest, mortgage insurance, and loan costs) a consumer will have made through the end of the 60th month after the due date of the first periodic payment (In 5 Years); (2) the APR; and (3) the total interest percentage (TIP), as described in § 1026.37(l)(1) through (3). The table would have appeared under the master heading ''Additional Information About This Loan,'' with the heading ''Comparisons,'' along with the statement, ''Use these measures to compare this loan with other loans.'' The comparisons table would have appeared on the final page of the Loan Estimate, apart from the key loan terms identified on the first page of the Loan Estimate. *See* proposed § 1026.37(o) and proposed form H–24.

37(l)(1) in Five Years

The Bureau's Proposal

The total of payments disclosure has been confusing for consumers during consumer testing. For example, consumer testing conducted for purposes of the Board's 2009 Closed-End Proposal found that many consumers did not understand the total of payments disclosure and that, even when consumers understood the meaning, most did not consider it important in their decision-making process. Macro 2009 Closed-End Report at *v,* 11. Based on the Board's testing and prior research about the total of payment disclosure, the Bureau considered alternative metrics that might prove more useful to consumers. As discussed above, one problem with the TILA-required disclosures is that they are calculated over the entire length of the loan, although consumers may typically only hold mortgage loans for five to seven years before selling the property or refinancing. Accordingly, the total of payments over the life of the loan is such a large number that consumers often find it overwhelming or unrealistic, and therefore not a meaningful disclosure of the cost of credit.

Furthermore, the total of payments over the life of the loan does not provide an accurate basis for identifying the lowest cost loan for the time a consumer may actually hold the loan. The Bureau also recognized that simply providing one disclosure would not give consumers an accurate view of how much their payments actually reduce the principal balance of the loan, which would help consumers pick the loan that puts them in the best financial position after the five to seven year mark if they do not sell the property or refinance. Accordingly, the Bureau developed a two-element disclosure.

First, proposed § 1026.37(l)(1)(i) would have required the creditor to disclose the dollar amount of the total principal, interest, mortgage insurance, and loan costs (disclosed pursuant to proposed § 1026.37(f)) scheduled to be paid through the end of the 60th month after the due date of the first periodic payment, expressed as a dollar amount, along with the statement ''Total you will have paid in principal, interest, mortgage insurance, and loan costs.'' Proposed comment 37(l)(1)(i)–1 would have clarified that the amount disclosed pursuant to § 1026.37(l)(1)(i) is the sum of principal, interest, mortgage insurance, and loan costs scheduled to be paid through the end of the 60th month after the due date of the first periodic payment. The comment also would have clarified that, for purposes of § 1026.37(l)(1)(i), interest is calculated using the fully-indexed rate at consummation and includes any prepaid interest. The comment would have further provided that, for purposes of § 1026.37(l)(1)(i), the creditor assumes that the consumer makes payments as scheduled and on time. In addition, proposed comment 37(l)(1)(i)–1 would have provided that, for purposes of § 1026.37(l)(1)(i), mortgage insurance is defined pursuant to comment 37(c)(1)(i)(C)–1, and includes prepaid or escrowed mortgage insurance, and that loan costs are those costs disclosed pursuant to § 1026.37(f). Proposed comment 37(l)(1)(i)–2 would have provided guidance to creditors on calculating principal and interest disclosures for loans with negative amortization features. Proposed § 1026.37(l)(1)(i) would have implemented the requirements of TILA section 128(a)(5) and (8) for transactions subject to proposed § 1026.19(e). The Bureau proposed to modify the total of payments disclosure to reflect the total payments over five years, rather than the life of the loan, on the Loan Estimate provided to consumers near the time of application. The Bureau proposed this modification pursuant to its authority under TILA section 105(a), Dodd-Frank Act 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b).

Second, proposed § 1026.37(l)(1)(ii) would have required the creditor to disclose the dollar amount of principal scheduled to be paid through the end of the 60th month after the due date of the first periodic payment, expressed as a dollar amount, along with the statement ''Principal you will have paid off.'' Proposed comment 37(l)(1)(ii)–1 would have clarified that the disclosure required by proposed § 1026.37(l)(1)(ii) is calculated in the same manner as the disclosure required by proposed § 1026.37(l)(1)(i), provided, however, that the disclosed amount reflects only the total payments to principal through the end of the 60th month after the due date of the first periodic payment.

Comments

In response to the proposal, a number of commenters favored the disclosure. Several trade association commenters noted that the ''In 5 Years'' disclosure is on the Loan Estimate, and the Total

of Payments disclosure is on the Closing Disclosure. According to these commenters, the Bureau should require only the more useful disclosure in order to improve consistency, enhance the ability of consumers to compare the Loan Estimate with the Closing Disclosure, and reduce compliance burden.

One industry commenter argued that this disclosure would further confuse consumers regarding the costs and interest associated with a loan. Another industry commenter argued that this disclosure is misleading and wasteful if the loan terms extend beyond five years. A trade association commenter favored eliminating this disclosure, arguing that the Loan Estimate is already long enough and that this would help reduce information overload. Several consumer advocacy group commenters stated that the ''In 5 Years'' disclosure would not help consumers differentiate between high cost and low cost loans because the cost of the loan depends on whether and how the closing costs are financed, and that the disclosure needs to account for whether the consumer finances the closing costs and to convey the impact of prepaid finance charges. One industry commenter suggested that the Bureau should add back the Total of Payments disclosure to the Loan Estimate in order to more credibly, reliably, and accurately reflect the loan's total cost and create more consistency between the Loan Estimate and Closing Disclosure.

Some commenters raised concerns about how to calculate this disclosure and sought clarification with respect to adjustable rate mortgage loans. One industry commenter argued that calculating the disclosure based on the fully-indexed rate fails to account for a situation where the interest rate begins to adjust before the 60th payment, and that the use of the fully-indexed rate will give consumers inaccurate information regarding the true economics of their mortgage loan, which is very important for consumers who do not plan to keep their home for 5 years. This commenter suggested that the commentary be revised to indicate that the disclosure be calculated using the actual initial rate and maximum interest rate at the first and subsequent adjustment dates. Several trade association commenters argued that the calculation of this disclosure should be based on the actual initial interest rate, while assuming that the index value in effect at consummation will not change over the life of the loan and that the interest rate will adjust as provided for in the legal obligation. These commenters also argued that the prepaid interest on an adjustable rate mortgage loan should be based on the initial actual rate and not the fully-indexed rate, and that the amount of mortgage insurance included in the calculation will be affected by the interest rate used and whether it is assumed to increase as quickly as possible.

Several trade association commenters questioned the inclusion of loan costs in the ''In 5 Years'' disclosure, noting that if the final rule requires disclosure of the APR and finance charge, using loan costs for some calculations and prepaid finance charges for others will unnecessarily increase compliance burden. These commenters also questioned the definition of ''loan costs'' in comment 37(l)(1)(i)–1 which defines loan costs as costs disclosed under § 1026.37(f), arguing that the amount disclosed would be overstated because the definition does not account for credits provided by the creditor, mortgage broker, seller, or other party. One industry commenter argued that the ''In 5 Years'' calculation needs to include credits provided by the creditor because if they are not included, then the same mortgage loan will look more expensive if it is offered by a mortgage broker instead of a mortgage banker.

An industry commenter argued that instead of displaying the principal amount the consumer has paid in five years, the Bureau should replace it with the remaining unpaid principal balance metric because it is more meaningful and is a better representation of refinancings, where higher upfront costs are financed, resulting in a lower principal amount paid over five years but a higher principal balance.

One industry commenter argued that the ''In 5 Years'' disclosure in some ways inhibits the flexibility of community banks that often make mortgage loans with terms no longer than 36 months due to interest rate risk concerns. This commenter argued that the ''In 5 Years'' calculation should not include the balloon payment, if applicable, because that would be misleading if a consumer is seeking to compare short-term and long-term loans.

Final Rule

For the reasons discussed below, the Bureau is adopting § 1026.37(l)(1) and comment 37(l)(1)(ii)–1 as proposed. Section 1026.37(l)(1)(i) requires disclosure of the total principal, interest, mortgage insurance, and loan costs scheduled to be paid through the end of the 60th month after the due date of the first periodic payment, expressed as a dollar amount, along with the statement ''Total you will have paid in principal, interest, mortgage insurance, and loan costs.'' As discussed above, some commenters disfavored the inclusion of the ''In 5 Years'' disclosure due to concerns that it would be confusing to consumers, would cause information overload, and would not be valuable to consumers if the loan terms extend beyond five years. Another commenter argued that instead of displaying the principal amount the consumer has paid in five years, the Bureau should replace it with the remaining unpaid principal balance metric. However, as discussed in the proposal and in the Kleimann Testing Report, consumer testing conducted by the Bureau indicates that consumers can use the ''In 5 Years'' disclosure to compare loans they are considering and that, in some instances, these disclosures increase consumers' understanding of loan costs. *See* Kleimann Testing Report at xxvii, 297–299; 77 FR 51116, 51222–51223. The ''In 5 Years'' disclosure shows how much will be paid in total and the amount of principal that will be paid off in the five years after the loan closes, which is roughly the time period the average consumer stays in a loan. In addition, the Bureau believes that it is a more accessible time period for consumers than the life of the loan (typically 30 years), which is used in other disclosures, such as the current TILA ''Total of Payments'' disclosure. Most participants at the Bureau's consumer testing used the total payments and the principal paid components of the ''In 5 Years'' disclosure to compare the loan with the other loan they were considering and, sometimes, to increase their understanding of loan costs. *See* Kleimann Testing Report at 297–299. Consumer participants understood the relationship of principal and interest and generally wanted to choose loans with more principal paid off during the first five years. For example, some consumers who did not understand from page one of the Loan Estimate that a loan provided for interest only payments for a specified period were able to recognize that they would be making interest only payments as a result of the principal-paid component of the ''In 5 Years'' disclosure. Several industry participants stated that this disclosure covered a manageable period of time that could be useful to participants. *See* Kleimann Testing Report at 299.

Industry feedback provided in response to the Bureau's Small Business Review Panel Outline and in comments

stated that implementation of the ''In 5 Years'' disclosure will require additional training and systems changes, and that it is unclear whether the disclosure will assist consumers. Most industry participants in the Bureau's consumer testing did not think that consumers would want to know the information in the disclosure, and some thought that the period should vary according to the loan term. *See* Kleimann Testing Report at 299. The Bureau has considered this; however, the consumer testing results discussed above indicated that consumers found the information useful. Thus, the Bureau believes that the ''In 5 Years'' disclosure will provide important benefits to consumers by disclosing the total of payments over a period that more accurately reflects the typical life of a mortgage loan.

The Bureau also is exercising its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b) to include mortgage insurance and other loan costs in the ''In 5 Years'' calculation. TILA section 128(a)(5) defines the total of payments as the sum of the amount financed and the finance charge. However, the Bureau believes including mortgage insurance and other loan costs, rather than the finance charge, in the calculation may enhance consumer understanding of mortgage transactions because consumers can cross-reference other sections of the Loan Estimate to determine what costs are actually included in the ''In 5 Years'' disclosure, permitting consumers to more readily compare loans, consistent with the purposes of TILA. In contrast, as discussed below, consumers have no way to know which costs are included in the finance charge. For these same reasons, the Bureau believes that the modification will ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances, consistent with section 1032(a) of the Dodd-Frank Act, and will improve consumer awareness and understanding of residential mortgage loans and be in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

Section 1026.37(l)(1)(ii) requires creditors to disclose the dollar amount of principal scheduled to be paid through the end of the 60th month after the due date of the first periodic payment. The Bureau is adopting this requirement, in addition to § 1026.37(l)(1)(i), pursuant to its authority under TILA section 105(a) and Dodd-Frank Act section 1032(a). As discussed above, the Bureau believes the disclosure will enhance consumers' understanding of the allocation of their payments between principal and interest and help consumers select the loan that puts them in the best financial position after a five-to-seven-year period if they do not sell the property or refinance, consistent with the purposes of TILA. For these same reasons, consistent with section 1032(a) of the Dodd-Frank Act, the Bureau believes that the disclosure would ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

As discussed above, one industry commenter suggested that the Bureau should add back the Total of Payments disclosure to the Loan Estimate in order to more closely reflect the loan's total cost and create more consistency between the Loan Estimate and Closing Disclosure. However, the ''In 5 Years'' disclosure is a modified Total of Payments disclosure designed to improve consumer understanding of the loan transaction. The Bureau is modifying the existing TILA total of payments disclosure to reflect the total payments over five years, rather than the life of the loan, on the Loan Estimate provided to consumers near the time of application.

The Bureau recognizes, however, that the Total of Payments disclosure is commonly used by creditors and supervisory agencies for compliance purposes, as well as consumer advocates. Therefore, under the final rule, creditors will be required to disclose a modified total of payments over the loan's full term in the Closing Disclosure provided to consumers at least three business days prior to consummation. *See* the section-by-section analysis of § 1026.38(o)(1).

As discussed above, one industry commenter argued that the ''In 5 Years'' disclosure in some ways inhibits the flexibility of community banks that often make mortgage loans with terms no longer than 36 months due to interest rate risk concerns. However, the Bureau notes that comment 37(l)(1)–1 should address any concerns regarding loans with shorter terms because it clarifies that in transactions with a scheduled loan term of less than 60 months, to comply with § 1026.37(l)(1), the creditor discloses the amounts paid through the end of the loan term.

With respect to the comments concerning the definition of ''loan costs'' and credits, the Bureau has considered this feedback but, in light of the research and consumer testing results discussed above, nevertheless believes that the ''In 5 Years'' disclosure as proposed will provide important benefits to consumers. The Bureau does not believe that the total loan costs factored into the ''In 5 Years'' disclosure should account for lender credits. As disclosed under § 1026.37(f) and reflected in the Closing Cost Details on page 2 of the Loan Estimate, total loan costs include origination charges, services the consumer cannot shop for, and services the consumer can shop for, but do not include lender credits. The total loan costs, along with other costs such as taxes and other government fees, prepaid charges, and the initial escrow payment at closing, combined with lender credits, compose the total closing costs disclosed under § 1026.37(h), which is a separate and distinct metric. As discussed above, consumer testing conducted by the Bureau indicates that consumers can use the ''In 5 Years'' disclosure to compare loans they are considering and that these disclosures increase consumers' understanding of loan costs. *See* Kleimann Testing Report at 297–299. The Bureau believes, as it stated in the proposal, that one of the benefits of the modification to the calculation of Total of Payments is that consumers can identify and compare the components of the ''In 5 Years'' calculation, enhancing consumer understanding of the transaction. The Bureau also believes that the inclusion of the total loan costs in the ''In 5 Years'' disclosure will promote the informed use of credit and more effectively advance disclosure of settlement costs, which are purposes of TILA and RESPA, respectively. Furthermore, the Bureau believes that to enable such identification of the components of the calculation, the loan costs cannot be included after subtracting out lender credits. Lender credits are disclosed in a separate section of the disclosure and are not factored into loan costs disclosed under § 1026.37(f). Accordingly, the Bureau believes such a disclosure would not be readily understandable and could be confusing to consumers.

In response to the comments received, the Bureau is amending comment 37(l)(1)(i)–1 to provide greater clarity regarding the calculation of the interest component of this disclosure for mortgage loans with multiple interest rates. In particular, in mortgage loans

that are Adjustable Rate products under § 1026.37(a)(10)(i)(A), when creditors use an initial interest rate that is not calculated using the index or formula for later rate adjustments, such as a discounted rate, the disclosure should reflect a composite annual percentage rate based on the initial rate for as long as it is charged and, for the remainder of the term, the rate that would have been applied using the index or formula at the time of consummation. Comment 37(l)(1)(i)–1 now cross-references comment 17(c)(1)–10 for purposes of reflecting the effect of multiple rates in the calculation of the ''In 5 Years'' disclosure, and clarifies that the interest calculation includes any prepaid interest. The Bureau has also amended comment 37(l)(1)(i)–1 to provide clarity with respect to the cross-reference to comment 37(c)(1)(i)(C)–1 for the definition of mortgage insurance under § 1026.37(l)(1)(i). The Bureau is also modifying comment 37(l)(1)(i)–2 to refer to the negative amortization loan feature under § 1026.37(a)(10)(ii)(A). The Bureau believes that referring to the product types and features under § 1026.37(a)(10) in comments 37(l)(1)(i)–1 and –2 will facilitate compliance. The Bureau is also amending comment 17(c)(1)–10.ii to clarify that the effect of the multiple rates must be reflected in the disclosures required under § 1026.37(l).

37(l)(2) Annual Percentage Rate

The Bureau's Proposal

TILA section 128(a)(4) and (8) requires creditors to disclose the annual percentage rate, together with a brief descriptive statement of the annual percentage rate. 15 U.S.C. 1638(a)(4), (a)(8). Current § 1026.18(e) implements these statutory provisions by requiring creditors to disclose the ''annual percentage rate,'' using that term, and a brief description such as ''the cost of your credit as a yearly rate.'' In addition, TILA section 122(a) requires that the annual percentage rate be more conspicuous than other disclosures, except the disclosure of the creditor's identity. 15 U.S.C. 1632(a). This requirement is also implemented in current § 1026.18(e). As discussed above, concerns have been raised repeatedly over the last two decades that consumers are confused by what the APR represents and do not use it for its intended purpose: to compare loans. As discussed in the proposal and the Kleimann Testing Report, the Bureau's consumer testing similarly indicates consumer confusion regarding the APR disclosure and that consumers do not use the APR when comparing loans. *See* Kleimann Testing Report at 297–304.

Pursuant to its implementation authority under TILA section 105(a), the Bureau proposed § 1026.37(l)(2) to implement the requirements of TILA section 128(a)(4) and (8) for transactions subject to proposed § 1026.19(e) by requiring creditors to disclose the ''annual percentage rate'' and the abbreviation ''APR,'' together with the following statement: ''Your costs over the loan term expressed as a rate. This is not your interest rate.'' On the basis of its consumer testing and research that showed that consumers often confuse the APR with their contract interest rate, the Bureau included the sentence ''This is not your interest rate.'' Further, in light of consumer confusion over the APR and the fact that consumers do not appear to use the APR in comparing loan offers, the Bureau proposed to exercise its authority under TILA section 105(a) and (f), Dodd-Frank Act section 1032(a) and, for residential mortgage loans, Dodd-Frank Act section 1405(b), to except transactions subject to § 1026.19(e) from the requirement of TILA section 122(a) that the annual percentage rate disclosure be more conspicuous than other disclosures, except the disclosure of the creditor's identity.

Comments

In response to the proposal, some commenters suggested removing the APR disclosure since consumers find it confusing and do not use it. A trade association commenter, a consumer commenter, and a law firm commenter argued that the Bureau should use its authority under TILA sections 105(a) and (f) to exempt all residential mortgage loans from the disclosure requirements of the APR. A GSE, an industry commenter, and a consumer advocacy group commenter suggested that the Bureau formulate a better explanation of the APR than the one proposed, to help consumers understand that the APR reflects not only the interest rate but also the related cost of credit. These commenters stated that creditors consistently fail to understand and correctly explain the difference between the interest rate and the APR. One consumer commenter argued that the APR is not useful for an adjustable rate loan, and several industry commenters suggested that the Bureau provide additional clarity in terms of how to calculate the APR for adjustable rate mortgage loans.

Several industry trade association commenters favored the inclusion of APR and disfavored making any changes to how this disclosure is calculated. A consumer commenter supported the APR disclosure but suggested disclosing it as two separate items, similar to its disclosure for credit cards: (1) APR; and (2) all other fees. One industry commenter suggested that the finance charge used to calculate the APR should be disclosed appropriately to help consumers understand what charges are included in the APR.

Various consumer advocacy groups, civil rights and community organizations, and a real estate brokerage commenter argued that the decision to place the APR on page three of the Loan Estimate will make it less likely that consumers will understand or be able to compare the full cost of different mortgages. These commenters believed that placing the APR on page three would make it more likely that unscrupulous lenders will quote misleadingly low interest rates with high hidden fees. These commenters argued that the APR is the best tool for selecting the mortgage loan with the lowest cost of credit, and that Congress issued a clear and explicit mandate to make the APR one of the most conspicuous disclosures. These commenters cited to several studies that say that the majority of consumers use the APR to compare loans, and urged the Bureau to restore the APR to a prominent place on the first page of the Loan Estimate to make the information more noticeable to consumers. A group of 12 law professors stated that the APR better conveys the cost of a loan than the interest rate because it includes all credit-related fees, not just interest, and that the APR disclosure should be prominently displayed on the first page of the Loan Estimate. According to these commenters, minimizing the APR will also have the effect of driving mortgage brokers and lenders to increase closing costs and other fees, since consumers will be focused on the interest rate, but if consumers learn to shop based on APR, the competition will drive down fees.

A law professor and an associate professor of cognitive psychology submitted an ex parte communication that included a study using a form similar to the Bureau's proposed Loan Estimate. These professors stated that their study found that, with the Bureau's proposed Loan Estimate, only 44 percent of their participants correctly identified the lower cost loan. By contrast, they noted that 74 percent of their participants correctly identified the lower cost loan when they revised the form to present the APR prominently on the first page of the form, with a price tag symbol and simple explanation of how to use the

APR. These professors concluded that consumers could use the APR to identify lower cost loans, even without understanding it, if the Bureau were to place the APR in a simple and more prominent format on the first page of the Loan Estimate, along with a statement that lower values are better for consumers, and suggested that the Bureau should modify the Loan Estimate accordingly.

Final Rule

For the reasons discussed below, the Bureau is adopting § 1026.37(l)(2) as proposed. The Bureau notes that the APR is a long-standing measure designed to provide consumers a way of measuring the total cost of credit and comparing loan products. As discussed above, consumer testing conducted by the Board and the Bureau, and comments received by the Bureau, consistently indicate consumer confusion over the APR. When the Bureau added the statement ''this is not your interest rate'' to the descriptive explanation of the APR during its consumer testing, although confusion was reduced, participants still did not understand how to use the APR. *See* Kleimann Testing Report at 303–304. Instead, participants used measures they readily understood, such as the maximum interest rates, maximum periodic payments, and closing cost details to evaluate, compare, and verify loan terms. Participants were able to use these measures to evaluate and compare loans, making sophisticated trade-offs, often based on rationales involving their personal circumstances. In light of these comments concerning consumer confusion over the APR and the fact that consumers do not appear to use the APR in comparing loan offers, the Bureau is exercising its authority under TILA section 105(a) and (f), Dodd-Frank Act section 1032(a) and, for residential mortgage loans, Dodd-Frank Act section 1405(b), to exempt transactions subject to § 1026.19(e) from the requirement of TILA section 122(a) that the annual percentage rate disclosure be more conspicuous than other disclosures, except the disclosure of the creditor's identity.

The Bureau believes that the exemption will enhance consumer understanding by separating the APR disclosure from the interest rate disclosure, which could prevent consumer confusion over the two rates and reduce the possibility of information overload for consumers attempting to compare loan terms, consistent with the purposes of TILA. The Bureau believes that grouping the APR with the ''In 5 Years'' and Total Interest Percentage disclosures will also enhance consumer understanding by emphasizing that the APR is a special metric created specifically for comparison purposes, which may help consumers compare the total costs over the life of the loan. In addition, the purpose of the integrated disclosures under TILA section 105(b) and RESPA section 4(a) is to ''aid the borrower . . . in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures.'' The Bureau believes that placing measures that are readily understandable to consumers on the first page of the Loan Estimate, and complex measures that consumers find confusing on latter pages, meets this statutory objective.

The Bureau has also considered the factors in TILA section 105(f) and has determined that an exemption is appropriate under that provision. Specifically, the Bureau has determined that the exemption is appropriate for all affected borrowers, regardless of their other financial arrangements and financial sophistication and the importance of the loan to them. Similarly, the Bureau has determined that the exemption is appropriate for all affected loans, regardless of the amount of the loan and whether the loan is secured by the principal residence of the consumer. Furthermore, the Bureau has determined that, on balance, the exemption will simplify the credit process without undermining the goal of consumer protection or denying important benefits to consumers. As discussed above, consumer testing and historical research indicate that consumers do not understand the APR and do not use it when shopping for a loan. Highlighting the APR on the disclosure form contributes to overall consumer confusion and information overload, complicates the mortgage lending process, and hinders consumers' ability to understand important loan terms.

As such, the Bureau has determined that the exemption from the requirement that the APR be disclosed more conspicuously than other disclosures will not undermine the goal of consumer protection but, instead, will improve consumer understanding of the loans. For all these reasons, the Bureau has determined that the disclosure in a less prominent place than is required under TILA section 122(a) will improve consumer awareness and understanding of residential mortgage loans. The Bureau has also determined that the exemption is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b), and that, consistent with section 1032(a) of the Dodd-Frank Act, the exemption would ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

Regarding the concern expressed by commenters regarding the placement of the APR on the final page of the Loan Estimate and, as discussed below, on the final page of the Closing Disclosure, and the suggestions that the APR disclosure can be improved through an all-in APR, better descriptive language of the APR, or by supplementing the APR with other disclosures, the Bureau believes that its disclosure of the APR improves upon the current disclosure on the TILA disclosures. As noted above, consumer advocacy groups recommended that the APR be more prominent than the interest rate on the Loan Estimate and be disclosed in a graphic format. In addition, two professors recommended that the Bureau place the APR in a simple and more prominent location and format on the first page of the Loan Estimate and state that lower values are better for consumers, based upon a study they conducted.[280] The Bureau has considered these comments, but based on past research showing that consumers are confused by the APR, the Board's prior efforts to improve the APR disclosure, and the Bureau's testing of various descriptive statements of the APR, described above, the Bureau believes that the final rule's approach to the APR will provide important benefits to consumers by emphasizing the difference between the APR and the contract interest rate. Further, the Bureau's Quantitative Study showed that the proposed forms performed better than the current forms with

[280] The examples that were tested by the professors do not appear to be typical of the loans a consumer would be presented with in an actual transaction. For example, the scenario involved a refinance transaction in which the payoff amounts of the loans being satisfied differed by approximately $5,000. In addition, the statement placed on the study's prototype disclosures that states that a lower APR amount is better may be inaccurate for consumers in certain situations. For example, whether a certain makeup of interest rate and upfront fees in a transaction would be less expensive for a consumer would depend on the facts specific to a particular transaction, such as the length of time the new loan would be held by the consumer. Debra Stark et al., *When is Consumer Understanding Necessary to Make Wise Home Loan Decisions? Testing Enhanced APR Disclosure And General Financial Literacy* (2013), available at *http://ssrn.com/abstract=2294590* or *http://dx.doi.org/10.2139/ssrn.2294590.*

respect to consumers identifying and comparing APRs. Indeed, at the Bureau's Quantitative Study, consumers using the Bureau's integrated disclosures performed statistically significantly better than those using the early TILA disclosure statement and RESPA GFE at identifying the APR. Question 23 of the questionnaire used in the Quantitative Study asked the consumer respondents in the study, ''[w]hat is the Annual Percentage Rate (APR) for this loan?'' For the consumers using the Bureau's integrated disclosures, 79.5 percent gave the correct answer to this question, while for consumers using the early TILA disclosure statement and RESPA GFE, only 65.7 percent gave the correct answer, a difference of 13.8 percentage points, which is statistically significant. *See* Kleimann Quantitative Study Report at 45 and 50–51. The Bureau is, however, improving the APR disclosure through a descriptive statement that clearly distinguishes the APR from the interest rate. The Bureau may also develop supplemental educational materials in booklets and its 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.

As discussed above, several commenters were confused about how to calculate the APR for adjustable rate loans. The Bureau is amending comment 17(c)(1)–10.ii, as described in the section-by-section analysis of § 1026.17(c) above, to clarify that the effect of the multiple rates must be reflected in certain of the disclosures required under § 1026.37(l), but the Bureau notes that this does not change the current underlying methodology for calculating the APR. For additional guidance regarding the calculation of the APR for closed-end transactions, see the commentary to § 1026.17, as amended by this final rule. The Bureau is not adopting suggestions made by other commenters such as to disclose the APR as it is disclosed for credit cards, to itemize the finance charge, or to use a different description. Consumers who participated in the Bureau's consumer testing found the APR less confusing with the description the Bureau used at its consumer testing which informed consumers that the APR was a different figure than the contract interest rate. *See* Kleimann Testing Report at 303–304.

37(l)(3) Total Interest Percentage

The Bureau's Proposal

The Dodd-Frank Act amended TILA to add new section 128(a)(19), which requires that, in the case of a residential mortgage loan, the creditor disclose the total amount of interest that the consumer will pay over the life of the loan as a percentage of the principal of the loan. That section also requires that the disclosure be computed assuming the consumer makes each monthly payment in full and on time, and does not make any over-payments.

The Bureau proposed § 1026.37(l)(3) to implement TILA section 128(a)(19) by requiring creditors to disclose the total interest percentage, using that term and the abbreviation ''TIP,'' and requiring creditors to disclose the descriptive statement ''The total amount of interest that you will pay over the loan term as a percentage of your loan amount.'' Proposed § 1026.37(l)(3) also would have provided that the ''total interest percentage'' is the total amount of interest that the consumer will pay over the life of the loan, expressed as a percentage of the principal of the loan. Proposed comments 37(l)(3)–1 through –3 would have provided further guidance to creditors on the calculation of the total interest percentage. Proposed comment 37(l)(3)–1 would have provided that, when calculating the total interest percentage, the creditor assumes that the consumer will make each payment in full and on time, and will not make any additional payments. Proposed comment 37(l)(3)–2 would have provided that, for adjustable rate mortgages, § 1026.37(1)(3) requires that the creditor compute the total interest percentage using the fully-indexed rate and that, for step-rate mortgages, § 1026.37(l)(3) requires that the creditor compute the total interest percentage in accordance with § 1026.17(c)(1) and its commentary. Proposed comment 37(l)(3)–3 would have provided that, for loans that permit negative amortization, § 1026.37(l)(3) requires that the creditor compute the total interest percentage using the minimum payment amount until the consumer must begin making fully amortizing payments under the terms of the legal obligation.

Notwithstanding the proposed modifications, the Bureau was concerned that the total interest percentage may not be a useful tool for consumers and could create confusion and contribute to information overload. In light of these concerns, the Bureau alternatively proposed to use its exception and modification authority under TILA section 105(a) and (f), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b) to exempt transactions subject to proposed § 1026.19(e) and (f) from the requirements of TILA section 128(a)(19). The Bureau solicited comment on the proposed exemption and, alternatively, on whether the Bureau should implement the total interest percentage disclosure only in the Closing Disclosure.

Comments

In response to the proposal, industry commenters generally urged the Bureau to use its exception authority to remove the disclosure. They generally asserted that the disclosure would not be useful to consumers, that consumers would be confused by it, and that the disclosure would trigger information overload. For these same reasons, some commenters suggested that the Bureau should only require the disclosure in the Closing Disclosure. A number of commenters additionally asserted that the disclosure would alarm consumers when they see how much they would be paying in interest. Industry commenters further asserted that the disclosure would create compliance burden because it would be difficult to calculate and explain. Several industry trade association commenters recommended that the Bureau provide additional clarification as to the calculation and meaning of the Total Interest Percentage disclosure if the Bureau decides to keep the disclosure.

A number of industry commenters observed that the disclosure would be inaccurate for any loan paid off before maturity and for adjustable rate mortgage loans. They expressed concern that consumers could be misled by a potentially inaccurate metric. Several industry trade association commenters sought clarification as to whether the calculation of this disclosure would use the actual initial interest rate or the fully-indexed rate, and whether it assumes that payments increase as fast as possible.

On the one hand, many industry commenters also argued that if the Bureau decides to finalize the disclosure, disclosing the total interest amount in the form of a number rather than as a percentage would be more comprehensible. On the other hand, a number of industry commenters suggested that disclosing a number for the total interest amount is unnecessary because of the Finance Charge disclosure in the Closing Disclosure.

A consumer commenter strongly favored the Total Interest Percentage disclosure and some industry commenters did not object to its

inclusion. An association of various State regulators and a joint letter from several consumer advocacy groups did not recommend that the Bureau remove the disclosure, but expressed concern that the disclosure could mislead consumers about the cost of credit because the calculation would not include closing costs or prepaid finance charges. Two industry trade associations representing consumer financial services providers recommended that prepaid interest be excluded from the calculation.

Lastly, a national trade association representing developers of timeshare and other similar fractional interest real estate products stated that the Bureau should clarify that the proposed disclosure would not apply to timeshare lenders. The trade association commenter asserted that it believes that TILA section 103(cc)(5), as added by section 1401 of the Dodd-Frank Act, exempted timeshare lenders from compliance with, among other things, TILA section 128(a)(19) and any regulations promulgated thereunder.

Final Rule

For the reasons discussed below, the Bureau is adopting § 1026.37(l)(3) and comments 37(l)(3)–1 as proposed. As discussed above, some commenters generally urged the Bureau to use its exception authority to remove the disclosure and asserted that the disclosure would not be useful to consumers, that consumers would be confused by it, and that the disclosure would trigger information overload. Some commenters also argued that disclosing the total interest amount in the form of a number rather than as a percentage would be more comprehensible. The Bureau's consumer testing, however, indicated that consumer participants generally understood the basic concept of the disclosure, even though they did not understand its more technical aspects. Although some consumers did not understand the disclosure at all and questioned why it was included, the Kleimann Testing Report concluded that participants understood the basic concept of total interest as a percentage of principal, and that most participants used the disclosure to achieve a more complete understanding of the loan. Kleimann Testing Report at 299–300. Some commenters asserted that the disclosure would alarm consumers when they see how much they would be paying in interest. However, the Kleimann Testing Report stated that most participants used the TIP to compare loans in the Loan Estimate, choosing the lower percentage as the better loan, and that they used the TIP as a measure of what they would pay in interest in the Closing Disclosure. The Kleimann Testing Report further indicated that participants expressed surprise upon seeing the TIP and realizing how much interest they would pay for their mortgage loans and appreciated the disclosure for this effect. *See* Kleimann Testing Report at 299–300. Concerns were also raised during the Bureau's Small Business Review Panel,[281] by industry in feedback provided in response to the Small Business Review Panel Outline, in feedback received through the Bureau's Web site during the Know Before You Owe initiative, and in comments received that the TIP could be difficult to calculate and explain to consumers, and would not likely be helpful to consumers. However, several industry participants in the Bureau's consumer testing thought it would be helpful to consumers. *See* Kleimann Testing Report at 299–300. In addition, the Bureau's consumer testing indicated that consumers generally understood the disclosure. *See* Kleimann Testing Report at 299–300.

As discussed above, several industry trade association commenters recommended that the Bureau provide additional clarification as to the calculation and meaning of the TIP disclosure. In light of the Bureau's consumer testing of the TIP disclosure and the concerns about consumers' ability to understand the disclosure, the Bureau is requiring creditors to disclose the descriptive statement, ''The total amount of interest that you will pay over the loan term as a percentage of your loan amount.'' The Bureau adopts this pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). Based on consumer testing, the Bureau believes that consumer understanding of the TIP disclosure may be enhanced through the descriptive statement of the TIP, consistent with the purposes of TILA, and that the descriptive statement is in the interest of consumers and the public, consistent with section 1405(b) of the Dodd-Frank Act. For these reasons, the Bureau also believes that the disclosure of the descriptive statement regarding the TIP may ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances, consistent with section 1032(a) of the Dodd-Frank Act.

In response to the comments received that raised concerns about calculations for adjustable rate mortgage loans, the Bureau is revising proposed comment 37(l)(3)–2 to provide further guidance to creditors on the calculation of the total interest percentage for adjustable rate mortgage loans, clarifying that for such transactions, the total interest percentage is calculated in accordance with comment 17(c)(1)–10. In particular, for an Adjustable Rate product under § 1026.37(a)(10)(i)(A), when creditors use an initial interest rate that is not calculated using the index or formula for later rate adjustments, the disclosure should reflect a composite annual percentage rate based on the initial rate for as long as it is charged and, for the remainder of the term, the rate that would have been applied using the index or formula at the time of consummation. For purposes of § 1026.37(1)(3), comment 37(l)(3)–2 additionally clarifies that for Step Rate products under § 1026.37(a)(10)(i)(B), the creditor computes the total interest percentage in accordance with § 1026.17(c)(1) and its commentary. The Bureau is also amending proposed comment 17(c)(1)–10.ii to clarify that the effect of the multiple rates must be reflected in certain of the disclosures required under § 1026.37(l), including the TIP, as described in the section-by-section analysis of § 1026.17(c). The Bureau is revising proposed comment 37(l)(3)–3 to refer to loans that have negative amortization loan features under § 1026.37(a)(10)(ii)(A). The Bureau believes that referring to the product types and features under § 1026.37(a)(10) in comments 37(l)(3)–2 and –3 will facilitate compliance.

In response to several comments received that sought clarification on whether prepaid interest is included, the Bureau notes that prepaid interest is included in the TIP calculation. Section 1026.37(l)(3) requires that the calculation include the total amount of interest that the consumer will pay over the life of the loan, which includes prepaid interest.

With respect to the argument that the disclosure should not apply to timeshare lenders, the general section-by-section analysis of § 1026.19 provides a more detailed discussion of the Bureau's decision to expand the scope of some of the disclosure requirements set forth in TILA, as

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

amended by the Dodd-Frank Act. In addition, the Bureau believes that the disclosure of the total interest percentage would be just as useful to a consumer in a credit transaction secured by a consumer's interest in a timeshare plan as to a consumer in a credit transaction secured by an interest in real property or real property with a dwelling.

Accordingly, the Bureau has determined that the total interest percentage is a useful tool for consumers and has determined not to use its exception and modification authority under TILA section 105(a) and (f), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b) to exempt transactions subject to § 1026.19(e) and (f) from the requirements of TILA section 128(a)(19). The Bureau also believes that the TIP disclosure on the Loan Estimate will help ensure that the features of the mortgage transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, will improve consumer awareness and understanding of residential mortgage loans, and is in the interest of consumers and the public. Based on these considerations, the results of the Bureau's consumer testing, and the analysis discussed elsewhere in this final rule, the Bureau believes that an exemption is not appropriate.

Other Statutory Disclosures

As discussed above, the research regarding consumer comprehension and behavior and the results of the Board's and the Bureau's consumer testing suggest that an effective disclosure regime minimizes the risk of consumer distraction and information overload by providing only information that will assist most consumers. The Bureau therefore carefully evaluated each statutory element required under TILA for its usefulness to consumers and others at early stages of the loan process, during the real estate closing process, and as general reference information over the life of the loan. Based on that analysis, the Bureau proposed to use its authority under TILA section 105(a) and (f), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b), to except from and modify the timing requirements for certain disclosures required by TILA section 128. Specifically, those disclosures are: the amount financed (TILA section 128(a)(2)), the finance charge (TILA section 128(a)(3)), a statement that the creditor is taking a security interest in the consumer's property (TILA section 128(a)(9)), a statement that the consumer should refer to the appropriate contract document for information about his or her loan (TILA section 128(a)(12)), a statement regarding certain tax implications (TILA section 128(a)(15)), and the creditor's cost of funds (TILA section 128(a)(17)).

In response to the proposal, one industry commenter suggested that the Bureau should include the Total of Payments, Finance Charge, and Amount Financed disclosures on the Loan Estimate in order to more accurately reflect the loan's total cost and create more consistency between the Loan Estimate and Closing Disclosure. The Bureau has analyzed the feedback provided and has determined that the exemptions discussed above will carry out the purposes of TILA, consistent with TILA section 105(a), by avoiding consumer confusion and information overload, thereby promoting the informed use of credit, as discussed above. For these same reasons, the exemptions will help ensure that the features of the mortgage transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, consistent with Dodd-Frank Act section 1032(a), and will improve consumer awareness and understanding of residential mortgage loans and are in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

The Bureau has considered the factors in TILA section 105(f) and has determined that, for the reasons discussed above, an exemption is appropriate under that provision. Specifically, the Bureau has determined that the exemption is appropriate for all affected borrowers, regardless of their other financial arrangements and financial sophistication and the importance of the loan to them. Similarly, the Bureau has determined that the exemption is appropriate for all affected loans, regardless of the amount of the loan and whether the loan is secured by the principal residence of the consumer. Furthermore, the Bureau has determined that, on balance, the exemption will simplify the credit process without undermining the goal of consumer protection or denying important benefits to consumers. Based on these considerations, the results of the Bureau's consumer testing, and the analysis discussed elsewhere in this final rule, the Bureau has determined that the exemptions are appropriate. The exclusion of the finance charge and the amount financed from the Loan Estimate is discussed at length below.

Finance charge. TILA section 128(a)(3) and (8) requires creditors to disclose the ''finance charge'' and a brief descriptive statement of the finance charge. 15 U.S.C. 1638(a)(3), (a)(8). For transactions subject to RESPA, TILA section 128(b)(2)(A) requires creditors to provide this disclosure not later than three business days after the creditor receives the consumer's application, and at least seven business days before consummation. 15 U.S.C. 1638(b)(2)(A). Current § 1026.18(d) implements TILA section 128(a)(3) and (8) by requiring creditors to disclose the ''finance charge,'' using that term, and a brief description such as ''the dollar amount the credit will cost you.'' For transactions subject to RESPA, current § 1026.19(a) requires creditors to provide the finance charge disclosure not later than the third business day after the creditor receives the consumer's application.

Federal agency research has long recognized consumer confusion over the finance charge. The Board-HUD Joint Report found that TILA disclosures fall short of meeting their goal of informing consumers about the cost of credit, in part because of consumer confusion over the finance charge. Board-HUD Joint Report at III. Evidence of consumer confusion over the finance charge was echoed in the Board's 2009 Closed-End Proposal. 74 FR 43307–08 (Oct. 21, 2009). The Board's consumer testing indicates that consumers often fail to understand that the finance charge contains both interest and fees,[282] and that consumers place very little value on the finance charge when making decisions regarding their loan.[283] The report stated that ''[testing] participants . . . generally disregarded the finance charge when reading their TILA statements.'' [284] In addition, FTC staff conducted a study evaluating prototype mortgage disclosures in comparison to then-current TILA and REPSA disclosures, which indicated that consumers were confused by the finance

[282] Macro 2009 Closed-End Report at 11, 41 (stating that, in Round 8 of the testing, ''[m]ost [participants] thought the finance charges were equal to the amount of interest that the borrower would pay over time; only a few understood the finance charges shown on the form included fees as well as interest'').

[283] For example, only one of the nine participants in one round of the Board's testing found the finance charge useful. *Id.* at 35. In another round, most participants said that they would not use the finance charge in their decision-making. *Id.* at 28.

[284] *Id.* at 41.

charge disclosure on the TILA disclosures.[285]

For these reasons, the Bureau is exercising its authority under TILA section 105(a) and (f) and Dodd-Frank sections 1032(a) and, for residential mortgage loans, 1405(b), to except transactions subject to proposed § 1026.19(e) from the requirements of TILA section 128(a)(3) and (8) as it applies to the Loan Estimate provided to consumers within three business days of application. As discussed above, the Bureau has determined that the exclusion of the finance charge disclosure from the Loan Estimate effectuates the purposes of TILA by avoiding consumer confusion and information overload historically associated with the finance charge disclosure, thereby improving the informed use of credit.

The Bureau has considered the factors in TILA section 105(f) and has determined that, for the reasons discussed above, an exemption is appropriate under that provision. Specifically, the Bureau has determined that the exemption is appropriate for all affected borrowers, regardless of their other financial arrangements and financial sophistication and the importance of the loan to them. Similarly, the Bureau has determined that the exemption is appropriate for all affected loans, regardless of the amount of the loan and whether the loan is secured by the principal residence of the consumer. Furthermore, the Bureau has determined that, on balance, the exemption will simplify the credit process without undermining the goal of consumer protection or denying important benefits to consumers. Based on these considerations, the results of the Bureau's consumer testing, and the analysis discussed above, the Bureau has determined that an exemption is appropriate.

Although one industry commenter believed the finance charge should be included on the Loan Estimate, the Bureau does not believe that disclosure of the finance charge on the Loan Estimate provides a meaningful benefit to consumers in the form of useful information or protection. Rather, disclosure of the finance charge to consumers early in the lending process actually complicates and hinders the process of mortgage lending because consumers do not understand the disclosure. Removing the finance charge disclosure from the Loan Estimate that consumers receive early in the lending process may assure meaningful disclosure of credit terms, facilitate consumer comparison of credit terms, and improve the informed use of credit by avoiding information overload and improving consumer understanding of loan terms, consistent with the purposes of TILA and with section 1405(b) of the Dodd-Frank Act. As consumer testing indicates that consumers generally do not use the finance charge when shopping for a loan, the absence of the finance charge from the Loan Estimate should not detract from consumers' understanding of their credit terms but, instead, will permit consumers to focus on other important terms. In addition, consistent with Dodd-Frank Act section 1032(a), removal of the finance charge from the Loan Estimate would help ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

The Bureau recognizes that creditors, consumer advocates, and State and Federal supervisory agencies use the finance charge when calculating or verifying the calculation of the APR, determining compliance with certain price thresholds, and for a range of other purposes, including the right of rescission pursuant to TILA section 125. 15 U.S.C. 1635. Accordingly, to preserve the finance charge disclosure for these purposes, § 1026.38(o)(2) requires creditors to disclose the finance charge on the Closing Disclosure provided to consumers at least three days prior to consummation. Although concerns regarding consumer distraction and information overload persist at the stage of the transaction where the consumer receives the Closing Disclosure, the Bureau believes that disclosing the finance charge with other loan calculations on the final page of the Closing Disclosure as a general reference for the consumer after closing will mitigate these concerns. In addition, though the finance charge is not disclosed on the Loan Estimate, creditors must, in order to comply with the record retention requirements in § 1026.25, document the finance charge used to calculate the APR disclosed on the Loan Estimate. As discussed above, the Bureau is adopting conforming amendments to § 1026.22 to reflect the accuracy standards applicable to the finance charge disclosed on the Closing Disclosure under § 1026.38(o)(2). The Bureau is also adopting conforming amendments to § 1026.22 to reflect the accuracy standards applicable to the finance charge used in the APR calculation for the Loan Estimate under § 1026.37(l)(2).

Amount financed. TILA section 128(a)(2) and (8) requires creditors to disclose the ''amount financed,'' using that term, and a brief descriptive statement of the amount financed. 15 U.S.C. 1638(a)(2), (a)(8). Current § 1026.18(b) implements this requirement and requires creditors to disclose the amount financed, using that term, together with a brief description that the amount financed represents the amount of credit of which the consumer has actual use. Like the finance charge disclosure, for transactions subject to RESPA, TILA section 128(b)(2)(A) requires that creditors provide a good faith estimate of this disclosure not later than three business days after the creditor receives the consumer's application, and at least seven business days before consummation. 15 U.S.C. 1638(b)(2)(A). This requirement is implemented in current § 1026.19(a).

Like the finance charge disclosure, research has indicated that the amount financed disclosure appears to confuse consumers. The Board-HUD Joint Report recommended removing the amount financed disclosure from consumer disclosures altogether because it ''is probably not a useful disclosure for mortgage lending.'' [286] The Board-HUD Joint Report found that the primary use of the amount financed disclosure is to help supervisory agencies confirm APR calculations, and is not a useful shopping tool for consumers.[287] The Board's consumer testing in connection with the 2009 Closed-End Proposal also indicated consumer confusion about the amount financed disclosure. Some testing participants incorrectly assumed that the amount financed disclosure was their loan amount or the sale price of the home.[288] Based on this testing, the

[285] James Lacko & Janis Pappalardo, Fed. Trade Comm'n Bureau Econ. Staff Report, *Improving Consumer Mortgage Disclosures: An Empirical Assessment of Current and Prototype Disclosure Forms* at 30, 37 (2007) available at *http://www.ftc.gov/os/2007/06/P025505MortgageDisclosureReport.pdf* (finding that respondents in the study were confused by the finance charge disclosure).

[286] Board-HUD Joint Report at 16.

[287] *Id.* at 17.

[288] Macro 2009 Closed-End Report at *v.* For example, in Round 8 of testing, participants were ''confused about the difference between the 'loan amount' and the 'amount financed.' '' *Id.* at 26. In Round 9, participants gave a variety of incorrect explanations of the term, including that it was ''how much escrow they would have,'' the amount they would have to pay back, or the amount that they borrowed. *Id.* at 35. In both of these rounds, some participants believed the amount financed disclosure was equal to the amount of money they would be borrowing. *Id.* at 40. In Round 11, the amount financed disclosure was moved to the second page, under the heading ''Total Payments'' in the ''More Information About Your Payments''

Board concluded that the amount financed disclosure detracted from, rather than enhanced, consumers' understanding of other disclosures [289] and that consumers ''would not consider the amount financed when shopping for a mortgage or evaluating competing loan offers.'' [290] The Board also found that ''requiring creditors to disclose the amount financed in the loan summary with other key loan terms would add unnecessary complexity and result in 'information overload.' '' [291]

For these reasons, the Bureau is exercising its authority under TILA section 105(a) and (f), Dodd-Frank section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b), to modify and except transactions subject to proposed § 1026.19(e) from the requirements of TILA section 128(a)(2) and (8) as it applies to the Loan Estimate provided to consumers within three business days of application. As discussed above, the Bureau has determined that the exclusion of the amount financed disclosure from the Loan Estimate effectuates the purposes of TILA by avoiding consumer confusion and information overload historically associated with the disclosure, thereby improving the informed use of credit. In addition, the Bureau has considered the factors in TILA section 105(f) and has determined that, for the reasons discussed above, an exception is appropriate under that provision. Specifically, the Bureau has determined that the exemption is appropriate for all affected borrowers, regardless of their other financial arrangements and financial sophistication and the importance of the loan to them. Similarly, the Bureau has determined that the exemption is appropriate for all affected loans, regardless of the amount of the loan and whether the loan is secured by the principal residence of the consumer. Furthermore, the Bureau has determined that, on balance, the exemption will simplify the credit process without undermining the goal of consumer protection or denying important benefits to consumers. Based on these considerations, the findings of the Board-HUD Joint Report, and the analysis discussed above, the Bureau has determined that an exemption is appropriate.

As discussed above, one industry commenter suggested that the Bureau should add the amount financed disclosure to the Loan Estimate. The Bureau does not believe, however, that disclosure of the amount financed on the Loan Estimate provides a meaningful benefit to consumers in the form of useful information or protection. Rather, the Bureau believes that disclosure of the amount financed to consumers early in the lending process actually complicates and hinders the process of mortgage lending because consumers do not understand the disclosure. Removing the amount financed from the Loan Estimate may improve the informed use of credit by avoiding information overload and improving consumer understanding of loan terms, consistent with the purposes of TILA and will be in the interest of consumers and the public, consistent with section 1405(b) of the Dodd-Frank Act. Enhanced consumer understanding of mortgage transactions is also in the interest of consumers and the public. In addition, consistent with Dodd-Frank Act section 1032(a), removal of the amount financed from the Loan Estimate may help ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

However, the Bureau recognizes that, like the finance charge, the amount financed is commonly used by creditors and supervisory agencies for compliance purposes, as well as by consumer advocates. Therefore, under the final rule, creditors would be required to disclose the amount financed in the Closing Disclosure provided to consumers at least three business days prior to consummation. Like the finance charge, the Bureau believes that disclosing the amount financed with other loan calculations on the final page of the Closing Disclosure as a general reference for the consumer after closing will mitigate concerns about consumer distraction and information overload at the Closing Disclosure stage.

37(m) Other Considerations

Under § 1026.37(m), the Bureau proposed to require creditors to disclose certain information pertaining to: (1) The consumer's right to receive copies of appraisals; (2) future assumability of the loan; (3) at the creditor's option, homeowner's insurance requirements; (4) the creditor's late payment policy; (5) loan refinancing; (6) loan servicing, and (7) in refinance transactions, the consumer's liability for deficiency after foreclosure. This information would have been provided under the master heading ''Additional Information About This Loan'' required by § 1026.37(k) and under the heading ''Other Considerations.''

The Bureau stated in the proposal that consumers already receive most of these disclosures at or after application or prior to consummation, and that by incorporating all of these disclosures into the Loan Estimate, the proposed rule would reduce the number of separate disclosures that consumers receive. The Bureau stated that under the proposed rule, consumers would receive these disclosures in a single, integrated document, which would reduce the potential for information overload, promote the informed use of credit by the consumer, and facilitate compliance by industry. The Bureau did not receive any comments on proposed § 1026.37(m) and is adopting it as proposed.

37(m)(1) Appraisal

Prior to the Dodd-Frank Act, ECOA section 701(e) required creditors to provide to applicants, upon written request, a copy of the appraisal report used in connection with the consumer's application for a loan secured by a lien on residential real property. Section 1474 of the Dodd-Frank Act amended ECOA section 701(e) to remove the provision requiring consumers to request a copy of their appraisal. That section now requires the creditor to provide the consumer with a copy of any written appraisal or valuation developed in connection with an application for a loan that is or will be secured by a first lien on a dwelling promptly upon completion, and no later than three days prior to the closing of the loan, even if the creditor denies the consumer's application or the application is incomplete or withdrawn. 15 U.S.C. 1691(e)(1). Under ECOA section 701(e)(5), the creditor must notify the consumer in writing at the time of application of the right to receive a copy of any appraisal or valuation. 15 U.S.C. 1691(e)(5).

section. *Id.* at 51. As in previous rounds, no participant was able to explain the meaning of the amount financed disclosure. *Id.* at 55. In Round 12, with the amount financed disclosure in the same place on the second page, two participants incorrectly believed they were borrowing the ''amount financed.'' *Id.* at 55. In the final round of testing, none of the participants understood the meaning of the amount financed disclosure. *Id.* at 72.

[289] 74 FR 43232, 43308 (Aug. 26, 2009). For example, ''sample disclosures were used to try to explain that the difference between the loan amount and amount financed is attributable to prepaid finance charges, but this explanation did not appear to improve consumer comprehension.'' *Id.*

[290] *Id.*

[291] *Id.*

In addition, section 1471(a) of the Dodd-Frank Act added to TILA new appraisal requirements for higher-risk mortgages. Specifically, new TILA section 129H(c) requires creditors to provide consumers, at least three days prior to closing, a copy of any appraisal prepared in connection with a higher-risk mortgage. 15 U.S.C. 1639h(c). Section 1471(f) of the Dodd-Frank Act defines the term ''higher-risk mortgage'' generally as a residential mortgage loan, other than a reverse mortgage, that is secured by a principal dwelling with an APR that exceeds the average prime offer rate for a comparable transaction by a specified percentage. 15 U.S.C. 1639h(f). Section 1471 also allows for interagency rules to adopt exemptions for transactions, which would not be subject to the implementing regulations. New TILA section 129H(d) contains a disclosure requirement that creditors must provide consumers, at the time of the initial mortgage application, a statement that any appraisal prepared for the mortgage is for the creditor's sole use and that the consumer may choose to have a separate appraisal conducted at his or her own expense. 15 U.S.C. 1639h(d).

The Bureau proposed to use its authority under TILA section 105(a) and Dodd-Frank Act section 1032(a) to include on the Loan Estimate disclosure of the new requirements regarding the consumer's right to appraisal copies for loans subject to ECOA section 701(e)(5) or TILA section 129H(c) and (d). In the proposal, the Bureau stated its intent to harmonize this proposal with its rulemaking implementing amended ECOA section 701(e) and the interagency rulemaking implementing new TILA section 129H(c) and (d), so that creditors may satisfy the ECOA section 701(e)(5) and TILA section 129H requirements in a single disclosure. The Bureau stated its belief in the proposal that including these appraisal disclosures on the Loan Estimate is consistent with the purposes of TILA and would reduce burden on industry. The Bureau stated its belief that because consumers would receive one integrated disclosure rather than a separate appraisal disclosure in addition to the Loan Estimate they would receive after application, the proposal would facilitate compliance for creditors and promote the informed use of credit by consumers, and ensure effective disclosure to consumers, consistent with the purposes of TILA section 105(a).

In addition, the Bureau also stated its belief that incorporating the appraisal disclosures into the Loan Estimate in a way that is consistent with the presentation of other disclosures would ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). Since the proposal, the Bureau has issued the 2013 ECOA Appraisals Final Rule, 78 FR 7215 (Jan. 31, 2013) to implement ECOA section 701(e) as amended by the Dodd-Frank Act. In addition, the Bureau, the Department of the Treasury, the Board, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Federal Housing Finance Agency have issued the 2013 Interagency Appraisals Final Rule, 78 FR 10367 (Feb. 13, 2013), to implement new TILA section 129H(c) and (d). The disclosure proposed in § 1026.37(m)(1) is generally consistent with the disclosure standards adopted in these two rulemakings and would have satisfied the requirements of them both.

Proposed § 1026.37(m)(1) would have applied only to closed-end credit transactions subject to proposed § 1026.19(e) and ECOA section 701(e) or TILA section 129H, as implemented in Regulation B, 12 CFR part 1002, and Regulation Z, respectively. For such transactions, proposed § 1026.37(m)(1) would have required the disclosure under the label ''Appraisal.'' Proposed § 1026.37(m)(1)(i) would have required the disclosure to state that the creditor may order an appraisal to determine the value of the property that is the subject of the transaction and may charge the consumer the cost for any such appraisal. Proposed § 1026.37(m)(1)(ii) would have required the disclosure to state that the creditor will promptly provide the consumer a copy of any completed appraisal, even if the transaction is not consummated. Finally, proposed § 1026.37(m)(1)(iii) would have required the disclosure to state that the consumer has the right to order an additional appraisal of the property for the consumer's own use. Proposed comment 37(m)(1)–1 would have clarified that if a transaction subject to proposed § 1026.19(e) is not also subject to either ECOA section 701(e) or TILA section 129H, as implemented in Regulations B and Z, respectively, the disclosure required by proposed § 1026.37(m)(1) may be omitted from the Loan Estimate.

A large bank criticized proposed § 1026.37(m)(1)(i) because section 1471(a) of the Dodd Frank Act requires that a disclosure that ''the appraisal prepared for the mortgage is for the sole use of the creditor, and the applicant may choose to have a separate appraisal conducted at the expense of the applicant'' and proposed § 1026.37(m)(1)(i) leaves out this critical first clause. The commenter stated that the omission could be a source of consumer confusion. A regional trade association representing banks commented that the required disclosure proposed in § 1026.37(m)(1)(ii) should make clear that the creditor may not have an appraisal to provide if the transaction is not consummated. A regional trade association representing banks expressed concern that the statement required by § 1026.37(m)(1)(iii) may cause consumers to believe that the creditor would consider the appraisal ordered by the consumer which the creditor may not do pursuant to other Federal laws and regulations. The commenter stated that the omission could be a source of consumer confusion.

With respect to the comment that the disclosure required by proposed § 1026.37(m)(1)(i) leaves out the first clause of section 1471(a) of the Dodd Frank Act stating that the appraisal prepared for the mortgage is for the sole use of the creditor, the Bureau believes that the statement required by § 1026.37(m)(1)(i) effectively informs the consumer that the appraisal is for the creditor. The Bureau has designed the statement to use plain language to convey this concept to consumers. Accordingly, the statement required by proposed § 1026.37(m)(1)(i), as illustrated by proposed form H–24 of appendix H to Regulation Z, states ''we may order an appraisal to determine the property's value and charge you for this appraisal.'' The Bureau does not believe that adding the term ''sole use of the creditor'' would make the disclosure more effective, and on the contrary, because of its technical nature, may decrease the level of engagement of consumers with the statement. The Bureau has conducted extensive consumer testing of prototype disclosure statements for these statutory appraisal notices. The proposed statement performed better than prototype statements that included language that directly addressed this clause. The Bureau tested a clause with consumers that stated, ''any appraisal we order for this loan is for our use only, even if we charge you the cost.'' This clause caused consumer confusion regarding the right to obtain a copy of the appraisal, because consumers believed this statement meant they would not be able to see the

appraisal.[292] Accordingly, the Bureau has determined the proposed statement more effectively conveyed the right to a copy of the appraisal and the creditor's use of the appraisal ordered by the creditor. Moreover, changing the disclosure proposed in § 1026.37(m)(1)(i) would render it inconsistent with the disclosures adopted in the 2013 ECOA Appraisals Final Rule and the 2013 Interagency Appraisals Final Rule and undermine the intent of the proposal to harmonize the appraisal disclosure in the integrated disclosures with the Bureau's other rulemakings.

With respect to the comment that the statement under § 1026.37(m)(1)(ii) should make clearer that the creditor may not have an appraisal for the transaction, the Bureau notes that the disclosure, as illustrated on form H–24, states that the creditor ''may'' order an appraisal. The Bureau believes that this conditional language is sufficient to put a consumer on notice that an appraisal may not be ordered in every instance (such as where a transaction is not completed) and thus, the consumer may not receive a copy of such appraisal.

Regarding the comment that consumers may believe that the creditor would consider the appraisal ordered by the consumer, the Bureau believes that the statement effectively conveys that the appraisal ordered by a consumer is for the consumer's use. The proposed statement, as illustrated by form H–24, states ''you can pay for an additional appraisal for your own use at your own cost.'' Based on the Bureau's consumer testing, the Bureau believes the statement is understandable by consumers. In addition, for reasons discussed more fully in the 2013 ECOA Appraisals Rule, the Bureau does not believe that the concise, tested language in the sample disclosure should be expanded to discuss other Federal laws and regulations, which are complex and subject to varying interpretations. 78 FR 7215, 7228–9 (Jan. 31, 2013). For the aforementioned reasons, the Bureau is not revising the proposed appraisal notice pursuant to the comments.

However, for transactions subject only to the Interagency Appraisals Final Rule and not the ECOA Appraisals rule, the creditor is permitted to remove the word ''promptly'' from the disclosure pursuant to § 1026.35(c)(5)(i). 78 FR 10367, 10410–10412 (Feb. 13, 2013). Accordingly, to conform the appraisal notice in the integrated disclosures to these final rules, the Bureau is revising comment 37(m)(1)–1 to provide that for transactions subject to TILA section 129H, but not ECOA section 1691(e), the creditor may delete the word promptly from the disclosure required by § 1026.37(m)(1)(ii).

In addition, since the proposal was issued, the regulations implementing the Dodd-Frank Act's newly required appraisal notices have both been finalized. Neither of these regulations limits the requirement for the creditor to provide appraisals to ''completed'' appraisals. Indeed, the 2013 ECOA Appraisals Rule specifically states that a rule requiring only ''final'' versions to be provided would not be consistent with the statutory requirement, because it would allow creditors to withhold a valuation that they determine is a draft or preliminary even if they never receive a later version. 78 FR 7215, 7224 (Jan. 31, 2013) (citing comment 1002.14(a)(1)–7). Accordingly, the Bureau is revising § 1026.37(m)(1)(ii) to delete the word ''completed.'' The statement illustrated by proposed form H–24 of appendix to Regulation Z would not have contained the word completed, and thus, is not being revised as such.

For the aforementioned reasons, the Bureau is adopting § 1026.37(m)(1)(i) and (iii) as proposed, based on the authority stated in the proposal. The Bureau is revising § 1026.37(m)(1)(ii) to delete the word ''completed,'' to conform to the 2013 ECOA Appraisals Rule and the 2013 Interagency Appraisals Final Rule. The Bureau is also revising comment 37(m)(1)–1 as described above, to clarify that a creditor may delete the word ''promptly'' from the statement illustrated by form H–24 of appendix H to Regulation Z if it is subject to TILA section 129H, but not ECOA section 701(e). The Bureau is also adopting new comment 37(m)(1)–2 to clarify that the disclosure required by § 1026.37(m)(1) is as illustrated by form H–24, which contains the statement that the creditor will provide an appraisal even if the ''loan does not close.'' The Bureau is further revising comment 37(m)(1)–1 to delete the reference to § 1026.37's permission that disclosures be made ''as applicable'' to conform with revisions to § 1026.37. Pursuant to § 1026.37(o)(3), the illustrated language is required even though § 1026.37(m)(1) refers to ''consummation of the transaction.'' The Bureau has used the term ''close'' instead of the term ''consummation'' on the disclosures, because it is plain language, which the Bureau believes will be more understandable to most consumers. The Bureau adopts these revisions pursuant to its authority under TILA section 105(a) and Dodd-Frank Act section 1032(a). The Bureau believes these revisions will effectuate the purpose of TILA by promoting the informed use of credit and consistent with Dodd-Frank Act section 1405(b), will improve consumer awareness and understanding of residential mortgage loans.

37(m)(2) Assumption

TILA section 128(a)(13) requires the creditor to disclose, in any residential mortgage transaction, a statement indicating whether a subsequent purchaser may be permitted to assume the remaining loan obligation on its original terms. 15 U.S.C. 1638(a)(13). This provision is currently implemented in § 1026.18(q), and applies only to residential mortgage transactions. TILA section 103(x) defines ''residential mortgage transaction'' as a ''transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained against the consumer's dwelling to finance the acquisition or initial construction of a dwelling.'' 15 U.S.C. 1602(x).

The Bureau proposed § 1026.37(m)(2) to implement TILA section 128(a)(13) for transactions subject to § 1026.19(e), pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). In addition, the Bureau proposed to modify the scope of TILA section 128(a)(13), pursuant to its authority under TILA section 105(a) and Dodd-Frank Act sections 1032(a) and 1405(b), to apply to all transactions subject to proposed § 1026.19(e), even if not a ''residential mortgage transaction'' as defined in TILA section 103(x). The Bureau stated its belief in the proposal that consumers in transactions secured by real property would benefit from the disclosure, even if the property does not contain a dwelling. The Bureau stated that the proposed modification would promote the informed use of credit, consistent with the purposes of TILA; ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a); and would improve consumer awareness and understanding of residential mortgage loans, and be in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b). Transactions subject to the disclosure

[292] *See* Kleimann Testing Report at 254–256.

requirements of § 1026.18 would have continued to be subject to § 1026.18(q).

Proposed § 1026.37(m)(2) would have implemented TILA section 128(a)(13) for all transactions subject to § 1026.19(e) by requiring the creditor to disclose whether a subsequent purchaser of the property may be permitted to assume the remaining loan obligation on its original terms. Proposed comment 37(m)(2)–1 would have clarified that the creditor must disclose whether or not a third party may be allowed to assume the loan on its original terms if the property is sold or transferred by the consumer. Proposed comment 37(m)(2)–1 also would have noted that in many mortgages, the creditor may be unable to determine whether the loan is assumable at the time the Loan Estimate is provided and cited to the GSEs as examples of entities that as a common practice condition assumability on a number of factors such as the subsequent borrower's creditworthiness. Further, proposed comment 37(m)(2)–1 would have clarified that, if the creditor can determine that such assumption is not permitted, the creditor complies with § 1026.37(m)(2) by disclosing that the loan is not assumable. In all other situations, including where assumption of a loan is permitted or is dependent on certain conditions or factors, or uncertainty exists as to the future assumability of a mortgage, the creditor complies with proposed § 1026.37(m)(2) by disclosing that, under certain conditions, the creditor may allow a third party to assume the loan on its original terms. Proposed comment 37(m)(2)–2 would have clarified that the phrase ''original terms'' as used in § 1027.37(m)(2) does not preclude an assumption fee but may represent different terms, and would have provided an example of a modified term.

An association of State regulators commented that the assumption disclosure, as proposed in § 1026.37(m)(2) for the Loan Estimate was inconsistent with that proposed in § 1026.38(l)(1), for the Closing Disclosure, as illustrated by proposed forms H–24 and H–25 of appendix H to Regulation Z, respectively. The Bureau believes that the consistent statements between the Loan Estimate and Closing Disclosure will aid consumer understanding. Accordingly, the Bureau is adopting § 1026.37(m)(2) as proposed, based on the authority stated in the proposal, but is revising the assumption disclosure on form H–24 for consistency with the Closing Disclosure, as described in the section-by-section analysis of appendix H to Regulation Z. The Bureau is adopting comments 37(m)(2)–1 and –2 substantially as proposed but with minor modifications for clarity.

37(m)(3) Homeowner's Insurance

TILA section 106(c) provides that premiums for homeowner's insurance written in connection with any consumer credit transaction shall be included in the finance charge unless a clear and specific statement in writing is furnished by the creditor to the person to whom credit is extended, setting forth the cost of the insurance if obtained from or through the creditor, and stating that the person to whom credit is extended may choose the insurance provider. 15 U.S.C. 1605(c). Current §§ 1026.4(d)(2)(i) and 1026.18(n) implement this provision.

The Bureau stated in the proposal that it understands that many creditors provide consumers the disclosure described in TILA section 106(c) and § 1026.4(d)(2)(i) in order to exclude homeowner's insurance premiums from the finance charge. The Bureau stated that to reduce the number of individual disclosures provided to consumers and facilitate compliance for creditors, the Bureau proposed § 1026.37(m)(3) which provides that, at the creditor's option, the creditor may disclose a statement of whether homeowner's insurance is required on the property and whether the consumer may choose the insurance provider, labeled ''Homeowner's Insurance.'' Proposed comment 37(m)(3)–1 would have clarified that the disclosure required in § 1026.37(m)(3) is optional. Proposed comment 37(m)(3)–2 would have clarified that a creditor satisfies the condition for excluding homeowner's insurance premiums from the finance charge described in § 1026.4(d)(2)(i) by disclosing the statement described in § 1026.37(m)(3).

The Bureau proposed § 1026.37(m)(3) pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). The Bureau believes, as stated in the proposal, that combining the optional disclosure regarding homeowner's insurance premiums with the other disclosures on the Loan Estimate may avoid information overload and therefore promote the informed use of credit, consistent with the purposes of TILA. In addition, the Bureau believes, as stated in the proposal, that the proposed disclosure will help ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, consistent with Dodd-Frank Act section 1032(a), and will improve consumer awareness and understanding of residential mortgage loans, in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

A national trade association representing developers of timeshare properties commented that the homeowner's insurance disclosure is not applicable to timeshare transactions because the homeowners association for the timeshare resort typically pays for insurance on the property. As noted, the disclosure required by § 1026.37(m)(3) may be made at the creditor's option. Accordingly, to the extent that timeshare creditors believe the disclosure is inapplicable, they are free to omit it from the Loan Estimate. The Bureau continues to believe that § 1026.37(m)(3) will effectuate the purposes of TILA and is consistent with the Dodd-Frank Act section 1032(a) and 1405(b). Accordingly, the Bureau is adopting § 1026.37(m)(3) substantially as proposed but is making minor modifications for clarity and to reflect the disclosure on form H–24. The Bureau is adopting comment 37(m)(3)–1 as proposed and is adopting comment 37(m)(3)–2 substantially as proposed but with a minor modification for clarity.

37(m)(4) Late Payment

TILA section 128(a)(10) requires disclosure of ''any dollar charge or percentage amount which may be imposed by a creditor solely on account of a late payment.'' 15 U.S.C. 1638(a)(10). This requirement is currently implemented in § 1026.18(l), which requires a statement detailing any ''dollar or percentage charge that may be imposed before maturity due to a late payment.''

The Bureau proposed § 1026.37(m)(4) to implement TILA section 128(a)(10) for transactions subject to § 1026.19(e), pursuant to its implementation authority under TILA section 105(a). In addition, the Bureau proposed to require creditors to disclose the number of days that a payment must be late to trigger the late payment charge pursuant to its authority under TILA section 105(a) and Dodd-Frank Act section 1032(a). The Bureau stated in the proposal that it believes that the additional disclosure enhances the late payment disclosure by describing the conditions that may trigger a late payment charge and therefore promotes the informed use of credit, consistent with the purpose of TILA. For this same reason, the Bureau stated its belief that the proposed disclosure would ensure

that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a).

Proposed § 1026.37(m)(4) would have implemented TILA section 128(a)(10) for transactions subject to § 1026.19(e) and required the creditor to disclose a statement detailing any charge that may be imposed on the consumer for a late payment and the number of days a payment must be late before a penalty for late payment may be assessed. Proposed comment 37(m)(4)–1 would have clarified that the late payment disclosure is required if charges are added to an individual delinquent installment of a transaction that remains ongoing on its original terms. Proposed comment 37(m)(4)–1 also would have clarified which charges and creditor actions under the legal obligation do not qualify as a late payment charge and that an increase in the interest rate is a late payment charge to the extent of the increase. Comment 37(m)(4)–2 would have clarified that the creditor may make changes to the disclosure to reflect the requirements imposed and alternatives allowed under State law.

Two GSEs criticized the design of the Late Payment disclosure as proposed on form H–24 of appendix H to Regulation Z, stating it was inconsistent with other disclosures required by § 1026.37(m) because the information filled in by the creditor that is particular to the consumer's transaction is not highlighted by a checkbox. The Bureau did not propose a format based on checkboxes for this disclosure in proposed form H–24 of appendix H based on its belief that the formula for a creditor's charge for a late payment varies, although it is typically subject to limits under applicable law. However, the Bureau believes that placing additional emphasis on the variable information of the disclosure may aid consumer understanding, and thus, has illustrated such emphasis of this information using italics in form H–24 of appendix H to Regulation Z, as discussed in the section-by-section analysis of appendix H.

The Bureau did not receive any comments on the substance of proposed § 1026.37(m)(4) or its accompanying commentary. Accordingly, the Bureau is finalizing proposed § 1026.37(m)(4) and comments 37(m)(4)–1 and –2 as proposed, based on the authority stated in the proposal.

37(m)(5) Refinance

TILA section 128(b)(2)(C)(ii) requires that, for variable-rate transactions or transactions where the regular payment may otherwise be variable and that are secured by the consumer's dwelling, the borrower be provided with a disclosure that there is no guarantee to refinance to a lower amount. Current § 1026.18(t) implements this provision by requiring creditors to disclose a statement that there is no guarantee that the consumer may refinance to lower the interest rate or monthly payment. Current § 1026.18(t) also expands the no-guarantee-to-refinance disclosure to apply to, not only variable-rate or variable-payment transactions, but all closed-end transactions secured by real property or a dwelling, other than transactions secured by the consumer's interest in a timeshare.

The Bureau proposed § 1026.37(m)(5) to implement TILA section 128(b)(2)(C)(ii) for transactions subject to proposed § 1026.19(e). Proposed § 1026.37(m)(5) would have required the disclosure of the following statement: ''Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan.'' This statement was based on the results of several rounds of consumer testing. As discussed in the Kleimann Testing Report, consumers in the Bureau's consumer testing understood this language to mean that they are permitted to try to refinance their loan in the future, but that they may not be able to do so. *See* Kleimann Testing Report at 218, 225.

In implementing TILA section 128(b)(2)(C)(ii), the Bureau proposed to use its authority under TILA section 105(a) and Dodd-Frank Act sections 1032(a) and 1405(b) to expand the requirement to all transactions subject to § 1026.19(e). The proposal stated that, like the Board, the Bureau was concerned that some consumers may accept loan terms that could present refinancing problems similar to those experienced by consumers in variable-rate or variable-payment transactions (*e.g.,* a three-year fixed rate mortgage with a balloon payment), and that all consumers would benefit from a statement that encourages consideration of possible future market rate increases on refinancing. *See* 2009 Closed-End Proposal, 74 FR 43310. The Bureau stated that it believed the proposed disclosure effectuates the purpose of TILA to help consumers avoid the uninformed use of credit. In addition, the Bureau stated its belief that the proposed disclosure would help to ensure that the features of mortgage transactions are fully and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with a financial product, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a), and would improve consumer awareness and understanding of residential mortgage loans, which is in is the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b). Transactions subject to the disclosure requirements of § 1026.18 would have continued to be subject to § 1026.18(t).

A national trade association representing developers of timeshare properties commented that the refinance disclosure is confusing for timeshare consumers because those transactions are rarely refinanced and thus the disclosure could mislead consumers into believing they could refinance. The Bureau disagrees that the disclosure as proposed would be confusing for timeshare consumers. Indeed, the disclosure required by § 1026.37(m)(5) notifies consumers that refinancing may not be possible, which is correct given that timeshares are typically not refinanced. The Bureau continues to believe that the disclosure required by § 1026.37(m)(5) will effectuate the purposes of TILA and is consistent with the Dodd-Frank Act sections 1032(a) and 1405(b). See the section-by-section analysis of § 1026.19 for a discussion regarding the Bureau's decision to extend the scope of certain disclosures required by the Dodd-Frank Act for ''residential mortgage loans,'' as defined under Dodd-Frank Act section 1401, to transactions secured by a consumer's interest in a timeshare plan. Accordingly, the Bureau is adopting § 1026.37(m)(5) as proposed, based on the authority stated in the proposal.

37(m)(6) Servicing

RESPA section 6(a) requires disclosures to loan applicants concerning whether the servicing of the loan may be assigned, sold, or transferred to any other person at any time while the loan is outstanding. 12 U.S.C. 2605(a). Current appendix C to Regulation X implements RESPA section 6(a) and requires a statement in the RESPA GFE regarding loan servicing under the section ''If your loan is sold in the future,'' albeit using relatively generic language that does not express the creditor's actual intent.[293] Proposed

[293] The standard RESPA GFE form in appendix C to Regulation X reads as follows: ''Some lenders

Continued

§ 1026.37(m)(6) would have required a statement of whether the loan will be serviced by the creditor or transferred to another servicer, labeled ''Servicing.'' Proposed comment 37(m)(6)–1 would have clarified that the disclosure required in proposed § 1026.37(m)(6) requires only that the creditor state its intent at the time the disclosure is issued.

For transactions subject to RESPA, the Bureau proposed § 1026.37(m)(6) to implement RESPA section 6(a), pursuant to its authority under RESPA section 19(a). For transactions subject to the requirements of proposed § 1026.19(e) but that are not subject to RESPA, the Bureau proposed to require creditors to provide the servicing disclosure described in § 1026.37(m)(6) pursuant to its authority under TILA section 105(a) and Dodd-Frank Act 1032(a). The Bureau believes, as stated in the proposal, that requiring the disclosure regarding loan servicing in these transactions will improve consumer understanding and avoid the uninformed use of credit, consistent with the purposes of TILA, and that the disclosure will ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a).

A non-depository lender commenter stated that a lender does not typically know at the time the Loan Estimate is issued whether it intends to retain servicing of the loan or transfer it. Further, the commenter stated that under other applicable laws and regulations, a creditor need not disclose whether it has transferred servicing of the loan until after closing. The commenter suggested that the disclosure design include a third option where a creditor could disclose that it did not know whether it intended to service the loan.

The Bureau intended for the servicing disclosure to implement RESPA section 6(a), which only requires a notice of whether the servicing of the loan may be assigned, sold, or transferred to any other person at any time while the loan is outstanding. The Bureau intended that the proposal require, as illustrated by proposed form H–24 of appendix H to Regulation Z, only the disclosure of the creditor's intent. The Bureau believed such a disclosure would convey effectively the information required by RESPA section 6(a) and aid consumer understanding of the transaction. The Bureau, however, understands that proposed § 1026.37(m)(6) would have required a statement of whether the loan will or will not be serviced by the creditor, and does not in the regulatory text refer to the creditor's intent to service the loan. Accordingly, the Bureau is revising § 1026.37(m)(6) to refer specifically to the creditor's intent with respect to servicing the loan. The Bureau believes that, with the revision to the regulatory text, a third check box in form H–24, as suggested by the commenter, is unnecessary. If a creditor does not intend to service the loan, then it should select the checkbox that it does not intend to service the loan. The Bureau believes that if there is doubt regarding whether the creditor intends to transfer servicing, consumers will be better served by a disclosure that the creditor does intend to do so, in order that consumers are on notice about that possibility. The Bureau is adopting § 1026.37(m)(6) with a revision to require a statement of whether or not the creditor intends to service the loan. The Bureau is also revising comment 37(m)(6)–1 to change a reference from the closing of the loan to the consummation of the loan. The Bureau adopts § 1026.37(m)(6) and comment 37(m)(6)–1 as revised pursuant to its authority under RESPA sections 6(a) and 19(a), TILA section 105(a), and Dodd-Frank Act 1032(a).

37(m)(7) Liability After Foreclosure

Section 1414(c) of the Dodd-Frank Act created new TILA section 129C(g), which establishes certain requirements for residential mortgage loans subject to protection under a State anti-deficiency law. 15 U.S.C. 1639c(g). TILA section 129C(g)(2) requires that, prior to consummation, the creditor or mortgage originator provide a written notice to the consumer describing the protection provided by the anti-deficiency law and the significance to the consumer of the loss of such protection. TILA section 129C(g)(3) requires that any creditor or mortgage originator that provides an application to a consumer or receives an application from a consumer, for any type of refinancing for such loan that would cause the loan to lose the protection of an anti-deficiency law, shall provide a written notice to the consumer describing the protection provided by the anti-deficiency law and the significance for the consumer of the loss of such protection before any agreement for refinancing is consummated. TILA section 129C(g)(1) defines anti-deficiency law to mean the law of any State which provides that, in the event of foreclosure on the residential property of a consumer securing a mortgage, the consumer is not liable, in accordance with the terms and limitations of such State law, for any deficiency between the sale price obtained from a foreclosure sale and the outstanding balance of the mortgage.

Proposed § 1026.37(m)(7) would have implemented TILA section 129C(g)(3), which applies to refinance transactions and proposed comment 37(m)(7)–1 would have provided guidance on when such a disclosure is permitted. Specifically, proposed § 1026.37(m)(7) would have provided that, if the credit is to refinance an extension of credit as described in § 1026.37(a)(9)(ii) or (iii), the creditor must disclose a brief statement that certain State law protections against liability for any deficiency after foreclosure may be lost upon refinancing, the potential consequences of the loss of such protections, and a statement that the consumer should consult an attorney for additional information, labeled ''Liability after Foreclosure.''

The Bureau proposed this requirement pursuant to its implementation authority under TILA section 105(a). TILA section 129C(g)(3) requires creditors to provide the anti-deficiency disclosure prior to consummation. The Bureau stated in the proposal that it believed that consumers in refinance transactions would benefit from receiving the disclosure in the Loan Estimate provided three days after application since the disclosure informs consumers of the potentially significant consequences of refinancing and is therefore an important consideration for a consumer evaluating whether to proceed with the loan. Further, the Bureau stated it believed that the anti-deficiency disclosure is appropriately tied to the submission of the consumer's application since TILA section 129C(g)(3) requires creditors to provide the disclosure to all consumers to whom it provides an application or from whom it receives an application. The Bureau stated its belief that it would not be feasible to require the disclosure to be provided to any consumer to whom the creditor ''provides'' a loan application because, as discussed above in the section-by-section analysis of § 1026.2(a)(3), ''application'' is defined by § 1026.2(a)(3) as the consumer's submission of certain specific information to a creditor. The requirements of TILA section 129C(g)(2) were proposed to be implemented in § 1026.38(p)(3).

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.''

The Bureau did not receive any comments specifically on proposed § 1026.37(m)(7). Accordingly, the Bureau is adopting § 1026.37(m)(7) as proposed, based on the authority stated in the proposal. The Bureau is adopting comment 37(m)(7)–1 substantially as proposed but with minor modifications for clarity. See the section-by-section analysis of § 1026.38(p)(3) for a discussion of the proposed provisions implementing TILA section 129C(g)(2).

37(n) Signature Statement

TILA section 128(b)(2)(B)(i) requires the following statement in transactions that are also subject to RESPA and where the extension of credit is secured by the consumer's dwelling, other than timeshares: ''You are not required to complete this agreement merely because you have received these disclosures or signed a loan application.'' 15 U.S.C. 1638(b)(2)(B)(i). Current § 1026.19(a)(4) implements this provision by requiring, for transactions subject to RESPA that are secured by the consumer's dwelling (other than home equity lines of credit subject to § 1026.5(b) and timeshares), the statement required by TILA section 128(b)(2)(B)(i) in the good faith estimates and corrected disclosures provided pursuant to § 1026.19(a)(1) and (2).

During the Know Before You Owe initiative, the Bureau received public feedback on the prototype disclosure forms stating that a signature line on the integrated disclosures would facilitate compliance for industry. In addition, during the Bureau's consumer testing, industry participants also stated that a signature line would facilitate compliance. Based on that feedback, the Bureau designed prototype disclosure forms that included signature lines for consumers to confirm receipt of the disclosures and included a signature statement based on the statement required by TILA section 128(b)(2)(B)(i). At the Bureau's consumer testing, participants understood from the prototype signature statement that signing the disclosure did not obligate them to the transaction. *See* Kleimann Testing Report at 153.

Accordingly, the Bureau proposed to implement the signature requirement of TILA section 128(b)(2)(B)(i) in proposed § 1026.37(n), for all transactions subject to § 1026.19(e), which would have provided creditors with the option to add a line for the signatures of the consumers in the transaction, but required the signature statement. The Bureau proposed to modify the signature language required by TILA section 128(b)(2)(B)(i) pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). While the substance of the disclosure required by proposed § 1026.37(n) is the same as the statutory language, as discussed in the Kleimann Testing Report, the Bureau stated in the proposal that its consumer testing indicated that consumers easily understand from the proposed language that a signature does not bind them to accept the loan. *See* Kleimann Testing Report at 131, 148, 153, 220.

Accordingly, the Bureau believed that the proposed modification would have promoted the informed use of credit, consistent with the purposes of TILA. For this same reason, the Bureau stated its belief that the proposed modification would ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, consistent with Dodd-Frank Act section 1032(a), and will improve consumer awareness and understanding of residential mortgage loans and is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

The Bureau also proposed to use its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b) to expand the scope of TILA section 128(b)(2)(B)(i) to apply to all transactions subject to proposed § 1026.19(e). As discussed above, TILA section 128(b)(2)(B)(i) applies only to transactions subject to both TILA and RESPA that are secured by the consumer's dwelling, and excludes transactions secured by the consumer's interest in a timeshare. However, the Bureau stated its belief in the proposal that consumers in all transactions subject to proposed § 1026.19(e) would benefit from the disclosure because it ensures that consumers understand they are not obligated to complete the loan transaction just because they signed or received the Loan Estimate. Accordingly, the Bureau stated its belief that the proposed disclosure would promote the informed use of credit, consistent with the purposes of TILA. For these same reasons, the Bureau stated its belief in the proposal that the proposed disclosure would ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, consistent with Dodd-Frank Act section 1032(a), and would improve consumer awareness and understanding of residential mortgage loans and would be in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

Proposed § 1026.37(n)(1) would have stated that, at the creditor's option, lines for the signatures of the consumers in the transaction may be provided. The optional signatures lines would be located under the master heading ''Additional Information About This Loan'' required by proposed § 1026.37(k) and under the heading ''Confirm Receipt.'' Proposed § 1026.37(n)(1) also would have stated that if the creditor includes a line for the consumer's signature, the creditor is required to disclose that, by signing the Loan Estimate, the consumer is only confirming receipt of the form and is not required to accept the loan. For transactions where the creditor does not include a line for the consumer's signature, proposed § 1026.37(n)(2) would have required disclosure of the statement that the consumer does not have to accept the loan because the consumer received or signed the Loan Estimate. The statement that would have been required by proposed § 1026.37(n)(2) would have been located under the heading ''Other Considerations'' that would have been required by proposed § 1026.37(m), labeled ''Loan Acceptance.'' Proposed comment 37(n)–1 would have clarified that it is at the creditor's discretion whether to provide a signature line for the consumer's signature, but if a signature line is provided, the statement in proposed § 1026.37(n)(1) must be provided. Proposed comment 37(n)–2 would have clarified that, if there is more than one consumer in the transaction, the first consumer signs as the applicant and each additional consumer signs as a ''co-applicant.'' Proposed comment 37(n)–2 also would have clarified that the creditor may add an additional signature page to the back of the form if additional signature lines are necessary to accommodate the number of consumers in the transaction.

A community bank commenter praised the proposed signature line, noting that consumers feel more at ease if they can sign a document to show that they have received it. A non-depository lender further praised the fact that the signature statement was optional. In contrast, a national trade association representing developers of timeshares criticized the inclusion of a signature line as confusing and unnecessary for consumers purchasing timeshare products. Several mortgage creditor trade association commenters stated that

the regulation would be clearer if the ''Loan Acceptance'' requirement were also listed in § 1026.37(m). A document preparation company commenter requested guidance on whether the designation ''Applicant'' must appear below the consumer's name as shown on form H–24 or if the designation can be changed to reflect the name of the consumer signing the Loan Estimate.

With respect to the commenters' criticism of the signature line as permitted by § 1026.37(n)(1) as confusing, as expressly stated by that provision, a signature line is not required and thus, could be omitted for such transactions. In response to the commenters' request that the Loan Acceptance requirement be listed in § 1026.37(m), the Bureau believes that listing the Loan Acceptance disclosure under both § 1026.37(n) and (m) would be duplicative and declines to add it to § 1026.37(m). The Bureau believes that, because the Loan Acceptance disclosure is required only if the creditor does not use the optional signature line, its placement under § 1026.37(n) is clear and thus, facilitates compliance. In response to the commenter's request to permit disclosure of the applicant's name, rather than the designation ''Applicant'' under the signature line, the Bureau is adding comment 37(n)(1)–3 to clarify that a creditor may insert the consumer's name under the signature line, rather than using the designation ''Applicant'' in form H–24, but is not required to do so.

For the reasons discussed and based on the legal authority cited above and in the proposal, the Bureau is adopting § 1026.37(n) and comments 37(n)–1 and –2 as proposed, with minor modifications to § 1026.37(n)(1) to conform to form H–24 and to comment 37(n)–2 for clarity. The Bureau is also adding comment 37(n)–3 for the reasons discussed above.

37(o) Form of Disclosures

TILA section 122(a) provides that the information required to be disclosed under TILA shall be disclosed clearly and conspicuously, in accordance with regulations of the Bureau. 15 U.S.C. 1632(a). TILA section 128(b)(1) provides that the disclosures required by sections 128(a) and 106(b) through (d) generally shall be conspicuously segregated from all other terms, data, or information provided in connection with a transaction, including any computations or itemization. 15 U.S.C. 1638(b)(1). Regulation Z currently implements these requirements for closed-end transactions in § 1026.17(a)(1), which provides that the disclosures shall be made clearly and conspicuously in writing, in a form that the consumer may keep. Section 1026.17(a)(1) further provides that the disclosures shall be grouped together, shall be segregated from everything else, and shall not contain any information not directly related to the disclosures under § 1026.18 (and § 1026.47 for private education loans).

As discussed above, the Bureau proposed to exclude transactions subject to § 1026.19(e) and (f) from the coverage of § 1026.17(a) and (b). Consequently, the requirements of TILA sections 122(a) and 128(b)(1) must be implemented elsewhere. The Bureau, pursuant to its implementation authority under TILA section 105(a), therefore proposed to implement the statutory segregation and clear and conspicuous requirements of TILA sections 122(a) and 128(b)(1) for those disclosures in new §§ 1026.37(o) and 1026.38(t). The Bureau stated its belief in the proposal that these requirements will effectuate the purposes of TILA by assuring a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him or her and avoid the uninformed use of credit. In addition, § 1026.37(o) establishes a standard form requirement for transactions subject to RESPA and provides flexibility for certain aspects of the integrated disclosures.

37(o)(1) General Requirements

Proposed § 1026.37(o)(1)(i) would have established the requirements that the disclosures required by § 1026.37 be clear and conspicuous, in writing, and grouped together, segregated from everything else, and provided on separate pages that are not commingled with any other documents or disclosures, including any other disclosures required by State or other laws. Proposed comment 37(o)–1 would have clarified that the clear and conspicuous standard requires that the disclosures be legible and in a readily understandable form. This guidance would have been adopted from existing comment 17(a)(1)–1. The comment also would have clarified that proposed § 1026.37(o)(1)(i) would have required that the disclosures required by § 1026.37 be provided in a form that is physically separate from any other documents or disclosures, including any other disclosures required by State or other laws. This requirement is stricter than the guidance found in existing comment 17(a)(1)–2, which provides that the disclosures may be grouped together and segregated from other information in a variety of ways other than a separate piece of paper. Proposed § 1026.37(o)(1)(ii) also would have provided that, except as provided in § 1026.37(o)(5), the disclosures shall contain only the information required by § 1026.37(a) through (n) and that they generally shall be made in the same order, and positioned relative to the master headings, headings, subheadings, labels, and similar designations in the same manner, as shown in form H–24. Proposed comment 37(o)(1)–2 would have clarified that, even if a creditor elects not to use the form as a model (when so permitted because the transaction is not a federally related mortgage loan, as discussed above), failure to comply with these requirements, to designate as ''estimated'' all disclosures designated as such in the form, or to use letter size paper as shown in form H–24 constitutes noncompliance with the requirement of § 1026.37(o)(3)(ii) that the disclosures be made with headings, content, and format substantially similar to the model form.

The Bureau stated in the proposal that it recognized that, in certain credit sale and other non-mortgage, closed-end credit transactions, creditors include the disclosures required by § 1026.18 in the loan contract or some other document and ensure that they are grouped together and segregated by outlining them in a box or other means authorized by comment 17(a)(1)–2. The Bureau further stated in the proposal that it understood, however, that this approach is virtually never employed for mortgage credit, for which the new disclosures under proposed §§ 1026.19(e) and 1026.37, rather than § 1026.18 disclosures, are required. The Bureau stated in the proposal that it understood that mortgage lenders generally use a standardized note that cannot accommodate dynamically generated, transaction-specific disclosures, and they almost universally employ the model disclosure forms provided in appendix H to Regulation Z as stand-alone, separate documents for providing required TILA disclosures. The RESPA GFE and RESPA settlement statement forms required by RESPA for federally related mortgage loans currently are delivered as separate documents, in accordance with the standard form requirements of Regulation X. Moreover, the Bureau stated in the proposal that the proposed forms were developed as stand-alone documents through an extensive outreach and consumer testing process, as discussed above, and the Bureau was concerned that much of the informative benefit of the forms could be lost or compromised if they were permitted to be included within

other documents. For these reasons, the Bureau stated its belief in the proposal that requiring the § 1026.37 disclosures to be delivered as a separate document maximizes the benefits of the forms and does not present any significant new obligation that mortgage lenders do not already effectively observe. The Bureau sought comment in the proposal, however, on whether there currently are transactions subject to proposed § 1026.19(e) that may be burdened by the adoption of this requirement. Comments received in relation to this issue are discussed in the section-by-section analysis of § 1026.19(e).

A large bank requested guidance on whether it could provide a cover letter along with the Loan Estimate that outlines the next steps in the loan process. Provided the disclosures required by § 1026.37 were made on pages separate from any cover letter, the Bureau believes that § 1026.37(o)(1) as finalized permits providing a cover letter to a consumer along with the Loan Estimate. Because the Bureau continues to believe that it will effectuate the purposes of both TILA and RESPA, the Bureau is adopting § 1026.3(o)(1) as revised to delete the requirement that the disclosures be on separate pages that are not commingled with any other documents or disclosures because the Bureau believes that requirement is redundant to the requirement that the disclosures be grouped together and segregated from everything else. The Bureau is adopting comment 37(o)(1)–1 substantially as proposed with minor modifications to clarify the requirement that the pages of the Loan Estimate be segregated from everything else and to explain that creditors may disclose only the information required by § 1026.37(a) through (n), based on the legal authority described in the proposal and above. The Bureau is adopting comment 37(o)(1)–2 as proposed.

37(o)(2) Headings and Labels

Proposed § 1026.37(o)(2) would have provided that, wherever form H–24 discloses the required master heading, heading, subheading, label, or similar designation for a disclosure as ''estimated,'' that corresponding master heading, heading, subheading, label, or similar designation required by § 1026.37 must contain the word ''estimated,'' even if the provision requiring such headings, label, or similar designation does not. As noted below in the section-by-section analysis of § 1026.38, many of the disclosure items required by that section cross-reference their estimated counterparts in § 1026.37, although the same items may not be estimates as required by § 1026.19(f). To avoid confusion over which items are estimates and which are not, the content provisions of § 1026.37 do not qualify any of the master headings, headings, subheadings, labels, and similar designations of the items disclosed as ''estimated.'' Instead, proposed § 1026.37(o)(2) incorporates by reference the ''estimated'' designations reflected on form H–24, and as discussed below, proposed § 1026.38(t)(2) incorporates by reference the ''estimated'' designations reflected on form H–25. Proposed comment 37(o)(2)–1 would have provided guidance regarding the use of the ''estimated'' designations.

The Bureau did not receive any comments regarding proposed § 1026.37(o)(2) or its accompanying commentary. The Bureau is adopting § 1026.37(o)(2) substantially as proposed but is expanding it to require the capital letter designations in the headings and labels on form H–24 to be disclosed, as applicable. The Bureau makes this revision to clarify that the capital letter designations shown before or after certain of the headings and labels on form H–24 are required, even if the specific provisions of the corresponding disclosures in § 1026.37 do not contain the initial capital letter. The Bureau is also revising the description of § 1026.37(o)(2) from ''Estimated disclosures'' to ''Headings and labels.'' The Bureau is adopting § 1026.37(o)(2) as revised and is adopting comment 37(o)(2)–1 with modifications to conform to § 1026.37(o)(2) as revised, and to clarify that the abbreviation ''est.'' for estimated as illustrated on form H–24 of appendix H is also incorporated into the disclosure requirements of § 1026.37 and must be disclosed.

37(o)(3) Form

Proposed § 1026.37(o)(3)(i) also would have provided that, for a transaction that is a federally related mortgage loan, as defined in Regulation X, the disclosures must be made using form H–24, set forth in appendix H to Regulation Z. The Bureau proposed to require that creditors use a standard form (form H–24 of appendix H) for federally related mortgage loans pursuant to RESPA section 4, as amended by the Dodd-Frank Act. 12 U.S.C. 2603(a). Section 4 has long authorized the use of standard forms. As discussed above, the Dodd-Frank Act amended section RESPA section 4(a) to require the integrated disclosures that are the subject of this proposal, which specifically include both the settlement statement under section 4 and the RESPA GFE under section 5(c). Although the Dodd-Frank Act eliminated one reference in section 4(a) to a ''standard'' form, it left another reference in place, as well as another reference to a ''standard'' form in section 4(c). And by including the cross-reference to section 5(c) in section 4 in relation to the integrated disclosure mandate, Congress effectively extended RESPA's existing standard-form authority to the RESPA GFE as well as the RESPA settlement statement requirement. More notably, in amending section 4(a), Congress did not include an explicit prohibition of a mandatory-use form as is found in TILA section 105(b).[294] For this reason, the Bureau stated in the proposal that it does not believe that Congress intended to eliminate standard-form authority from RESPA section 4.

The Bureau also proposed a mandatory form pursuant to its authority under RESPA section 19(a) to prescribe such rules and regulations as may be necessary to achieve RESPA's purposes. 12 U.S.C. 2617(a). RESPA's purposes include the establishment of more effective advance disclosure to home buyers and sellers of settlement costs. 12 U.S.C. 2601(b)(1). The Bureau stated its belief in the proposal, based on consumer testing results, that the purpose of more effective advance disclosure of settlement costs is better achieved if all lenders provide those disclosures in a standardized format that consumers can recognize and understand. Moreover, the Bureau stated in the proposal that credit terms included in the Loan Estimate facilitate and enhance the consumer's ability to shop for the best-priced loan, including settlement charges, which have a direct relationship to, and can overlap with, credit terms. The Bureau stated its belief in the proposal that disclosure of the settlement costs alone, without the context provided by the credit terms, is therefore far less effective. This is consistent with HUD's rationale in HUD's 2008 RESPA Final Rule for including credit terms in its good faith estimate form. *See* 73 FR 68204, 68214–15 (Nov. 17, 2008). Accordingly, the Bureau stated its belief in the proposal that it is authorized under section 19(a) to require the standard form for the disclosure of all of the information it contains, both settlement costs and credit terms alike.

As noted in the proposal, certain closed-end consumer credit transactions are subject to the requirements of

[294] TILA section 105(b) states that ''nothing in this title may be construed to require a creditor or lessor to use any such model form or clause prescribed by the Bureau under this section.'' 15 U.S.C. 1604(b).

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 did not propose to mandate the use of form H–24 as a standard form. As noted above, TILA section 105(b) explicitly provides that nothing in TILA may be construed to require a creditor to use any model form or clause prescribed by the Bureau under that section. Accordingly, proposed § 1026.37(o)(3)(ii) would have provided that, for transactions subject to § 1026.37 that are not federally related mortgage loans, the disclosures must be made with headings, content, and format substantially similar to form H–24 but use of that form is not required. Consistent with TILA section 105(b), proposed comment 37(o)(3)–1 would have explained that, although use of the form as a standard form is not mandatory for such transactions, its use as a model form, if properly completed with accurate content, constitutes compliance with the clear and conspicuous and segregation requirements of § 1026.37(o). In consideration of the recommendation of the Small Business Review Panel, the Bureau sought comment in the proposal on the advantages, such as cost-saving benefits, and disadvantages of requiring a standard form for the Loan Estimate for federally related mortgage loans and model forms for other credit transactions subject to proposed § 1026.19(e). *See* Small Business Review Panel Report at 28. Proposed § 1026.37(o)(3)(iii) would have provided that the disclosures may be provided in electronic form, subject to compliance with the E-Sign Act. This provision parallels existing § 1026.17(a)(1).

A national title company and a consumer advocacy group stated their support of the Bureau's requiring standard forms for federally related mortgage loans because doing so is more cost-effective for industry and benefits consumers in that they are able to learn the forms over the course of different transactions. Those commenters also apparently believed that the Bureau should require a standard form for all transactions subject to §§ 1026.37 and 1026.38 but, as noted, TILA section 105(b) specifically prohibits requiring a creditor to use any model form or clause. A consumer advocacy group supported the Bureau's requirement that disclosures for non-federally related mortgage loans be made in a format substantially similar to the standard form because it believes uniformity is beneficial for consumers.

Many varied types of industry commenters requested guidance on whether specific design elements of form H–24 were required, such as differing font sizes, bolding, shading, and underscoring. A national trade association representing banks requested permission for creditors to deviate from form H–24 generally with regard to graphics and shading because many of the required elements are expensive to implement. With respect to the differing font sizes, bolding, shading, and underscoring, several industry commenters objected to these formatting requirements because programming software to produce a single form with these various elements is expensive. With regard to shading specifically, industry commenters argued that documents with shading can be difficult to print or fax without obscuring text and are expensive to print because they require more ink than documents without shading. Industry commenters argued that these implementation costs would be transferred to the consumer and thus negate the potential benefit of the design of the integrated disclosures for consumers. Lastly, a document preparation company requested guidance on whether a creditor could produce a form optimized for screen presentation so that such disclosures were more easily viewed on a computer screen or a tablet. For example, the commenter suggested being able to present the Loan Estimate to a consumer in sections, rather than in pages and allowing the consumer to electronically acknowledge receipt of each section.

For federally related mortgage loans, § 1026.37(o)(3) requires the use of form H–24, including all of its elements, meaning that various font sizes, bolding, shading, and underscoring are required by § 1026.37(o)(3). For mortgage loans to which § 1026.19(e) applies but that are not federally related mortgage loans, form H–24 is only a model form. For federally related mortgage loans, the Bureau recognizes that the design of form H–24 is different from the RESPA GFE, RESPA settlement statement, and the TILA disclosures. As discussed elsewhere, the Bureau designed the integrated disclosures to more easily and clearly provide the information that is currently provided in two separate disclosures to consumers on one disclosure in as few pages as possible. As noted in part III above, at the Bureau's Quantitative Study, consumers who used the new Loan Estimate and Closing Disclosure performed statistically significantly better than those who used the existing disclosures. *See* Kleimann Quantitative Study Report at 68. Moreover, the Bureau believes that the design elements of the integrated disclosures contribute significantly to their better performance with consumers. The Bureau believes that this benefit to consumers outweighs the one-time cost of programming software to implement these design elements or any increased costs of copying and printing forms with these elements. With respect to the request for guidance on whether a creditor could produce a version of the disclosures optimized for a screen or a tablet, neither § 1026.37(o)(3)(iii) nor other provisions of § 1026.37 permits any deviations from form H–24 for forms optimized to be shown on a screen or tablet. The Bureau believes that current technology provides for the viewing of the integrated disclosures as designed on computer screens and other devices. The Bureau's Know Before You Owe initiative was conducted on its Web site, on which the prototype disclosures were displayed for viewing and the submission of feedback by the public. With respect to whether such changes are permitted for non-federally related mortgage loans for which the integrated disclosures may be used as model forms, TILA section 105(b) permits creditors to delete non-required information or rearrange the format of the model forms, if in making such deletion or rearranging the format, the creditor does not affect the substance, clarity, or meaningful sequence of the disclosure. For the aforementioned reasons, the Bureau is adopting § 1026.37(o)(3)(i) substantially as proposed but with a technical revision to change the reference from § 1026.37 to § 1026.19(e), based on the legal authority described above and in the proposal. Based on that same authority, the Bureau is adopting § 1026.37(o)(3)(ii) and comment 37(o)(3)–1 as proposed and

§ 1026.37(o)(3)(iii) substantially as proposed but with minor modifications for clarity.

37(o)(4) Rounding

As described in the proposal, the prototype disclosure forms used in the Bureau's pre-proposal consumer testing displayed rounded numbers for certain information required to be disclosed by § 1026.37. For example, rounded numbers were disclosed for the information required by § 1026.37(b)(6) and (7), (c)(1)(iii), (c)(2)(ii) and (iii), (c)(4)(ii), (f), (g), (h), (i), and (l). In addition, the total monthly payment required by proposed § 1026.37(c)(2)(iv) was rounded if any of its component amounts were required to be rounded. The loan amount required to be disclosed by proposed § 1026.37(b)(1) and percentage amounts required to be disclosed by proposed § 1026.37(b)(2) and (6), (f)(1)(i), (g)(2)(iii), (j), and (l)(2) and (3) that did not contain cents or fractional amounts were required to be disclosed without decimal places.

The Bureau stated in the proposal that in its consumer testing, using rounded numbers in this manner, consumers were able to see and evaluate the information required by the above-mentioned paragraphs of § 1026.37 quickly. The Bureau was concerned, as stated in the proposal, that a large number of exact dollar amounts and percentages had the potential to cause information overload and reduce the overall effectiveness of the disclosure. In the proposal, the Bureau stated its belief that rounding certain amounts on the Loan Estimate reduces the quantity of numbers on the form and the complexity of information about potential risks. For example, the Bureau stated that participants at its testing were able to evaluate the risks of maximum payments and interest rates in the Loan Terms table using rounded numbers, as well as evaluate the rounded closing cost estimates, enhancing the utility of the disclosure for consumers. The Bureau believed, as described in the proposal, that the exact number of cents or decimal places for information required to be disclosed by the above-mentioned paragraphs of § 1026.37 at the time the Loan Estimate is provided would not provide a benefit to consumers that would outweigh the risk of information overload.

Accordingly, the Bureau proposed to use its implementation authority under TILA section 105(a), its authority under section 1032(a) of the Dodd-Frank Act, and its authority under section 1405(b) of the Dodd-Frank Act with respect to residential mortgage loans, to require only rounded numbers and percentages without fractional amounts to be disclosed without decimal places for certain information on the Loan Estimate. The Bureau stated its belief in the proposal that whole dollar and certain whole percentage amounts appear to be sufficient to inform consumers of the estimated periodic payment amounts, estimated closing costs, financial risks posed by maximum amounts, and ensure a meaningful disclosure of credit terms. In addition, the disclosure of exact amounts could suggest to consumers a degree of accuracy that may not be warranted for some of the estimated figures.

In the proposal, the Bureau stated its belief that this requirement ensures the meaningful disclosure of credit terms to consumers and promotes the informed use of credit. In addition, the Bureau believed that this requirement may ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances. Further, the Bureau stated that this requirement may improve consumer awareness and understanding of transactions involving residential mortgage loans and is in the interest of consumers and in the public interest.

Specifically, proposed § 1026.37(o)(4)(i)(A) would have required only rounded numbers for the information disclosed pursuant to proposed § 1026.37(b)(6) and (7), (c)(1)(iii), (c)(2)(ii) and (iii), (c)(4)(ii), (f), (g), (h), (i), and (l). Proposed § 1026.37(o)(4)(i)(B) would have required the loan amount disclosed pursuant to proposed § 1026.37(b)(1) to be disclosed without decimal places denoting cents if the cent amount is zero. Proposed § 1026.37(o)(4)(i)(C) would have required the total monthly payment disclosed pursuant to § 1026.37(c)(2)(iv) to be disclosed as a rounded number if any of its component amounts are required to be rounded. The Bureau did not receive any comments on proposed § 1026.37(o)(4)(i)(A) or (B) and is adopting them as proposed. Proposed § 1026.37(o)(4)(ii) would have required percentages that are disclosed pursuant to § 1026.37(b)(2) and (6), (f)(1)(i), (g)(2)(iii), (j), and (l)(3) to be disclosed as an exact number up to two or three decimal places and percentages that are disclosed pursuant to § 1026.37(l)(2) to be disclosed as an exact number up to three decimal places. Proposed comment 37(o)(4)–1 would have clarified that, consistent with § 1026.2(b)(4), all numbers are to be disclosed as exact numbers, unless required to be rounded by proposed § 1026.37(o)(4). Proposed comments 37(o)(4)–2, 37(o)(4)(i)(A)–1, 37(o)(4)(i)(B)–1, and 37(o)(4)(ii)–1 would have provided guidance regarding rounding amounts on the Loan Estimate.

Many industry commenters criticized the proposal's requirement for rounded disclosures. Commenters argued that it would be difficult for consumers to compare and reconcile truncated values, especially when some numbers were rounded and others were not. The industry commenters also noted that programming software to create forms with rounded numbers is difficult and expensive and that, in their opinion, the benefit to the consumers of doing so does not outweigh the implementation cost. A document preparation company requested guidance on whether percentages which contain more than three decimal places must to be rounded to three decimal places pursuant to § 1026.37(o)(4)(ii). A document preparation company requested guidance on how numbers required to be rounded on the Loan Estimate would be compared to the Closing Disclosure for the purposes of the tolerances provided in § 1026.19(f)(1). That issue is addressed above in the section-by-section analysis of § 1026.19(e)(3)(i).

The Bureau does not believe that rounded numbers would be difficult for consumers to use in comparing the Loan Estimate and the Closing Disclosure. As stated in the proposal, the Bureau believes, based on its extensive consumer testing, that rounded disclosures allow consumers to digest the information on the Loan Estimate faster and more easily than disclosure of non-rounded numbers. Moreover, given that many of the numbers on the Loan Estimate are simply estimates and will likely change on the Closing Disclosure, disclosing exact values is unnecessary and may contribute to information overload without any real benefit to consumers. Though the Bureau understands that programming forms to round numbers may be more expensive to implement, the Bureau does not believe that that one-time cost outweighs the benefit to consumers of disclosing rounded numbers. Indeed, the integrated disclosures performed significantly better in consumer testing than the existing RESPA GFE, RESPA settlement statement, and TILA disclosures. *See* Kleimann Quantitative Study Report at 68. With respect to the request for guidance on how to disclose percentages required to be disclosed by

§ 1026.37(o)(4)(ii) that contain more than three decimal places, the Bureau notes that the provision provides only three decimal places, and thus, percentages of more than three decimal places would need to be rounded to three decimal places to comply with § 1026.37(o)(4)(ii). The Bureau is revising comment 37(o)(4)(ii)–1 to this effect.

The Bureau continues to believe that the rounding of certain numbers disclosed on the Loan Estimate as required by proposed § 1026.37(o)(4) will effectuate the purposes of both TILA and RESPA and is, therefore, adopting it substantially as proposed. The Bureau is revising § 1026.37(o)(4)(i)(A) to except from the rounding requirements the per diem amount required to be disclosed by § 1026.37(g)(2)(iii) and the monthly amounts required to be disclosed by § 1026.37(g)(3)(i) through (iv) because the Bureau believes that it is important for consumers to know the precise figures for these amounts given that they represent the exact interest paid and exact monthly costs for other items that would be paid in advance at consummation. However, the totals required to be disclosed by § 1026.37(g)(2)(iii) and (g)(3)(i) through (iv) must still be rounded so that they can be understood easily by consumers and totaled under § 1026.37(g)(5). The Bureau did not receive any comments on the proposed commentary to § 1026.37(o)(4) and is adopting § 1026.37(o)(4)(i)(B) and (o)(4)(ii) and comments 37(o)(4)–1, –2, 37(o)(4)(i)(A)–1, 37(o)(4)(i)(B)–1 substantially as proposed, with modifications for clarity. For the reasons discussed, the Bureau is revising comment 37(o)(4)(ii)–1. The Bureau is adopting § 1026.37(o)(4)(i)(C) as proposed.

37(o)(5) Exceptions

As described in the proposal, the Bureau's consumer testing indicated that the format of information on the disclosures required by proposed § 1026.37 substantially affects the way in which a consumer interacts with and understands the information disclosed. In addition, the Bureau stated in the proposal that it understood that credit and real estate transactions involve significant variability and believes that it is important to provide industry with clear guidance regarding permissible changes to the format requirements to accommodate this variability. Accordingly, the Bureau stated its belief in the proposal that it must specify the changes to the format that are required and permissible, to ensure the disclosures provided to consumers convey the information required by proposed § 1026.37 in a clear, understandable, and effective manner for consumers.

As described above, pursuant to RESPA section 19(a), 12 U.S.C. 2617(a), § 1024.7 of Regulation X currently requires the use of a standard form to provide the disclosures required by section 5 of RESPA, 12 U.S.C. 2604. In contrast, TILA section 105(b), 15 U.S.C. 1604(b), provides for model disclosures instead of a standard form. However, TILA permits creditors to delete information not required under the statute, other than numerical disclosures, and rearrange the format, only if doing so does not affect the substance, clarity, or meaningful sequence of the disclosure. Pursuant to its authority under RESPA section 19(a), its implementation authority under TILA section 105(a), and its authority under section 1032(a) of the Dodd-Frank Act, the Bureau proposed § 1026.37(o)(5), which sets forth the required changes to the format required to be used by proposed § 1026.37(o)(3), illustrated by form H–24 of appendix H to Regulation Z, and the permissible changes that do not affect the substance, clarity, or meaningful sequence of the disclosure. In addition, consistent with section 1032(a) of the Dodd-Frank Act, the Bureau stated in the proposal that it believed specifying the required and permissible changes to the form would ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances. The Bureau stated its belief in the proposal that specifying the required and permissible changes to the form effectuates the purposes of TILA set forth in TILA section 102(a) and the purpose of the integrated disclosure set forth in TILA section 105(b), because it would ensure meaningful disclosure of credit terms to consumers, promote the informed use of credit, and facilitate compliance by providing flexibility where warranted. In addition, the Bureau stated its belief that this requirement would effectuate the purposes of RESPA by promoting more effective advance disclosure of settlement costs.

Accordingly, proposed § 1026.37(o)(5) would have specified certain changes to form H–24 that are required or that do not affect the substance, clarity, or meaningful sequence of the disclosure and therefore are permissible. Proposed § 1026.37(o)(5)(i) would have required the substitution of the words ''month'' or ''monthly'' on the form H–24, where used to designate the frequency of payments or the applicable unit-period of the transaction, with a different word representing the frequency of payments or unit-period under the transaction's actual terms, if different from monthly. Proposed § 1026.37(o)(5)(ii) would have permitted the deletion of lender credits from the Cash to Close table, required by proposed § 1026.37(d)(4), if the amount is zero. Proposed § 1026.37(o)(5)(iii) would have permitted the use of a logo for, or addition of a slogan with, the information required by § 1026.37(a)(3), and would have required the information disclosed pursuant to § 1026.37(a)(3), if no logo is used, to be disclosed in a similar format as form H–24 of appendix H to Regulation Z. Proposed § 1026.37(o)(5)(iv) would have permitted the attachment of a business card over the information required by proposed § 1026.37(a)(3). The Bureau did not receive any comments on proposed § 1026.37(o)(5)(i) through (iv).

Proposed § 1026.37(o)(5)(v) would have permitted the insertion of administrative information above the information required to be disclosed by proposed § 1026.37(a)(2) and adjacent to the information required to be disclosed by proposed § 1026.37(a)(3) to assist in the identification of the form or the information contained on the form. Proposed § 1026.37(o)(5)(vi) would have permitted the form to be translated into languages other than English. The Bureau stated in the proposal that it understood that some State laws require versions of the disclosures required under TILA and RESPA to be provided to consumers in a language other than English when the negotiation of the transaction is conducted in that language.[295] In addition, the Bureau noted that some of the regulatory authorities in these States publish their own translations of these disclosures for use by the public.[296] As described in the proposal, the Bureau's consumer testing prior to the proposal included two rounds of testing with Spanish-speaking consumers of Spanish-language prototype disclosure forms to determine whether co-development of a non-English version of the disclosure would

[295] *See* Cal. Civ. Code §§ 1632, 1632.5; Or. Rev. Stat. § 86A.198.

[296] The California Department of Corporations has translated the RESPA GFE into Chinese, Korean, Tagalog, and Vietnamese, available at *http://www.corp.ca.gov/Forms/Default.asp.* The Oregon Division of Finance and Corporate Securities provides version of the RESPA GFE and early TILA disclosure in Russian, Spanish, and Vietnamese, available at *http://www.cbs.state.or.us/dfcs/ml/mortgage_disclosures_translations.html.*

be beneficial to consumers.[297] At the proposal stage, the Bureau determined that co-development of a separate Spanish version of the disclosures would likely yield little benefit to consumers, because any differences in performance with the Spanish prototypes during testing were caused more by translation than design and structural issues. The Bureau stated its belief in the proposal that this may be due, in part, to the fact that the Bureau intentionally pursued a more graphic than textual design for the Loan Estimate with as few words as possible. The Bureau stated in the proposal that it believed the proposed design highlights key information and allows consumers to quickly recognize and find the key information about the transaction without large amounts of text. The Bureau further stated in the proposal that it did not believe the differences in language necessitated changes to the design of the disclosure. Accordingly, the proposed rule only included English-language disclosure forms and would have permitted the translation of these forms. The Bureau stated in the proposal that it planned to review issues surrounding translations of the integrated disclosures before issuing the final rule and solicited comment on whether the final rule should include sample Spanish-language or other non-English language forms.

Proposed comment 37(o)(5)–1 would have clarified that creditors making any changes that are not expressly permitted may lose their protection from civil liability under TILA, because such changes may affect the substance, clarity, or meaningful sequence of the disclosure. Proposed comment 37(o)(5)–2 would have clarified that the form may be completed by hand, typewriter, computer, or other word processing device, as long as the method produces clear and legible text and uses the required formatting, including bold font where shown on form H–24. The comment would have clarified that pursuant to § 1026.37(o)(5), such completion by hand or typewriter would not have exempted the creditor from the requirement to keep records in an electronic, machine readable format under proposed § 1026.25. Proposed comment 1026.37(o)(5)–3 would have clarified that if there are multiple creditors or mortgage brokers for a transaction, a creditor may alter the space provided on form H–24 and add labels to disclose additional contact information under proposed § 1026.37(m), or disclose the additional information on a separate page with an appropriate cross-reference, if the space provided does not accommodate the information to be disclosed on the page. Proposed comment 1026.37(o)(5)–4 would have clarified that a creditor may add signature lines to form H–24 under the ''Confirm Receipt'' heading required by proposed § 1026.37(n), or an additional page with an appropriate cross-reference, if the space provided by form H–24 cannot accommodate the signature lines for multiple applicants.

Several document preparation companies commented that the location permitted for insertion of administrative information by proposed § 1026.37(o)(5)(v) was problematic and that industry practice was to place administrative information on the bottom of forms. The commenters noted that including administrative information at the top and right of the Loan Estimate, as required by proposed § 1026.37(o)(5)(v) risked the administrative information interfering with the substantive disclosures of the Loan Estimate, whereas the bottom of the form was less prominent. Further, the commenters noted that administrative information was typically placed at the bottom of a form to avoid it being covered if the form were stapled or clipped together. Commenters also requested that administrative information be permitted to be included on every page, rather than just on the first page of the Loan Estimate as permitted by proposed § 1026.37(o)(5)(v) because there may be different versions of each page depending on the type of transaction and it is important for there to be a unique identifier on each page. In addition, document company commenters and a large bank also requested that form H–24 be revised to allow at least 1.5 or 1.75 inches of white space at the bottom for bar coding or other administrative information.

The Bureau received comments from both industry and consumer advocacy groups requesting that the Bureau issue sample forms translated into other languages. Consumer advocacy group commenters noted that failure to provide the forms in other languages could have a disparate impact on non-English speaking populations. One consumer advocacy group specifically requested translation of forms into Spanish because 16 percent of the population of the United States is of Hispanic origin. Industry commenters also requested that the Bureau provide foreign translations of the integrated disclosures so that translations were consistent across the industry.

A consumer advocacy group suggested that proposed comment 37(o)(5)–1 which clarified that creditors making any changes that are not expressly permitted may lose their protection from civil liability under TILA, read in conjunction with § 1026.37(o)(5)(i) which requires the creditor to describe the appropriate unit-period whenever the form uses ''monthly'' or ''month'' to reflect the correct terms of the transaction, suggests that a creditor would not lose their protection from civil liability under TILA if it disclosed the wrong unit-period. A national title company questioned whether manual completion of the Loan Estimate as permitted by comment 37(o)(5)–2 would permit a creditor to deviate from the shading and formatting shown on form H–24 that is required for federally related mortgage loans by § 1026.37(o)(3). Lastly, the Bureau received comments from two document preparation companies seeking guidance on when additional pages may be added to the Loan Estimate.

In response to the comments regarding the placement of administrative information as permitted by § 1026.37(o)(5)(v), the Bureau is adopting proposed § 1026.37(o)(5)(v) as revised to permit insertion of administrative information at the bottom of each page of the Loan Estimate and not only on the first page. With respect to the commenters' request for additional white space on the bottom of the form, there is limited space on the Loan Estimate and the Bureau could not increase the white space at the bottom of the pages of form H–24 without adding additional pages to the disclosure. Adding additional pages to the disclosure would, in turn, increase the paperwork burden for industry and consumers and potentially risk information overload of consumers or otherwise affect consumers' ability or desire to engage with the form. Accordingly, the Bureau declines to revise the layout of form H–24 to increase the white space at the bottom of the page.

Regarding translation, since the proposal, the Bureau has worked to translate the integrated disclosures into Spanish. Further, in response to the comments described above requesting Spanish translations that have been subject to consumer testing, the Bureau is including Spanish-language models and samples of the Loan Estimate and

[297] According to the U.S. Census Bureau, based on data from the 2007 American Community Survey, 55.4 million people spoke a language other than English at home, and of those people, 62 percent spoke Spanish. U.S. Census 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.*

Closing Disclosure as form H–28 of appendix H to Regulation Z. Consumer group commenters also requested that the Bureau translate the forms into other languages such as Korean, Chinese, Russian, and Vietnamese and into formats specifically designed for visually impaired or elderly consumers. While the Bureau has not developed translations in these languages, or revisions for the visually impaired or elderly, at this time, it will consider doing so after the issuance of this final rule. Because the Bureau continues to believe that translating the forms into languages other than English will effectuate the purposes of both TILA and RESPA, it is adopting § 1026.37(o)(5)(vi) substantially as proposed, but renumbered as § 1026.37(o)(5)(ii) and with modifications to provide additional clarity, as described below. The Bureau is also adding comment 37(o)(5)–6 to provide additional guidance regarding permissible modifications to form H–24 to accommodate the translated language.

With respect to manual completion, comment 37(o)(5)–2 clarifies that a creditor could reproduce blank form H–24 included in appendix H to Regulation Z and then complete the individual disclosures required by § 1026.37 by hand, thereby retaining the headings, formatting, and shading of form H–24. Comment 37(o)(5)–2 does not permit deviation from form H–24 for manual completion. With respect to the suggestion that comment 37(o)(5)–1 would permit a creditor to disclose an incorrect unit-period without losing protection from civil liability under TILA, the Bureau does not believe that result follows from the regulation. Section 1026.37(o)(5)(i) requires the creditor to substitute the ''appropriate'' unit-period if not month or monthly. Only the substitute of an ''appropriate'' unit-period is a permissible change pursuant to § 1026.37(o)(5)(i). Accordingly, a creditor who substituted an incorrect unit-period would not be in compliance with § 1026.37(o)(5)(i) and comment 37(o)(5)–1 correctly states that such a creditor may lose its protection from civil liability under TILA.

With respect to the requests for guidance regarding additional pages, the regulation states whether an additional page is permitted to be added to the Loan Estimate for a required disclosure that does not fit in the space allocated for it on form H–24 in the specific sub-section of § 1026.37 or its associated commentary. Otherwise, the use of an additional page is not permitted by § 1026.37(o)(3). To provide additional clarity, the Bureau is revising comment 37(o)(5)–5 to state that additional pages may be required or permitted by specific disclosure requirements in § 1026.37, and not only by § 1026.37(o)(5).

The Bureau received comments that the proposed Loan Estimate would not perform well for transactions without a seller, such as refinancings. For reasons discussed in the section-by-section analysis of § 1026.37(d)(2) and (h)(2), the Bureau is making certain changes to form H–24 for transactions without a seller. Those changes permit disclosure in transactions without sellers of alternative tables described in § 1026.37(d)(2) and (h)(2) which are tailored for transactions without sellers, instead of the information required by § 1026.37(d)(1) and (h)(1), respectively. Such alternative tables would be permitted under § 1026.37(o) because they are permitted under § 1026.37(d) and (h).

For the reasons discussed and pursuant to the legal authority discussed in the proposal and above, the Bureau is adopting § 1026.37(o)(5)(i), (iii), (iv), and (vi) as proposed. The Bureau is not finalizing § 1026.37(o)(5)(ii) because final § 1026.37(g)(6)(ii) requires that the amount of lender credits be left blank if no such amount is disclosed, as discussed in the section-by-section analysis of § 1026.37(g)(6) above. Accordingly, the Bureau is renumbering proposed § 1026.37(o)(5)(vi) as § 1026.37(o)(5)(ii), and modifying the provision to provide additional clarity regarding the modifications permitted to form H–24 to accommodate the translation into a language other than English. Final § 1026.37(o)(5)(ii) permits creditors to modify form H–24 to the extent that translation prevents the headings, labels, designations, and required disclosure items under § 1026.37 from fitting in the space provided on form H–24. The Bureau is also adding comment 37(o)(5)–6 to provide additional guidance regarding the modifications to form H–24 that are permitted to accommodate translation of the Loan Estimate into languages other than English.

The Bureau is adopting § 1026.37(o)(5)(v) as revised to permit disclosure of administrative information at the bottom of form H–24. The Bureau is further adopting, for the reasons discussed, comment 37(o)(5)–3 as proposed. The Bureau is not adopting proposed comment 37(o)(5)–4 because it is redundant to the guidance provided in final comment 37(n)–2. The Bureau is adopting comment 37(o)(5)–1 substantially as proposed, with minor modifications for clarity. The Bureau is revising proposed comment 37(o)(5)–2 to delete the reference to proposed § 1026.25 because the Bureau is not finalizing that provision requiring retention of evidence of compliance in an electronic, machine readable format, as described in the section-by-section analysis of § 1026.25, but is otherwise adopting comment 37(o)(5)–2 as proposed. The Bureau is adopting comment 37(o)(5)–5 as revised to clarify, for the reasons discussed above, how additional pages are permitted to be appended to the Loan Estimate. The Bureau is also adding final comment 37(o)(5)–4 to provide additional guidance regarding the modification of unit-periods disclosed on the Loan Estimate, and to clarify that the term ''unit-period'' as used in § 1026.37 has the same meaning as in appendix J to Regulation Z.

Section 1026.38 Content of Disclosures for Certain Mortgage Transactions (Closing Disclosure)

Proposed § 1026.38 would have set forth the required content of the integrated Closing Disclosure, required by proposed § 1026.19(f) to be provided to a consumer no later than three business days prior to consummation.

As discussed above, the Closing Disclosure would have integrated the disclosures currently provided in the RESPA settlement statement and the final TILA disclosure. In addition, the Closing Disclosure would have integrated several disclosures, including new disclosures under the Dodd-Frank Act, that otherwise would likely have been provided separately. The Bureau stated in the proposal that it believed that the five-page Closing Disclosure integrates at least nine pages of disclosures. Specifically, the proposed Closing Disclosure incorporated: (i) Three pages of the RESPA settlement statement; (ii) two pages typically used for the final TILA disclosure; (iii) one page for the negative amortization statement under TILA section 129C(f), which was added by section 1414(a) of the Dodd-Frank Act; (iv) one page for the anti-deficiency protection notice under TILA section 129C(g)(2), which was added by section 1414(c) of the Dodd-Frank Act; (v) one page for the partial payment policy disclosure under TILA section 129C(h), which was added by section 1414(d) of the Dodd-Frank Act; and (vi) one page for the escrow account disclosures under TILA sections 129D(h) and (j)(1)(A), which were added by sections 1461 and 1462 of the Dodd-Frank Act. In addition, the Closing Disclosure would have incorporated the disclosure of: (i) The total interest percentage under TILA section 128(a)(19), which was added by section 1419 of the Dodd-Frank Act; (ii)

the approximate amount of the wholesale rate of funds in connection with the loan under TILA section 128(a)(17), which was added by section 1419 of the Dodd-Frank Act; and (iii) the aggregate amount of settlement charges for all settlement services provided in connection with the loan and the aggregate amount of other fees or required payments in connection with the loan under TILA section 128(a)(17), which was added by section 1419 of the Dodd-Frank Act. In absence of the Bureau's integration of the final TILA disclosure and the RESPA settlement statement, these disclosures would have been added to the final TILA disclosure, which potentially could have increased that disclosure's typical two pages to three pages.

The Bureau received numerous comments from industry and consumer groups related generally to the design of the proposed integrated disclosures, which are discussed with respect to the section-by-section analysis of § 1026.37. Specifically with respect to the design of the Closing Disclosure, the Bureau also received comments both criticizing and praising the proposed format. For example, a national title company commented that the proposed Closing Disclosure clearly addresses the most important questions consumers ask at the closing table and gives consumers an informative snapshot of their transaction. An independent title agent commented that the design of the proposed Closing Disclosure was easy to read. In contrast, a title insurance company commented that the Closing Disclosure is too long and overly complicated. Similarly, an individual title attorney commented that she saw no difference in the quality of information provided to consumers in the proposed Closing Disclosure as compared to the RESPA settlement statement and final TILA disclosure.

Proposed § 1026.38 would have provided that the information set forth in § 1026.38(a) through (s) shall be disclosed ''as applicable.'' The Bureau also proposed comment 38–1 to clarify that a disclosure that is not applicable to a transaction generally may be eliminated entirely or may be included but marked ''not applicable'' or ''N/A.'' The Bureau further proposed comment 38–2 to cross-reference § 1026.38(t) for permissible modifications to the format of the disclosures. The Bureau received numerous comments from industry and consumer advocacy groups related to the design of certain required disclosures, which are discussed in their respective section-by-section analyses. As discussed more fully in the section-by-section analysis of § 1026.37, the Bureau received many comments that expressed confusion over whether inapplicable disclosures could be eliminated. In response to those comments, the Bureau is revising § 1026.38 to delete the phrase ''as applicable.'' The Bureau is further revising comment 38–1 to clarify that disclosures not applicable may be left blank, but that ''N/A'' or ''not applicable'' may not be used and form H–25 may not be modified. Accordingly, disclosures may not be deleted from form H–25 unless otherwise provided under § 1026.38. The Bureau is adopting comment 38–2 as proposed. The Bureau is also adding comment 38–3 to clarify that the creditor is required to disclose the actual terms and costs but can disclose estimates under certain circumstances when the actual term or cost is unknown.

38(a) General Information

As with the Loan Estimate in proposed § 1026.37(a), the Bureau proposed to use its authority under TILA section 105(a), and its authority under RESPA section 19(a), Dodd-Frank Act sections 1032(a) and (f), 1098, and 1100A, and for residential mortgage loans, Dodd-Frank Act section 1405(b), to combine and modify disclosures and related requirements currently provided under Regulations X and Z and add additional disclosures in the Closing Disclosure for transactions subject to proposed § 1026.19(f).

The Bureau received a comment from a GSE requesting that the Bureau require additional information to be disclosed under § 1026.38(a). The GSE requested that the Closing Disclosure include a disclosure of the date on which the consumer's interest rate was locked, similar to the disclosure on the Loan Estimate required by § 1026.37(a)(13), which states the date the consumer's locked interest rate will expire. The GSE argued that such a statement on the Closing Disclosure would allow consumers to confirm that the rate they received at closing was locked on the date stated on the Loan Estimate and would provide lenders and investors with important data for compliance purposes. The Bureau does not believe that such a disclosure would benefit consumers given that a consumer could easily review the Loan Estimate to recall the date on which the interest rate was locked. Section 1026.19(e)(3)(iv)(D) of this final rule requires a revised Loan Estimate to be provided to the consumer on the date the interest rate is locked. To prevent potential information overload for the consumer, the Bureau declines to add such a disclosure.

The Bureau did not receive any other comments on proposed § 1026.38(a) and is adopting it as proposed, pursuant to the legal authority discussed above and in the proposal. The specific disclosures required by § 1026.38 are discussed below.

38(a)(1) Form Title

Like the integrated disclosure provided three business days after application, TILA, RESPA, and the Dodd-Frank Act do not expressly prescribe a title for the form that must be provided in connection with a settlement. RESPA refers to the form as the ''uniform settlement statement,'' although § 1024.8 of Regulation X uses the titles HUD–1 and HUD–1A to refer to the forms used to document settlement charges in connection with the purchase of a property or refinancing of an existing mortgage loan, respectively. Regulation Z, however, does not prescribe a title for the disclosures that must be provided to the consumer three business days prior to consummation.

Proposed § 1026.38(a)(1) would have required the creditor to use the term ''Closing Disclosure'' as the name of the integrated disclosures provided to consumers three business days prior to consummation pursuant to proposed § 1026.19(f). The Bureau stated its belief in the proposal that the adoption of a standardized form name will effectuate the purposes of TILA and RESPA by promoting the informed use of credit and more effective advance notice of settlement costs, consistent with TILA section 105(a) and RESPA section 19(a), and will ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to better understand the costs, benefits, and risks associated with mortgage transactions in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). In addition, the Bureau stated in the proposal that it believed the use of standard terminology for the integrated disclosures will facilitate compliance for industry, which is a purpose of this rulemaking under Dodd-Frank Act sections 1098 and 1100A. The Bureau also stated its belief in the proposal that, consistent with section 1405(b) of the Dodd-Frank Act, the requirement of a standard form name may improve consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures, and is in the interest of consumers and in the public interest.

The Bureau did not receive any public comments regarding proposed § 1026.38(a)(1). Because the Bureau

continues to believe that a standard form title will serve to effectuate the purposes of TILA and RESPA, it is adopting § 1026.37(a)(1) as proposed.

38(a)(2) Form Purpose

Proposed § 1026.38(a)(2) would have required the creditor to include a statement regarding the purpose of the Closing Disclosure. Specifically, proposed § 1026.38(a)(2) would have required creditors to provide the following statement: ''This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.'' As noted in the proposal, providing the purpose of the Closing Disclosure is a new requirement, as neither creditors nor settlement agents are currently required to provide this type of information in the disclosures required by TILA, RESPA, and their implementing regulations. Nonetheless, the Bureau stated its belief in the proposal that this disclosure will benefit consumers and promote the informed use of credit by encouraging consumers to use both the Loan Estimate and Closing Disclosure as tools to identify changes in costs and terms that may have occurred after issuance of the Loan Estimate. Accordingly, the Bureau believed, as stated in the proposal, that this disclosure will benefit consumers and effectuate the purposes of TILA and RESPA by promoting the informed use of credit and more effective advance notice of settlement costs, consistent with TILA section 105(a) and RESPA section 19(a), and will ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to better understand the costs, benefits, and risks associated with mortgage transactions, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a).

A national title insurance company commented that because the closing cost details disclosed on the Closing Disclosure may change between delivery of the Closing Disclosure and consummation of the transaction, the statement should be preceded by the phrase ''subject to certain limited exceptions.'' Several national trade associations representing mortgage lenders commented that the statement should direct consumers to compare it to their ''most recent'' Loan Estimate given that a consumer may receive more than one Loan Estimate. A national trade association representing developers of timeshares commented that the statement should not reference comparison to the Loan Estimate since the Loan Estimate should not be provided in timeshare transactions.

With respect to the suggestion to include the phrase ''subject to certain limited exceptions,'' the Bureau believes adding that phrase would overly complicate the form purpose statement. The statement was designed to use plain language to describe the general difference between the Loan Estimate and Closing Disclosure. With respect to timeshares, final comment 19(e)(1)(iii)–4 permits creditors in timeshare transactions to omit provision of the Loan Estimate and provide only the Closing Disclosure where the transaction is consummated within three business days of receipt of the consumer's application. The Bureau does not believe that the disclosure required by § 1026.37(a)(2) should be modified because the timeshare creditors can adequately explain to consumers at consummation why they were not required to receive the Loan Estimate in those transactions. The Bureau believes the statement will be just as useful to consumers of transactions secured by a consumer's interest in a timeshare plan where consummation occurs after the third business day from receipt of the consumer's application as it will be for consumers in transactions secured by real property. Accordingly, the Bureau declines to revise § 1026.37(a)(2) and is adopting it as proposed, pursuant to the legal authority described above and in the proposal.

38(a)(3) Closing Information

Appendix A to Regulation X currently requires the settlement agent to include in the RESPA settlement statement basic information about the settlement process, including the name of the settlement agent, the place of settlement, the property location, and the settlement date. In addition to this information, with the exception of the place of settlement, proposed § 1026.38(a)(3) would have required creditors to disclose: (1) the date the Closing Disclosure is issued; (2) the dates funds are disbursed to the seller and consumer, as applicable; (3) the sale price of the property that is the subject of the transaction; and (4) the file number assigned to the transaction by the closing agent. All of the aforementioned information would be located under the heading ''Closing Information.'' The Bureau stated its belief in the proposal that this information and the additional information discussed below effectuate the purposes of TILA and RESPA by promoting the informed use of credit and more effective advance notice of settlement costs, consistent with TILA section 105(a) and RESPA section 19(a), and will ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to better understand the costs, benefits, and risks associated with mortgage transactions, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). The Bureau did not receive any comments on § 1026.38(a)(3) and is adopting it as proposed, pursuant to the legal authority described above and in the proposal. The specific requirements of the disclosure proposed in § 1026.38(a)(3) will be discussed below.

38(a)(3)(i) Date Issued

Proposed § 1026.38(a)(3)(i) would have required the creditor to disclose the date the disclosures required for transactions subject to § 1026.19(f) are issued to the consumer, labeled ''Date Issued.'' Proposed comment § 1026.38(a)(3)(i)–1 would have cross-referenced the commentary to proposed § 1026.37(a)(4).

A document preparation company commenter requested guidance on whether to disclose the date the form is printed or the date the form is mailed to the consumer. A national settlement company requested guidance on which date to disclose if the Closing Disclosure is printed at settlement or is printed after consummation for a purpose other than providing notice to the consumer. The same commenter also suggested that the Bureau add a space for disclosure of the time the disclosure is issued to the consumer, in the event that a creditor delivers more than one disclosure to a consumer in one day.

Regarding which date to disclose on the Closing Disclosure, as stated in proposed comment 37(a)(4)–1, the date issued is the date the form is delivered to the consumer, regardless of the method of delivery. In response to the request for guidance on how to disclose the date of a form printed after consummation, under § 1026.38(a)(3)(i), the Bureau believes that the regulation text is clear that the date to be disclosed is the date of delivery, regardless of whether it is printed after consummation for some other purpose. Lastly, with respect to the suggestion to permit disclosure of the time the Closing Disclosure is printed, while the Bureau understands that there may be instances in which a Closing Disclosure is revised and delivered to the consumer more than once in a single day, the Bureau believes that including the time may result in information overload and that consumers in most cases would only need to know the date the Closing

Disclosure was issued. Accordingly, the Bureau is adopting § 1026.38(a)(3)(i) and comment 38(a)(3)(i)–1 as proposed.

38(a)(3)(ii) Closing Date

Proposed § 1026.38(a)(3)(ii) would have required the creditor to disclose the consummation date for the mortgage loan transaction, labeled ''Closing Date.'' A national settlement company and a large bank both commented that the consummation date can only be an estimate at the time the Closing Disclosure is delivered, especially given the consumers right to waive the three-day waiting period between delivery of the Closing Disclosure and consummation under limited circumstances. The commenters requested that § 1026.38(a)(3)(ii) expressly permit disclosure of an estimated consummation date.

The commenters are correct that given the requirement that the Closing Disclosure be provided so that it is received by the consumer three days before consummation under § 1026.19(f)(1)(ii), the consummation date may, in some transactions, change after the delivery of the Closing Disclosure. However, § 1026.19(f)(1)(i) requires creditors to use the best information reasonably available to them to complete the Closing Disclosure and thus, the closing date disclosed under § 1026.38(a)(3)(ii) would be based on that best information. Moreover, under the requirements of § 1026.19(f)(2), if the disclosure previously provided becomes inaccurate, the creditor would be required to deliver a revised Closing Disclosure at consummation and the revised Closing Disclosure would therefore disclose the actual consummation date. Accordingly, either consummation of the transaction will occur on the date the creditor initially disclosed and be accurate, or the creditor will be required to revise the Closing Disclosure to reflect the date on which consummation actually occurs. In either case, the Closing Disclosure will reflect the actual date of consummation and not an estimate. Accordingly, the Bureau is adopting § 1026.38(a)(3)(ii) as proposed. Section § 1026.38(a)(3)(ii) requires disclosure of the date of consummation of the transaction. Current § 1026.2(a)(13) defines ''consummation'' for purposes of Regulation Z as ''the time that a consumer becomes contractually obligated on a credit transaction.'' See commentary to § 1026.2(a)(13) for additional guidance regarding the definition of consummation.

38(a)(3)(iii) Disbursement Date

Proposed § 1026.38(a)(3)(iii) would have required the disclosure of the date the amounts disclosed pursuant to proposed § 1026.38(j)(3)(iii) and (k)(3)(iii) are expected to be paid to the consumer and seller, respectively, labeled ''Disbursement Date.'' A large bank commenter noted that because the consumer has the right, under limited circumstances, to waive the three-day waiting period between delivery of the Closing Disclosure and the closing, the disbursement date is necessarily an estimate and should be labeled ''Estimated Disbursement Date.'' The Bureau notes that under § 1026.19(f)(1)(i), creditors are required to disclose the actual terms of the legal obligation, but where such information is not known to the creditor, creditors must disclose the best information reasonably available. Accordingly, under § 1026.38(a)(3)(iii), creditors may disclose the date the funds are expected to be paid to the consumer and seller using the best information reasonably available regarding such date. See the section-by-section analysis of § 1026.19(f)(1)(i) and its commentary for further discussion regarding the labeling of estimates on the Closing Disclosure. Accordingly, the Bureau declines to add the word ''estimated'' to the label ''Disbursement Date.'' The Bureau is adopting § 1026.38(a)(3)(iii) substantially as proposed, but is modifying the provision to provide additional clarity regarding the required disclosure in transactions that are not purchase transactions under § 1026.37(a)(9). In such non-purchase transactions, creditors are required to disclose the date the amounts disclosed pursuant to § 1026.38(j)(2)(iii) or (t)(5)(vii)(B) are expected to be paid to the consumer or a third party.

38(a)(3)(iv) Settlement Agent

Proposed § 1026.38(a)(3)(iv) would have required disclosure of the identity of the settlement agent conducting the closing, labeled ''Agent.'' Proposed comment 38(a)(3)(iv)–1 would have clarified that the name of the agency that employs the settlement agent should be provided in the disclosure required by § 1026.38(a)(3)(iv) and that the name of the individual conducting the closing is not required. Several industry commenters noted in response to the proposal that the label ''Agent'' was unclear given the numerous types of agents involved in a real estate transaction. In addition, GSE commenters noted that the proposal used the term ''Settlement Agent'' in the contact information table required under proposed § 1026.38(r), in contrast with the label proposed under § 1026.38(a)(3)(iv). The Bureau agrees that the label ''Agent'' was not sufficiently specific and did not conform with the contact information table in the proposed Closing Disclosure. Accordingly, the Bureau is revising the label for the disclosure required by § 1026.38(a)(3)(iv) to ''Settlement Agent,'' to improve the consistency and clarity of the Closing Disclosure. The Bureau is also revising final comment 38(a)(3)(iv)–1 to reflect the label ''Settlement Agent'' and to refer to the entity employing the settlement agent, rather than the agency, such that the term will cover settlement agents that are employed by entities that are not title insurance agents, such as law firms.

38(a)(3)(v) File Number

Proposed § 1026.38(a)(3)(v) would have required disclosure of the number assigned to the transaction by the closing agent for identification purposes, labeled ''File #.'' A national settlement company requested that the Bureau add ''Settlement'' before the proposed label ''File #'' to clarify whose file number is disclosed on the Closing Disclosure. Because the file number disclosure is directly below the Settlement Agent disclosure on the Closing Disclosure, the Bureau believes that consumers will understand that the file number being disclosed is that of the Settlement Agent. Moreover, § 1026.38(a)(5)(v) requires that the creditor separately disclose its own loan identification number, under the label ''Loan ID #'' which further clarifies that the file number referred to on form H–25 is the settlement agent's. Accordingly, the Bureau is adopting § 1026.38(a)(3)(v) as proposed. The Bureau is also adding comment 38(a)(3)(v)–1 to clarify that the file number may contain any alpha-numeric characters and need not be limited to numbers.

38(a)(3)(vi) Property

Proposed § 1026.38(a)(3)(vi) would have required the street address of the property required to be disclosed under proposed § 1026.37(a)(6), labeled ''Property.'' Proposed comment 38(a)(3)(iv)–1 would have cross-referenced the commentary to § 1026.37(a)(6), which provides guidance regarding the information that must be provided in response to this requirement when a standard property address is unavailable. A GSE commenter requested guidance on how to disclose personal property that secures a transaction under proposed

§ 1026.38(a)(3)(vi). That comment is addressed in the section-by-section analysis of § 1026.37(a)(6), in response to which the Bureau added comment 37(a)(6)–2 to provide that where personal property secures a transaction, a description of the personal property may be disclosed to the extent that it fits on the space provided for the disclosure on form H–24 for the Loan Estimate. The Bureau is adopting § 1026.38(a)(3)(vi) and comment 38(a)(3)(vi)–1 substantially as proposed but with modifications to clarify that, unlike with respect to the disclosure of personal property in connection with the Loan Estimate, personal property securing the transaction may be disclosed if it does not fit within the space provided on form H–25 by using an addendum to form H–25 for the Closing Disclosure. The Bureau believes that in connection with the consummation of the transaction, the consumer should be provided with this information to understand the final loan terms and costs of the transaction.

38(a)(3)(vii) Sale Price

In credit transactions where there is a seller, proposed § 1026.38(a)(3)(vii)(A) would have required disclosure of the contract sale price for the property identified in proposed § 1026.38(a)(3)(vii), labeled ''Sale Price.'' In transactions where there is no seller, proposed § 1026.38(a)(3)(vii)(B) would have required disclosure of the appraised value of the property in proposed § 1026.38(a)(3)(vi), labeled ''Appraised Prop. Value.'' Proposed comment 38(a)(3)(vii)–1 also would have provided that when there is no seller that is a party to the transaction, the value to be disclosed is that determined by the appraisal or valuation used to determine approval of the credit transaction, or if a more recent appraisal or valuation has been obtain by the creditor, the value determined by the more recent appraisal or valuation.

The Bureau did not receive any comments on proposed § 1026.38(a)(3)(vii)(A) and is adopting it as proposed. Several national trade associations representing mortgage lenders commented that in transactions without a seller, such as a refinance transaction, an appraisal is not always obtained and that § 1026.38(a)(3)(vii)(B) should permit disclosure of an estimated property value. A GSE commented that the value that should be disclosed is the one used for underwriting, regardless of whether there is a subsequent appraisal. The GSE commenter noted that other fees disclosed on the Closing Disclosure, such as mortgage insurance and loan level pricing adjustments, are tied to the loan-to-value ratio which is, in turn, determined by the value used for underwriting. The commenter stated that disclosing a value different than the one used for underwriting would render the disclosures on the Closing Disclosure misaligned and cause confusion for consumers and creditors. A GSE also requested guidance on whether to disclose the value of personal property in transactions where such property is valued separately from real property.

With respect to refinance transactions where an appraisal may not be obtained, the Bureau agrees that disclosing an estimated property value is permissible where an appraisal is not obtained and is revising comment 38(a)(3)(vii)–1 to permit disclosure of an estimated property value if the creditor has not obtained an appraisal. Revised comment 38(a)(3)(vii)–1 further provides that where an estimate, rather than an appraisal, is used, the label for the disclosure would be changed to ''Estimated Prop. Value.''

Regarding the GSE's comment that the value disclosed should be the one used for underwriting, the Bureau agrees that the value disclosed on the Closing Disclosure should be the one used for underwriting for the reasons suggested by the commenter. Accordingly, the Bureau is further revising comment 38(a)(3)(vii)–1 to revise the description of the requirement to disclose the most recent appraisal or valuation and clarify that § 1026.38(a)(3)(vii) requires disclosure of the appraisal or estimate used to determine approval of the credit transaction. Regarding the GSE's request for guidance on the disclosure of personal property, the Bureau addresses that comment in the section-by-section analysis of § 1026.37(a)(7), above. The Bureau added comment 37(a)(7)–2 to clarify that where personal property is included in the sale price of real property § 1026.37(a)(7) permits disclosure of the aggregate price without any reduction for the appraised or estimated value of the real property. The Bureau is adding comment 38(a)(3)(vii)–2 to cross-reference the guidance provided in comment 37(a)(7)–2 regarding the disclosure of personal property.

38(a)(4) Transaction Information

Proposed § 1026.38(a)(4) would have required the creditor to disclose the names and addresses of the parties to the transaction: the borrower, seller, and lender, as applicable. This information would appear under the heading ''Transaction Information.'' As noted in the proposal, these disclosures are currently provided in the RESPA settlement statement. *See* appendix A to Regulation X. In addition, TILA section 128(a)(1) and Regulation Z § 1026.18(a) require disclosure of the identity of the creditor. The Bureau stated its belief in the proposal that these disclosures effectuate the purposes of TILA and RESPA by promoting the informed use of credit and more effective advance notice of settlement costs, consistent with TILA section 105(a) and RESPA section 19(a), and will ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to better understand the costs, benefits, and risks associated with mortgage transactions, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). Proposed comment 38(a)(4)–1 would have clarified that the name and address for each consumer and seller must be provided and referred creditors to the commentary to proposed § 1026.37(a)(5) for further guidance. Proposed comment 38(a)(4)–1 also would have clarified that the name and address of each consumer must be provided and that if the form does not provide enough space to include the required information for each seller, an additional page with that information may be appended to the end of the form, provided the creditor is in compliance with proposed § 1026.38(t)(3). Proposed comment 38(a)(4)–1 also would have cross-referenced commentary to § 1026.37(a)(5) for guidance on how to disclose multiple borrowers. Proposed comment 38(a)(4)–2 would have clarified that, in transactions where there is no seller such as in a refinancing or home equity loan, the creditor must provide the name of the person or persons primarily liable under the obligation or who have a right of rescission. Finally, proposed comment 38(a)(4)–3 would have cross-referenced the commentary to proposed § 1026.37(a)(3) for information regarding the identification of multiple creditors.

A GSE commented that the heading ''Transaction Information'' is misleading because the information disclosed relates only to the parties to the transaction. Two document preparation company commenters requested guidance on who meets the definition of ''creditor'' and is therefore required to be disclosed under proposed § 1026.38(a)(4).

With respect to the heading ''Transaction Information,'' as discussed elsewhere in this section-by-section analysis, the Bureau extensively tested the integrated disclosures with

consumers and found no evidence that consumers were confused by this heading. Accordingly, the Bureau declines to revise the heading ''Transaction Information'' required under § 1026.38(a)(4). Regarding the request for guidance on which creditor is required to be disclosed, the definition of ''creditor'' is addressed by § 1026.2(a)(17) and its accompanying commentary. The Bureau notes that comment 38(a)(4)–3 cross-references § 1026.37(a)(3) and its commentary for guidance. The Bureau also notes the existing guidance regarding transactions with multiple creditors under comment 17(d)–1 which is cross-referenced in commentary to § 1026.37(a)(3), and therefore believes adequate guidance is provided in the regulation as proposed. Because the Bureau continues to believe that disclosing the described transaction information will effectuate the purposes of TILA and RESPA, it is adopting § 1026.38(a)(4) as proposed. The Bureau did not receive any comments on comments 38(a)(4)–1 through –3 and is adopting them substantially as proposed but with minor modifications for clarity.

38(a)(5) Loan Information

Proposed § 1026.38(a)(5) would have required the creditor to provide certain information about the mortgage loan that is the subject of the transaction. With the exception of the mortgage insurance case number required by proposed § 1026.38(a)(5)(vi), all of the disclosures required under proposed § 1026.38(a)(5) mirror the disclosures required by proposed § 1026.37(a)(8) through (12). In the proposal, the Bureau stated its belief that these disclosures effectuate the purposes of TILA and RESPA by promoting the informed use of credit and more effective advance notice of settlement costs, consistent with TILA section 105(a) and RESPA section 19(a), and will ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to better understand the costs, benefits, and risks associated with mortgage transactions, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a).

Proposed comment 38(a)(5)–1 would have referred the creditor to the commentary to proposed § 1026.37(a)(8) through (12) for further guidance on the general requirements and definitions applicable to proposed § 1026.38(a)(5)(i) through (v). The disclosures required by proposed § 1026.38(a)(5) appear under the heading ''Loan Information.'' Comments received in relation to the disclosures required by § 1026.37(a)(8) through (12) that are mirrored in § 1026.38(a)(5) are addressed in the section-by-section analyses of § 1026.37(a)(8) through (12). The Bureau did not receive any comments on proposed § 1026.38(a)(5) and comment 38(a)(5)–1 and is adopting them as proposed.

38(a)(5)(i) Loan Term

Proposed § 1026.38(a)(5)(i) would have required disclosure of the term of the loan, consistent with proposed § 1026.37(a)(8) and labeled ''Loan Term.'' The Bureau did not receive any comments regarding § 1026.38(a)(5)(i) not already discussed in the section-by-section analysis of § 1026.37(a)(8). The Bureau continues to believe § 1026.38(a)(5)(i) will effectuate the purposes of TILA and RESPA and is adopting § 1026.38(a)(5)(i) as proposed.

38(a)(5)(ii) Purpose

Proposed § 1026.38(a)(5)(ii) would have required disclosure of the purpose of the loan, consistent with proposed § 1026.37(a)(9) and labeled ''Purpose.'' The Bureau did not receive any comments regarding § 1026.38(a)(5)(ii) not already discussed in the section-by-section analysis of § 1026.37(a)(9) and continues to believe that § 1026.38(a)(5)(ii) will effectuate the purposes of TILA and RESPA. Accordingly, the Bureau is adopting § 1026.38(a)(5)(ii) as proposed.

38(a)(5)(iii) Product

Proposed § 1026.38(a)(5)(iii) would have required disclosure of the loan product, consistent with proposed § 1026.37(a)(10) and labeled ''Product.'' The Bureau did not receive any comments regarding § 1026.38(a)(5)(iii) not already discussed in the section-by-section analysis of § 1026.37(a)(10) and continues to believe that § 1026.38(a)(5)(iii) will effectuate the purposes of TILA and RESPA. Accordingly, the Bureau is adopting § 1026.38(a)(5)(iii) as proposed.

38(a)(5)(iv) Loan Type

Proposed § 1026.38(a)(5)(iv) would have required disclosure of the loan type, consistent with proposed § 1026.37(a)(11) and labeled ''Loan Type.'' The Bureau did not receive any comments regarding § 1026.38(a)(5)(iv) not already discussed in the section-by-section analysis of § 1026.37(a)(11) and continues to believe that § 1026.38(a)(5)(iv) will effectuate the purposes of TILA and RESPA. Accordingly, the Bureau is adopting § 1026.38(a)(5)(iv) as proposed.

38(a)(5)(v) Loan Identification Number

Proposed § 1026.38(a)(5)(v) would have required disclosure of the loan identification number, consistent with § 1026.37(a)(12) and labeled ''Loan ID #.'' Comments received in relation to the loan identification number disclosure generally are discussed in the section-by-section analysis of § 1026.37(a)(12). One document preparation company commenter requested that the disclosure of the loan identification number on the Closing Disclosure be permitted to differ from that on the Loan Estimate because the identifying number used may be one used by the settlement company, rather than the lender.

Notwithstanding the fact that a settlement company may use an identification number for a transaction that differs from that used by the creditor, the Bureau believes that disclosing the same identification number on the Loan Estimate and the Closing Disclosure is beneficial for consumers who wish to compare the Closing Disclosure to the Loan Estimate. The settlement company would not be required, however, to use the identification number disclosed on the Loan Estimate and the Closing Disclosure in its own systems and can list its identification number under § 1026.38(a)(3)(v).

The Bureau continues to believe that disclosure of a loan identification number will promote the informed use of credit, and accordingly, is adopting § 1026.38(a)(5)(v) as proposed. The Bureau is also adding comment 38(a)(5)(v)–1 to clarify that the identification number disclosed on the Closing Disclosure must be one that enables the creditor, consumer, and other parties to identify the transaction as the same transaction that was disclosed on the Loan Estimate under § 1026.37. The Bureau has also clarified in the comment that the loan identification number may contain any alpha-numeric character, which means that the identification number need not be limited to numbers.

38(a)(5)(vi) Mortgage Insurance Case Number

The mortgage insurance case number currently is disclosed in section B of the RESPA settlement statement. *See* appendix A to Regulation X. Proposed § 1026.38(a)(5)(vi) would have incorporated this disclosure into the Closing Disclosure, labeled ''MIC #.'' A national settlement company commented that the label ''MIC #'' would be confusing to consumers. The Bureau extensively tested the integrated disclosures with consumers and did not

find that the proposed label ''MIC #'' detracted from consumer understanding of the loan transactions. The Bureau believes that to the extent consumers do not understand the acronym, they can find such information from other sources, such as the Bureau's Web site, the creditor's or mortgage broker's loan officer, the settlement agent, or real estate agents. The Closing Disclosure will contain a statement referring consumers to the Bureau's Web site to obtain more information next to a graphic depiction of a question mark, which consumer testing conducted by the Bureau indicated drew consumers' attention to the notice. *See* Kleimann Testing Report at 224. Accordingly, the Bureau believes that consumers will have available information regarding this information in the disclosure should they have questions. For the aforementioned reasons, the Bureau is adopting § 1026.38(a)(5)(vi) as proposed.

38(b) Loan Terms

For transactions subject to § 1026.19(f), proposed § 1026.38(b) would have implemented the requirements of TILA section 128(a)(6), (a)(11), and (b)(2)(C)(ii) by requiring creditors to disclose on the Closing Disclosure the table of key loan terms provided on the Loan Estimate pursuant to proposed § 1026.37(b). This information includes the loan amount; interest rate; periodic principal and interest payment; whether the loan amount, interest rate, or periodic payment may increase; and whether the loan has a prepayment penalty or balloon payment. For a detailed description of the Bureau's implementation of these statutory provisions and its legal authority for this final rule, see the section-by-section analysis of § 1026.37(b). The requirements of proposed § 1026.38(b) generally would have mirrored those of § 1026.37(b). Proposed comment 38(b)–1 would have provided a cross-reference to the commentary to § 1026.37(b) for guidance on the disclosures required by § 1026.38(b). The Bureau did not receive any comments on proposed § 1026.38(b) or its associated commentary not already discussed in the section-by-section analysis of § 1026.37(b) and is adopting § 1026.38(b) and its accompanying commentary as proposed.

38(c) Projected Payments

Proposed § 1026.38(c) would have implemented the requirements of TILA section 128(a)(6), (a)(16), (b)(2)(C), and (b)(4) for transactions subject to proposed § 1026.19(f), by requiring creditors to disclose on the Closing Disclosure the periodic payment or range of payments, together with an estimate of the taxes, insurance, and assessments and the payments to be made with escrow account funds. 15 U.S.C. 128(a)(6), (a)(16), (b)(2)(C), (b)(4). The requirements of proposed § 1026.38(c) generally would have mirrored those of proposed § 1026.37(c), with certain exceptions which are discussed below. Accordingly, proposed comment 38(c)–1 would have directed creditors to § 1026.37(c) and its commentary for guidance on the disclosures required by § 1026.38(c). For a detailed description of the Bureau's implementation of these statutory provisions and the Bureau's legal authority, see the section-by-section analysis of § 1026.37(c) above. As discussed below in the section-by-section analysis of § 1026.38(t), the items that would have been required to be disclosed pursuant to § 1026.38 would have been actual terms and costs, as required by proposed § 1026.19(f).

Proposed § 1026.38(c) would have differed from proposed § 1026.37(c) in several ways. First, proposed § 1026.38(c)(2) would have required an additional reference to the information required by proposed § 1026.38(l)(7). The proposal noted the Bureau's belief, based on consumer testing, that this additional reference would help consumers to understand the specific payment amounts to be made with escrow funds and those that must be paid separately by the consumer. Second, proposed § 1026.38(c) would have provided different rules for estimating escrow payments. As discussed in the section-by-section analysis of proposed § 1026.37(c), the Dodd-Frank Act amended TILA to add new requirements regarding the disclosure of escrow payments in consumer credit transactions secured by a first mortgage on the principal dwelling of the consumer, other than an open-end credit plan or reverse mortgage. Specifically, TILA section 128(b)(4)(A) provides that the disclosures required by TILA section 128(a)(6) must take into account the amount of any monthly payment to an escrow account, in accordance with section 10(a)(2) of RESPA. 15 U.S.C. 1638(b)(4)(A); 12 U.S.C. 2609(a)(2). In addition, new TILA section 128(b)(4)(B) generally requires creditors to take into account the taxable assessed value of the property during the first year after consummation, including the value of any improvements constructed or to be constructed on the property, if known, and the replacement costs of the property for hazard or flood insurance, when disclosing estimated escrow payments pursuant to TILA section 128(b)(4)(A). 15 U.S.C. 1638(b)(4)(B). For the Loan Estimate provided to consumers near the time of application, proposed § 1026.37(c) generally would have incorporated these statutory provisions, but would have expanded the requirements to all transactions subject to § 1026.37(c). However, the proposal noted the Bureau's belief that separate treatment is required for the Closing Disclosure because the statutory requirements may conflict with certain provisions of Regulation X, which implements the provisions of RESPA sections 6(g) and 10, regarding the administration of escrow accounts. 12 U.S.C. 2605(g), 2609.

Current Regulation X § 1024.17(c)(7) specifies how a creditor conducting an escrow account analysis must estimate disbursement amounts. If the creditor knows the charge for a particular escrow item, the creditor must use that amount in estimating the disbursement. If the charge is unknown, the creditor may base the estimate on the preceding year's charge, but may adjust the estimate to account for inflation. The Regulation X requirement that the creditor use actual charges, if known, in estimating escrow payment amounts may conflict with the TILA section 128(b)(4)(B) requirement that the creditor take into account the replacement costs of the property for hazard insurance when determining the estimated escrow amount. Under the plain language of TILA section 128(b)(4)(B), a creditor must base estimated escrows for hazard insurance on the replacement costs of the property, even if it knows that the actual charges will be different. The proposal noted that while the Bureau believes that the TILA requirement for estimating escrow payments is appropriate for the Loan Estimate because it requires creditors to use a uniform standard for estimates and therefore facilitates comparison, the disclosure of actual payment amounts, when known, is more appropriate for the Closing Disclosure.

Accordingly, the Bureau proposed to use its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b) to modify the requirements of TILA section 128(b)(4)(B) for the estimation of escrow payment amounts on the Closing Disclosure. Proposed § 1026.38(c) would have provided that, in disclosing estimated escrow payments as described in § 1026.37(c)(2)(iii) and (4)(ii), the amount disclosed on the Closing Disclosure: (1) for transactions subject to

RESPA, is determined under the escrow account analysis described in Regulation X, 12 CFR 1024.17, and (2) for transactions not subject to RESPA, may be determined under the escrow account analysis described in Regulation X, 12 CFR 1024.17, or in the manner set forth in § 1026.37(c)(5). Comment 38(c)(1)–1 would have clarified that the amount of estimated escrow payments disclosed on the Closing Disclosure is accurate if it differs from the estimated escrow payment disclosed on the Loan Estimate due to the escrow account analysis described in Regulation X, 12 CFR 1024.17. The Bureau noted its belief that the proposed modification would effectuate the purposes of TILA by promoting the informed use of credit by allowing disclosure of actual escrow amounts for hazard insurance, when known. Additionally, the Bureau noted its belief that the proposed modification would ease compliance burden for creditors. In particular, permitting creditors in transactions not subject to RESPA to rely on the accounting rules described in Regulation X, 12 CFR 1024.17, to calculate the escrow payment disclosure would avoid requiring creditors to follow a separate disclosure requirement for the relatively small number of transactions that are subject to TILA but not RESPA. The Bureau also noted that the proposed modification will also improve consumer awareness and understanding of residential mortgage loans and is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b). The Bureau also noted its belief that the disclosure would ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a).

The Bureau received a number of comments on the projected payments table from industry and consumer advocacy groups. Those comments are generally discussed above in the section-by-section analysis of § 1026.37(c). The Bureau has considered those comments and made certain adjustments to the rules regarding the projected payments table in response to those comments and for additional clarity, as discussed above. Because the requirements of proposed § 1026.38(c) generally would have mirrored those of proposed § 1026.37(c), with certain exceptions outlined above, the comments received regarding the projected payments table are generally applicable to the projected payments table under § 1026.38(c). In addition, one industry trade association commenter argued that, unlike the Loan Estimate where estimated escrow payments should always be disclosed, loans with no escrow account do not need escrow information on a Closing Disclosure.

For the reasons discussed in the proposed rule, in the section-by-section analysis of § 1026.37(c), and below, the Bureau is adopting § 1026.38(c) as proposed, although the changes to the projected payments table described above in the section-by-section analysis of § 1026.37(c) also apply § 1026.38(c). The Bureau has considered the comment suggesting that loans with no escrow account do not need escrow information disclosed on the Closing Disclosure. However, as noted above in the section-by-section analysis of § 1026.37(c) and in the Kleimann Testing Report, consumer testing indicates that consumers view their total monthly payment as a key piece of information and that, even where no escrow account is established for the payment of taxes and insurance, the Bureau believes that information about such costs is an important measure of the consumer's ability to afford the transaction. *See* Kleimann Testing Report at 285. Absent such a disclosure, consumers may not fully comprehend the cost of their home loan on a periodic basis, and may not be as readily able to make an informed decision about whether to proceed with the transaction. Accordingly, the final rule requires creditors to disclose consumer's taxes, insurance, and assessment information on the table required by § 1026.38(c), even where no escrow account for the payment of such amounts will be established.

38(d) Costs at Closing

The Bureau's proposed § 1026.38(d) would have required the disclosure of the cash required from the consumer at consummation of the transaction, with a breakdown of the amounts of loan costs and other costs associated with the transaction under a heading of ''Cash to Close.'' Under proposed § 1026.38(d)(1), the dollar amount due from the consumer would have been the same amount as calculated in accordance with proposed § 1026.38(j)(3)(iii) and would have been disclosed under a heading of ''Cash to Close'' and labeled ''Cash to Close.'' The total dollar amount of the loan costs to be paid by the consumer at closing as calculated under proposed § 1026.38(f)(4) would have been disclosed under proposed § 1026.38(d)(2) with a description of ''Loan Costs.'' The total dollar amount of the other costs to be paid by the consumer at closing as calculated under proposed § 1026.38(g)(5) would have been disclosed under proposed § 1026.38(d)(3) with a description of ''Other Costs.'' The amount of lender credits disclosed under § 1026.38(h)(3) would have been disclosed under § 1026.38(d)(4) with a description of ''Lender Credits.'' The sum of the amounts disclosed under § 1026.38(d)(2), 1026.38(d)(3), and 1026.38(d)(4) would have been disclosed with a description of ''Closing Costs'' under § 1026.38(d)(5). A statement directing the consumer to refer to the tables required under § 1026.38(f) and (g) for more details would have been required under § 1026.38(d)(6).

As more fully discussed in the section-by-section analysis of proposed § 1026.37(d) and (h), above, and § 1026.38(e), below, several commenters stated that the cash to close amount would be difficult for consumers to understand, especially in the case of a cash-out refinance transaction where the cash to close amount disclosed under proposed § 1026.38(d)(1) would have been negative. These commenters stated that consumers would have difficulty in understanding negative numbers in this context. The Bureau, in response to these comments, conducted additional qualitative testing of the proposed integrated disclosures using a sample refinance transaction in which a consumer would receive cash at consummation, in which case the cash to close would be disclosed as a negative amount, and a modified version of the integrated disclosures with an alternative table that would use checkboxes to denote that cash was received at consummation. As described in the section-by-section analysis of § 1026.37(d) above, based on the comments received and this qualitative testing, the Bureau believes that disclosing a positive cash to close amount with a checkbox to denote that cash will be received will be more understandable to consumers than disclosing a negative amount for the cash to close. In addition, as also described in the section-by-section analysis of § 1026.37(d) above, in response to comments received regarding the proposed cash to close tables under §§ 1026.37(d) and 1026.38(d) and the results of one question in the Bureau's Quantitative Study regarding the total closing costs

amount, the Bureau tested with consumers a revised cash to close table on page 1 of the Loan Estimate and Closing Disclosure to place equal emphasis on the total closing costs amount and the cash to close amount for consumers, rather than placing the total closing costs amount embedded in text to the right of the cash to close amount as it was in the proposed Loan Estimate and Closing Disclosure. *See* Kleimann Post-Proposal Testing Report at 51–52, 58, 62, 71; Kleimann Quantitative Study at 74. This table included a revised heading, ''Costs at Closing.'' Based on the comments received and its consumer testing, the Bureau believes this modification to the cash to close table enhances consumer understanding of the transaction.

Accordingly, the Bureau is adopting § 1026.38(d) as revised from proposed § 1026.38(d) to revise the heading to ''Costs at Closing,'' and to include two separate rows: the first row contains the total closing costs, loan costs, other costs, and lender credits in connection with the transaction, as well as a reference to the closing cost details under § 1026.38(f), (g), and (h) (disclosed on page 2 of the Closing Disclosure); and the second row contains the cash to close amount, a statement that the cash to close amount includes closing costs, and a reference to the calculating cash to close table under § 1026.38(i) (disclosed on page 3 of the Closing Disclosure), as illustrated by form H–25 of appendix H to Regulation Z. In addition, § 1026.38(d) as revised provides for an alternative cash to close disclosure for transactions without a seller, consistent with the provisions of § 1026.37(d) and (h) and § 1026.38(e). As a result of these revisions, the cash to close disclosure under proposed § 1026.38(d), is adopted in § 1026.38(d)(1), which will use cross-references from the provisions of § 1026.38(f), (g), and (h) for the amounts to be disclosed. The alternative cash to close disclosure under § 1026.38(d)(2) must be provided for transactions without a seller when the Loan Estimate is disclosed with the optional alternative table pursuant to § 1026.37(d)(2). The alternative cash to close disclosure under § 1026.38(d)(2) will use cross-references from the provisions of § 1026.38(e) for the amounts to be disclosed. The Bureau also is adopting comments 38(d)(2)–1, which clarifies that the use of the alternative cash to close disclosure under § 1026.38(d)(2) must be used when the alternative calculating cash to close table under § 1026.38(e) is used; and 38(d)(2)–2, which provides an example of how the indication of whether the cash is due from or to the consumer can be disclosed with the use of checkboxes, as shown in form H–25(J) of appendix H.

Pursuant to its authority under TILA section 105(a), RESPA section 19(a), and Dodd-Frank section 1032(a), the Bureau requires creditors to provide the actual total closing costs imposed upon the consumer and the amount of the cash required at consummation from the consumer. This disclosure will promote the informed use of credit and consumer understanding of the costs, benefits, and risks associated with the loan because it will indicate to the consumer the amount the consumer will pay at consummation of the credit transaction and closing of the real estate transaction.

38(e) Alternative Calculating Cash To Close Table for Transactions Without a Seller

As discussed in the section-by-section analyses of §§ 1026.37(d) and (h) and 1026.38(d) and (i), the Bureau is adopting an alternative Calculating Cash to Close table for use in a transaction without a seller in response to the comments received that expressed concerns regarding the proposed calculation's understandability for consumers in refinance transactions, and the disclosure of a negative cash to close amount for transactions in which a consumer would receive cash from a refinance transaction. The Bureau developed and conducted qualitative consumer testing of an alternative Calculating Cash to Close table after reviewing these comments. The Bureau's consumer testing of the alternative table demonstrated greater consumer comprehension and the alternative table proved to be readily understood by consumers for transactions without a seller. *See* Kleimann Post-Proposal Testing Report at 58, 71.

Accordingly, the Bureau adopts § 1026.38(e) to require an alternative calculating cash to close table for transactions without a seller when the Loan Estimate was disclosed with the optional alternative Calculating Cash to Close table permitted under § 1026.37(h)(2). The Bureau is requiring use of the alternative Calculating Cash to Close table permitted under § 1026.38(e) if the optional alternative table under § 1026.37(h)(2) is used because the Bureau designed the tables to match information and content. The Bureau has designed the Loan Estimate and Closing Disclosure generally to match, to enable easier comparison of estimated and final numbers for consumers. The Bureau's Quantitative Study determined that consumer participants using the Bureau's integrated disclosures performed statistically significantly better than consumer participants using the current disclosures at comparing estimated and final loan terms costs. *See* Kleimann Quantitative Study Report at 68. The Bureau believes this increased performance is due, in part, to the matching designs of the Loan Estimate and Closing Disclosure. Accordingly, the Bureau has determined to require the alternative Calculating Cash to Close table permitted under § 1026.38(e) if the optional alternative table under § 1026.37(h)(2) is used, because use of a similar format and content for the table on both the Loan Estimate and the Closing Disclosure will enable consumers to compare changes more easily between the estimated and final terms and costs, aiding consumer understanding of the transaction, which is one of the purposes of the integrated disclosures under Dodd-Frank Act sections 1098 and 1100A.

The alternative table under § 1026.38(e) discloses the loan amount, total closing costs, amount of closing costs paid before closing, payoffs and payments, the total amount of cash to or from the consumer, and the closing costs financed. These items, with the exception of closing costs financed, would be disclosed with three columns: the first to disclose the corresponding amounts from the Loan Estimate under § 1026.37(h)(2); the second to disclose amounts from § 1026.38(f), (g), and (t)(5)(viii)(B); and the final column to disclose whether the amounts change, with additional statements providing more information to the consumer about the change. The disclosure of the closing costs financed, because it is not part of the calculation of the cash to close in the alternative table, is not disclosed as a row in the table, but instead, disclosed in the bottom right of the table. The calculation of the closing costs financed amount in the alternative table under § 1026.38(e) is the same as under § 1026.37(h)(2)(v), except that the sum of closing costs designated borrower-paid before closing under § 1026.38(h)(2) are subtracted from the amount, because those costs are not paid from loan funds. The consumer has made payment for those charges before the loan was consummated. The Bureau is adopting comment 38(e)–1 to clarify that the optional use of the alternative table must be made in conjunction with the alternative disclosure under § 1026.38(d)(2). Based on its authority under TILA section 105(a), RESPA

section 19(a), and Dodd-Frank Act section 1032(a), the Bureau is requiring the creditor in a transaction without a seller to provide an alternative Calculating Cash to Close table in lieu of disclosing the table required by § 1026.38(i) when the alternative Calculating Cash to Close table was disclosed pursuant to § 1026.37(h)(2) which highlights the cash to close amount and its critical components and compares those amounts to the corresponding disclosures shown on the Loan Estimate under § 1026.37(h). The Bureau believes that this disclosure will effectuate the purposes of TILA and RESPA by facilitating the informed use of credit and ensuring that consumers are provided with greater and timelier information on the costs of the closing process. Providing consumers with information about the cash to close amount, its critical components, and how such amounts changed from the estimated amounts disclosed on the Loan Estimate helps ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to better understand the costs, benefits, and risks associated with the transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a).

38(f), (g), and (h) Closing Cost Details

The Bureau's proposed § 1026.38(f), (g), and (h) would have required the creditor or closing agent to disclose the details of the closing costs at closing and totals of those costs. The costs related to the consummation of the credit transaction and the closing of the real estate transaction would have been disclosed under § 1026.38(f), (g), and (h), as discussed below, regardless of the person responsible for paying the cost. Currently, RESPA section 4(a) requires that the forms published by the Bureau ''shall conspicuously and clearly itemize all charges imposed upon the borrower and all charges imposed upon the seller in connection with the settlement. . . .'' 12 U.S.C. 2603(a). The current RESPA settlement statement used in residential real estate transactions is promulgated under Regulation X § 1024.8, with instructions in appendix A to Regulation X.

As discussed above, Dodd-Frank Act sections 1032(f), 1098, and 1100A require the Bureau to integrate these RESPA disclosures with the disclosures required by TILA. However, section 1419 of the Dodd-Frank Act amended TILA section 128(a) also to require, in the case of a residential mortgage loan, disclosure of the aggregate amount of settlement charges for all settlement services provided in connection with the loan and the aggregate amount of other fees or required payments in connection with the loan. 15 U.S.C. 1638(a)(17).

Many of the comments submitted to the Bureau related to § 1026.38(f) and (g) concern the same issues raised in comments received concerning § 1026.37(f) and (g). To the extent that similar comments addressed an issue that was more fully discussed in response to comments related to § 1026.37(f) and (g), the discussion of the comments received related to § 1026.38(f) and (g) will include only summaries of comments and refer to the section-by-section analyses of § 1026.37(f) and (g), unless there is a specific reason that the comment needs to be addressed in the context of the Closing Disclosure.

Generally, the Bureau is adopting the requirements of § 1026.38(f), (g), and (h) as proposed, with modifications to some provisions and additional commentary to address comments received as discussed below. Pursuant to its authority under Dodd-Frank Act section 1032(a) and (f), TILA section 105(a), and RESPA section 19(a), the Bureau is requiring creditors to provide the loan costs and other costs imposed upon the consumer and the seller in tables as part of the integrated Closing Disclosure for closed-end transactions secured by real property (other than reverse mortgages). Based on its consumer testing, the Bureau believes that the disclosure of loan costs and other costs in the format illustrated in form H–25 of appendix H to Regulation Z will improve consumer understanding of the loan costs and other costs being imposed. The Bureau tested several different prototype formats for disclosing actual closing costs on the Closing Disclosure, including prototypes that were similar in format to the current RESPA settlement statement, with a similar three- and four-digit line numbering system, and other prototypes that more closely matched the Loan Estimate. Consumer participants at the Bureau's consumer testing performed better at identifying closing costs, including whether closing costs had changed between the estimated and actual amounts, when using a format for closing costs that closely matched that of the Loan Estimate. Participants gained a familiarity with the organization of closing costs on the Loan Estimate and benefited from this experience when engaging with the Closing Disclosure. In addition, consumer participants often placed the Loan Estimate and Closing Disclosure prototypes side-by-side to compare the closing costs, and this method of comparing the two disclosures was better enabled and assisted by a closely matching organization of closing costs between them. Accordingly, pursuant to § 1026.38(t) and illustrated by form H–25, the Bureau is requiring a format for the disclosure of closing cost information required by § 1026.38(f) and (g) that closely matches the format and organization of the closing cost information on the Loan Estimate.

This format of form H–25 also uses a different line numbering system than that of the current RESPA settlement statement. Both consumer and industry participants at the Bureau's qualitative testing before issuance of the proposal stated that line numbers would be useful to facilitate conversations between consumers, creditors, and other participants in the credit transaction and underlying real estate transaction. However, consumer participants at the Bureau's testing appeared overwhelmed by the three- and four-digit line numbers on the prototypes similar to the current RESPA settlement statement, and performed worse with prototypes containing that system. *See* Kleimann Testing Report at 289. As discussed above in part III, the Bureau is particularly mindful of the potential risk of information overload for consumers, given the amount of numbers and complexity involved in the credit transaction and the underlying real estate transaction. Accordingly, in its qualitative testing before issuance of the proposal, the Bureau tested prototypes with a two-digit line numbering system, which performed better with both consumer and industry participants at the Bureau's testing, with some industry participants at the Bureau's testing preferring it over the system of the current RESPA settlement statement. *See* Kleimann Testing Report at 293. In addition, at the Bureau's Quantitative Study, consumer participants using the Bureau's integrated disclosures performed statistically significantly better than consumer participants using the current disclosures at comparing estimated and final loan terms costs. *See* Kleimann Quantitative Study Report at 67–71. The Bureau believes the matching organization of the closing costs on the Loan Estimate and Closing Disclosure, as well as the streamlined line numbering system, enabled consumers to better compare the estimated and final loan terms and costs. Accordingly, the format for the information required by § 1026.38(f) and (g), as required by § 1026.38(t) and illustrated by form H–25, also contains a matching organization between the

Loan Estimate and Closing Disclosure, as well as a two-digit line numbering system that is different than the current RESPA settlement statement.

The Bureau believes that this disclosure will effectuate the purpose of TILA by promoting the informed use of credit and assuring a meaningful disclosure to consumers. The Bureau believes that this disclosure will also satisfy the purpose of RESPA to provide more effective advanced disclosure of settlement costs to both the consumer and the seller in the real estate transaction. In addition, consistent with section 1032(a) of the Dodd-Frank Act, this disclosure will ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

During the Small Business Review Panel, several settlement agents and one mortgage company requested that the line numbers from the current RESPA settlement statement be retained, stating that using the revised line numbers in the prototype integrated Closing Disclosure would significantly increase programming costs. *See* Small Business Review Panel Report at 20, 28–9. Based on this feedback, the Bureau sought comment on whether the use of line numbers would lower software-related costs on industry and the exact amount of the savings given the rest of the changes in the integrated Closing Disclosure contemplated by the proposal, while also improving consumer understanding of the loan terms and costs at the consummation of the credit transaction and the closing of the real estate transaction.

Other than generalized statements and assertions, the Bureau did not receive comments that included data or factual information on the issues sought. Some industry commenters stated that the line numbers currently on the RESPA settlement statement are sometimes used for reference when discussing closing costs. However, even though the line numbers on the Closing Disclosure will be different and many are not directly attributable to a certain charge in all transactions, the line numbers on the Closing Disclosure still can be used in the same fashion. One document preparation/software industry commenter stated that changing the line numbers is a significant project on its own, but that the other changes to the forms will necessitate enough changes to the forms that changing the line number methodology would not be a significant part of any update to their system. Other document preparation/software industry commenters stated that mapping of the charges between the Loan Estimate and Closing Disclosure may be more difficult. However, difficulty in mapping for systems purposes does not mean that consumers will be more confused. To the contrary, consumer testing conducted by the Bureau generally indicates that consumers using the Closing Disclosure were better able to understand their final loan terms and costs than those using the current RESPA settlement statement. *See* Kleimann Quantitative Study Report at 67. A title company industry commenter stated that line numbering is important and retaining the current line numbers would not reduce costs since there is not a one-to-one correlation between the RESPA settlement statement and the Closing Disclosure, and therefore supported retaining the proposed line numbers to quickly guide consumers to specific items.

Some title company industry commenters stated that the line numbers are used to generate checks and issue reports. This, however, does not address consumer understanding, but rather the use of disclosure forms to simplify business practices. As with the RESPA settlement statement, the Bureau anticipates that industry will be able to utilize the Closing Disclosure for the same business practices. However, the purpose of the integrated disclosures under Dodd-Frank sections 1098 and 1100A is not to streamline business practices, but to assist consumers in understanding the transaction and facilitate compliance with applicable regulations. A document preparation/software industry commenter stated that neither of the provisions of proposed § 1026.38(f) nor (g) required the identification of the third party providing the service to be itemized on the Closing Disclosure. As demonstrated by the examples proposed in appendix H to Regulation Z, the Bureau intended that a third party ultimately receiving payment would be identified on the Closing Disclosure, as is currently required under current Regulation X on the RESPA settlement statement. *See* 12 CFR part 1024 appendix A. The Bureau has added this requirement into the regulatory text of § 1026.38(f) and (g), as applicable, to ensure that the required disclosures are made on the Closing Disclosure.

38(f) Closing Cost Details; Loan Costs

The Bureau proposed § 1026.38(f), which would have disclosed closing cost details under a master heading of ''Closing Cost Details,'' with columns stating whether the charge is paid at or before consummation by the consumer or the seller, or paid by others. All loan costs in the credit transaction would have been disclosed in a table under a heading of ''Loan Costs'' in three subcategories. The Bureau did not receive comments on the design of the Closing Disclosure under § 1026.38(f). Two national trade association commenters stated that the proposed rule was unclear whether the amounts disclosed in the ''paid by others'' column were to include charges paid before or at closing, since the borrower and seller columns in form H–25 break out these designations in separate columns. The borrower and seller columns break out charges paid before or at closing because the distinction is essential to determine the amounts due to or from the consumer and seller at consummation. The same concern is not present for charges paid by parties other than the consumer or seller. Therefore, the ''paid by others'' column does not make such a distinction, and charges that are required to be disclosed on the Closing Disclosure, whenever paid, are itemized in the ''paid by others'' column. Accordingly, the Bureau is adopting § 1026.38(f) as proposed, with modifications and clarifications as identified below. The Bureau also is adopting comment 38(f)–1, which permits charges disclosed pursuant to § 1026.38(f) and (g) and designated as paid by others to include a notation of ''(L)'' to designate those charges paid by the creditor pursuant to the legal obligation between the creditor and the consumer for the reasons stated in the section-by-section analysis of § 1026.38(h)(3), below.

38(f)(1) Origination Charges

The first subcategory of loan costs would have been disclosed under the label ''Origination Charges,'' which encompassed the same items as would have been disclosed on the Loan Estimate under proposed § 1026.37(f)(1), together with any compensation of a loan originator paid by the creditor. Each cost would have been disclosed in the appropriate column designated borrower-paid at or before closing, seller-paid at or before closing, or paid by others. Proposed comment 38(f)(1)–1 would have clarified that comments 37(f)(1)–1, –2 and –3 provide additional guidance for the charges listed under § 1026.38(f)(1). Proposed comment 38(f)(1)–2 would have clarified that all compensation paid to a loan originator must be disclosed under § 1026.38(f)(1) and that compensation from the creditor to a loan originator must be disclosed in

the paid by others column. In addition, proposed comment 38(f)(1)–2 would have clarified that compensation from both the consumer and the creditor to the loan originator is prohibited under § 1026.36(d)(2). Proposed comment 38(f)(1)–3 would have clarified that any amount disclosed as paid from the creditor to the loan originator is calculated as the dollar value of all compensation to the loan originator and referred to comments 36(d)(1)–1, –2, –3 and –6 for further guidance on the components of compensation to a loan originator. The Bureau believed that the origination charges disclosed under proposed § 1026.38(f)(1) would have implemented TILA section 128(a)(18), as amended by Dodd-Frank Act section 1419, which requires disclosure of the aggregate amount of fees paid to the mortgage originator, the amount of those fees paid directly by the consumer, and any additional amount received by the originator from the creditor. The Bureau also noted that it was engaged in six other rulemakings that relate to mortgage credit and intended that the rulemakings function collectively as a whole. Accordingly, the Bureau noted it might have to modify the disclosure of origination charges under § 1026.38(f)(1) as appropriate for consistency with other rulemakings related to permissible mortgage loan originator compensation.

Alternatively, the Bureau invited comment on whether it should require itemization in the Closing Disclosure of fees received by loan originators from the creditor, and whether it should require itemization of any compensation paid by consumers to loan originators, which does not include creditors, in the Loan Estimate and Closing Disclosure. As discussed above with respect to § 1026.37(f)(1), the Bureau is using its authority under TILA section 105(a) and (f), RESPA section 19(a), and Dodd-Frank Act section 1405(b) to exempt the disclosures required by proposed § 1026.19(e) from the TILA section 128(a)(18) requirement that creditors disclose the amount of origination fees received by loan originators from the creditor. The Bureau sought comment on whether a similar exemption should be applied under proposed § 1026.38(f)(1).

Comments from industry stated the same comments as discussed in the section-by-section analysis of § 1026.37(f)(1) above regarding ''negative discount points,'' itemizations for services provided by third parties, and requests for clarification of the level of itemization under proposed § 1026.38(f)(1). Industry commenters generally expressed concern regarding the requirement to disclose all compensation received by loan originators, including creditor-paid compensation.

Industry commenters stated that loan originator compensation should not be disclosed to protect the privacy of loan originators, some of whom are their employees. In addition, commenters stated that the disclosure of loan originator compensation would require the disclosure of trade secrets, and that the disclosure of loan originator compensation would not benefit consumers. Industry commenters also stated that loan originator compensation does not affect a consumer's loan terms. One large bank commenter specifically requested that the Bureau utilize its exemption authority under Dodd-Frank Act section 1405(b) to eliminate the disclosure of loan originator compensation from the requirements of the Closing Disclosure. Another community bank commenter stated that the disclosure of loan originator compensation is a de facto taking under the Fifth Amendment to the U.S. Constitution.

Lastly, a national trade association representing developers of timeshare and other similar fractional interest real estate products stated that the Bureau should clarify that the proposed disclosure would not apply to timeshare lenders. The trade association commenter asserted that it believes that TILA section 103(cc)(5), as added by section 1401 of the Dodd-Frank Act, exempts timeshare lenders from compliance with, among other things, TILA section 129C and any regulations promulgated thereunder.

Dodd-Frank Act section 1419 amended TILA section 128(a) to require the disclosure of all amounts received by loan originators in a transaction. Although the Bureau recognizes that industry has concerns about disclosing compensation to loan originators, the Bureau believes that the use of exemption authority to exempt creditors from disclosure of all loan originator compensation would be inappropriate, because information regarding certain loan originator compensation may be useful to consumers in understanding their transaction, or to facilitate compliance with other applicable requirements. In addition, the Bureau does not believe that this disclosure amounts to an unconstitutional taking of property. The mere disclosure of the amount a loan originator will receive in compensation cannot be interpreted to be the required relinquishment of a cognizable property interest by government action.[298] Lastly, with respect to the argument that the Closing Disclosure should not apply to timeshare lenders, the general section-by-section analysis of § 1026.19 provides a more detailed discussion of the Bureau's decision to expand the scope of some of the disclosure requirements set forth in TILA, as amended by the Dodd-Frank Act. The Bureau believes the disclosure of amounts received by third-party loan originators in a transaction would be just as useful to consumers obtaining a loan secured by a consumer's interest in a timeshare plan as it would be to consumers obtaining loans secured by real property.

Industry commenters also made statements concerning the disclosure of compensation paid by the creditor to a loan originator that were consistent with comments that they had provided in connection with other Bureau rulemakings concerning or dealing with loan originator compensation. *See* 78 FR 6407 (Jan. 30, 2013), 78 FR 10367 (Feb. 13, 2013), 78 FR 35430 (June 12, 2013), and 78 FR 60382 (Oct. 1, 2013). In the proposed rule, the Bureau recognized that it may have to make adjustments to the items disclosed on the Closing Disclosure to reflect these matters or for consistency with determinations made in the Bureau's other mortgage rulemakings. The comments received in response to the proposed rule were extremely similar, if not the same, as the arguments of commenters discussed in the 2013 ATR Final Rule, the 2013 Loan Originator Final Rule, and the May 2013 ATR Final Rule, such as: That the identity of a loan originator is not needed to be disclosed, that the amount of loan originator compensation cannot be calculated on the date of consummation due to post-consummation events such as quarterly bonus and profit-sharing compensation, that the term compensation is unclear and overly broad, that the amount of compensation is difficult to calculate, and that compensation to loan originators can be double-counted because both upfront fees and future interest payments can be the source of the funds used for compensating loan originators. The extent to which loan originator compensation should be

[298] ''[T]he Government's imposition of an obligation between private parties, or destruction of an existing obligation, must relate to a specific property interest to implicate the Takings Clause.'' *Eastern Enterprises v. Apfel,* 524, U.S. 498, 544 (Kennedy, J., concurring). *See also Koontz v. St. Johns River Water Management Dist.,* 568 U.S. __ __, 133 S.Ct. 2586, 2599–2600 (2013), available at: *http://www.supremecourt.gov/opinions/12pdf/11-1447_4e46.pdf.*

included in the definition of points and fees was the subject of considerable discussion in the Bureau's 2013 ATR Final Rule and May 2013 ATR Final Rule.[299] Because of the similar issues involved in whether loan originator compensation should be included in the definition of points and fees and disclosed on the integrated disclosures, the Bureau believes that the matters stated by commenters in response to the proposed rule were fully discussed and considered in the Bureau's 2013 ATR Final Rule and May 2013 ATR Final Rule.[300] In addition, the Bureau stated in the proposal that it may have to modify aspects of this proposed rule for consistency with determinations made in the other rulemakings. Based on this evaluation and the Bureau's belief that consistency between its mortgage rulemakings will facilitate compliance for industry, the Bureau is modifying the guidance provided in proposed comment 38(f)(1)–3 to reflect that the amount of loan originator compensation paid by a creditor to a loan originator will be calculated in accordance with the guidance provided in relation to § 1026.32(b)(1)(ii). The Bureau believes that this modification will facilitate compliance and assist consumer understanding of the transaction.

Accordingly, the Bureau is adopting § 1026.38(f)(1) with the addition of a requirement to provide the identity of any third-party loan originator that ultimately receives compensation from the creditor, and comment 38(f)(1)–1 and –2 as proposed with a modification to reflect payments from a creditor to a third-party loan originator. The Bureau is also adopting comment 38(f)(1)–3 with modifications to address comments about how to calculate the amount of compensation to a third-party loan originator paid by a creditor by referencing the calculation of creditor-paid compensation to the third-party loan originator for the purposes of determining the amount of points and fees associated with the transaction in accordance with § 1026.32(b)(1)(ii).

The Bureau is using its authority under TILA section 105(a), RESPA section 19(a), and Dodd-Frank Act section 1032(a) to exempt from disclosure the amounts paid to the employee of a loan originator organization from the amounts disclosed under § 1026.38(f)(1). As stated above, the Bureau believes that the amounts of third-party loan originator compensation disclosed on the Closing Disclosure should be calculated in accordance with the amount of third-party loan originator compensation included in the points and fees calculation used by § 1026.32(b)(1)(ii), which does not include such employee compensation. The Bureau believes that consumers understand that employees are compensated by their employer, and do not require separate disclosure because the consumer is already paying the creditor. Accordingly, the Bureau believes the inclusion of such information on the Closing Disclosure will not aid consumer understanding of the transaction, and instead, may cause information overload for consumers. However, consumers may not understand that a third-party loan originator will be paid by the creditor in connection with the transaction, and thus, the disclosure of such compensation may aid consumer understanding of the transaction. In addition, the Bureau believes that using the calculation of § 1026.32(b)(1)(ii) to determine the amount of third-party loan originator compensation disclosed under § 1026.38(f)(1) will facilitate compliance by creditors with the 2013 ATR Final Rule, the May 2013 ATR Final Rule, and the second set of amendments to the Title XIV Rulemakings. *See* 78 FR 60382 (Oct. 1, 2013).

Accordingly, this disclosure will effectuate the purposes of TILA and RESPA by promoting the informed use of credit and more effective advance notice of settlement costs, consistent with TILA section 105(a) and RESPA section 19(a), and will ensure that the features of the mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to better understand the costs, benefits, and risks associated with mortgage transactions, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). The Bureau also believes such disclosure will improve consumers' awareness and understanding of residential mortgage transactions, which is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

38(f)(2) Services Borrower Did Not Shop for

The second subcategory of loan costs would have been disclosed under the label ''Services Borrower Did Not Shop For.'' The costs of services that were required by the creditor and provided by persons other than the creditor for which the consumer could not or did not shop would have been disclosed under proposed § 1026.38(f)(2). Any additional items that were required by the creditor but were not disclosed on the Loan Estimate under proposed § 1026.37(f)(2) would have been disclosed under proposed § 1026.38(f)(2) when the consumer did not shop for the service under § 1026.19(e)(1)(vi). Each cost would have been disclosed in the appropriate column designated borrower-paid at or before closing, seller-paid at or before closing, or paid by others. Proposed comment 38(f)(2)–1 would have referred to comments 37(f)(2)–1 through –4 to provide additional guidance for the charges listed under proposed § 1026.38(f)(2).

Commenters made statements in relation to proposed § 1026.38(f)(2) that concerned matters of appraisal management fees, the perceived difficulty in how some charges would be categorized, and the disclosure of enhanced lender's title insurance policies, which are discussed in the section-by-section analysis of § 1026.37(f)(2) above. The Bureau did not receive other comments related to proposed § 1026.38(f)(2). Accordingly, the Bureau is adopting § 1026.38(f)(2) substantially as proposed. The Bureau is adding to § 1026.38(f)(2) a requirement to provide the identity of the person ultimately receiving the payment. The Bureau is also adopting comment 38(f)(2)–1 as proposed.

38(f)(3) Services Borrower Did Shop for

The third subcategory of loan costs would have been disclosed under the label ''Services Borrower Did Shop For.'' The services required by the creditor but for which the consumer independently shopped would have been disclosed under proposed § 1026.38(f)(3). Each cost would have been disclosed in the appropriate column for borrower-paid at or before closing, seller-paid at or before closing, or paid by others. Proposed comment 38(f)(3)–1 would have clarified that all services that were disclosed under proposed § 1026.37(f)(3) that the consumer did not shop for under proposed § 1026.19(e)(1)(vi) are disclosed under proposed § 1026.38(f)(2), and not under proposed § 1026.38(f)(3).

The Bureau did not receive comments concerning proposed § 1026.38(f)(3). Accordingly, the Bureau is adopting § 1026.38(f)(3) substantially as proposed. The Bureau is adding to § 1026.38(f)(3) a requirement to provide the identity of the person ultimately

[299] *See* 12 CFR 1026.32(b)(1)(ii) for amounts of loan originator compensation excluded from the definition of points and fees; and discussions of comments received concerning the issues identified in 78 FR 6408, 6432–6438 (Jan. 30, 2013); 78 FR 35430, 35442–35459 (June 12, 2013); and 78 FR 60382, 60408–60413 (Oct. 1, 2013).

[300] *Id.*

receiving the payment. The Bureau is adopting comment 38(f)(3)–1 as proposed.

38(f)(4) and (5) Total Loan Costs and Subtotal of Loan Costs

With the label ''Total Loan Costs (Borrower-Paid),'' the total costs designated borrower-paid charges at closing and borrower-paid charges before closing would have been disclosed under proposed § 1026.38(f)(4). The costs disclosed under proposed § 1026.38(f)(1), (2), and (3) would have been subtotaled and disclosed in the appropriate column designated borrower-paid at or before closing under proposed § 1026.38(f)(5). Proposed comment 38(f)(5)–1 would have clarified that costs that are seller-paid at or before closing, or paid by others, are not subtotaled under proposed § 1026.38(f)(5), and that the subtotal of charges that are seller-paid at or before closing, or paid by others, would be disclosed under proposed § 1026.38(h)(2).

Several commenters stated that consumers and sellers may be confused if the seller-paid at closing, seller-paid before closing, and paid by other columns are treated differently than the borrower-paid columns, and therefore also should be subtotaled under proposed § 1026.38(f)(5). Consumer testing conducted by the Bureau did not indicate that consumers were confused because of a lack of subtotals in the seller-paid at closing, seller-paid before closing, and paid by other columns. Unless agreed to by contract, many of the costs disclosed in proposed § 1026.38(f) would not be paid by the seller, since the seller is not legally obligated to or required by the creditor to pay for such services. The seller's transaction is only with the consumer, and typically has fewer costs associated with consummation. Accordingly, the Bureau is adopting § 1026.38(f)(5) and its accompanying commentary as proposed, with a modification to the label required under § 1026.38(f)(5) to conform to H–25.

38(g) Closing Cost Details; Other Costs

Under proposed § 1026.38(g), all other costs in the credit transaction and the real estate transaction would have been disclosed in a table under the heading of ''Other Costs'' in four subcategories. Proposed comment 38(g)–1 would have referred to proposed comment 38(f)–1 and proposed comment 37(g)–1 to provide guidance related to proposed § 1026.38(g). The Bureau did not receive comments on proposed § 1026.38(g) or its accompanying commentary generally. Accordingly, the Bureau is adopting § 1026.38(g) and its accompanying commentary as proposed, with the modifications stated for the individual subcategories of other costs as specifically discussed, below.

38(g)(1) Taxes and Other Government Fees

The first subcategory would have been disclosed under the label ''Taxes and Other Government Fees.'' The amount of recording fees and an itemization of transfer taxes would have been disclosed under proposed § 1026.38(g)(1). Proposed comment 38(g)(1)–1 would have referred to comments 37(g)(1)–1, –2, –3 and –4 for guidance on disclosures required under proposed § 1026.38(g)(1). Several commenters again stated concerns related to the definition of recording fees that are discussed in the section-by-section analysis of § 1026.37(g)(1) above. Several national industry trade association commenters stated that the disclosure of the split of recording fees between those required for recording the deed and mortgage would omit recording fees for other documents (such as powers of attorney and subordination agreements), and therefore the disclosed amount under proposed § 1026.38(g)(1) would not equal the sum of the two disclosed components. Some of these commenters suggested deleting the breakout between charges associated with recording the deed and the mortgage. The Bureau's consumer testing did not indicate that consumers were confused about the breakout. *See* Kleimann Testing Report at 186–87, 291. The Bureau believes that to introduce further breakouts would require additional space that may not be available on the form as tested and would not demonstrably change consumer understanding of the Closing Disclosure.

Several commenters stated that there are sometimes multiple transfer taxes that cannot be lumped together in one line. However, § 1026.38(g)(1) does not require all transfer taxes to be included on one line, unlike § 1026.37(g)(1). Additionally, § 1026.38(g)(1) expressly requires an itemization of transfer taxes, and reflects the actual division of transfer taxes between the consumer and seller, instead of transfer taxes that the consumer could pay that are disclosed in accordance with § 1026.37(g)(1), as any negotiations between the consumer and seller will be resolved by consummation.

Accordingly, the Bureau is adopting proposed § 1026.38(g)(1) and its accompanying commentary substantially as proposed, with a modification to § 1026.38(g)(1)(ii) to include the name of the government entity assessing the transfer tax to clarify that the identities of such entities are required to be disclosed. The Bureau is also adopting comment 38(g)(1)–2 to provide guidance clarifying that transfer taxes can be itemized by the creditor as provided in State or local law and the real estate purchase contract, to provide further clarity regarding the requirement to itemize transfer taxes.

38(g)(2) Prepaids

The second subcategory would have been disclosed under the label ''Prepaids.'' The items that were identified under this label and stated with the actual costs in the applicable columns would have been disclosed under § 1026.38(g)(2). Proposed comment 38(g)(2)–1 would have referred to proposed comment 37(g)(2)–1 to provide guidance on disclosures required under proposed § 1026.38(g)(2). Proposed comment 38(g)(2)–2 would have clarified that the amount of prepaid interest can be disclosed as a negative number if the calculation of prepaid interest results in a negative number. Proposed comment 38(g)(2)–3 would have clarified that if interest is not collected for a portion of a month or other period between closing and the date from which interest will be collected with the first monthly payment, then $0.00 must be disclosed under proposed § 1026.38(g)(2) for prepaid interest. This guidance would have been consistent with instructions for RESPA settlement statement line 901 in appendix A to Regulation X.

Several commenters submitted comments similar to comments received in response to proposed § 1026.37(g)(2), stating that this subcategory under proposed § 1026.38(g)(2) should be labeled with a different description, and that any prepaid interest should be calculated in reference to the introductory interest rate instead of the fully-indexed rate. Accordingly, for the reasons discussed above in the section-by-section analysis of § 1026.37(g)(2), the Bureau is adopting § 1026.38(g)(2) and its accompanying commentary as proposed with a modification to require the name of the person ultimately receiving the payment, except for the disclosure of prepaid interest. The Bureau also is adopting comment 38(g)(2)–4 to clarify that the interest rate used to determine the amount of prepaid interest is the interest rate disclosed on page one of the Closing Disclosure under § 1026.38(b), as required by § 1026.37(b)(2). One industry commenter stated that the proposed rule did not provide a definition for items that would be

considered property taxes. The Bureau is adopting comment 38(g)(2)–5 to clarify that property taxes that are disclosed pursuant to § 1026.38(g)(2) are those items that meet the definition stated in comment 43(b)(8)–2.

38(g)(3) Initial Escrow Payment at Closing

The third subcategory would have been disclosed under the subheading ''Initial Escrow Payment at Closing.'' The items that would have been identified under § 1026.37(g)(3) would have been stated with their actual cost and the applicable aggregate adjustment required under 12 CFR 1024.17(d)(2) and disclosed under proposed § 1026.38(g)(3). Proposed comment 38(g)(3)–1 would have clarified that the creditor would be required to state the amount that it would require the consumer to place into a reserve or escrow account at consummation to be applied to recurring charges for property taxes, homeowner's and similar insurance, mortgage insurance, homeowner's association dues, condominium dues, and other periodic charges. Each charge identified would have been disclosed with a relevant label, monthly payment amount, and number of months collected at consummation. Proposed comment 38(g)(3)–2 would have clarified that the method used to determine the aggregate adjustment for purposes of establishing the reserve or escrow account is described in Regulation X § 1024.17(d)(2), that examples of the calculation methodology can be found in appendix E to Regulation X, and that the result of the calculation will always be a negative number or zero, except for amounts due to rounding. This comment would have incorporated guidance provided in appendix A to Regulation X relating to the instructions to complete the current RESPA settlement statement section 1000.

Comments received regarding proposed § 1026.38(g)(3) sought clarity regarding the difference between items that are considered to be prepaid versus those items that are considered to be included in an escrow account, since both categories are payable prior to the first payment date. Commenters also sought clarity on the itemization of multiple taxes, as discussed in § 1026.37(g)(3) above. The Bureau observes that escrow payments would be paid to a creditor (or a mortgage servicer if one has been identified at closing) while prepaid amounts generally are paid to third parties, and thus the Bureau does not believe this difference is confusing or difficult to comply with. Indeed, § 1026.38(g)(2) requires disclosure of the person ultimately receiving the payment or the government entity assessing the property taxes, while § 1026.38(g)(3) does not impose such a requirement.

One document preparation/software industry commenter stated that the aggregate adjustment disclosed under proposed § 1026.38(g)(3) should be the last item disclosed under this subheading. The Bureau believes that it would improve consumer understanding to have the aggregate adjustment required by § 1024.17(d)(2) listed as the last item disclosed under this subheading, and is adding a sentence to comment 37(g)(3)–2 to address this issue. One industry commenter stated that the proposed rule did not provide a definition for items that would be considered property taxes.

Accordingly, the Bureau is adopting § 1026.38(g)(3) and its accompanying commentary as proposed. The Bureau also is adding an additional sentence to comment 38(g)(3)–2 to clarify that the aggregate adjustment required under § 1024.17(d)(2) should be listed as the last item disclosed under this subheading. The Bureaus also is adopting comment 38(g)(3)–3 to incorporate guidance from 37(g)(3)–5 for multiple taxes with different accounting periods. The Bureau is adopting comment 38(g)(3)–4 to clarify that property taxes that could be disclosed pursuant to § 1026.38(g)(3) are those items that meet the definition stated in comment 43(b)(8)–2. The Bureau is adopting comment 38(g)(3)–5 to clarify that the amounts disclosed pursuant to § 1026.38(g)(3) are those amounts that are included in the definition of ''escrow account'' under 12 CFR 1024.17(b).

38(g)(4) Other

The fourth subcategory would have been disclosed under the label ''Other.'' The services required or obtained in the real estate closing by the consumer, seller, or other party would have been described and the costs for the services would have been disclosed under proposed § 1026.38(g)(4). The label for any cost that is a component of title insurance would have been required to include the description ''Title—.'' The label for costs of premiums for separate insurance, warranty, guarantee, or event-coverage products would have been required to include the parenthetical ''(optional)'' at the end. Proposed comment 38(g)(4)–1 would have clarified that the charges disclosed under proposed § 1026.38(g)(4) include all real estate brokerage fees, homeowner's or condominium association charges paid at closing, home warranties, inspection fees, and other fees that are part of the real estate transaction but not required by the creditor or disclosed elsewhere in proposed § 1026.38. Proposed comment 38(g)(4)–2 would have clarified that any owner's title insurance premium disclosed under proposed § 1026.38(g)(4) in a jurisdiction that permits simultaneous issuance title insurance rates would have been calculated by using the full owner's title insurance premium, adding any simultaneous issuance premium for issuance of lender's coverage, and then deducting the full premium for lender's coverage disclosed under proposed § 1026.38(f)(2) or (f)(3) and that the cost of a premium for an owner's title insurance policy would have been always labeled with ''Title—'' at the beginning, and labeled ''(optional)'' at the end when designated borrower-paid at or before closing. Proposed comment 38(g)(4)–3 would have referred to comment 37(g)(4)–3 for additional guidance on the use of the parenthetical ''(optional)'' at the end of label on a cost under proposed § 1026.38(g)(4)(ii).

Commenters that provided comments related to the calculation of the owner's title insurance premium presented arguments identical to those provided in relation to proposed § 1026.37(g)(4), which are discussed in the section-by-section analysis of that provision, above. Two GSE commenters indicated that there was no guidance in the proposal on how to disclose real estate commissions charged by real estate brokerages in a transaction. The Bureau is addressing this query with the addition of commentary to clarify this issue. Accordingly, the Bureau is adopting § 1026.38(g)(4) and its accompanying commentary as proposed. In response to the comments regarding the real estate brokerage commissions, the Bureau also is adopting comment 38(g)(4)–4 to clarify that the total amount of the real estate commission charged by any real estate brokerage must be disclosed under § 1026.38(g)(4), regardless of the identity of the party that may hold any earnest money deposit.

38(g)(5) Total Other Costs

38(g)(6) Subtotal of Costs

With the label ''Total Other Costs (Borrower-Paid),'' the total of the consumer paid charges at closing and the consumer paid charges before closing would have been disclosed under proposed § 1026.38(g)(5). The costs disclosed under proposed § 1026.38(g)(1) through (4) would have

been subtotaled and disclosed in the appropriate column designated borrower-paid at or before closing under proposed § 1026.38(g)(6). Proposed comment 38(g)(6)–1 would have clarified that the only costs subtotaled under proposed § 1026.38(g)(6) are those that would have been designated borrower-paid at or before closing. The costs disclosed under § 1026.38(g)(1) through (4) that are seller-paid at closing, seller-paid before closing, or paid by others would not have been disclosed under proposed § 1026.38(g)(6), but would have been subtotaled under proposed § 1026.38(h)(2). The Bureau did not receive comments concerning proposed § 1026.38(g)(5) or (6). Accordingly, the Bureau is adopting § 1026.38(g)(5) and (6) and its accompanying commentary as proposed, with a minor modification to the label required under § 1026.38(g)(6) to conform to form H–25.

38(h) Closing Cost Totals

38(h)(1) and (2)

Subtotals of closing costs and total closing costs paid by the consumer would have been required to be disclosed under proposed § 1026.38(h). With the label ''Total Closing Costs (Borrower-Paid),'' the total amount of consumer paid closing costs would have been disclosed under proposed § 1026.38(h)(1). With a description of ''Closing Costs Subtotal (Loan Costs + Other Costs),'' the subtotal of all charges disclosed under proposed § 1026.38(f) and (g) in each column described in proposed § 1026.38(f) would have been disclosed under proposed § 1026.38(h)(2). Comment 38(h)(2)–1 would have clarified that the loan costs and other costs that are seller-paid at closing, seller-paid before closing, and paid by others are also subtotaled under proposed § 1026.38(h)(2). The Bureau did not receive comments concerning the totals and subtotals to be provided under § 1026.38(h)(1) and (2). Accordingly, the Bureau is adopting § 1026.38(h)(1) and (2) and its accompanying commentary as proposed, with a minor modification to the label required under § 1026.38(h)(2) to conform to form H–25.

The Bureau adopts § 1026.38(h)(1) and (2) pursuant to its authority under TILA section 105(a) and Dodd-Frank Act section 1032(a) because disclosure of this closing cost information promotes the informed use of credit and consumer understanding of the costs, benefits, and risks associated with the mortgage transaction. Furthermore, for the reasons stated above, the rule is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b). In addition, § 1026.38(h)(1) and (2) implements Dodd-Frank Act section 1419, which amended section 128(a) of TILA to add a new paragraph (17) requiring disclosure of, among other amounts, the amount of settlement charges the borrower must pay at closing and the aggregate amount of all settlement charges for all settlement services provided in connection with the loan.

38(h)(3)

Section 1026.38(h)(3) would have required the creditor to disclose the amount of credits provided by the creditor to the consumer at consummation. Proposed comment 38(h)(3)–1 would have provided a cross-reference to guidance provided in comments 17(c)(1)–19, 19(e)(3)(i)–4, and 19(e)(3)(i)–5 concerning the disclosure of lender credits, including those that are disclosed under § 1026.37(g)(6). Proposed comment 38(h)(3)–2 would have clarified that any amounts disclosed under § 1026.38(h)(3) also can be used for disclosing any credits from the creditor to remediate excess costs determined under § 1026.19(e)(3)(i) or (e)(3)(ii). This comment would have incorporated guidance provided in the HUD RESPA Roundup dated April 2010.

Industry commenters stated that lender credits should not be deducted from the total costs, but rather should offset origination charges, in a fashion similar to the existing RESPA GFE and RESPA settlement statement. Industry commenters stated that to show credits in another fashion would make loans offered by mortgage brokers appear more expensive. Consumer testing conducted by the Bureau indicated that applying lender credits to origination charges lead to negative loan costs, which may not be understood by consumers. *See* Kleimann Testing Report at 125. The Bureau moved lender credits to offset all closing costs to better ensure they would be understood by consumers. *See* Kleimann Testing Report at 259–60

However, an association of State financial regulators stated that it believed netting of lender credits against origination fees would be contrary to the nature of Regulation Z, and that netting of credits should be avoided wherever possible. Specifically, the association of State financial regulators stated that a clear enumeration of how a lender credit was applied should be provided in the Closing Disclosure. As noted in the proposed rule, the Bureau understands that lender credits are sometimes provided to offset specific charges, as well as provided in a lump sum without attribution to specific costs, pursuant to the legal obligation between the creditor and the consumer. The Bureau believes that the Closing Disclosure should, to the extent practicable, reflect the terms of the legal obligation. The Bureau has adopted comment 38(f)–1, which provides a method to designate those specific closing costs that are paid by the lender, which is intended to permit the itemization of lender credits in accordance with the legal obligation between the creditor and consumer. However general, undesignated lender credits also need to be appropriately reflected on the Closing Disclosure. Accordingly, the Bureau is adopting § 1026.38(h)(3) and its accompanying commentary substantially as proposed, with minor modifications for clarity. The Bureau is modifying § 1026.38(h)(3) to require statements regarding the inclusion of a credit under § 1026.19(f)(2)(v) to cure a tolerance violation of § 1026.19(e)(3), and making minor modifications for clarity. The statement regarding the inclusion of a credit under § 1026.19(f)(2)(v) is illustrated by form H–25(F) of appendix H.

38(h)(4)

Section 1026.38(h)(4) would have required the creditor to use terminology describing the charges on the Closing Disclosure in a manner that is consistent with the descriptions used for charges disclosed on the Loan Estimate under § 1026.37. The creditor also would have been required to list the charges on the Closing Disclosure in the same sequential order on the Loan Estimate under § 1026.37. Proposed comment 38(h)(4)–1 would have clarified that the creditor would have been required to use the same terminology and order to make it easier for the consumer to compare charges listed on the Loan Estimate and Closing Disclosure. Also, if charges move between subheadings under § 1026.38(f)(2) and (3), listing the charges in alphabetical order in each subheading category would have been considered to be in compliance with § 1026.38(h)(4).

Commenters stated that showing items in alphabetical order would be difficult for their information technology systems, which was discussed in the section-by-section analysis of § 1026.37(f)(6), above. Proposed § 1026.38(h)(4) requires that the items on the Closing Disclosure be kept in the same order as the items were disclosed on the Loan Estimate, with items added on the Closing Disclosure to be re-alphabetized. Consumer testing

conducted by the Bureau showed that maintaining, to the extent possible, the order of charges in the order disclosed on the Loan Estimate on the Closing Disclosure assisted consumers to better identify changes between the estimated and actual amounts. *See* Kleimann Testing Report at 292. At the Bureau's Quantitative Study, consumer participants using the Loan Estimate and Closing Disclosure performed statistically significantly better than the consumer participants using the current RESPA GFE, early TILA disclosure, RESPA settlement, and final TILA disclosure at comparing their estimated and final terms and costs. *See* Kleimann Quantitative Study Report at 68–9. Based on these findings, the Bureau believes that there is substantial consumer benefit to the proposed ordering of the charges. Accordingly, the Bureau is adopting § 1026.38(h)(4) and its accompanying commentary as proposed, with modifications for clarity.

38(i) Calculating Cash To Close

As discussed above, the total amount of cash or other funds that the consumer must provide at consummation is commonly known as the ''cash to close.'' Prior to the enactment of the Dodd-Frank Act, neither TILA nor Regulation Z expressly required disclosure of the cash to close amount or its critical components. The Dodd-Frank Act added section 128(a)(17) to TILA, which requires the disclosure of ''the aggregate amount of settlement charges for all settlement services provided in connection with the loan, the amount of charges that are included in the loan and the amount of such charges the borrower must pay at closing . . . and the aggregate amount of other fees or required payments in connection with the loan.'' 15 U.S.C. 1638(a)(17).

The ''Summary of Borrower's Transaction'' on page 1 of the RESPA settlement statement, line 303, includes a box that shows the amount of cash due to or from the consumer. *See* appendix A to Regulation X. Page 3 of the RESPA settlement statement also includes a chart entitled ''Comparison of Good Faith Estimate (GFE) and HUD–1 Charges,'' which highlights any changes between the estimated and actual amounts for settlement service charges that are subject to the limitations on increases under 12 CFR 1024.7(e). However, these settlement service charges comprise only a portion of the total amount of funds that the consumer would need to consummate the transaction. Thus, the cash to close box on line 303 and the comparison chart on page 3 of the RESPA settlement statement together provide an incomplete picture of how the cash to close amount is calculated and whether it is different than the consumer expects based on the RESPA GFE.

The ''Calculating Cash to Close'' table in the Closing Disclosure under proposed § 1026.38(i) would have mirrored the format of, and updated the amounts shown on, the ''Calculating Cash to Close'' table in the Loan Estimate under proposed § 1026.37(h). The Bureau believed that including separate ''Calculating Cash to Close'' tables on both the Loan Estimate and the Closing Disclosure would have aided the consumer in ascertaining whether the cash to close amount and its critical components changed between the Loan Estimate and the Closing Disclosure, and by how much. The two tables would have been similar in format and designed to be used in tandem when the consumer is reviewing the Closing Disclosure and comparing its content to that shown on the Loan Estimate. However, the table on the Closing Disclosure would have included additional information under the subheading ''Did this change?'' which was intended to assist the consumer in identifying and understanding the reasons for any such changes.

The Bureau's consumer testing indicated that consumers were able to use the detailed comparison table to understand how and why the actual cash to close amount on the Closing Disclosure differs from the estimated amounts shown on the Loan Estimate. During testing conducted prior to the proposal, consumers tended to use the ''Calculating Cash To Close'' table in conjunction with the ''Closing Cost Details'' tables showing itemized charges and subtotals on the Closing Disclosure, to identify the differences between the estimated and actual cash to close amount and its critical components and to gain a better understanding of the numbers underlying the cash to close amount. The consumers also benefited from the ''Did this change?'' subheading containing statements that components of the cash to close changed and simple explanations as to why. The Bureau incorporated this feedback into the design of the table and its choice of language to be used under the ''Did this change?'' subheading, as applicable.

The proposal stated that requiring disclosure of the ''Calculating Cash To Close'' table also would have complemented § 1026.19(f)(1)(ii), which requires delivery of the Closing Disclosure three business days prior to consummation. TILA section 128(b)(2)(D) requires that a corrected TILA disclosure be given to the consumer not later than three business days prior to consummation if the APR as initially disclosed becomes inaccurate and the Bureau understands that the annual percentage rate changes triggering the redisclosure obligation occur so frequently that many creditors currently provide the corrected TILA disclosure as a matter of course even if redisclosure is not required. RESPA section 4 provides that the RESPA settlement statement be provided ''at or before settlement,'' however, and the Bureau understands that it typically is given the day of settlement. As discussed above, proposed § 1026.19(f)(1)(ii) would have merged the two provisions by requiring that consumers be given the integrated disclosures three business days prior to consummation. The Bureau stated that, during this three-business-day period, the consumer can review the Closing Disclosure, contact the creditor with questions regarding the information contained on the Closing Disclosure, and correct any errors prior to consummation. The proposal stated that disclosing the cash to close amount and how it was calculated three business days in advance of consummation generally provides the consumer with a three-business-day window to make arrangements to have the necessary funds available for the consummation. The proposal stated that this would help alleviate concerns that, in some cases, consumers may not know until shortly before consummation—or even the day of consummation—how much of their own funds they will be expected to bring to the closing table.

The ''Calculating Cash To Close'' table that would have been disclosed on the Closing Disclosure under § 1026.38(i) would have consisted of four columns and nine rows. The first column, which does not have a subheading, would have included labels for the components of cash to close. Total closing costs, which would have been listed in the first row, would have been the sum total of creditor, third-party settlement service, and other transaction-related charges disclosed on the ''Closing Cost Details'' tables on the Closing Disclosure. Subsequent rows would have listed other components of the cash to close amount, such as the closing costs paid before consummation, closing costs financed, and the deposit. These component amounts are discussed in more detail under § 1026.38(i)(1) through (8), below. The second column, under the subheading ''Estimate,'' would have included the estimated amounts of cash to close and its

components. These amounts would have matched the estimates given on the ''Calculating Cash To Close'' table in the Loan Estimate, which would have been shown to the nearest whole dollar amount. The third column, under the subheading ''Final,'' would have included the actual amounts of the cash to close and its components without rounding. In both the second and the third columns, the amounts that increase the total cash to close amount would have been shown as positive numbers, and the amounts that reduce the total cash to close amount would have been shown as negative numbers. The fourth column, under the subheading ''Did this change?'' would have contained in each row: (1) A statement, more prominent than other disclosures under proposed § 1026.38(i), as to whether the actual amount is different from or increased above the estimated amount; and (2) if the actual amount is different from or increased over the estimated amount, a simple explanation for the difference or increase along with cross-references to other relevant information disclosed on the Closing Disclosure, as applicable.

Proposed comment 38(i)–1 would have discussed how, under each subparagraph (iii) of § 1026.38(i)(1) through (i)(8), the statement as to whether the ''Final'' amount disclosed under each subparagraph (ii) of § 1026.38(i)(1) through (i)(8) is greater than, equal to, or less than the corresponding ''Estimate'' amount disclosed under each subparagraph (i) of § 1026.38(i)(1) through (i)(8) would have been disclosed more prominently than the other disclosures under § 1026.38(i). The proposed comment would have clarified that this more prominent statement can take the form, for example, of a ''Yes'' or ''No'' disclosed in capital letters and in boldface, as shown on the Closing Disclosure form H–25 set forth in appendix H to Regulation Z, the standard form or model form, as applicable, pursuant to § 1026.38(t). The comment also would have discussed how, in the event a difference or an increase in costs has occurred, certain words within the narrative text that are included under the subheading ''Did this change?'' are displayed more prominently than other disclosures, and gives an example of such a prominent statement.

Proposed comment 38(i)–2 would have described how a final amount shown to two decimal places on the ''Calculating Cash to Close'' table disclosed under proposed § 1026.38(i) could appear to be a larger number than its corresponding estimate shown to the nearest dollar when, in fact, the apparent increase is due solely to rounding. The comment further would have clarified that any statement disclosed under the subheading ''Did this change?'' as to whether an actual amount is higher than its corresponding estimated amount is based on the actual, non-rounded estimate that would have been disclosed on the Loan Estimate under § 1026.37(h) if it had been shown to two decimal places rather than a whole dollar amount. The proposed comment also would have provided an example of how a contrary rule could result in inaccurate disclosures of increases. The proposed comment would have reflected the Bureau's intention that the statements of increases to be disclosed under each subparagraph (iii) under § 1026.38(i)(1) through (i)(8) capture true increases rather than increases due solely to rounding rules.

Proposed comments 38(i)–3 and –4 would have provided guidance regarding the statements required by each of § 1026.38(i)(4)(iii)(A), (i)(5)(iii)(A), (i)(6)(iii)(A), (i)(7)(iii)(A), and (i)(8)(iii)(A) that the consumer should see the details disclosed pursuant to another subsection or other subsections within proposed § 1026.38, or that an amount has increased or decreased from an estimated amount, as applicable. The comments would have noted that, for example, § 1026.38(i)(7)(iii)(A) requires a statement that the consumer should see the details disclosed pursuant to § 1026.38(j)(2)(v), and, as shown on Closing Disclosure form H–25, that statement could read: ''See Seller Credits in Section L.'' These comments also provide guidance regarding the required statements that are not illustrated as samples in form H–25 of appendix H.

Commenters stated several reasons for why the Calculating Cash To Close table proposed under § 1026.38(i) would not work in transactions without a seller, including the disclosure of negative numbers for cash received by the consumer, and the different nature of a transaction without a seller. The Bureau is addressing the differing nature of a transaction without a seller by providing an alternative Calculating Cash To Close table under § 1026.38, as discussed in the section-by-section analysis of § 1026.38(e) above. However, the Bureau believes that negative numbers, to a certain extent, are necessary to be used in order to offset charges from credits. One large non-bank lender commenter stated that it was unfair to require the creditor to know the amount of an earnest money deposit, payments to others, and the funds for the consumer in the calculating cash to close table. However, much, if not all, of the information that the commenter cited will be necessary to know and evaluate the loan-to-value ratio and other criteria in order to: (1) Determine the consumer's ability to repay as required under § 1026.43(c); or (2) to evaluate the transaction for its eligibility for government loan programs and sale on the secondary market. Since the creditor will be evaluating this information in connection with underwriting the loan, the inclusion of the information on the Closing Disclosure should not create a compliance burden.

One large bank commenter stated that there was no provision in the calculating cash to close table under proposed § 1026.38(i) to compare the charges disclosed on the Loan Estimate to the charges on the Closing Disclosure in a more itemized fashion, such as is currently disclosed on page 3 of the RESPA settlement statement. The Bureau's consumer testing of the integrated disclosures before it issued the proposal has shown that consumers were confused about the disclosure of the charges subject to a tolerance limit and the exact extent of tolerance, if any, which would apply to each charge. *See* Kleimann Testing Report at 125, 134.[301] The calculating cash to close table under proposed § 1026.38(i) would have indicated to consumers when the creditor exceeded a tolerance limit. The approach tested and included in proposed § 1026.38(i) provided clearer information to the consumer than the type of breakdown suggested by the large bank commenter.

Several national industry trade association commenters stated that, while the calculating cash to close table was required to show when there was a tolerance violation under § 1026.19(e)(3), there was no provision to show a tolerance cure. Tolerance cures at consummation could be effectuated by indicating that the charge, or a portion of a charge, was designated as paid by others under proposed § 1026.38(f), and thus the total amount paid by the consumer under § 1026.38(i)(1) would be within the tolerance limits of § 1026.19(e)(3). Thus, the difference discussed in § 1026.38(i)(1)(iii)(A)(*2*) would not

[301] A table entitled ''Limits on Increases'' was tested in subsequent rounds, which also proved to be difficult for consumers to understand. Kleimann Testing Report at 168, 174. The information was instead incorporated into the calculating cash to close table. Kleimann Testing Report at 226. The calculating cash to close table subsequently assisted in consumer's understanding of why charges changed and if they exceeded tolerance limitations. Kleimann Testing Report at 248–49, 267.

exceed the legal limits and no statement would be required under § 1026.38(i)(1)(iii)(A)(*3*). The documentation of a tolerance cure after consummation would be accomplished under proposed § 1026.38(h)(3), as discussed in proposed comment 38(h)(3)–2. Therefore, the disclosure of tolerance cures was already addressed by other provisions of the proposal, all of which have been adopted by the Bureau. Several commenters requested additional guidance on the statements that could be made in the column designated ''Did this change?'' The Bureau has added additional guidance in the commentary and additional samples to appendix H to Regulation Z to provide additional guidance related to these disclosures.

One title insurance company commenter stated that the amounts disclosed in the ''Estimate'' column of the calculating cash to close table under § 1026.38(i) should not be rounded, and instead the total unrounded amount of the charges that were the basis for the rounded amount should be provided. This could be problematic, since the unrounded amounts would not have been disclosed to the consumer until the Closing Disclosure was provided. Thus, the consumer would not see the same amounts on the Loan Estimate and the ''Estimate'' column of the calculating cash to close table. Accordingly, the Bureau is adopting § 1026.38(i) and its accompanying commentary as proposed. Based on its authority under TILA section 105(a), RESPA section 19(a), and Dodd-Frank Act sections 1032(a) and, for residential mortgage loans, 1405(b), the Bureau is requiring that the Closing Disclosure contain a Calculating Cash to Close table that highlights the cash to close amount and its critical components and compares those amounts to the corresponding disclosures shown on the Loan Estimate under § 1026.37(h). The Bureau believes that this disclosure will effectuate the purposes of TILA and RESPA by facilitating the informed use of credit and ensuring that consumers are provided with greater and timelier information on the costs of the closing process. Providing consumers with information about the cash to close amount, its critical components, and how such amounts changed from the estimated amounts disclosed on the Loan Estimate helps ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to better understand the costs, benefits, and risks associated with the transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). The Bureau also believes such disclosure will improve consumers' awareness and understanding of residential mortgage transactions, which is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

38(i)(1) Total Closing Costs

Proposed § 1026.38(i)(1)(i) and (ii) would have required the disclosure of a comparison of the consumer's estimated and actual ''Total Closing Costs'' amounts. The estimated ''Total Closing Costs'' amount would have been the same amount that is disclosed on the Loan Estimate in the Calculating Cash To Close table under proposed § 1026.37(h)(1). This amount also would have matched the ''Total Closing Costs'' amount that is disclosed on the Loan Estimate under proposed § 1026.37(g)(6). The actual ''Total Closing Costs'' amount would have been the same amount disclosed on the Closing Disclosure under proposed § 1026.38(h)(1), reduced by the amount of any lender credits disclosed under proposed § 1026.38(h)(3). Proposed comment 38(i)(1)(i)–1 would have provided guidance regarding the requirement under proposed § 1026.38(i)(1)(i) that the amount disclosed is labeled ''Total Closing Costs'' and that such label is accompanied by a reference to the disclosure of ''Total Closing Costs'' under § 1026.38(h)(1).

Proposed § 1026.38(i)(1)(iii)(A) would have specified that if the actual amount of ''Total Closing Costs'' is different than the estimated amount of such costs as shown on the Loan Estimate (unless the difference is due to rounding), the creditor or closing agent must state, under the subheading ''Did this change?,'' that the consumer should see the total loan costs and total other costs subtotals disclosed on the Closing Disclosure under proposed § 1026.38(f)(4) and (g)(5), and must include a reference to such disclosures, as applicable. This language was intended to direct the consumer to the more detailed itemization on the Closing Disclosure of the costs that comprise the ''Total Closing Costs.''

Under proposed § 1026.38(i)(1)(iii)(A), the creditor or closing agent also would have stated the dollar amount of any excess amount of closing costs above the limitations on increases in closing costs under proposed § 1026.19(e)(3), if applicable, along with language stating that the increase exceeds the legal limits by the dollar amount of the excess. The dollar amount that would have been disclosed would have been required to reflect the different methods of calculating such excess amounts under proposed § 1026.19(e)(3)(i) and (ii). Proposed comment 38(i)(1)(iii)(A)–1 would have contained examples of how to calculate such excess amounts and would have clarified that because certain closing costs, individually, are subject to the limitations on increases in closing costs under proposed § 1026.19(e)(3)(i) (*e.g.,* origination fees, transfer taxes, charges paid by the consumer to an affiliate of the creditor), while other closing costs are collectively subject to the limitations on increases in closing costs under proposed § 1026.19(e)(3)(ii) (*e.g.,* recordation fees, fees paid to an unaffiliated third party if the creditor permitted the consumer to shop for the service provider), the creditor or closing agent calculates subtotals for each type of excess amount, and then adds such subtotals together to yield the dollar amount to be disclosed in the table. The proposed comment also would have clarified that the calculation of the excess amounts above the limitations on increases in closing costs takes into account the fact that the itemized, estimated closing costs disclosed on the Loan Estimate will not result in charges to the consumer if the service is not actually provided at or before consummation, and that certain itemized charges listed on the Loan Estimate under the subheading ''Services You Can Shop For'' may be subject to different limitations depending on the circumstances. Proposed comments 38(i)(1)(iii)(A)–2.i through –2.iii would have complemented commentary to proposed § 1026.19(e)(3). Pursuant to proposed § 1026.19(f)(2)(v), the creditor or closing agent would have been required to refund to the consumer any such excess amounts at consummation or within 30 days thereafter. Accordingly, the Bureau stated its belief that this proposed disclosure may help the consumer identify when a refund may be required and this information can be used by the consumer to request that the creditor or closing agent provide such refund at consummation or within 30 days thereafter.

The Bureau did not receive additional comments concerning § 1026.38(i)(1). Accordingly, the Bureau is adopting § 1026.38(i)(1) substantially as proposed, with modifications for clarity, a modification of the subheading of ''Estimate'' to ''Loan Estimate'' for consistency with form H–25 of appendix H to Regulation Z, and a modification removing the requirement to provide a reference to ''Total Closing Costs'' as duplicative of the

requirements of § 1026.38(t)(3). The Bureau is modifying the design of these subheadings in the Closing Disclosure as discussed in more detail in section-by-section analysis of appendix H below. The revised design uses the subheading ''Loan Estimate'' instead of ''Estimate'' to increase understanding by consumers that the amounts disclosed in this column are those that were disclosed on the Loan Estimate. In the Bureau's pre-proposal and post-proposal qualitative consumer testing, consumers were able to use the Calculating Cash to Close table to understand their transactions and compare the estimated and final amounts. *See* Kleimann Testing Report at 248–9, 267–8; Kleimann Post-Proposal Testing Report at 68–71. The Bureau also is modifying § 1026.38(i)(1)(iii)(A)(3) to require specific statements in the case that a credit is provided to the consumer under § 1026.19(f)(2)(v) to cure a tolerance violation under § 1026.19(e)(3). These statements are illustrated by form H–25(F) of appendix H on the alternative Calculating Cash to Close table under § 1026.38(e), but are equivalent to those required under § 1026.38(i)(1)(iii)(A)(3). The Bureau is adopting comment 38(i)(1)(iii)(A)–3 to provide guidance regarding these statements.

38(i)(2) Closing Costs Subtotal Paid Before Closing

Proposed § 1026.38(i)(2) would have required the disclosure of a comparison of the estimated and actual amounts of the ''Total Closing Costs'' that are paid before consummation of the transaction. The estimated ''Closing Costs Subtotal Paid Before Closing'' would have been required to be disclosed as $0. Proposed comment 38(i)(2)(i)–1 would have clarified that this requirement is because the Loan Estimate does not have an equivalent disclosure under proposed § 1026.37(h). The actual ''Closing Costs Subtotal Paid Before Closing'' would have been the sum of the amount disclosed on the Closing Disclosure under proposed § 1026.38(h)(2) and designated ''Borrower-Paid Before Closing.'' Proposed § 1026.38(i)(2)(iii) would have specified that if the actual amount of ''Closing Costs Subtotal Paid Before Closing'' is different than the estimated amount, in this case $0 (unless the difference is due to rounding), the creditor or closing agent must state under the subheading ''Did this change?'' that the consumer paid such costs before consummation. This language was intended to remind the consumer that he or she paid certain transaction closing costs prior to consummation and that such costs will be subtracted from the actual cash to close amount. Proposed comment 38(i)(2)(iii)(B)–1 would have provided guidance regarding the requirement to disclose whether the estimated and final amounts are equal.

The Bureau did not receive comments concerning § 1026.38(i)(2). Accordingly, the Bureau is adopting § 1026.38(i)(2) and its accompanying commentary as proposed, with modifications for clarity, and a modification of the subheading of ''Estimate'' to ''Loan Estimate'' for consistency with form H–25 of appendix H to Regulation Z.

38(i)(3) Closing Costs Financed

Proposed § 1026.38(i)(3) would have required the disclosure of a comparison of the estimated and actual amounts of the ''Total Closing Costs'' that are financed. The estimated ''Closing Costs Financed'' amount would have been the same amount that is disclosed in the ''Calculating Cash to Close'' table in the Loan Estimate under proposed § 1026.37(h)(2). The actual ''Closing Costs Financed'' amount would have reflected any changes to the amount previously disclosed on the Loan Estimate. Proposed § 1026.38(i)(3)(iii) would have specified that if the actual amount of ''Closing Costs Financed'' is different than the estimated amount (unless the excess is due to rounding), the creditor or closing agent must state under the subheading ''Did this change?'' that the consumer included these closing costs in the loan amount, which increased the loan amount. The Bureau believed this explanatory language would have been particularly helpful to consumers for two reasons. First, an increase in closing costs financed may trigger a sizeable decrease in the cash to close, which in turn could create a false impression that the overall transaction costs to the consumer decreased. Second, during consumer testing, when consumers were presented with a scenario involving a loan amount that increased after delivery of the Loan Estimate, some of the consumers had difficultly isolating the increase in closing costs financed as the reason for the increased loan amount. *See* Kleimann Testing Report at 250. The Bureau believed this disclosure may assist consumers in understanding that the financed portion of the closing costs are paid for through the loan proceeds.

The Bureau did not receive comments concerning § 1026.38(i)(3). Accordingly, the Bureau is adopting § 1026.38(i)(3) and its accompanying commentary as proposed, with modifications for clarity, a modification of the subheading of ''Estimate'' to ''Loan Estimate,'' and to change the label of ''Closing Costs Financed'' to ''Closing Costs Financed (Paid from your Loan Amount),'' for consistency with form H–25 of appendix H to Regulation Z. In addition to the design modification described above under the section-by-section analysis of § 1026.38(i)(1), the Bureau is modifying the design of the Closing Disclosure to change the parenthetical in the label of Closing Costs Financed from ''Included in Loan Amount'' to ''Paid From Your Loan Amount'' to provide additional clarity regarding the use of loan proceeds when financing closing costs (as discussed in more detail in section-by-section analysis of appendix H below). In the Bureau's post-proposal qualitative consumer testing, consumers were able to use the Calculating Cash to Close table to understand their transactions and compare the estimated and final amounts. *See* Kleimann Post-Proposal Testing Report at 68–71.

38(i)(4) Down Payment/Funds From Borrower

Proposed § 1026.38(i)(4) would have required the disclosure of a comparison of the estimated and actual amounts of the ''Down Payment/Funds from Borrower.'' Down payment and funds from borrower are related concepts, but down payment is applicable to a transaction that is a purchase as defined in proposed § 1026.37(a)(9)(i), while funds from borrower relates to a transaction other than a purchase. Under proposed § 1026.38(i)(4)(i), the estimated ''Down Payment/Funds from Borrower'' amount would have been the same amount that is disclosed on the ''Calculating Cash To Close'' table in the Loan Estimate under proposed § 1026.37(h)(3). Under proposed § 1026.38(i)(4)(ii)(A), in a transaction that is a purchase as defined in proposed § 1026.37(a)(9)(i), the actual amount of the ''Down Payment/Funds from Borrower'' would have been the actual amount of the difference between the purchase price of the property and the principal amount of the credit extended, stated as a positive number. Under proposed § 1026.38(i)(4)(ii)(B), in a transaction other than a purchase as defined in proposed § 1026.37(a)(9)(i), the actual amount of ''Down Payment/Funds from Borrower'' would have been determined in accordance with § 1026.38(i)(6)(iv), by subtracting from the total amount of all existing debt being satisfied in the real estate closing and disclosed under § 1026.38(j)(1)(v) (except to the extent the satisfaction of such existing debt is disclosed under § 1026.38(g)) the principal amount of the credit extended. If such calculation

would have yielded a positive number, then the positive number is disclosed under proposed § 1026.38(i)(4)(ii)(B); otherwise, $0.00 is disclosed.

Proposed comment 38(i)(4)(ii)(A)–1 would have provided an example of the down payment changing in a particular transaction. Proposed comment 38(i)(4)(ii)(B)–1 would have provided further clarification about how the actual ''Down Payment/Funds from Borrower'' amount is determined under proposed § 1026.38(i)(6)(iv), and gives an example of when that actual amount may change from the corresponding estimated amount.

Proposed § 1026.38(i)(4)(iii)(A) would have specified that if the actual amount of ''Down Payment/Funds from Borrower'' is different than the estimated amount (unless the difference is due to rounding), the creditor or closing agent must state under the subheading ''Did this change?'' that the consumer increased or decreased the payment, as applicable, and also state that the consumer should see the details disclosed under § 1026.38(j)(1) or (j)(2), as applicable. This language was intended to remind the consumer that he or she will be contributing a different amount of his or her own funds toward the cash to close, and therefore must make arrangements prior to the date of consummation to procure any necessary funds. Comment 38(i)(4)(iii)(A)–1 would have clarified the requirement under § 1026.38(i)(4)(iii)(A) that a statement be given that the consumer has increased or decreased this payment, as applicable, along with a statement that the consumer should see the details disclosed under § 1026.38(j)(1) or (j)(2), as applicable. The comment would have noted that, in the event the purchase price of the property increased, that statement can read, for example: ''You increased this payment. See details in Section K.'' In the event the loan amount decreased, that statement can read, for example, ''You increased this payment. See details in Section L.'' This language was intended to direct the consumer to the section within the Closing Disclosure containing the information that accounts for the increase in the ''Down Payment/Funds From Borrower'' amount.

The Bureau did not receive comments concerning § 1026.38(i)(4). Accordingly, the Bureau is adopting § 1026.38(i)(4) and its accompanying commentary as proposed, with a modification for clarity, and a modification of the subheading of ''Estimate'' to ''Loan Estimate'' for consistency with form H–25 of appendix H to Regulation Z.

38(i)(5) Deposit

Proposed § 1026.38(i)(5) would have required the disclosure of a comparison of the estimated and actual amounts of the ''Deposit.'' The estimated ''Deposit'' amount would have been the same amount that is disclosed in the ''Calculating Cash To Close'' table on the Loan Estimate under proposed § 1026.37(h)(4). The actual ''Deposit'' amount would have been the same amount that is disclosed on the Closing Disclosure under proposed § 1026.38(j)(2)(ii). Proposed § 1026.38(i)(5)(iii) would have specified that if the actual amount of ''Deposit'' is different than the estimated amount (unless the difference is due to rounding), the creditor or closing agent must state, under the subheading ''Did this change?,'' that the consumer increased or decreased this payment, as applicable, and should see the details disclosed under § 1026.38(j)(2)(ii). This language was intended to direct the consumer to the section within the Closing Disclosure containing the itemization of the deposit in the Closing Disclosure.

The Bureau did not receive comments concerning § 1026.38(i). Accordingly, the Bureau is adopting § 1026.38(i)(5) as proposed, with modifications for clarity, and a modification of the subheading of ''Estimate'' to ''Loan Estimate'' for consistency with form H–25 of appendix H to Regulation Z. In addition, the Bureau is adopting new comment 38(i)(5)–1 to provide additional clarity regarding the disclosure required under § 1026.38(i)(5) in transactions in which there is no deposit.

38(i)(6) Funds for Borrower

Proposed § 1026.38(i)(6) would have required the disclosure of a comparison of the estimated and actual amounts of the ''Funds for Borrower.'' Like proposed § 1026.37(h)(5), this amount was intended to represent generally the amount to be disbursed to the consumer or used at the consumer's discretion at consummation of the transaction, such as in cash-out refinance transactions. The determination of whether the transaction will result in ''Funds for Borrower'' would have been made under proposed § 1026.38(i)(6)(iv). The estimated ''Funds for Borrower'' amount disclosed under proposed § 1026.38(i)(6)(i) would have been the same amount that is disclosed in the ''Calculating Cash To Close'' table in the Loan Estimate under proposed § 1026.37(h)(5). Proposed § 1026.38(i)(6)(ii) would have provided that the actual ''Funds for Borrower'' amount disclosed is determined pursuant to proposed § 1026.38(i)(6)(iv), by subtracting from the total amount of all existing debt being satisfied in the real estate closing and disclosed under § 1026.38(j)(1)(v) (except to the extent the satisfaction of such existing debt is disclosed under § 1026.38(g)) the principal amount of the credit extended (excluding any amount disclosed under § 1026.38(i)(3)(ii)). The exclusion of any amount disclosed under § 1026.38(i)(3)(ii) would have been necessary since that amount of the credit extended has already been accounted for in the cash to close calculation by inclusion in proposed § 1026.38(i)(3)(ii). If such calculation yielded a negative number, then the negative number is disclosed under proposed § 1026.38(i)(6)(ii); otherwise, $0 is disclosed.

Proposed comment 38(i)(6)(ii)–1 would have provided further clarification about how the actual ''Funds for Borrower'' amount is determined under § 1026.38(i)(6)(iv), and to whom such amount is disbursed. Proposed § 1026.38(i)(6)(iii) would have provided that, if the actual amount of ''Funds for Borrower'' is different than the estimated amount (unless the difference is due to rounding), the creditor or closing agent must state in the subheading ''Did this change?'' that the consumer's available funds from the loan amount have increased or decreased, as applicable. This language was intended to remind the consumer that a different amount of loan proceeds will be available following payoff of existing loans.

The Bureau did not receive comments concerning § 1026.38(i)(6). Accordingly, the Bureau is adopting § 1026.38(i)(6) and its accompanying commentary as proposed, with a minor modification to indicate that zero amounts are disclosed as ''$0,'' without decimal places denoting cents, modifications for clarity, and a modification of the subheading of ''Estimate'' to ''Loan Estimate'' for consistency with form H–25 of appendix H to Regulation Z.

38(i)(7) Seller Credits

Proposed § 1026.38(i)(7) would have required the disclosure of a comparison of the estimated and actual amounts of the ''Seller Credits.'' ''Seller Credits'' would have been described in proposed § 1026.38(j)(2)(v) and corresponding commentary. The estimated ''Seller Credits'' amount would have been the same amount that is disclosed on the ''Calculating Cash to Close'' table in the Loan Estimate under proposed § 1026.37(h)(6). The actual ''Seller Credits'' amount would have been the same amount disclosed on the Closing

Disclosure under proposed § 1026.38(j)(2)(v). Proposed comment 38(i)(7)(ii)–1 would have clarified that the ''Final'' amount reflects any change, following the delivery of the Loan Estimate, in the amount of funds given by the seller to the consumer for generalized credits for closing costs or for allowances for items purchased separately, as distinguished from payments by the seller for items attributable to periods of time prior to consummation (which are considered ''Adjustments and Other Credits'' separately disclosed under proposed § 1026.38(i)(8)).

Proposed § 1026.38(i)(7)(iii) would have specified that, if the actual amount of ''Seller Credits'' is different than the estimated amount (unless the difference is due to rounding), the creditor or closing agent must state that fact under the subheading ''Did this change?,'' and state that the consumer should see the details disclosed under § 1026.38(j)(2)(v). This language was intended to direct the consumer to the section within the Closing Disclosure containing the itemization of seller credits.

The Bureau did not receive comments concerning § 1026.38(i)(7). Accordingly, the Bureau is adopting § 1026.38(i)(7) and its accompanying commentary as proposed, with modifications for clarity, and a modification of the subheading of ''Estimate'' to ''Loan Estimate'' for consistency with form H–25 of appendix H to Regulation Z.

38(i)(8) Adjustments and Other Credits

Proposed § 1026.38(i)(8) would have required the disclosure of a comparison of the estimated and actual amounts of the ''Adjustments and Other Credits.'' ''Adjustments and Other Credits'' would have been described in proposed § 1026.38(j)(2)(vi) through (xi) and corresponding commentary. The estimated ''Adjustments and Other Credits'' amount is the same amount that would have been disclosed on the ''Calculating Cash to Close'' table in the Loan Estimate under proposed § 1026.37(h)(7). The actual ''Adjustments and Other Credits'' amount would have been equal to the total amount of the adjustments and other credits due from the consumer at consummation (*i.e.,* the amounts disclosed on the Closing Disclosure under § 1026.38(j)(1)(v) through (x)), reduced by the total amount of the adjustments and other credits already paid by or on behalf of the consumer at consummation (*i.e.,* the amounts disclosed on the Closing Disclosure under § 1026.38(j)(2)(vi) through (xi)). Proposed § 1026.38(i)(8)(iii) would have specified that if the actual amount of ''Adjustments and Other Credits'' is different than the estimated amount (unless the difference is due to rounding), the creditor or closing agent must state that fact under the subheading ''Did this change?,'' and state that the consumer should see the details disclosed under § 1026.38(j)(1)(v) through (x) and (j)(2)(vi) through (xi). This language was intended to direct the consumer to the sections within the Closing Disclosure containing the itemization of the adjustments and other credits. Proposed comment 38(i)(8)(ii)–1 would have given examples of items that may be adjustments and other credits, and would have clarified that if the calculation required by § 1026.38(i)(8)(ii) yields a negative number, the creditor or closing agent discloses it as such.

One industry commenter stated that additional guidance was needed concerning the amount to be disclosed pursuant to § 1026.38(i)(8) for calculations without a seller, since the amounts under § 1026.38(j) may not be disclosed. An amount disclosed pursuant to § 1026.38(i)(8) in transactions without a seller would be $0 since there would be no amount disclosed under § 1026.38(j). However, a creditor can choose to use the alternative calculating cash to close table adopted in § 1026.38(e) as discussed in the section-by-section analysis of § 1026.38(e), above, in which case, the creditor would not disclose $0 under § 1026.38(i)(8). The Bureau is adopting § 1026.38(i)(8) and its accompanying commentary as proposed, with modifications for clarity, and a modification of the subheading of ''Estimate'' to ''Loan Estimate'' for consistency with form H–25 of appendix H to Regulation Z.

38(i)(9) Cash To Close

Proposed § 1026.38(i)(9) would have required the disclosure of a comparison of the estimated and actual amounts of the ''Cash To Close.'' The estimated ''Cash To Close'' amount would have been the same amount that is disclosed on the ''Calculating Cash To Close'' table in the Loan Estimate under proposed § 1026.37(h)(8) as ''Estimated Cash To Close.'' The actual ''Cash To Close'' amount would have been the sum of the amounts disclosed under proposed § 1026.38(i)(1) through (8). The label ''Cash To Close'' and the estimated and actual amounts listed in the table would have been disclosed more prominently than other disclosures in § 1026.38(i), as a means of emphasizing the importance of the cash To close amount. Proposed comment 38(i)(9)(ii)–1 would have clarified that the ''Final'' amount of ''Cash To Close'' disclosed under § 1026.38(i)(9)(ii) equals the amount disclosed on the Closing Disclosure as ''Cash To Close'' under § 1026.38(j)(3)(iii). The proposed comment also would have clarified that if the calculation required by § 1026.38(i)(9)(ii) yielded a negative number, the creditor or closing agent discloses it as such. Proposed comment 38(i)(9)(ii)–2 would have discussed how the disclosure of the ''Final'' amount of ''Cash To Close'' under § 1026.38(i)(9)(ii) is more prominent than the other disclosures under § 1026.38(i) and would have clarified that this more prominent disclosure can take the form, for example, of boldface, as shown on the Closing Disclosure form H–25(B).

The Bureau did not receive comments concerning § 1026.38(i)(9). Accordingly, the Bureau is adopting § 1026.38(i)(9) and its accompanying commentary substantially as proposed, with a modification of the subheading of ''Estimate'' to ''Loan Estimate'' for consistency with form H–25 of appendix H to Regulation Z and with a modification to § 1026.38(i)(9)(ii) to clarify that the sum disclosed is the sum of the amounts disclosed under the subheading ''Final'' in paragraphs (i)(1) through (i))(8) and not the sum of every amount disclosed in those paragraphs.

38(j) and (k) Summaries of Borrower's and Seller's Transactions

Proposed § 1026.38(j) and (k) would have required that the creditor or closing agent provide summaries of the consumer and seller portions of the transaction. Currently, RESPA section 4 requires the settlement agent to clearly and conspicuously itemize all charges imposed upon the borrower and seller in connection with the settlement. *See* 12 U.S.C. 2603. Regulation X implements these requirements by requiring the settlement agent to provide summaries of the consumer's and seller's transactions on the RESPA settlement statement. *See* Regulation X § 1024.8 and appendix A. Dodd-Frank Act section 1032(f) requires that the Bureau propose disclosures that combine the disclosures required under TILA and RESPA sections 4 and 5 into a single, integrated disclosure for mortgage loan transactions covered under TILA and RESPA.

Several commenters stated that the current RESPA settlement statement number system should be retained. However, the format required by proposed § 1026.38(t), as illustrated by proposed form H–25 of appendix H to Regulation Z, for the information

required by proposed § 1026.38(j) and (k) contains a two-digit line numbering system, in contrast to the three-digit line numbering system for this information on the current RESPA settlement statement. At the Bureau's consumer testing, consumer participants appeared overwhelmed by the three- and four-digit line numbers on prototypes that contained line numbers similar to the current RESPA settlement statement. As described above in part III, the Bureau is also mindful of the risks of information overload to consumers. The Bureau believes that the increased amount of numbers on the page from the three- and four-digit line numbering system may detract significantly from the consumer's ability to engage with the Closing Disclosure. The prototypes that the Bureau tested that contained only a two-digit line numbering system performed better with consumers, and were more effective at enabling them to understand their actual closing costs and the differences between the estimated and actual amounts. In addition, as described above in the section-by-section analysis of § 1026.38(f) and (g), the use of this two-digit line numbering system for the information required by § 1026.38(f) and (g) allows the Loan Estimate and Closing Disclosure to match more closely, which the Bureau's consumer testing indicates better enables consumers to understand their transaction. See the section-by-section analysis of § 1026.38(f) and (g) above for more detail regarding the two-digit line numbering system. During the Small Business Review Panel, several settlement agents and one mortgage company requested that the line numbers from the current RESPA settlement statement be retained, stating that using the revised line numbers in the prototype integrated Closing Disclosure would significantly increase programming costs. *See* Small Business Review Panel Report at 20, 28. Based on this feedback, the Bureau sought comment on whether the use of line numbers will lower software-related costs on industry, and the exact amount of the savings given the rest of the changes contemplated by this proposal, while also improving consumer understanding of the loan terms and costs at the consummation of the credit transaction and the closing of the real estate transaction.

Commenters did not provide the information sought by the Bureau, other than short, conclusory estimates of costs associated with implementation without discussion of the potential savings of the rest of the proposed rule. One title insurance company commenter stated that the separation of the Closing Disclosure into two disclosures, one for the consumer's transaction and one for the seller's transaction, should be mandatory under proposed § 1026.38(j), and not permissive as provided under proposed § 1026.38(t)(5)(vi) and (vii). In proposing § 1026.38(t)(5)(vi) and (vii), the Bureau sought to balance privacy concerns and more restrictive State law requirements with the mandated combination of the existing TILA and RESPA disclosures. This approach is consistent with current RESPA settlement statement requirements. 12 CFR 1024.9(a)(6). Even if the consumer and seller are provided with separate disclosures, creditors may still prepare, or require that a settlement agent prepare, a complete Closing Disclosure to document compliance and to evaluate the transaction in accordance with governmental loan program and secondary market requirements to underwrite the mortgage.

Several commenters stated that it would be easier to provide two separate disclosure documents at consummation: (1) One representing the transaction between the creditor and the consumer; and (2) one representing the transaction between the consumer and seller. However, the Bureau has found through its consumer testing and in its analysis of the comments received, that the inclusion of the summaries of the consumer's and seller's transactions enable consumers to fully provide effective advance notice to home buyers of settlement costs. *See* Kleimann Testing Report at xvii; Kleimann Quantitative Study Report at 67–71. To separate the Closing Disclosure into two separate disclosures, one for the transaction between the creditor and consumer and another for the transaction between the consumer and seller would be impracticable, if not impossible, due to the intertwined nature of the two transactions. Without a real estate purchase contract, there would not be a transaction between the consumer and the creditor. And, without a mortgage loan, there would not be a transaction between the consumer and the seller. Often, costs associated with one transaction are accounted for or allocated between the parties and have a direct effect on the other transaction. For example, seller concessions from the real estate purchase contract can change the availability or terms of the loan transaction if the concessions are large enough to change the loan-to-value ratio and the amount of the consumer's down payment. In addition, at the Bureau's Quantitative Study, consumer participants using the Bureau's integrated disclosures performed statistically significantly better at understanding their final loan terms and costs than consumer participants using the current RESPA settlement statement and final TILA disclosure. *See* Kleimann Quantitative Study Report at 68–9. Accordingly, the Bureau is adopting § 1026.38(j) and (k) with applicable modifications as discussed further below.

In addition to effectuating Dodd-Frank Act section 1032(f), the Bureau believes that including on the Closing Disclosure summaries of the consumer's and seller's transactions will effectuate the purposes of TILA and RESPA by promoting the informed use of credit and more effective advance notice to home buyers and sellers of settlement costs, respectively. The summaries will assist consumers in understanding of the resolution of their legal obligations to sellers under the terms of the sales contract for the property which will be used to secure the credit extended to facilitate the purchase. The summaries also will assist sellers in understanding the charges they are required to pay under the sales contract. Moreover, consistent with section 1032(a) of the Dodd-Frank Act, the addition of the summaries of the consumer's and seller's transactions will ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances. Therefore, the Bureau is exercising its authority under TILA section 105(a), RESPA section 19(a), and Dodd-Frank Act section 1032(a) to require the creditor or closing agent to provide the summaries of the consumer's and seller's transactions that are currently provided in the RESPA settlement statement. The required information regarding the consumer's transaction is set forth in § 1026.38(j) and the required information regarding the seller's transaction is set forth in § 1026.38(k). Furthermore, for the reasons stated above, the rule is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

38(j) Summary of Borrower's Transaction

Proposed § 1026.38(j) would have required that the creditor or closing agent provide the summaries of the consumer's and seller's transactions in separate tables under the heading ''Summaries of Transactions'' with a

statement that the purpose of the table is to summarize the transaction. Proposed § 1026.38(j) also would have listed the information that must be provided under the subheading ''Borrower's Transaction.'' Proposed comment 38(j)–1 would have clarified that it is permissible to give two separate Closing Disclosures to the consumer and seller. This comment would have incorporated guidance provided in the HUD RESPA FAQs p. 44, #4 (''HUD–1—General''). Comment 38(j)–2 would have clarified that additional lines can be added to the Closing Disclosure to show customary recitals and information used locally in real estate closings. This comment would have incorporated guidance provided in HUD RESPA FAQs p. 44, #5 and #10 (''HUD–1—General''). Proposed comment 38(j)–3 would have clarified that the amounts disclosed under the following provisions of proposed § 1026.38(j) are the same as the amounts disclosed under the corresponding provisions of proposed § 1026.38(k): proposed § 1026.38(j)(1)(ii) and proposed § 1026.38(k)(1)(ii); proposed § 1026.38(j)(1)(iii) and proposed § 1026.38(k)(1)(iii); if the amount disclosed under proposed § 1026.38(j)(1)(v) is attributable to contractual adjustments between the consumer and seller, proposed § 1026.38(j)(1)(v) and proposed § 1026.38(k)(1)(iv); proposed § 1026.38(j)(1)(vii) and proposed § 1026.38(k)(1)(vi); proposed § 1026.38(j)(1)(viii) and proposed § 1026.38(k)(1)(vii); proposed § 1026.38(j)(1)(ix) and proposed § 1026.38(k)(1)(viii); proposed § 1026.38(j)(1)(x) and proposed § 1026.38(k)(1)(ix); proposed § 1026.38(j)(2)(iv) and proposed § 1026.38(k)(2)(iv); proposed § 1026.38(j)(2)(v) and proposed § 1026.38(k)(2)(vii); proposed § 1026.38(j)(2)(viii) and proposed § 1026.38(k)(2)(x); proposed § 1026.38(j)(2)(ix) and proposed § 1026.38(k)(2)(xi); proposed § 1026.38(j)(2)(x) and proposed § 1026.38(k)(2)(xii); and proposed § 1026.38(j)(2)(xi) and proposed § 1026.38(k)(2)(xiii). The Bureau did not receive comments on § 1026.38(j), generally. Accordingly, the Bureau is adopting § 1026.38(j) and its accompanying commentary as proposed, with modifications for clarity and as specifically discussed below.

38(j)(1) Itemization of Amounts Due From Borrower

Proposed § 1026.38(j)(1)(i) would have required the creditor or closing agent to disclose the label ''Due from Borrower at Closing'' and the total amount due from the consumer at closing, calculated as the sum of items required to be disclosed under proposed § 1026.38(j)(1)(ii) through (x), excluding items paid from funds other than closing funds defined under proposed § 1026.38(j)(4)(i). Below this label proposed § 1026.38(j)(ii) would have required the creditor or closing agent to provide a reference to the sale price of the property and the amount of the contract sales price of the property being sold, excluding the price of any items of tangible personal property if the consumer and seller have agreed to a separate price for such items. In addition, below the same label, a reference to the subtotal of closing costs paid at closing by the consumer with adjustments for items paid by the seller in advance also would have been required to be provided by the creditor or closing agent. Proposed comment 38(j)(1)(ii)–1 would have clarified that, for purposes of this disclosure, personal property is defined by State law, but could include such items as carpets, drapes, and appliances. Manufactured homes would not have been considered personal property for purposes of proposed § 1026.38(j)(1)(ii). This comment would have incorporated guidance currently provided in the instructions for RESPA settlement statement line 102 in appendix A to Regulation X. Proposed § 1026.38(j)(1)(iii) would have required the creditor or closing agent to provide a reference to the sales price of any tangible personal property included in the sale that is not included in the sales price disclosed under proposed § 1026.38(j)(1)(ii).

Proposed § 1026.38(j)(1)(iv) would have required the creditor or closing agent to provide a reference to the subtotal of closing costs paid at closing by the consumer and to disclose the amount of closing costs paid by the consumer at closing. Proposed § 1026.38(j)(1)(v) would have required the creditor or closing agent to describe and disclose the amount of any additional items that the seller has already paid but are attributable to a time after closing and therefore will be used by the consumer. Also, proposed § 1026.38(j)(1)(v) would have required a description and the cost of any other items owed by the consumer not otherwise disclosed under proposed § 1026.38(f), (g), or (j). Proposed comment 38(j)(1)(v)–1 would have clarified that items described and disclosed under § 1026.38(j)(v) can include: any balance in the seller's reserve account held in connection with an existing loan, if assigned to the consumer in a loan assumption case; any rent the consumer would collect after closing for a time period prior to closing; or the treatment of a security deposit. Proposed comment 38(j)(1)(v)–2 would have clarified costs owed by the consumer not otherwise disclosed under proposed § 1026.38(f), (g), or (j) will not have a parallel amount disclosed under proposed § 1026.38(k)(1)(iv).

Proposed § 1026.38(j)(1)(vi) would have required the creditor or closing agent to provide a reference to adjustments paid by the seller in advance. Proposed § 1026.38(j)(1)(vii) would have required the creditor or closing agent to provide a reference to city/town taxes, the time period that the consumer is responsible to reimburse the seller for any such prepaid taxes, and the prorated amount of any such prepaid taxes due from the consumer at closing. Proposed § 1026.38(j)(1)(viii) would have required the creditor or closing agent to provide a reference to county taxes, the time period that the consumer is responsible for reimbursing the seller for any such prepaid taxes, and the prorated amount of any such prepaid taxes due from the consumer at closing. Proposed § 1026.38(j)(1)(ix) would have required the creditor or closing agent to provide a reference to assessments, the time period that the consumer is responsible for reimbursing the seller for any such prepaid assessments, and the prorated amount of any such prepaid assessment due from the consumer at closing. Proposed § 1026.38(j)(1)(x) would have required the creditor or closing agent to provide a description and amount of any additional items paid by the seller prior to closing that are due from the consumer at closing. Proposed comment 38(j)(1)(x)–1 would have clarified that amounts disclosed under proposed § 1026.38(j)(1)(x) could be for additional taxes not disclosed under proposed § 1026.38(j)(1)(vii) and (viii), flood and hazard insurance premiums where the consumer is being substituted as an insured under the same policy, mortgage insurance in loan assumptions, planned unit development or condominium association assessments paid in advance, fuel or other supplies on hand purchased by the seller which the consumer will use when consumer takes possession of the property, and ground rent paid in advance. This comment would have incorporated instructions for RESPA settlement statement lines 106–112 in appendix A to Regulation X.

The Bureau did not receive comments concerning the required disclosures

under proposed § 1026.38(j)(1). Accordingly, the Bureau is adopting § 1026.38(j)(1) and its accompanying commentary as proposed, with a minor modification to the label under § 1026.38(j)(1)(iv) to conform to form H–25.

38(j)(2) Itemization of Amounts Already Paid by or on Behalf of Borrower

Proposed § 1026.38(j)(2)(i) would have required the creditor or closing agent to disclose the label ''Paid Already by or on Behalf of Borrower at Closing'' and the total amount paid by or on behalf of the consumer prior to closing, calculated as the sum of items required to be disclosed under § 1026.38(j)(2)(ii) through (xi), excluding items paid from funds other than closing funds defined under § 1026.38(j)(4)(i). Below this label, § 1026.38(j)(2)(ii) would have required the creditor or closing agent to provide a reference to the amount of the deposit, the consumer's loan amount, the existing loans assumed or taken subject to at closing, seller credit, other credits, and adjustments for items unpaid by seller. Proposed comment 38(j)(2)(ii)–1 would have clarified that the deposit is any amount paid into a trust account by the consumer under the contract of sale for real estate. This would have been a change from the current definition of deposit in the instructions for RESPA settlement statement line 201 in appendix A to Regulation X, that define the deposit as any amount paid against the sales price prior to settlement, because the amount of the down payment or funds from the consumer disclosed under § 1026.38(i)(4) may also be paid prior to closing. To differentiate between the down payment amount and the deposit amount in § 1026.38(i)(4), the amount of the deposit would have needed to be specified separately from other payments by the consumer against the sales price prior to closing. Proposed comment 38(j)(2)(ii)–2 would have clarified that the amount of the deposit should be reduced by a commensurate amount if any of the deposit is used to pay for a closing cost before closing. Instead, the charge for the closing cost paid from the deposit would have been designated as borrower-paid before closing under § 1026.38(f)(1) or (g)(1), as applicable.

Proposed § 1026.38(j)(2)(iii) would have required the creditor or closing agent to provide a reference to the principal amount of the consumer's new loan and the amount of the new loan made by the creditor or the amount of the first user loan. Proposed comment 38(j)(2)(iii)–1 would have clarified that the first user loan amount disclosed under § 1026.38(j)(2)(iii) is used to finance construction of a new structure or purchase of a manufactured home and that how to disclose a first user loan will depend on whether it is known if the manufactured home will be considered real property at the time of consummation. This comment would have incorporated guidance currently provided in the instructions for RESPA settlement statement line 202 in appendix A to Regulation X and HUD RESPA FAQs p. 47, #2 (''HUD–1—200 series'').

Proposed § 1026.38(j)(2)(iv) would have required the creditor or closing agent to provide a reference to existing loans assumed or taken subject to at closing by the consumer and the amount of those loans. Proposed comment 38(j)(2)(iv)–1 would have clarified that the amount that must be disclosed under proposed § 1026.38(j)(2)(iv) is the outstanding amount of any loan that the consumer is assuming, or subject to which the consumer is taking title to the property. This comment would have incorporated guidance currently provided in the instructions for RESPA settlement statement line 203 in appendix A to Regulation X. One title insurance company commenter stated that when multiple loans are being assumed, each loan should have a separate itemization. However, an additional itemization for each loan is not necessary for assumed loans, as an aggregate amount is sufficient to describe the nature of the transaction between the consumer and seller. Accordingly, the Bureau is adopting § 1026.38(j)(2)(iv), and comment 38(j)(2)(iv)–1 substantially as proposed with modifications to clarify that the total of all loans being assumed by the consumer is disclosed under § 1026.38(j)(2)(iv).

Proposed § 1026.38(j)(2)(v) would have required the creditor or closing agent to provide a reference to seller credits and the total amount of money that the seller will provide in a lump sum at closing for closing costs, designated borrower-paid at or before closing, as disclosed under proposed § 1026.38(f)(1) and (g)(1), as applicable. Proposed comment 38(j)(2)(v)–1 would have clarified that any amount disclosed under § 1026.38(j)(2)(v) is for generalized seller credits, and that seller credits attributable to a specific closing cost would be designated ''seller-paid'' under § 1026.38(f)(1) or (g)(1), as applicable. Proposed comment 38(j)(2)(v)–2 would have clarified that any other obligations of the seller to be paid directly to the consumer, such as for issues identified at a walk-through of the property prior to closing, are disclosed under proposed § 1026.38(j)(2)(v).

Proposed § 1026.38(j)(2)(vi) would have required the creditor or closing agent to provide a reference to other credits and the amount of items paid by or on behalf of the consumer and not otherwise disclosed under proposed § 1026.38(j)(2), (f)(1), (g)(1), or (h)(3). Proposed comment 38(j)(2)(vi)–1 would have clarified that any amounts disclosed under proposed § 1026.38(j)(2)(vi) are for other credits from parties other than the seller or creditor, but credits attributable to a specific closing cost would be reflected with a paid by other party designation under proposed § 1026.38(f)(1) or (g)(1). For example, a credit from a real estate agent would have been listed as a credit along with a description of the rebate and include the name of the party giving the credit. This comment would have incorporated guidance provided by HUD RESPA FAQs p. 47–48, #4 (''HUD–1—200 series'').

Proposed comment 38(j)(2)(vi)–2 would have clarified that any amounts disclosed under § 1026.38(j)(2)(vi) can also be used for disclosing subordinate financing proceeds. For subordinate financing, the principal amount of the loan would have been required to be disclosed with a brief explanation. If the net proceeds of the loan are less than the principal amount, the net proceeds could have been listed on the same lines as the principal amount. This comment would have incorporated guidance provided by the instructions for RESPA settlement statement lines 204 to 209 in appendix A to Regulation X and the HUD RESPA Roundup dated December 2010.

Proposed comment 38(j)(2)(vi)–3 would have clarified that any amounts disclosed under proposed § 1026.38(j)(2)(vi) can also be used for the disclosure of satisfaction of existing subordinate liens by the consumer. Any amounts paid to satisfy existing subordinate liens by the consumer with funds outside of closing funds would have been required to be disclosed with a statement that such amounts were paid outside of closing under § 1026.38(j)(4). This comment would have incorporated guidance provided by the instructions for completing the RESPA settlement disclosure lines 204 to 209 in appendix A to Regulation X and the HUD RESPA Roundup dated September 2010.

Proposed comment 38(j)(2)(vi)–4 would have clarified that any amounts disclosed under proposed § 1026.38(j)(2)(vi) can also be used for disclosing a transferred escrow balance in a refinance transaction as a credit

along with a description of the transferred escrow balance. This comment would have incorporated guidance provided by the HUD RESPA FAQs p. 47, #3 (''HUD–1—200 series''). Proposed comment 38(j)(2)(vi)–5 would have clarified that any amounts disclosed under § 1026.38(j)(2)(vi) can also be used for gift funds provided on the consumer's behalf by parties not otherwise associated with the transaction.

Several commenters stated that additional guidance was needed concerning whether a rebate or refund from any mortgage insurance premium after the payoff of an existing loan would be disclosed under proposed § 1026.38(j)(2)(vi). The Bureau does not believe additional guidance is necessary in specific relation to a rebate or refund from any mortgage insurance premium after the payoff of an existing loan because the separate disclosure of such a rebate or refund will depend on how the government agency or the mortgage insurer provides the rebate or refund. In some instances, the amount of the premium collected during the consummation of the transaction will be reduced by the amount of the rebate or refund, making any separate disclosure under proposed § 1026.38(j)(2)(vi) redundant and confusing to the consumer. In other instances, the rebate or refund would be sent to the consumer at an indefinite time after consummation, *i.e.,* after the funds sufficient to satisfy the debt were received and have cleared. This would mandate an additional, subsequent provision of the Closing Disclosure to inform the consumer that she received a check that likely was already deposited. Such a result would seem to provide little information or understanding of the transaction to the consumer. The only instance where the rebate or refund would be disclosed to the consumer is where the government agency or mortgage insurer is sending the rebate or refund to the closing agent to be used to reduce the amount due from the consumer at consummation. In that event, the rebate or refund can be disclosed as any other credit from a party other than the creditor or seller under proposed § 1026.38(j)(2)(vi). Accordingly, the Bureau is adopting § 1026.38(j)(2)(vi) and its accompanying commentary as proposed.

Proposed § 1026.38(j)(2)(vii) would have required the creditor or closing agent to provide a reference to adjustments for items unpaid by the seller. Proposed § 1026.38(j)(2)(viii) would have required the creditor or closing agent to provide a reference to city/town taxes, the time period that the seller is responsible for the payment of any such unpaid taxes, and the prorated amount of any such taxes due from the seller at closing. Proposed § 1026.38(j)(2)(ix) would have required the creditor or closing agent to provide a reference to county taxes, the time period that the seller is responsible for the payment of any such unpaid taxes, and the prorated amount of any such unpaid taxes due from the seller at closing. Proposed § 1026.38(j)(2)(x) would have required the creditor or closing agent to provide a reference to assessments, the time period that the seller is responsible for paying any such unpaid taxes, and the prorated amount of any such unpaid assessments due from the seller at closing.

Proposed § 1026.38(j)(2)(xi) would have required the creditor or closing agent to provide a description and the amount of any additional items which have not yet been paid and which the consumer is expected to pay, but which are attributable to a period of time prior to closing. Proposed comment 38(j)(2)(xi)–1 would have clarified that any amounts disclosed under proposed § 1026.38(j)(2)(xi) are for other items not paid by the seller, such as utilities used by the seller, rent collected in advance by the seller from a tenant for a period extending beyond the closing date, and interest on loan assumptions.

The Bureau did not receive comments concerning proposed § 1026.38(j)(2), except to the extent already discussed in relation to § 1026.38(j)(2)(iv) and (vi), above. Accordingly, the Bureau is adopting § 1026.38(j)(2) and its accompanying commentary, substantially as proposed with the modifications to comment 38(j)(2)(iv)–1 discussed above and a minor modification to the label required under § 1026.38(j)(2)(iii) to conform with form H–25.

38(j)(3) Calculation of Borrower's Transaction

Proposed § 1026.38(j)(3) would have required the creditor or closing agent to disclose the label ''Calculation.'' Proposed § 1026.38(j)(3)(i) would have required the creditor or closing agent to provide a reference to the total amount due from the consumer at closing under § 1026.38(j)(1)(i). Proposed § 1026.38(j)(3)(ii) would have required the creditor or closing agent to provide a reference to the total amount already paid by or on behalf of the consumer at closing as a negative number under § 1026.38(j)(2)(i).

Proposed § 1026.38(j)(3)(iii) would have required the creditor or closing agent to provide a reference to cash to close, a statement of whether the disclosed amount is due from or to the consumer, and the amount due from or to the consumer at closing. Proposed comment 38(j)(3)(iii)–1 would have clarified that the creditor or closing agent must state either the cash required from the consumer at closing, or cash payable to the consumer at closing. Proposed comment 38(j)(3)(iii)–2 would have clarified that the amount disclosed under proposed § 1026.38(j)(3)(iii) is the sum of the amounts disclosed under proposed § 1026.38(j)(3)(i) and (ii). If the result is positive, the amount would be due from the consumer. If the result is negative, the amount would be due to the consumer.

The Bureau did not receive comments concerning the required disclosures under § 1026.38(j)(3). Accordingly, the Bureau is adopting § 1026.38(j)(3) and its accompanying commentary as proposed.

38(j)(4) Items Paid Outside of Closing Funds

Proposed § 1026.38(j)(4)(i) would have required the creditor or closing agent to state amounts paid outside of closing with the phrase ''paid outside closing'' or ''P.O.C.'' Proposed comment 38(j)(4)(i)–1 would have clarified that any charges not paid from closing funds but otherwise disclosed under § 1026.38(j) must be marked with the designation ''paid outside of closing'' or ''P.O.C.'' with a designation of the party making the payment. This comment would have incorporated guidance provided by the general instructions for the RESPA settlement statement in appendix A to Regulation X. Proposed comment 38(j)(4)(i)–2 would have clarified that charges paid outside of closing funds are not included in computing totals under proposed § 1026.38(j). Proposed § 1026.38 (j)(4)(ii) would have defined closing funds to mean funds collected and disbursed at closing for purposes of proposed § 1026.38(j). The Bureau did not receive comments concerning the requirements of proposed § 1026.38(j)(4). Accordingly, the Bureau is adopting § 1026.38(j)(1) and its accompanying commentary as proposed.

38(k) Summary of Seller's Transaction

Proposed § 1026.38(k) would have required that the creditor or closing agent provide a summary of the seller's transaction in a separate table under the heading ''Summaries of Transactions'' required under § 1026.38(j). Proposed § 1026.38(k) also would have listed the information that must be provided under the subheading ''Seller's Transaction.'' Proposed comment 38(k)–1 would have clarified that proposed

§ 1026.38(k) does not apply in a transaction where there is no seller, such as a refinance transaction. Proposed comment 38(k)–2 would have clarified that proposed § 1026.38(k) refers to comment 38(j)–2 related to the use of addenda to the Closing Disclosure. Proposed comment 38(k)–3 would have referred to comment 38(j)–3 for guidance that the amounts disclosed under certain provisions of proposed § 1026.38(k) are the same as the amounts disclosed under certain provisions of proposed § 1026.38(j).

The Bureau did not receive comments concerning the required disclosures under § 1026.38(k), other than described below. Accordingly, the Bureau is adopting § 1026.38(k) and its accompanying commentary, with modifications for clarity and as discussed below, as proposed with a minor modification for clarity.

38(k)(1) Itemization of Amounts Due to Seller

Proposed § 1026.38(k)(1)(i) would have required the creditor or closing agent to disclose the label ''Due to Seller at Closing'' and the total amount due to the seller at closing, calculated as the sum of items required to be disclosed under proposed § 1026.38(k)(1)(ii) through (ix), excluding items paid from funds other than closing funds as described in proposed § 1026.38(k)(4)(i). Below this label, § 1026.38(k)(1)(ii) would have required the creditor or closing agent to provide a reference to the sale price of the property and the amount of the real estate contract sales price of the property being sold, excluding the price of any items of tangible personal property if the consumer and seller have agreed to a separate price for such items. In addition, below the same subheading, a reference for adjustments for items paid by seller in advance also would have been required to be provided by the creditor or closing agent.

Proposed § 1026.38(k)(1)(iii) would have required the creditor or closing agent to provide a reference to the sale price of any personal property included in the sale and the amount of the sale price of any personal property excluded from the contract sales price under proposed § 1026.38(k)(ii). Proposed comment 38(k)(1)(iii)–1 would have clarified that guidance regarding the classification of personal property is provided at proposed § 1026.38(j)(1)(ii) and proposed comment 38(j)(1)(ii)–1.

Proposed § 1026.38(k)(1)(iv) would have required the creditor or closing agent to provide a description and the amount of other items to be paid to the seller by the consumer under the contract of sale or other agreement, such as charges that were not listed on the Loan Estimate or items paid by the seller prior to closing but reimbursed by the consumer at consummation. Proposed § 1026.38(k)(1)(v) would have required the creditor or closing agent to provide a reference to adjustments for items paid by the seller in advance. Proposed § 1026.38(k)(1)(vi) would have required the creditor or closing agent to provide a reference to city/town taxes, the time period that the consumer is responsible for reimbursing the seller for any such prepaid taxes, and the prorated amount of any such prepaid taxes due from the consumer at closing. Proposed § 1026.38(k)(1)(vii) would have required the creditor or closing agent to provide a reference to county taxes, the time period that the consumer is responsible for reimbursing the seller for any such prepaid taxes, and the prorated amount of any such prepaid taxes due from the consumer at closing.

Proposed § 1026.38(k)(1)(viii) would have required the creditor or closing agent to provide a reference to assessments, the time period that the consumer is responsible for reimbursing the seller for any such prepaid assessments, and the prorated amount of any such assessments due from the consumer at closing. Proposed § 1026.38(k)(1)(ix) would have required the creditor or closing agent to provide a description and amount of additional items paid by the seller prior to closing that are reimbursed by the consumer at closing.

The Bureau did not receive comments concerning the required disclosures under § 1026.38(k)(1). Accordingly, the Bureau is adopting § 1026.38(k)(1) and its accompanying commentary as proposed.

38(k)(2) Itemization of Amounts Due From Seller

Proposed § 1026.38(k)(2)(i) would have required the creditor or closing agent to disclose the label ''Due from Seller at Closing'' and the total amount due from the seller at closing, calculated as the sum of items required to be disclosed under proposed § 1026.38(k)(2)(ii) through (xiii), excluding items paid from funds other than closing funds as described in proposed § 1026.38(k)(4)(i). Below this label, proposed § 1026.38(k)(2)(ii) would have required the creditor or closing agent to provide a reference to the amount of any excess deposit, the consumer's loan amount, the existing loans assumed or taken subject to at closing, the payoff amount of a first mortgage loan, the payoff of a second mortgage loan, seller credits, and adjustments for items unpaid by the seller. Proposed comment 38(k)(2)(ii)–1 would have clarified that any excess deposit disbursed to the seller by a party other than the closing agent must be disclosed under § 1026.38(k)(2)(ii) if the party will provide the excess deposit directly to the seller. Proposed comment 38(k)(2)(ii)–2 would have clarified that any amounts of the deposit that were disbursed to the seller prior to closing must be disclosed under proposed § 1026.38(k)(2)(ii).

Two GSEs during an ex parte meeting stated that the calculation of the excess deposit amount was confusing, especially since the amount of the deposit would offset any real estate commission that may be disclosed under § 1026.38(g)(4), above. Thus, the Closing Disclosure would not record the entire amount of the real estate commission paid by the seller in the event the real estate brokerage retained the deposit as part of its commission. The Bureau believes that this may be confusing to consumers and sellers and is adopting comment 38(g)(4)–4 to clarify that any real estate commissions disclosed under § 1026.38(g)(4) should be the full amount of the commission, regardless of the party who holds the deposit. In addition, a title insurance company commenter stated that the description of the excess deposit in proposed comment 38(k)(2)(ii)–2 would have incorrectly calculated the amount shown as excess deposit because the amount already disbursed to the seller as proposed would not be included in the amount, directly contrary to the regulatory text that requires the reduction of the amount due to the seller by any amount paid to the seller prior to consummation. The Bureau is adopting § 1026.38(k)(2)(ii) to require disclosure of the amount disbursed to the seller prior to the real estate closing, and is adopting proposed comment 38(k)(2)(ii)–2 as comment 38(k)(2)(ii)–1, with a modification to indicate that the amount disclosed under § 1026.38(k)(2)(ii) should be any amount of the deposit that has already been disbursed to the seller prior to closing. The Bureau is not adopting proposed comment 38(k)(2)(ii)–1 for the reasons stated above.

Proposed § 1026.38(k)(2)(iii) would have required the creditor or closing agent to provide a reference to and the amount of the subtotal closing costs paid at closing by the seller as calculated under proposed § 1026.38(h)(1). Proposed § 1026.38(k)(2)(iv) would have required the creditor or closing agent to provide a reference to existing loans assumed or taken subject to by the consumer and

the amount of those loans. Proposed comment 38(k)(2)(iv)–1 would have clarified that the amount of the outstanding balance of any lien that the consumer is assuming or taking title subject to, and which is to be deducted from the sales price, must be disclosed under proposed § 1026.38(k)(2)(iv). A title insurance company commenter stated that the term lien should be plural instead of singular in proposed comment 38(k)(2)(iv)–1. The Bureau is adopting § 1026.38(k)(2)(iv) and comment 38(k)(2)(iv)–1 substantially as proposed, but modified to state that more than one lien can be included in the amount being assumed.

Proposed § 1026.38(k)(2)(v) would have required the creditor or closing agent to provide a reference to the payoff of the first mortgage loan and the amount of any first loan that will be paid off as part of closing. Proposed § 1026.38(k)(2)(vi) would have required the creditor or closing agent to provide a reference to the payoff of the second mortgage loan and the amount of any second loan that will be paid off as part of closing. A title insurance company commenter stated that additional subordinate financing other than just the second lien should also be disclosed under proposed § 1026.38(k)(2)(vi). However, if there are third or fourth loans that are secured with liens on the property, they would be disclosed pursuant to § 1026.38(k)(2)(viii), below. Accordingly, the Bureau is adopting § 1026.38(k)(2)(vi) as proposed.

Proposed § 1026.38(k)(2)(vii) would have required the creditor or closing agent to provide a reference to seller credits and the total amount of money that the seller will provide as a lump sum at closing to pay for loan costs and other costs, designated borrower-paid at or before closing, as disclosed under proposed § 1026.38(f)(1) and (g)(1), as applicable. Any costs disclosed as seller-paid at or before closing under proposed § 1026.38(f)(1) and (g)(1) would not have been disclosed under proposed § 1026.38(k)(vii). Proposed comment (k)(2)(vii)–1 would have clarified that any other obligations of the seller to be paid directly to the consumer, such as credits for issues identified at a walk-through of the property prior to closing, would have been disclosed under proposed § 1026.38(k)(2)(vii).

Proposed § 1026.38(k)(2)(viii) would have required the creditor or closing agent to provide a description and the amount of any and all other obligations required to be paid by the seller at closing, including any lien-related payoffs, fees, or obligations. Proposed comment 38(k)(2)(viii)–1 would have clarified that amounts that must be paid in order to satisfy other seller obligations to clear title to the property must be disclosed under proposed § 1026.38(k)(2)(viii). Proposed comment 38(k)(2)(viii)–2 would have clarified that the satisfaction of existing liens by the consumer that are not deducted from the sales price are disclosed under proposed § 1026.38(k)(2)(viii) and must be disclosed as paid outside of closing under § 1026.38(k)(4)(i). This guidance would have been consistent with proposed comment 38(j)(2)(vi)–2, and would have incorporated guidance provided by the HUD RESPA Roundup dated December 2010. Proposed comment 38(k)(2)(viii)–3 would have clarified that escrowed funds held by the closing agent for payment of invoices related to repairs, water, fuel, or other utility bills received after closing that cannot be prorated are disclosed under proposed § 1026.38(k)(2)(viii), and that subsequent disclosure of the amounts paid after consummation is optional. This guidance would have been consistent with the instructions for RESPA settlement statement lines 506 to 509 in appendix A to Regulation X.

A title insurance company commenter stated that the subsequent disclosure of payments from escrowed funds held by the closing agent for payment of invoices related to repairs, water, fuel, or other utility bills received after consummation should be mandatory. However, closing agents can be regulated as part of the business of providing title insurance in some States. These States can have different requirements related to the subsequent disclosure of these amounts and the handling of the amounts held by the closing agent. The Bureau believes that providing the disclosure of the amounts after consummation should be optional to provide flexibility to the closing agent to comply with applicable State law. However, the Bureau notes that § 1026.19(f)(2)(iii) requires a creditor to provide a corrected Closing Disclosure if a post-consummation event occurs during the 30-day period following consummation that results in a change to the actual amount paid by the consumer. Similarly, § 1026.19(f)(4)(ii) requires post-consummation disclosures for the seller for events that occur during the 30-day period following consummation. Otherwise, the disclosures related to the transaction could be a process that could continue for years and possibly implicate State escheatment procedures, in some instances. Accordingly, the Bureau is adopting § 1026.38(k)(2)(viii) and its accompanying commentary as substantially as proposed, with a modification to comment 38(k)(2)(viii)–3 to include a reference to the requirement under § 1026.19(f)(2)(iii).

Proposed § 1026.38(k)(2)(ix) would have required the creditor or closing agent to provide a reference to adjustments for items unpaid by the seller. Proposed § 1026.38(k)(2)(x) would have required the creditor or closing agent to provide a reference to city/town taxes, the time period that the seller is responsible for payment of any such unpaid taxes, and the prorated amount of any such unpaid taxes due from the seller at closing. Proposed § 1026.38(k)(2)(xi) would have required the creditor or closing agent to provide a reference to county taxes, the time period that the seller is responsible for the payment of any such unpaid taxes, and the prorated amount of any such unpaid taxes due from the seller at closing. Proposed § 1026.38(k)(2)(xii) would have required the creditor or closing agent to provide a reference to assessments, the time period that the seller is responsible for payment of any such unpaid assessments, and the prorated amount of any such unpaid assessments due from the seller at closing. Proposed § 1026.38(k)(2)(xiii) would have required the creditor or closing agent to provide a description and the amount of any additional items that have not yet been paid, and which the seller is expected to pay at closing, but which are attributable in part to a period of time prior to the closing.

The Bureau did not receive any comments concerning the required disclosures under § 1026.38(k)(2), except for the comments provided related to § 1026.38(k)(2)(iv), (vi), and (vii) as discussed above. Accordingly, the Bureau is adopting § 1026.38(k)(2) and its accompanying commentary substantially as proposed, with the modifications to comments 38(k)(2)(iv)–1 and 38(k)(2)(viii)–3 discussed above and with minor modifications to § 1026.38(k)(2)(ii) for clarity and to § 1026.38(k)(2)(iii) to conform to form H–25.

38(k)(3) Calculation of Seller's Transaction

Proposed § 1026.38(k)(3) would have required the creditor or closing agent to disclose the subheading ''Calculation.'' Proposed § 1026.38(k)(3)(i) would have required the creditor or closing agent to provide a reference to the total amount due to the seller at closing and the amount described under proposed § 1026.38(k)(1)(i). Proposed § 1026.38(ii) would have required the creditor or closing agent to provide a reference to

the total amount due from the seller at closing and the amount described as a negative number under proposed § 1026.38(k)(2)(i).

Proposed § 1026.38(k)(3)(iii) would have required the creditor or closing agent to include the word ''Cash,'' a statement of whether the disclosed amount is due from or to the seller, and the amount due from or to the seller at closing. Proposed comment 38(k)(3)(iii)–1 would have clarified that the creditor or closing agent must state either the cash required from the seller at closing, or the cash payable to the seller at closing. Proposed comment 38(k)(3)(iii)–2 would have clarified that the amount disclosed under proposed § 1026.38(k)(3)(iii) is the sum of the amounts disclosed under proposed § 1026.38(k)(3)(i) and the amount disclosed under proposed § 1026.38(k)(ii). If the result is positive, the amount would be due to the seller. If the result is negative, the amount would be due from the seller.

The Bureau did not receive comments concerning the required disclosures under § 1026.38(k)(3). Accordingly, the Bureau is adopting § 1026.38(k)(3) and its accompanying commentary as proposed.

38(k)(4) Items Paid Outside of Closing Funds

Proposed § 1026.38(k)(4)(i) would have required the creditor or closing agent to state amounts paid outside of closing with the phrase ''Paid Outside of Closing'' or ''P.O.C.'' and would have provided that closing funds are funds collected and disbursed at consummation by the creditor or closing agent. Proposed § 1026.38(k)(4)(ii) would have defined closing funds to mean funds collected and disbursed at consummation for purposes of proposed § 1026.38(k).

The Bureau did not receive comments concerning the requirements of § 1026.38(k)(4). Accordingly, the Bureau is adopting § 1026.38(k)(4) and its accompanying commentary as proposed.

38(l) Loan Disclosures

As discussed below, TILA requires that creditors provide consumers with a variety of disclosures prior to consummation regarding requirements in or arising from the legal obligation: assumption, demand feature, late payment, negative amortization, partial payment policy, security interest, and escrow account information. For purposes of the integrated disclosure form that would have been required by proposed § 1026.19(f), these disclosures would have been required to be grouped together under the master heading ''Additional Information About This Loan'' and under the heading ''Loan Disclosures.''

Several industry commenters criticized the design of the Loan Disclosures section of the Closing Disclosure, as illustrated by proposed from H–25. A non-depository lender commented that the checkboxes for this section should be made larger to make them more visible for consumers. An association of State regulators commented that the many technical disclosures included in this section could be confusing to consumers and recommended that the disclosures be broken up with bullet points or reference web-based tools to help consumers understand them. One document preparation company commenter requested guidance on whether the text shown on form H–25 with respect to the disclosures in § 1026.38(l) is required or whether it can change.

The Bureau declines to revise the design of the Closing Disclosure as suggested by the commenter with respect to the disclosures required by § 1026.38(l). The Bureau is adopting § 1026.38(l) as proposed. With respect to the comment requesting clarification of whether the text is variable or required, the Bureau notes that under § 1026.38(l), the text illustrated by form H–25 of appendix H to Regulation Z is required for federally related mortgage loans, but is a model form for transactions subject to TILA only, and not RESPA. The Bureau recognizes that there is a large amount of information on page 4 of the Closing Disclosure as required by § 1026.38(l). With respect to the clarity of the disclosures under § 1026.38(l), these disclosures are mandated by statute, and three of these disclosures have been added to TILA by the Dodd-Frank Act. The Bureau has made every effort to draft them as concisely and accurately as possible so that consumers will be able to understand them, and included them in the prototype disclosures at the Bureau's consumer testing. *See* Kleimann Testing Report at 17.

38(l)(1) Assumption

Proposed § 1026.38(l)(1) would have implemented TILA section 128(a)(13) for transactions subject to § 1026.19(f) by requiring the creditor to disclose the statement required by § 1026.37(m)(2), which describes whether a subsequent purchaser may be permitted to assume the remaining loan obligation. For a detailed description of the Bureau's implementation of TILA section 128(a)(13) and the legal authority for this provision, see the section-by-section analysis of § 1026.37(m)(2). For the reasons discussed in the section-by-section analysis of § 1026.37(m)(2), the Bureau is adopting § 1026.38(l)(1) as proposed, based on the authority described in the proposal. The Bureau is revising the assumption disclosure illustrated on form H–25 of appendix H to Regulation Z, for consistency with the disclosure required for the Loan Estimate, as illustrated by form H–24.

38(l)(2) Demand Feature

TILA section 128(a)(12) requires the creditor to disclose a statement that the consumer should refer to the appropriate contract document for information about certain loan features, including the right to accelerate the maturity of the debt. 15 U.S.C. 1638(a)(12). Current § 1026.18(p) implements TILA section 128(a)(12) by requiring, among other things, a statement that the consumer should refer to the appropriate contract document for information about nonpayment, default, and the right to accelerate the maturity of the obligation, and prepayment rebates and penalties. In addition, current § 1026.18(i) requires the creditor to disclose whether the legal obligation includes a demand feature and, if the disclosures are based on the assumed maturity of one year as described in § 1026.17(c)(5), the creditor must state that fact.

Pursuant to its authority under TILA section 105(a) and (f), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b), the Bureau did not propose to incorporate into § 1026.38(l)(2) the special disclosure requirement regarding assumed maturity of one year in current § 1026.18(i) or the optional contract reference disclosures in current § 1026.18(p). The proposal stated that, by exempting disclosure of information that will not be useful to consumers, the disclosure would effectuate the purposes of TILA by enhancing consumer understanding of mortgage transactions, consistent with TILA section 105(a). Similarly, the Bureau stated it considered the factors in TILA section 105(f) and that it believed that an exemption was appropriate under that provision. Specifically, the Bureau stated its belief in the proposal that the proposed exemption is appropriate for all affected borrowers, regardless of their other financial arrangements and financial sophistication and the importance of the loan to them, that the exemption is appropriate for all affected loans, regardless of the amount of the loan and whether the loan is secured by the principal residence of the consumer,

and that, on balance, the exemption will simplify the credit process without undermining the goal of consumer protection or denying important benefits to consumers. Furthermore, the Bureau stated that the exemption will ensure that the features of the mortgage transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a), and will improve consumer awareness and understanding of residential mortgage loans, which is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

Proposed § 1026.38(l)(2) would have incorporated certain of the requirements of current § 1026.18(i) and (p) for transactions subject to § 1026.19(f) by requiring that the creditor disclose whether the legal obligation permits the creditor to demand early repayment of the loan and, if so, a statement that the consumer should review the loan document for more details. The information required by proposed § 1026.38(l)(2) would have been required to be labeled ''Demand Feature.'' Proposed comment 38(l)(2)–1 would have provided a cross-reference to comment 18(i)–2 for a description of demand features that would trigger the disclosure requirement in proposed § 1026.38(l)(2).

An individual mortgage broker commented that the proposed disclosure required by § 1026.38(l)(2) was too complex and should be simplified so that the consumer could understand how the demand feature affects them. The Bureau does not believe that the disclosure required by § 1026.38(l)(2) is confusing for consumers. The Bureau's consumer testing revealed that most consumers understood this disclosure as proposed. *See* Kleimann Testing Report at 188. The Bureau is adopting § 1026.38(l)(2) and comment 38(l)(2)–1 as proposed.

38(l)(3) Late Payment

TILA section 128(a)(10) requires disclosure of any dollar charge or percentage amount that may be imposed by a creditor due to a late payment, other than a deferral or extension charge. 15 U.S.C. 1638(a)(10). This requirement is currently implemented in § 1026.18(l). Proposed § 1026.38(l)(3) would have implemented TILA section 128(a)(10) for loans subject to § 1026.19(f) by requiring the creditor to disclose the statement required by § 1026.37(m)(4), which details any charge that may be imposed for a late payment, stated as a dollar amount or percentage charge of the late payment amount, and the number of days that a payment may be late to trigger the late payment fee. Proposed comment 38(l)(3)–1 would have referred to the commentary for § 1026.37(m)(4) for guidance on compliance with § 1026.38(l)(3). For a detailed description of the Bureau's proposed implementation of TILA section 128(a)(10) and the legal authority for the proposal, see the section-by-section analysis of § 1026.37(m)(4).

The Bureau did not receive any comments on the substance of § 1026.38(l)(3) and is adopting it as proposed and is adopting comment 38(l)(3)–1 substantially as proposed, with a minor modification for clarity. The Bureau received one comment regarding the design of the disclosure required by § 1026.38(l)(3) on proposed form H–25, however. For the reasons discussed in the section-by-section analysis of § 1026.37(m)(4), and as described in the section-by-section analysis of appendix H to Regulation Z, the Bureau is illustrating a revised design for the disclosure required by § 1026.38(l)(3) in form H–25 of appendix H to Regulation Z that contains greater emphasis for the variable text to be inputted by the creditor.

38(l)(4) Negative Amortization

New TILA section 129C(f), which was added by section 1414(a) of the Dodd-Frank Act, provides that no creditor may extend credit to a borrower in connection with a transaction secured by a dwelling or residential real property that includes a dwelling, other than a reverse mortgage, that provides for or permits a payment plan that may result in negative amortization unless the creditor provides the consumer with a notice that the transaction may or will result in negative amortization. 15 U.S.C. 1639c(f). Under TILA section 129C(f), before consummation of the transaction, the creditor must provide the consumer with a statement that: (1) The pending transaction will or may, as applicable, result in negative amortization; (2) describes negative amortization in the manner prescribed by the Bureau; (3) negative amortization increases the loan balance; and (4) negative amortization decreases the consumer's equity in the property. 15 U.S.C. 1639c(f)(1).

Although TILA section 129C(f) is new, both Regulations Z and X currently contain disclosure requirements for loan products that may negatively amortize. In Regulation Z, if the loan product contains features that may cause the loan amount to increase, § 1026.18(s)(4)(C) requires a statement that warns the consumer that the minimum payment covers only some interest, does not repay any principal, and will cause the loan amount to increase, for closed-end transactions secured by real property or a dwelling. Current appendix A to Regulation X requires a similar statement in the ''Loan Terms'' section of the RESPA settlement statement, which discloses whether the loan balance may increase even if loan payments are made on time.

The Bureau proposed § 1026.38(l)(4) to implement TILA section 129C(f) for transactions subject to § 1026.19(f), pursuant to its implementation authority under TILA section 105(a). Specifically, proposed § 1026.38(l)(4) would have required a statement of whether the regular periodic payment may cause the principal balance to increase. If the regular periodic payment does not cover all of the interest due, proposed § 1026.38(l)(4)(i) would have required a statement that the principal balance will increase, that the principal balance will likely exceed the original loan amount, and that increases in the principal balance will lower the consumer's equity in the property. In transactions in which the consumer has the option of making regular periodic payments that do not cover all of the interest accrued that month, proposed § 1026.38(l)(4)(ii) would have required a statement that, if the consumer chooses a periodic payment option that does not cover all of the interest due, the principal balance may exceed the original loan amount and that increases in the principal balance decrease the consumer's equity in the property. The statements required by proposed § 1026.38(l)(4)(i) and (ii) would have been located under the subheading ''Negative Amortization (Increase in Loan Amount).''

A national trade association representing developers of timeshare and other similar fractional interest real estate products stated that the Bureau should clarify that the proposed disclosure would not apply to timeshare lenders. The trade association commenter asserted that it believes that TILA section 103(cc)(5), as added by section 1401 of the Dodd-Frank Act, exempted timeshare lenders from compliance with, among other things, TILA section 129C and any regulations promulgated thereunder. The general section-by-section analysis of § 1026.19 provides a more detailed discussion of the Bureau's decision to expand the scope of some of the disclosure

requirements set forth in TILA, as amended by the Dodd Frank Act. In addition, the Bureau believes that the disclosure of the fact that a transaction may negatively amortize would be just as useful to a consumer in a credit transaction secured by a consumer's interest in a timeshare plan as to a consumer in a credit transaction secured by an interest in real property or real property with a dwelling. The Bureau continues to believe that proposed § 1026.38(l)(4) will effectuate the purposes of TILA. Accordingly, § 1026.38(l)(4) is adopted as proposed, based on the authority stated in the proposal.

38(l)(5) Partial Payment Policy

TILA section 129C(h), added by section 1414(d) of the Dodd-Frank Act, provides that, in the case of any residential mortgage loan, the creditor must disclose, prior to settlement or at the time such person becomes the creditor for an existing loan, the creditor's policy regarding the acceptance of partial payments, and if partial payments are accepted, how such payments will be applied to the mortgage and whether such payments will be placed in escrow. 15 U.S.C. 1631c(h).

The Bureau proposed § 1026.38(l)(5) to implement the pre-consummation disclosure requirements of TILA section 129C(h), pursuant to its implementation authority under TILA section 105(a).[302] Proposed § 1026.38(l)(5) would have required the creditor to disclose, under the subheading ''Partial Payment Policy,'' a statement of whether it will accept monthly payments that are less than the full amount due and that, if the loan is sold, the new creditor may have a different policy. The proposed provision would have required that, if partial payments are accepted, the creditor must also provide a brief description of its partial payment policy, including the manner and order in which any partial payments are applied to the principal, interest, or an escrow account for partial payments and whether any penalties apply.

Comments

The Bureau received a number of comments on proposed § 1026.38(l)(5). Some commenters, including several national trade associations representing banks generally, consumer mortgage companies, and large mortgage finance companies, asserted that the Bureau should withdraw the proposal to require the creditor to provide the pre-consummation partial payment disclosure on the Closing Disclosure. The commenters expressed concern that the proposal would have required creditors to provide information about an issue, the treatment of partial payments, which they asserted is a complex mortgage servicing issue. Some commenters were also concerned that the disclosure could be misleading if the creditor transfers servicing of a consumer's mortgage loan shortly after consummation and the servicer has a different partial payment policy. A GSE commenter suggested that the Bureau should require the disclosure only if the creditor will also be the loan's servicer. If the creditor will not be servicing the loan, then the GSE commenter asserted that the disclosure should come in a subsequent communication from the ultimate servicer. The GSE commenter further recommended that the Bureau require that a partial payment policy be disclosed only if the servicer maintains a policy of not accepting any partial payments.

Commenters also asserted that it is difficult to describe partial payment policies because how such payments are processed is a complex process. Based on the comments, it appears that the treatment of partial payments could vary on a loan-by-loan basis even within the same institution. National trade association commenters representing banks generally, consumer mortgage companies, and large mortgage finance companies further asserted that if the Bureau issues final regulations requiring mortgage servicers to provide a partial payment disclosure in connection with the Bureau's separate mortgage servicing rulemaking, then it would be unnecessary for the Bureau to also require creditors to provide the pre-consummation partial payment disclosure. A title company commenter expressed concern that the disclosure could lead consumers to believe that making partial payments is an acceptable practice.

Commenters asserted that if the Bureau decides to finalize the proposal, that the Bureau should define the term ''partial payment,'' what actions constitute acceptance of a partial payment, and provide model language that creditors may use to describe their partial payment policies. In an ex parte communication, two GSEs stated that the Bureau should require creditors to disclose whether a consumer will be in default when partial payments are accepted.

Some commenters, including national trade associations representing banks, general consumer mortgage companies, and large mortgage finance companies, suggested that the Bureau adopt a provision in the final rule that would provide that creditors comply with the partial payment policy disclosure requirement by providing a statement directing the consumer to contact the consumer's servicer about how the consumer's partial payments would be applied. Industry commenters further suggested that the Bureau provide creditors with additional space to describe the creditor's partial payment policy on final form H–25 of appendix H to Regulation Z, because the space allotted for the disclosure, as shown in proposed form H–25, appeared inadequate. Lastly, a national trade association representing developers of timeshare and other similar fractional interest real estate products stated that the Bureau should clarify that the proposed disclosure would not apply to timeshare lenders. The trade association commenter asserted that it believes that TILA section 103(cc)(5), as added by section 1401 of the Dodd-Frank Act, exempted timeshare lenders from compliance with, among other things, TILA section 129C and any regulations promulgated thereunder.

Discussion

The Bureau recognizes that a creditor may service a consumer's mortgage loan post-consummation or transfer the servicing of the loan shortly after consummation. The Bureau additionally recognizes that collecting and allocating payments are typical duties related to loan servicing. However, TILA section 129C(h) clearly establishes that the creditor has a distinct disclosure obligation related to partial payments. The Bureau does not believe it should exempt an express pre-consummation disclosure requirement simply because another rule required a similar disclosure to consumers after consummation. Both the servicing disclosure requirement, implemented under the Bureau's 2013 TILA Servicing Final Rule and the pre-consummation disclosure requirement may provide useful information to consumers at different stages of a transaction. Accordingly, the Bureau believes that consumers may benefit from receiving both disclosures. The Bureau does not believe that the proposed pre-consummation partial payment disclosure should be withdrawn because it describes a typical servicing duty or because the Bureau has issued disclosure requirements related to the acceptance of partial payments under the Bureau's 2013 TILA Servicing Final Rule.

[302] The Bureau proposed to implement the disclosure requirements of TILA section 129C(h) that apply after consummation in proposed § 1026.39.

The Bureau also believes that consumer understanding may be improved and that consumers may avoid the uninformed use of credit if the Bureau required creditors to provide the disclosure to the consumer pre-consummation and integrated the disclosure with the other disclosures required under § 1026.38. If the Bureau did not integrate this disclosure into the integrated disclosure, the disclosure would have to be provided separately by the creditor, which would increase the risk of consumer confusion and information overload, and increase compliance burden for industry.

With respect to the concern that the disclosure could be misleading in situations where creditors transfer the servicing of a consumer's loan shortly after consummation, and the servicer has a different policy, the Bureau believes that this concern suggests that the creditor and the servicer to whom the creditor intends to transfer the servicing of the loan must effectively communicate regarding the partial payment policy that will apply to the transaction. With respect to the argument that the disclosure should not apply to timeshare lenders, the general section-by-section analysis of § 1026.19 provides a more detailed discussion of the Bureau's decision to expand the scope of some of the disclosure requirements set forth in TILA, as amended by the Dodd-Frank Act. In addition, the Bureau believes that the disclosure of the creditor's partial payment policy would be just as useful to a consumer in a credit transaction secured by a timeshare plan as to a consumer in a credit transaction secured by an interest in real property or real property with a dwelling.

In response to concerns about the creditor's ability to adequately disclose their partial payment policy under the proposed provision, the Bureau has modified the disclosure requirement to facilitate compliance, which is one of the purposes of the integrated disclosure requirements stated by sections 1098 and 1100A of the Dodd-Frank Act. The modifications create more generalized partial payment disclosures. The Bureau modified the disclosures to respond to the concern that the creditor may not have a uniform policy on the acceptance and application of partial payments, which would be difficult to input on the Closing Disclosure for each transaction. The Bureau modified the disclosures, as illustrated by form H–25 of appendix H to Regulation Z, to provide for checkboxes to indicate the creditor's general policy, instead of a space in which the creditor would be required to write in its policy in free-form text. The Bureau also modified the disclosure to clarify that the term ''partial payment'' means periodic payment less than the full amount due, which the Bureau believes will aid consumer understanding, based on the results of its consumer testing. The Bureau conducted three rounds of consumer testing of the modified disclosure. At the Bureau's consumer testing, consumers were able to use the modified disclosure to understand the creditor's partial payment policy. *See* Kleimann Post-Proposal Testing Report at 30, 34, 36–37, and 42.

With respect to the concern that the disclosure would suggest to the consumer that making partial payments is acceptable, the Bureau believes that the checkbox structure, which shows that some creditors may not accept partial payments, will inform consumers that partial payment may not be an acceptable practice. With respect to the suggestion that the Bureau should disclose that consumers may be in default upon the making of a partial payment that is accepted, the Bureau believes that it would be duplicative and potentially confusing to the consumer to add an additional disclosure that the consumer may be in default. Under final § 1026.38(p)(2), the creditor must disclose to the consumer on the Closing Disclosure that the consumer should refer to the loan document and security instrument for information about, among other things, what constitutes a default under the legal obligation.

With respect to the suggestion that the Bureau modify the partial payment policy disclosure requirement to require only a statement directing the consumer to contact the consumer's servicer about the application of partial payments, the Bureau does not believe such a disclosure would aid consumer understanding of the consumer's transaction, because it would not inform the consumer of the creditor's policy for the transaction. The Bureau does not believe such statement would be effective at improving consumer understanding and helping consumers avoid the uninformed use of credit.

Final Rule

The Bureau is adopting § 1026.38(l)(5) with modifications to address concerns regarding compliance with the proposed disclosure requirements. As adopted, § 1026.38(l)(5) requires the creditor to disclose, under the subheading ''Partial Payments,'' a statement of whether the creditor accepts periodic payments that are less than the full amount due. If the creditor may accept such payments, and apply the payments to the consumer's loan, or if the creditor may hold the payments in a separate account until the consumer pays the rest of the payment, or if the creditor does not accept any partial payments, then the disclosure would have had to state that fact. Additionally, similar to the proposal, § 1026.38(l)(5) requires a statement that, if the loan is sold, the new creditor may have a different policy.

As adopted, § 1026.38(l)(5) modifies the statutory requirement that the creditor must describe how a consumer's partial payments, if accepted, will be applied to the consumer's account and whether any penalties will apply. The Bureau understands that there may be many variations regarding how partial payments are processed on a loan-by-loan basis, even within one institution. Accordingly, a detailed disclosure describing each and every partial payment policy could be costly and burdensome to implement, and may confuse consumers. As described above, the Bureau believes that the more generalized disclosures the Bureau is adopting in § 1026.38(l)(5) are effective at informing consumers and will facilitate compliance. The Bureau is adopting § 1026.38(l)(5) pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and for residential mortgage loans, Dodd-Frank Act section 1405(b).[303] The Bureau believes the modification will ensure that the features of the transaction are fully, accurately and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, consistent with Dodd-Frank Act section 1032(a), and will improve consumer awareness and understanding of residential mortgage loans, which is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

38(l)(6) Security Interest

TILA section 128(a)(9) requires the creditor to provide a statement that a security interest 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.

[303] The disclosure requirements of TILA section 129C(h) that apply after consummation are implemented in § 1026.39.

The Bureau proposed to require creditors to disclose the address of the property in which a security interest will be taken and a statement that the consumer may lose the property if he or she does not make payments or satisfy other requirements, pursuant to its authority under TILA section 105(a) and Dodd-Frank Act section 1032(a). The Bureau stated it proposed § 1026.38(l)(6) to implement TILA section 128(a)(9) for transactions subject to § 1026.19(f), pursuant to its implementation authority under TILA section 105(a). The Bureau stated its belief in the proposal that the proposed disclosures promote the informed use of credit, which is a purpose of TILA, by clearly disclosing the property in which a security interest is being granted and informing consumers of the potential consequences of the creditor's security interest in the property. In addition, the Bureau stated its belief that the proposed disclosures will ensure that the features of the mortgage transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a).

Proposed § 1026.38(l)(6) would have required that the creditor disclose, if the creditor will take a security interest in the property that is the subject of a mortgage loan transaction, that the consumer is granting it a security interest in that property, the address of the property, and a statement that the consumer may lose the property if the consumer fails to make payments or satisfy other requirements of the legal obligation. The information required by proposed § 1026.38(l)(6) would have been located under the subheading ''Security Interest.''

One industry commenter stated that the proposed security interest disclosure is redundant but did not state the reason or identify the other section of the Closing Disclosure that might render it redundant. A document preparation company and a national title company requested guidance on whether a legal description or other description of the real property could be disclosed where the property securing the transaction does not have a street address. A national trade association representing developers of timeshare and other similar fractional interest real estate products commented that requiring the property address was unnecessary for a timeshare and could be confusing to consumers, presumably because a timeshare consumer is not necessarily purchasing a security interest in a particular property. A national trade association representing mortgage lenders and a GSE commented that some transactions are secured by personal property and that the disclosure required by § 1026.38(l)(6) should permit disclosure of personal property. Several industry commenters noted that the use of underscoring on form H–25 in the Security Interest disclosure makes the information disclosed difficult to read and that it would be difficult and expensive to program software to produce a form with underscoring.

With respect to the comment requesting guidance of whether a legal description or other description would be permitted under § 1026.38(l)(6), the Bureau understands that additional guidance may facilitate compliance. Accordingly, the Bureau is adopting comment 38(l)(6)–1 to clarify that where there is no street address, § 1026.38(l)(6) requires disclosure of other location information for the property, such as a lot number. This comment also clarifies that a zip code is required in all instances. With respect to the timeshare commenter, the Bureau notes that comment 38(l)(6)–1 has been revised to clarify that § 1026.38(l)(6) permits disclosure as ''other location information'' of a lot, square, or other such number or other legal description of the property assigned by the local governing authority, or if no such number or description is available, the name of the timeshare property or properties with a designation indicating that the property is an interest in a timeshare plan. The Bureau also agrees that personal property securing a transaction should be disclosed on the Closing Disclosure and is adding comment 38(l)(6)–2 to clarify that where personal property also secures the credit transaction, a description of that property may be disclosed pursuant to § 1026.38(l)(6) on form H–25. The Bureau understands that the personal property to be disclosed may not fit in the space on form H–25 and thus is adopting comment 38(l)(6)–2 to clarify the creditor may disclose personal property on an addendum to the extent the personal property does not fit within the space provided on form H–25. The comment also clarifies that the creditor may use one addendum to disclose personal property securing the transaction under § 1026.38(l)(6) and (a)(3)(vi) and includes a cross-reference to comment 38(a)(3)(vi)–1.

The Bureau also understands that the underscoring illustrated by proposed form H–25 may increase programming costs, and may be difficult for consumers to read, and thus is revising form H–25 to delete the underscoring. Instead, the completed samples of form H–25 will illustrate the information provided by the creditor for the Security Interest disclosure with italics to emphasize that the italicized information has been completed by the creditor.

For the aforementioned reasons, the Bureau is adopting § 1026.38(l)(6) substantially as proposed, with a minor modification to clarify that the property address disclosed must include the zip code and that the consumer is granting a security interest in the property, based on the authority stated in the proposal. The Bureau is also adding comments 38(l)(6)–1 and –2, as described above, to provide additional clarity that was requested by commenters.

38(l)(7) Escrow Account

The Bureau's Proposal

As discussed in greater detail above in the section-by-section analysis of § 1026.20(e) (Escrow account cancellation notice for certain mortgage transactions), sections 1461 and 1462 of the Dodd-Frank Act amended TILA to create a new section 129D, which establishes certain requirements for escrow accounts for consumer credit transactions secured by a first lien on a consumer's principal dwelling (other than a consumer credit transaction under an open-end credit plan or a reverse mortgage), including, among other things, certain disclosure requirements when an escrow account is established and certain other disclosures when an escrow account is refused or cancelled by the consumer, respectively.

Specifically, TILA section 129D(h) establishes that a creditor must provide the Pre-Consummation Escrow Establishment Disclosure containing the information set forth under TILA section 129D(h) when an impound, trust, or other type of account for the payment of property taxes, insurance premiums, or other purposes relating to real property securing a consumer credit transaction is established in connection with the transaction. Additionally, pursuant to TILA section 129D(j)(1)(A), a creditor or servicer must provide the Pre-Consummation Escrow Waiver Disclosure containing the information set forth under TILA section 129D(j)(2) when an impound, trust, or other type of account for the payment of property taxes, insurance premiums, or other purposes relating to real property securing a consumer credit transaction is not established in connection with the transaction.

Under TILA section 129D(b), however, application of these mandatory escrow requirements is limited to the following situations: (1) Where an escrow account is required by Federal or State law; (2) where the loan is made, guaranteed, or insured by a Federal or State agency; (3) where the transaction's APR exceeds the average prime offer rate by prescribed margins; and (4) where an escrow account is required by regulation.

As discussed above in the section-by-section analysis of § 1026.20(e), the Board's 2011 Escrows Proposal proposed to implement the new TILA escrow requirements, and most aspects of that proposal have been implemented in a separate rulemaking. *See* 78 FR 4726 (Jan. 22, 2013). But the Bureau proposed to implement the Pre-Consummation Escrow Establishment Disclosure and the Pre-Consummation Escrow Waiver Disclosure, along with certain other new disclosure requirements for mortgage transactions established by title XIV of the Dodd-Frank Act, as part of the TILA–RESPA Proposal. The Bureau believed that implementing these disclosures and the integrated disclosures that satisfy the applicable sections of TILA and RESPA together would benefit consumers and facilitate compliance for industry with TILA and RESPA. The Bureau also believed that consumers would benefit from a consolidated disclosure that conveys loan terms and costs to consumers in a coordinated way, and industry would benefit by integrating two sets of overlapping disclosures into a single form and by avoiding regulatory burden associated with revising systems and practices multiple times.

Like the Board's 2011 Escrows Proposal, the Bureau proposed to apply the TILA section 129D escrow requirements to all transactions that would have been subject to proposed § 1026.19(f). In doing so, the Bureau was relying on its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). The Bureau believed that requiring disclosures regarding the establishment of an escrow account, as well as the non-establishment of an escrow account, would provide consumers with information needed to evaluate the costs and fees associated with mortgage loans and to understand their ongoing monthly obligations regardless of whether the transaction would include an escrow account. The Bureau stated in the proposal that disclosure of this information would ensure that consumers have the facts needed to understand a key requirement of their mortgage loan and avoid the uninformed use of credit, consistent with the purposes of TILA. In addition, the Bureau stated that it believed that the proposed disclosures would ensure that the features of the mortgage transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a), and would improve consumer awareness and understanding of residential mortgage loans, which is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

Accordingly, the Bureau proposed to implement the disclosure requirements of TILA section 129D(h) and (j) relating to the Pre-Consummation Escrow Establishment Disclosure and the Pre-Consummation Escrow Waiver Disclosure in proposed § 1026.38(l)(7), pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). Under the subheading ''Escrow Account,'' proposed § 1026.38(l)(7) would have required the creditor to disclose whether the consumer's loan will have an escrow account, and certain details about the payments made using escrow account funds and those the consumer must make directly.

Under the ''Escrow Account'' subheading and under the reference ''For now,'' proposed § 1026.38(l)(7)(i) would have required a statement that an escrow account may also be called an ''impound'' or ''trust'' account and a statement of whether the creditor has or will establish an escrow account at or before consummation in connection with the transaction for the costs that will be paid using escrow account funds described in proposed § 1026.38(l)(7)(i)(A).

Proposed § 1026.38(l)(7)(i)(A) would have required the following disclosures under the ''For now'' reference: (1) A statement that the creditor may be liable for penalties and interest if it fails to make a payment for any costs for which the escrow account has been established, (2) a statement that the consumer would be required to pay such costs directly if no account is established, and (3) a table titled ''Escrow'' that contains, if an escrow account is or will be established, an itemization of the following: (i) The total amount the consumer will be required to pay into an escrow account over the first year after consummation for payment of the charges described in § 1026.37(c)(4)(ii), labeled ''Escrowed Property Costs Over Year 1,'' together with a descriptive name for each such charge, calculated as the amount disclosed under § 1026.38(l)(7)(i)(A)(*4*) multiplied by the number of periodic payments scheduled to be made to the escrow account during the first year after consummation; (ii) the estimated amount the consumer is likely to pay during the first year after consummation for charges described in § 1026.37(c)(4)(ii) that are known to the creditor and that will not be paid using escrow account funds, labeled ''Non-Escrowed Property Costs Over Year 1,'' together with a descriptive name for each such charge and a statement that the consumer may have to pay other costs that are not listed; (iii) the total amount disclosed pursuant to § 1026.38(g)(3), a statement that the payment is a cushion for the escrow account, labeled ''Initial Payment,'' and a reference to the information disclosed pursuant to § 1026.38(g)(3); and (iv) the amount the consumer will be required to pay into the escrow account with each periodic payment during the first year after consummation for payment of the charges described in § 1026.37(c)(4)(ii), labeled ''Monthly Payment.''

Proposed § 1026.38(l)(7)(i)(A)(*5*) would have provided that a creditor complies with the requirements of § 1026.38(l)(7)(i)(A)(*1*) and (l)(7)(i)(A)(*4*) if the creditor bases the numerical disclosures required by those paragraphs on amounts derived from the escrow account analysis required under Regulation X, 12 CFR 1024.17. Proposed comment 38(l)(7)(i)(A)(*2*)–1 and 38(l)(7)(i)(A)(*4*)–1 would have provided guidance to creditors on the calculation of the itemized amounts that would have been required to be disclosed pursuant to proposed § 1026.38(l)(7)(i)(A).

Proposed § 1026.38(l)(7)(i)(B) would have required a statement of whether the loan will not have an escrow account and the reason the loan will not have an escrow account. For example, if the loan will not have an escrow account because either the consumer declined to have one or because the creditor does not require or offer them, the disclosure must state that fact. Proposed § 1026.38(l)(7)(i)(B) also would have required a statement that the consumer must pay all property costs, such as taxes and homeowner's insurance, directly, as well as a statement that the consumer may contact the creditor to inquire about the availability of an escrow account. Finally, proposed § 1026.38(l)(7)(i)(B) would have required a table titled ''No

Escrow,'' that contains, if an escrow account will not be established, an itemization of the following: (1) the estimated total amount the consumer will pay directly for charges described in § 1026.37(c)(4)(ii) during the first year after consummation that are known to the creditor and a statement that, without an escrow account, the consumer must pay the identified costs, possibly in one or two large payments, labeled as ''Estimated Property Costs Over Year 1,'' and (2) the amount of any fee that the creditor may impose for not establishing an escrow account, labeled ''Escrow Waiver Fee.''

The disclosures that would have been required in proposed § 1026.38(l)(7)(i)(B) would have been under the ''For now'' reference that would have been required in proposed § 1026.38(l)(7)(i). Proposed comment 38(l)(7)(i)(B)(*1*)-1 would have provided guidance to creditors on calculation of the amounts that would have been required to be disclosed pursuant to proposed § 1026.38(l)(7)(i)(B).

Under the subheading ''Escrow Account'' that would have been required by proposed § 1026.38(l)(7) and under the reference ''In the future,'' proposed § 1026.38(l)(7)(ii) would have required information about future requirements for property costs. Specifically, proposed § 1026.38(l)(7)(ii)(A) would have required a statement that the consumer's property costs may change and, as a result, the consumer's escrow amount may change. Proposed § 1026.38(l)(7)(ii)(B) would have required a statement that the consumer may be able to cancel an established escrow account, but if the account is cancelled the consumer would be required to pay those costs directly unless a new escrow account is established. Proposed § 1026.38(l)(7)(ii)(C) would have required a description of the consequences of failing to pay the property costs, including the imposition of fines and penalties or imposition of a tax lien by the consumer's State and local government, and possible actions by the creditor, such as adding the outstanding amounts to the loan balance, adding an escrow account for the loan, or purchasing property insurance on the consumer's behalf (with the statement that it is likely to be more expensive and provide fewer benefits than what the consumer could purchase directly).

Comments

The Bureau received a number of comments with respect to the disclosures that would have been required by proposed § 1026.38(l)(7). An individual consumer commenter suggested that the Bureau should remove the ''Escrow Waiver Fee'' in proposed § 1026.38(l)(7)(i)(B)(*2*) because the consumer believed that such fees should be prohibited. Another individual consumer commenter, in response to proposed illustrations of form H–25, suggested that the Bureau should require creditors to disclose the amount of homeowner's association fees a consumer is required to pay with each periodic payment. The commenter stated that as proposed, illustrations of form H–25 show only the total amount of such fees during the first year after consummation.

Some industry commenters asserted that they should be allowed to modify the disclosure requirements of proposed § 1026.38(l)(7). A national trade association representing timeshare developers and similar fractional interest real estate products stated that it did not believe the disclosures that would be required by § 1026.38(l)(7) applied to timeshare transactions because property taxes and insurance are usually included in the timeshare owner's annual maintenance fee instead of being escrowed. A State trade association representing bankers asserted creditors should be able to modify the disclosures that would have been required by § 1026.38(l)(7) such that if the disclosure were intended for a consumer who establishes an escrow account, creditors should not have to provide disclosures intended for a consumer who waived escrow, and vice versa. The trade association commenter asserted that providing information that is not applicable to a particular transaction could distract the consumer from important information that actually applies to the consumer's transaction. A community bank commenter urged the Bureau to eliminate or significantly reduce the proposed disclosures. The commenter asserted that the proposed escrow disclosures are generally unnecessary. The commenter asserted that in most cases, a consumer is already aware of the consumer's hazard insurance and property tax costs, the disclosure of non-escrowed property costs is not relevant to the loan transaction, and the proposed disclosures duplicated the proposed disclosures that would have been required by proposed § 1026.38(c) and (g)(3). Another community bank commenter asserted that a creditor should not have to disclose the statement that a consumer may contact the consumer's lender to ask if the consumer's loan can have an escrow account, which would have been required by proposed § 1026.38(l)(7)(i)(B)(*1*) if the creditor does not offer escrow accounts.

Other industry commenters sought to persuade the Bureau to clarify and modify various aspects of proposed § 1026.38(l)(7). Several national trade associations representing banks, mortgage bankers, and consumer mortgage companies appeared to suggest that industry stakeholders needed clarification from the Bureau with respect to how to count the first year after consummation in order to comply with the requirement to disclose the total amount for property costs that the consumer will be required to pay into an escrow account over the first year after consummation, as would have been required by proposed § 1026.38(l)(7)(i)(A)(*1*). A community bank commenter expressed similar concerns. Trade association commenters also asserted that the Bureau should not require creditors to list that the creditor does not require an escrow account as a reason for the non-establishment of an escrow account. They asserted that this explanation was encompassed within the proposed requirement to list that a consumer declined the escrow account as a reason for the non-establishment of an escrow account because a consumer could only decline an escrow account if the creditor did not require it. The trade association commenters further asserted that there should be a separate heading above the disclosure describing the consequences of the borrower failing to pay non-escrowed items required pursuant to proposed § 1026.38(l)(7)(ii)(C) because the ''In the future'' reference in proposed § 1026.38(l)(7)(ii) would be misleading due to the fact that the consumer may have non-escrowed items that are due very shortly after closing.

The trade association commenters, along with several bank commenters, sought clarification on how to comply with proposed § 1026.38(l)(7)(i)(B)(*2*),which would have required the creditor to disclose the amount of any fee the creditor imposes on the consumer for not establishing an escrow account in connection with the transaction, if the creditor does not charge a fee associated with the non-establishment of escrow, but reflects the cost of non-establishment through the provision of different loan terms, such as a higher interest rate. One such commenter, a community bank, suggested that the Bureau not adopt § 1026.38(l)(7)(i)(B)(*2*) because consumers pay for the escrow waiver fee through higher interest rates.

Several industry commenters, including a GSE commenter, a law firm commenter submitting comments on behalf of its document software company client, and a title company commenter, sought clarification on escrowed and non-escrowed property costs. The GSE commenter also suggested that the Bureau standardize the capitalization of the term ''escrowed property costs'' on final form H–25. It asserted that inconsistency in capitalization when referring to the same item could cause consumer confusion. On page 4 of proposed form H–25 of appendix H, ''escrowed property costs'' are shown capitalized to illustrate the disclosures that would have been required by proposed § 1026.38(l)(7), but the term is not shown capitalized on page 1 of proposed form H–25 to illustrate the disclosures that would have been required by proposed § 1026.38(c)(2).

One large bank commenter recommended that the Bureau change the proposed labels ''Initial Payment'' and ''Monthly Payment'' set forth in proposed § 1026.38(l)(i)(A)(*3*) and (*4*), respectively, to ''Initial Escrow Payment'' and ''Monthly Escrow Payment,'' respectively, and remove the word ''cushion'' from the description of the initial escrow payment to avoid risking consumer confusion. The commenter also suggested that the final disclosures include a statement that would expressly state that the consumer's loan terms may not allow for escrow account cancellation because it is prohibited under certain loan programs. Further, the commenter suggested that the Bureau include a disclosure that informs the consumer that State law does not require an escrow account among the reasons why an escrow account will not be established. The commenter was concerned that without the disclaimer, a consumer who desires to establish an escrow account, but is not aware that establishment is prohibited under State law, could make unfounded claims against the creditor.

A document preparation company commenter shared the large bank commenter's concern about describing the initial escrow payment as a ''cushion,'' as would have been required by proposed § 1026.38(l)(7)(i)(A)(*3*). The commenter also stated that the statements that would be required by proposed § 1026.38(l)(7)(i)(A) would be easier to understand if the statement that the creditor may be liable for penalties and interest if it fails to make a payment for an escrowed cost preceded the statement that the consumer would have to pay such costs directly in the absence of the escrow account. In proposed form H–25, the statement on the creditor's potential liability for failing to pay escrowed costs is shown immediately following the statement about a consumer's direct payment obligations absent an escrow account. The commenter did not provide any explanation for why the proposed sequencing of the statements is not clear or why the alternative sequencing it suggested would add greater clarity to the disclosures that would be required by proposed § 1026.38(l)(7)(i)(A).

One community bank commenter expressed concern that neither the model nor the sample Closing Disclosure forms provided an example where the consumer waived escrow. It asserted that creditors would need such an example to comply with proposed § 1026.38(l)(7)(i)(B)(*1*), which would have required the disclosure of the estimated total amount the consumer will pay directly for charges described during the first year after consummation that are known to the creditor, labeled as ''Estimated Property Cost over Year 1.''

One title company commenter asserted that the Bureau should not require a creditor to provide the statement that the consumer would have to pay for property costs directly absent an escrow account but did not explain its position. The commenter also asserted that the requirement to disclose the estimated amount the consumer is likely to pay during the first year after consummation labeled ''Non-Escrowed Property Costs over Year 1,'' should be moved to the table titled ''No Escrow'' under proposed § 1026.38(l)(7)(i)(B) because disclosures about escrowed and non-escrowed costs should be segregated on the Closing Disclosure for clarity. The commenter further asserted that the Bureau must make clear that cancellation of a consumer's escrow account requires lender approval.

One bank employee commenter sought clarification on whether the creditor is required to disclose the amount of homeowner's association fees if the charge is not included in the consumer's escrow account. One mortgage broker commenter questioned why there is no disclosure that would inform a consumer about the amounts included in the cushion for the escrow account. Another commenter, self-identifying as an individual, suggested that the Bureau should define ''escrow account'' to improve consumer understanding.

Discussion

The Bureau has considered the comments and is addressing them below.

General requirements. With respect to the argument that creditors should be prohibited from imposing an escrow wavier fee, the Bureau believes such a prohibition would be outside the scope of this rulemaking. Accordingly, as long as some creditors assess the fee, it is important to inform consumers about the fee. Further, the Bureau has determined not to modify the disclosure requirements with respect to the disclosure of homeowner's association fees a consumer is required to pay with each periodic payment, because homeowner's association, condominium, or cooperative fees may not be due with every periodic payment. Adding this requirement may cause consumer confusion and be costly and burdensome to implement.

With respect to industry commenters' request that the Bureau permit creditors to modify the proposed disclosures if the creditor determines the disclosure does not enhance consumer understanding or is inapplicable to the creditor, the Bureau generally believes that permitting creditors to omit disclosures based on the creditors' own judgment that they are inapplicable or do not enhance consumer understanding risks undermining the consumer's understanding of the transaction. This would be inconsistent with the purpose of this rulemaking and the requirements of § 1026.38(t), for reasons discussed in greater detail in the section-by-section analyses to § 1026.19(e) and § 1026.38(t). With respect to comments about the applicability of the disclosures to timeshare plans, the Bureau believes whether an annual maintenance fee that includes assessments for property taxes and insurance may be an escrow account for purposes of § 1026.38(l)(7) would be a determination based on the particular facts and circumstances regarding the transaction. Comment 38(g)–5 adopted in this final rule also provides guidance on the definition of an escrow account, and the guidance applies to the determination of whether an escrow account has been established for purposes of § 1026.38(l)(7). Further, the Bureau acknowledges that the initial escrow payment and monthly payment disclosures that would have been required by proposed § 1026.38(l)(7)(i)(A)(*3*) and (*4*) reflect disclosures that would have been required by proposed § 1026.38(g)(3) and (c)(1), respectively. But TILA section 129D(h) requires the creditor to

provide these disclosures in the Pre-Consummation Escrow Establishment Disclosure, and the Bureau believes that implementing these statutorily-required disclosures enhances consumer understanding of the escrow disclosure.

With respect to industry commenters that requested that the Bureau modify various aspects of the content that would have been required by proposed § 1026.38(l)(7), the Bureau has considered their suggestions and is making adjustments to the proposed disclosures to the extent the Bureau believes that these adjustments enhance consumer understanding, as described below. A number of comments the Bureau received on proposed § 1026.38(l)(7) sought clarifications on the content of the proposed disclosure or expressed compliance concerns, and the Bureau is responding to them separately below.

Content of proposed disclosures. The Bureau is adjusting the proposed labels ''Initial Payment'' and ''Monthly Payment'' set forth respectively in proposed § 1026.38(l)(i)(A)(*3*) and (*4*), to ''Initial Escrow Payment'' and ''Monthly Escrow Payment,'' respectively. As noted by the commenter, adding the word ''Escrow'' may clarify the nature of the payment disclosed. The Bureau believes the adjustment would enhance consumer understanding. The Bureau has decided not to finalize the proposed requirement that creditors state that the creditor does not require an escrow account as a reason for the non-establishment of an escrow account. The Bureau believes that the explanation is encompassed within a related disclosure, for reasons provided by the commenters. The Bureau is not adding to the list of reasons that the creditor must disclose for escrow account non-establishment. As discussed above, one large bank commenter suggested that the Bureau include a disclosure that informs the consumer that State law does not require an escrow account as a reason why an escrow account will not be established. The Bureau believes that the State laws at issue, as described by the commenter, do not support the argument that certain State laws prohibit the establishment of escrow accounts. It appears that the laws only prohibit creditors from requiring the consumer to establish or keep an escrow account. It does not appear that the referenced laws prohibit a creditor from establishing an escrow account for a consumer at the consumer's request.

The Bureau does not believe any other adjustments or modifications to the content or format of the disclosure would enhance consumer understanding. The Bureau does not believe it is necessary to define ''escrow account'' further. As the proposed disclosure indicates, variations exist with respect to the term (*i.e.,* such accounts could also be called ''impound'' or ''trust'' accounts). Further, the Bureau believes that by the time that the consumer receives the disclosures that would have been required by § 1026.38(l)(7), the consumer would have become familiarized with the term and the purpose of such accounts by seeing the term, first disclosed in the Loan Estimate, and by going through the origination process. The Bureau also believes that the capitalization decision the Bureau made with respect to the term ''escrowed property costs'' is appropriate. On page 1 of form H–25, the term is part of a sentence. The Bureau believes that the absence of capitalization makes the sentence easier to read and comprehend. In contrast, on page 4, the term is capitalized because it is a label, and capitalization enhances prominence.

The Bureau believes that requiring creditors to use the term ''cushion'' for the disclosure required by § 1026.38(l)(7)(i)(A)(*3*) to describe the initial escrow payment is appropriate because the term enhances consumer understanding that the initial escrow payment may exceed a monthly payment's worth of escrowed charges. The Bureau also does not believe that further explanation is needed to inform consumers about the amounts included in the ''cushion.'' This information is already disclosed pursuant to § 1026.38(g)(3), and the disclosure under § 1026.38(l)(7)(i)(A)(*3*) includes a cross-reference to that section.

The Bureau is also not persuaded that a statement that the consumer's loan terms may not allow for the cancellation of an escrow account is necessary. The Bureau believes that the disclosures proposed under the reference ''In the future'' state clearly that the consumer may not be able to cancel the consumer's escrow account. The Bureau also does not believe that the reference ''In the future'' could mislead consumers about their responsibilities to pay non-escrowed property costs. The disclosure that would have been required by proposed § 1026.38(l)(7)(i)(A)(*2*) clearly informs the consumer that the consumer should expect to have such costs due within the first year after consummation.

In response to a suggestion to move the disclosure about a consumer's non-escrowed property costs over the first year after consummation to the proposed ''No Escrow'' table, the Bureau does not believe that the disclosure belongs in the ''No Escrow'' table. The disclosure is appropriately placed under the ''Escrow'' table as proposed because it is a disclosure provided to a consumer that has established an escrow account and reflects the possibility that the consumer will have property costs that will not be paid using escrow account funds. The Bureau is also not adopting the suggestion that the Bureau withdraw the proposed requirement that the creditor provide the statement that the consumer would have to pay for property costs directly, absent an escrow account. The disclosure was proposed to implement a statutory requirement set forth in TILA section 129D(j), and the Bureau believes that it would enhance consumer understanding.

The Bureau has also considered the suggestion that the disclosure reflect that the consumer may only be able to cancel the consumer's escrow account with the creditor's consent. The Bureau believes that escrow account cancellation criteria could vary significantly, and the Bureau is concerned that adopting the suggestion to add certain specific criteria to the disclosure may confuse consumers, which would be inconsistent with the purpose of the integrated disclosures, which is to aid consumer understanding. Lastly, with respect to the suggestion that the Bureau re-sequence certain statements that would have been required by proposed § 1026.38(l)(7)(i)(A) as shown on proposed form H–25, the Bureau does not believe the adjustment would enhance consumer understanding. Additionally, consumer testing results indicated that the model disclosure performed well with consumers, and the commenter did not offer any explanation for why the proposed sequence is unclear. *See* Kleimann Quantitative Testing Report, at 69–70.

Compliance questions. With respect to requests that the Bureau clarify how to count the first year after consummation to facilitate compliance with § 1026.38(l)(7)(i)(A)(*1*), the Bureau believes that it is unnecessary because the text of proposed § 1026.38(l)(7)(i)(A)(*1*), which the Bureau is adopting as proposed in this final rule, would have provided clear instructions on how to determine the consumer's escrowed property costs over the first year after consummation. Additionally, some commenters had questions with respect to how to determine what charges are ''escrowed property costs'' and what charges are ''non-escrowed property costs.'' The Bureau believes that these questions are clearly addressed in proposed

§ 1026.38(l)(7)(i)(A)(*1*) and (*2*), respectively, which would have directed the creditor to § 1026.37(c)(4)(ii) to make the determination. With respect to whether the creditor is required to disclose the amount of homeowner's association fees if the charge is not included in the consumer's escrow account, § 1026.19(f)(1)(i) requires the creditor to disclose items on the Closing Disclosure that reflect the actual terms of the transaction. Additionally, proposed § 1026.38(l)(7)(i)(A)(*2*) would have required that the creditor disclose ''non-escrowed property costs'' over the first year after consummation, which would have included non-escrowed homeowner's association fees, to the extent that the consumer is likely to pay these costs over the first year after consummation and to the extent that they are known to the creditor. Accordingly, if, for example, the consumer's escrowed costs do not include homeowner's association fees, but the creditor knows that the consumer is likely to pay $1,000 in homeowner's association fees, then the creditor must disclose the fee as required by § 1026.38(l)(7)(i)(A)(*2*).

With respect to questions about how to disclose the Escrow Waiver Fee as required by § 1026.38(l)(7)(i)(B)(*2*) when the creditor does not impose a fee on the consumer for not establishing an escrow account in connection with the mortgage transaction, there would be no amount to disclose, and the disclosure would be left blank, as illustrated by form H–25 of appendix H to Regulation Z. Lastly, the Bureau recognizes that proposed form H–25 only provides illustrative examples of transactions where an escrow account has been established. However, the Bureau does not believe that an example illustrating a scenario in which the borrower has waived the escrow account is necessary to illustrate compliance with the proposed requirement to disclose estimated property costs over the first year after consummation, because, in that scenario, the calculation method is simple: all property costs described in § 1026.37(c)(4)(ii) are ''non-escrowed property costs'' if the consumer has waived the escrow account.

For the reasons stated above, the Bureau does not believe that it is necessary to make adjustments or modifications to proposed § 1026.38(l)(7) to address these concerns. But, as discussed above, the Bureau is making minor adjustments and modifications to the content and format of the disclosures in proposed § 1026.38(l)(7) as illustrated by form H–25 of appendix H to Regulation Z to enhance consumer understanding. The Bureau adopts § 1026.38(l)(7) and related commentary, with such adjustments and modifications, pursuant to its authority under section 105(a) of TILA, Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b).

Final Rule

Under the subheading ''Escrow Account,'' § 1026.38(l)(7) requires the creditor to disclose whether the consumer's loan will have an escrow account, and certain details about the payments made using escrow account funds and those the consumer must make directly. Under the ''Escrow Account'' subheading and under the reference ''For now,'' § 1026.38(l)(7)(i) requires a statement that an escrow account may also be called an ''impound'' or ''trust'' account and a statement of whether the creditor has or will establish an escrow account at or before consummation in connection with the transaction for the costs that will be paid using escrow account funds described in § 1026.38(l)(7)(i)(A). Section 1026.38(l)(7)(i)(A) requires the following disclosures under the ''For now'' reference: (1) a statement that the creditor may be liable for penalties and interest if it fails to make a payment for any costs for which the escrow account has been established, (2) a statement that the consumer would be required to pay such costs directly if no account is established, and (3) a table titled ''Escrow'' that contains, if an escrow account is or will be established, an itemization of the following: (i) the total amount the consumer will be required to pay into an escrow account over the first year after consummation for payment of the charges referenced in § 1026.37(c)(4)(ii), labeled ''Escrowed Property Costs over Year 1,'' together with a descriptive name for each such charge, calculated as the amount disclosed under § 1026.38(l)(7)(i)(A)(*4*) multiplied by the number of periodic payments scheduled to be made to the escrow account during the first year after consummation; (ii) the estimated amount the consumer is likely to pay during the first year after consummation for charges described in § 1026.37(c)(4)(ii) that are known to the creditor and that will not be paid using escrow account funds, labeled ''Non-Escrowed Property Costs over Year 1,'' together with a descriptive name for each such charge and a statement that the consumer may have to pay other costs that are not listed; (iii) the total amount disclosed pursuant to § 1026.38(g)(3), a statement that the payment is a cushion for the escrow account, labeled ''Initial Escrow Payment,'' and a reference to the information disclosed pursuant to § 1026.38(g)(3); and (iv) the amount the consumer will be required to pay into the escrow account with each periodic payment during the first year after consummation for payment of the charges described in § 1026.37(c)(4)(ii), labeled ''Monthly Escrow Payment.'' As discussed above, the labels ''Initial Escrow Payment'' and ''Monthly Escrow Payment'' reflect adjustments the Bureau has made in response to comments.

Section 1026.38(l)(7)(i)(A)(*5*) provides that a creditor complies with the requirements of § 1026.38(l)(7)(i)(A)(*1*) and (l)(7)(i)(A)(*4*) if the creditor bases the numerical disclosures required by those paragraphs on amounts derived from the escrow account analysis required under Regulation X, 12 CFR 1024.17. Comments 38(l)(7)(i)(A)(*2*)–1 and 38(l)(7)(i)(A)(*4*)–1 are adopted as proposed and set forth guidance with respect to the calculation of the itemized amounts that are required to be disclosed pursuant to § 1026.38(l)(7)(i)(A).

Section 1026.38(l)(7)(i)(B) requires a statement of whether the loan will not have an escrow account and the reason the loan will not have an escrow account. For example, if the loan will not have an escrow account because either the consumer declined to have one or the creditor does not offer them, the disclosure must state that fact. The finalized statement is different from the proposed statement because, as discussed above, commenters observed that a consumer could only decline an escrow account if the creditor did not require it. The Bureau is persuaded that it is unnecessary to require creditors to list ''the creditor does not require an escrow account'' as separate reason for why the loan will not have an escrow account.

Section 1026.38(l)(7)(i)(B) also requires a statement that the consumer must pay all property costs, such as taxes and homeowner's insurance, directly, as well as a statement that the consumer may contact the creditor to inquire about the availability of an escrow account. Finally, § 1026.38(l)(7)(i)(B) requires a table titled ''No Escrow,'' that contains, if an escrow account will not be established, an itemization of the following: (1) the estimated total amount the consumer will pay directly for charges described in § 1026.37(c)(4)(ii) during the first year after consummation that are known to the creditor and a statement that, without an escrow account, the consumer must pay the identified costs,

possibly in one or two large payments, labeled as ''Estimated Property Costs over Year 1,'' and (2) the amount of any fee that the creditor may impose for not establishing an escrow account, labeled ''Escrow Waiver Fee.'' The disclosures required by § 1026.38(l)(7)(i)(B) are under the ''For now'' reference that is required by § 1026.38(l)(7)(i). Comment 38(l)(7)(i)(B)(*1*)–1 is adopted as proposed and provides guidance with respect to the calculation of the amounts that are required to be disclosed pursuant to § 1026.38(l)(7)(i)(B).

Under the subheading ''Escrow Account,'' required by § 1026.38(l)(7) and under the reference ''In the future,'' § 1026.38(l)(7)(ii) requires information about future requirements for property costs. Specifically, § 1026.38(l)(7)(ii)(A) requires a statement that the consumer's property costs may change and, as a result, the consumer's escrow amount may change. Section 1026.38(l)(7)(ii)(B) requires a statement that the consumer may be able to cancel an established escrow account, but if the account is cancelled the consumer would be required to pay those costs directly unless a new escrow account is established.

Section 1026.38(l)(7)(ii)(C) requires a description of the consequences of failing to pay the property costs, including the imposition of fines and penalties or imposition of a tax lien by the consumer's State and local government, and possible actions by the creditor, such as adding the outstanding amounts to the loan balance, adding an escrow account for the loan, or purchasing property insurance on the consumer's behalf (with the statement that it is likely to be more expensive and provide fewer benefits than what the consumer could purchase directly).

Legal authority. The Bureau believes that requiring disclosures regarding the establishment of an escrow account, as well as the non-establishment of an escrow account, will provide consumers with information needed to evaluate the costs and fees associated with mortgage loans and to understand their ongoing monthly obligations regardless of whether the transaction would include an escrow account. Disclosure of this information will ensure that consumers have the facts needed to understand a key requirement of their mortgage loan and avoid the uninformed use of credit, consistent with the purposes of TILA. In addition, the Bureau believes that the disclosures adopted in this final rule will ensure that the features of the mortgage transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a), and will improve consumer awareness and understanding of residential mortgage loans, which is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

38(m) Adjustable Payment Table

For transactions subject to proposed § 1026.19(f), the Bureau proposed § 1026.38(m) pursuant to TILA section 128(b)(2)(C)(ii), its implementation authority under TILA section 105(a), and its authority under section 1032(a) of the Dodd-Frank Act and RESPA section 19(a). Proposed § 1026.38(m) would have required creditors to disclose on the Closing Disclosure the Adjustable Payment table required by § 1026.37(i) if, under the terms of the legal obligation, the principal and interest payment may adjust without a corresponding adjustment to the interest rate or if the loan is a seasonal payment product under § 1026.38(a)(5)(iii). The information required to be disclosed in the table would have included: the periodic payment at the first adjustment of the payment; the number of the earliest number payment that could reflect an adjustment to the amount of the periodic payment; the maximum possible principal and interest payment; the number of the earliest payment that could reflect the maximum possible periodic payment; an affirmative or negative statement of whether the loan has an interest only, payment-option, step-payment period, or seasonal payment period; and the length of such a period and the payments affected.

The requirements of proposed § 1026.38(m) would have mirrored those of proposed § 1026.37(i). Accordingly, proposed comment 38(m)–1 would have directed creditors to the commentary to proposed § 1026.37(i) for guidance on the disclosures required by proposed § 1026.38(m). Proposed comment 38(m)–2 would have clarified that, although the disclosure required by proposed § 1026.38(m) is to be presented under a different master heading than the disclosure required by proposed § 1026.37(i), the other requirements applicable to proposed § 1026.37(i) apply to proposed § 1026.38(m). Proposed comment 38(m)–3 would have clarified that the prohibition against presenting the table required by proposed § 1026.37(i) except if the conditions of that paragraph are satisfied applies to proposed § 1026.38(m). Proposed comment 38(m)–4 would have clarified that the final terms that will apply to the credit transaction must be disclosed pursuant to proposed § 1026.38(m).

Comments received related to the AP table are discussed in the section-by-section analysis of § 1026.37(i). The Bureau did not receive any comments specifically related to proposed § 1026.38(m) or its related commentary that were not discussed with respect to § 1026.37(i). Accordingly, the Bureau is adopting § 1026.38(m) and comments 38(m)–1 and –2 as proposed. The Bureau is adopting comments 38(m)–3 and –4 substantially as proposed but with minor modifications for clarity. For a detailed description of the Bureau's implementation of TILA section 128(b)(2)(C)(ii) and use of its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and RESPA section 19(a), see the section-by-section analysis of § 1026.37(i).

38(n) Adjustable Interest Rate Table

For transactions subject to § 1026.19(f), proposed § 1026.38(n) would have used the implementation authority of TILA section 105(a) and the authority of Dodd-Frank Act section 1032(a) and RESPA section 19(a) to require creditors to disclose on the Closing Disclosure the Adjustable Interest Rate table required by § 1026.37(j) if, under the final terms of the legal obligation, the interest rate may adjust after consummation. The information required to be disclosed in the table as proposed would have included: (i) The index and margin for an adjustable rate loan for which the interest rate will adjust according to an index that is beyond the control of the creditor; (ii) for a loan with an interest rate that changes based on something other than such an index, such as a ''step-rate'' product, the amount of the scheduled adjustments and their frequency; (iii) the interest rate at consummation; (iv) the minimum and maximum possible interest rates after consummation of the loan, after any introductory or teaser rate expires; (v) the maximum possible change in the interest rate at the first adjustment; (vi) the maximum possible change for subsequent adjustments of the interest rate; (vii) the month after consummation when the interest rate may first change, counted from the date that interest begins to accrue for the first periodic principal and interest payment; and (viii) the frequency of subsequent interest rate adjustments after consummation. The requirements of proposed § 1026.38(n) would have mirrored those of proposed § 1026.37(j). Accordingly, proposed comment 38(n)–1 would have directed creditors to the commentary to proposed § 1026.37(j) for

guidance on the disclosures required by proposed § 1026.38(n). Proposed comment 38(n)–4 would have clarified that, although the disclosure required pursuant to proposed § 1026.38(n) is to be presented under a different master heading than the disclosure required by § 1026.37(j), the other requirements applicable to § 1026.37(j) apply to proposed § 1026.38(n). Proposed comment 38(n)–3 would have clarified that the prohibition against presenting the table required by § 1026.37(j) if the interest rate will not change after consummation applies to proposed § 1026.38(n). Proposed comment 38(n)–4 would have clarified that the final terms that will apply to the credit transaction must be disclosed pursuant to proposed § 1026.38(n).

Comments received related to the AIR table are discussed in the section-by-section analysis of § 1026.37(j). The Bureau did not receive any comments specifically related to proposed § 1026.38(n) or its accompanying commentary that were not discussed with respect to § 1026.37(j). Accordingly, the Bureau is adopting § 1026.38(n) and comments 38(n)–1 and –2 as proposed. The Bureau is adopting comments 38(n)–3 and –4 substantially as proposed but with minor modifications for clarity.

For a detailed description of the Bureau's implementation of these rules and use of TILA section 105(a), Dodd-Frank Act section 1032(a), and RESPA section 19(a) authority, see the section-by-section analysis of § 1026.37(j) above.

38(o) Loan Calculations

Proposed § 1026.38(o) would have required creditors to disclose in a separate table under the heading ''Loan Calculations,'' certain information required by TILA section 128(a)(2) through (5), (8), (17), and (19). Specifically, the table required by proposed § 1026.38(o) would have needed to contain the total of payments, finance charge, amount financed, annual percentage rate, total interest percentage, and the approximate cost of funds disclosures described in proposed § 1026.38(o)(1) through (6). Pursuant to proposed § 1026.38(t) and form H–25, the table required by proposed § 1026.38(o) would have appeared on the final page of the Closing Disclosure, apart from key loan terms identified on the first page of the Closing Disclosure. The Bureau observed in the proposal that, based on research regarding consumer comprehension and behavior and the results of the Bureau's consumer testing, the Bureau believed that the disclosure of these calculations on the final page of the Closing Disclosure and apart from key loan terms may reduce information overload and enhance the overall understanding of the Closing Disclosure.

The Bureau further observed that research suggests that consumers can process only a finite amount of information when making complex decisions. As a result, an effective disclosure regime minimizes the risk of distraction and overload by emphasizing information that is important to consumer comprehension, while placing less emphasis on disclosures that are less useful to consumers. The Bureau noted that consumer testing conducted by the Bureau for purposes of developing the Closing Disclosure and by the Board for purposes of its 2009 Closed-End Proposal indicates that consumer understanding is enhanced if the loan calculations in proposed § 1026.38(o) are disclosed together and less prominently than disclosures that are most important to consumers' understanding of their mortgage transactions, such as interest rate and monthly payment. *See* Kleimann Testing Report at 297–304; 74 FR 43293–98, 43306–09.

The Bureau solicited comment on whether the disclosures in proposed § 1026.38(o) would enhance consumers' ability to understand their loan transactions or serve other important purposes and, if not, whether the Bureau should use its authority under TILA section 105(a) and (f) and Dodd-Frank Act sections 1032(a) and 1405(b) to exempt transactions subject to § 1026.19(f) from certain of these requirements.

38(o)(1) Total of Payments

TILA section 128(a)(5) and (8) requires creditors to disclose the sum of the amount financed and the finance charge using the term ''Total of Payments,'' and a descriptive explanation of that term. 15 U.S.C. 1638(a)(5), (8). Current § 1026.18(h) implements these statutory provisions by requiring creditors to disclose the ''total of payments,'' using that term, and a descriptive explanation that the figure represents the amount the consumer will have paid after making all scheduled payments. Current comment 18(h)–2 provides that creditors must calculate the total of payments amount for transactions subject to § 1026.18(s) using the rules in § 1026.18(g) and associated commentary and, for adjustable rate transactions, comments 17(c)(1)–8 and –10. Current comment 18(g)–1 provides guidance to creditors on the amounts to be included in the total of payments calculation. Current comment 18(h)–1 allows creditors to revise the total of payments descriptive statement for variable-rate transactions to convey that the disclosed amount is based on the annual percentage rate and may change. In addition, current comments 18(h)–3 and –4 permit creditors to omit the total of payments disclosure in certain single-payment transactions and for demand obligations that have no alternate maturity rate.

The Bureau's Proposal

Proposed § 1026.38(o)(1) would have implemented the requirements of TILA section 128(a)(5) and (8) for transactions subject to proposed § 1026.19(f), pursuant to the Bureau's implementation authority under TILA section 105(a). Specifically, proposed § 1026.38(o)(1) would have required creditors to disclose on the Closing Disclosure the term ''Total of Payments,'' and the statement that the disclosure is ''the total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.'' For the reasons set forth in the section-by-section analysis of § 1026.37(l)(1)(i), the Bureau proposed to modify the requirement of TILA section 128(a)(5) that the total of payments disclose the sum of the amount financed and the finance charge. Research has shown that consumers misunderstand the total of payments disclosure under current rules and do not use it when evaluating loan offers.

Thus, the Bureau proposed to modify the current rules and include in the total of payments calculation principal, interest, mortgage insurance (including any prepaid or escrowed mortgage insurance), and loan costs disclosed pursuant to proposed § 1026.37(f). Proposed comment 38(o)(1)–1 would have clarified that, for purposes of § 1026.18(o)(1), the total of payments is calculated in the same manner as the ''In 5 Years'' disclosure pursuant to § 1026.37(l)(1)(i), except that the disclosed amount reflects the total payments through the end of the loan term. The comment also would have referred creditors to comment 37(1)(1)(i)–1 for guidance on the amounts included in the total of payments calculation.

Comments

The Bureau received very few comments on the disclosure of the total of payments calculation in the Closing Disclosure. One consumer commenter supported the inclusion of the total of payments calculation on the Closing Disclosure. Two industry trade

association commenters requested additional guidance on how to calculate this particular disclosure. An industry commenter sought clarification as to whether hard-coded text is required on this disclosure or if the text can change, and if the latter, sought acceptable verbiage that could be used.

Final Rule

For the reasons discussed below, the Bureau is adopting § 1026.38(o)(1) and comment 38(o)(1)–1 as proposed. As discussed in the section-by-section analysis of § 1026.37(l) and noted above, the Bureau has decided to modify the total of payments disclosure to reflect the total payments over five years, rather than the life of the loan, on the Loan Estimate provided to consumers near the time of application. The Bureau determined based upon research and consumer testing that the ''In 5 Years'' disclosure is beneficial to consumers in comparing loans they are considering, and that it is a more accessible time period for consumers than the life of the loan (typically 30 years). Notwithstanding concerns about the utility of the total of payments disclosure on the Loan Estimate, the Bureau recognizes that the total of payments disclosure offers some important benefits on the Closing Disclosure. The Closing Disclosure is different than the Loan Estimate; although a five-year metric is appropriate for the Loan Estimate, a metric showing the total of payments for the full term is more appropriate for the Closing Disclosure. The total of payments disclosure is commonly used by creditors and supervisory agencies for compliance purposes, as well as by consumer advocates. In addition, consumer testing indicates that consumer participants used the total of payments calculation and it helped increase their understanding of loan costs. During the Bureau's consumer testing, both experienced and inexperienced consumer participants often commented on the total amount and saw it as an important piece of information that would assist them in evaluating a loan. *See* Kleimann Testing Report at 252.

For the reasons set forth in the section-by-section analysis of § 1026.37(l)(1)(i)—to improve consumer understanding of the meaning of the total of payments calculation and clarify its importance in the decision-making process—the Bureau is modifying the requirement of TILA section 128(a)(5) that the total of payments disclose the sum of the amount financed and the finance charge. Instead, the Bureau has decided to include in the total of payments calculation principal, interest, mortgage insurance (including any prepaid or escrowed mortgage insurance), and loan costs disclosed pursuant to § 1026.37(f). The Bureau is making this modification pursuant to TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). By focusing on amounts that are more likely to be understood and used by consumers, unlike the regulatory amounts of the finance charge and the amount financed, the Bureau believes that the total of payments disclosure will give consumers a way of measuring the cost of the loan with more readily understandable information, which is one of the purposes of the integrated disclosures. Dodd-Frank Act sections 1098 and 1100A. The Bureau believes that this modification will enhance consumer understanding of mortgage transactions because including loan costs, rather than the finance charge, in the total of payments calculation will allow consumers to identify the costs that are included in the total of payments calculation. Consumers can refer to other parts of the Closing Disclosure to determine which loan costs are included in the total of payments disclosure, in contrast to the components of the finance charge, which the consumer has no way to identify. Further, the Bureau believes that including the same costs and fees in the total of payments disclosure as are in the ''In 5 Years'' disclosure pursuant to § 1026.37(l)(1)(i) will ease compliance burden for creditors. The Bureau believes this modification will improve consumer awareness and understanding of residential mortgage loans, which is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b). In addition, the Bureau believes that the disclosure ensures that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a).

With respect to the comments seeking additional guidance in calculating the total of payments disclosure, comment 38(o)(1)–1 clarifies that, for purposes of § 1026.38(o)(1), the total of payments is calculated in the same manner as the ''In 5 Years'' disclosure pursuant to § 1026.37(l)(1)(i), except that the disclosed amount reflects the total payments through the end of the loan term. As discussed above, the Bureau also believes that including the same costs and fees in the total of payments disclosure as are in the ''In 5 Years'' disclosure pursuant to § 1026.37(l)(1)(i) will ease compliance burden for creditors.

Section 1026.38(o)(1) requires creditors to disclose on the Closing Disclosure the term ''Total of Payments,'' and the statement that the disclosure is the ''total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.''

The final rule does not allow creditors to modify the descriptive statement that accompanies the total of payments disclosure for variable-rate transactions or to omit the total of payments disclosure in single-payment transactions and for demand obligations that have no alternate maturity rate, in contrast to current comments 18(h)–1, –3, and –4. The Bureau believes that consistent disclosures will better enhance consumer understanding of credit terms and will ease compliance burden for creditors.

38(o)(2) Finance Charge

TILA section 128(a)(3) and (8) requires creditors to disclose the ''finance charge'' and a brief descriptive statement of the finance charge. 15 U.S.C. 1638(a)(3), (8). Current § 1026.18(d) implements these provisions by requiring creditors to disclose the ''finance charge,'' and a brief description such as ''the dollar amount the credit will cost you.'' Current comment 18(d)–1 allows creditors to modify the descriptive statement for variable rate transactions with a phrase indicating that the disclosed amount is subject to change. In addition, current § 1026.17(a)(2), which implements TILA section 122(a), requires creditors to disclose the finance charge (along with the APR) more conspicuously than any other required disclosure, except the creditor's identity. The rules addressing which charges must be included in the finance charge are set forth in TILA section 106, and are discussed more fully above with respect to § 1026.4.

The Bureau's Proposal

Proposed § 1026.38(o)(2) would have implemented TILA section 128(a)(3) and (8) for transactions subject to § 1026.19(f), pursuant to the Bureau's implementation authority under TILA section 105(a). Proposed § 1026.38(o)(2) would have required creditors to disclose the finance charge, using that term, and the descriptive statement ''the

dollar amount the loan will cost you,'' in the table required by proposed § 1026.38(o). Proposed comments 38(o)(2)–1 and –2 would have provided guidance to creditors on how to disclose and calculate the finance charge. The proposed rule would not have allowed creditors to modify the descriptive statement that accompanies the finance charge disclosure for variable-rate transactions, in contrast to current comment 18(d)–1, because the Bureau believed that consistent disclosures will better enhance consumer understanding of credit terms and will ease compliance burden for creditors. Proposed § 1026.38(o)(2) also would have provided that the disclosed finance charge and other disclosures affected by the disclosed finance charge (including the amount financed and the annual percentage rate) shall be treated as accurate if the amount disclosed as the finance charge is understated by no more than $100 or is greater than the amount required to be disclosed. However, the Bureau solicited comment on whether and the amount by which this tolerance should be raised in light of the proposed expanded definition of the finance charge for closed-end transactions secured by real property or a dwelling. The Bureau proposed to exercise its authority under TILA section 105(a) and (f), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b) to except transactions subject to proposed § 1026.19(f) from the requirement under TILA section 122(a) that the finance charge be disclosed more conspicuously than other disclosures.

Comments

The Bureau received very few comments on this aspect of the proposal. One industry commenter argued that if the Bureau adopts an ''all-in'' APR, the current $100 tolerance for the finance charge should be adjusted for inflation. One industry commenter was confused as to from where the Finance Charge numbers originate. Another industry commenter sought clarification as to whether hard-coded text is required for this disclosure or if the text can change, and if the latter, sought acceptable verbiage that could be used. One law firm commenter argued that the ''Finance Charge'' disclosure should be moved to a more prominent part of the Closing Disclosure.

Final Rule

For the reasons discussed below, the Bureau is adopting § 1026.38(o)(2) and comments 38(o)(2)–1 and 38(o)(2)–2 as proposed. Section 1026.38(o)(2) requires creditors to disclose the finance charge, using that term, and the descriptive statement ''the dollar amount the loan will cost you.'' The Bureau is exercising its authority under TILA section 105(a) and (f), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b) to except transactions subject to § 1026.19(f) from the requirement under TILA section 122(a) that the finance charge be disclosed more conspicuously than other disclosures. The Bureau has considered the purposes for which it may exercise its authority under TILA section 105(a) and, based on that review, believes that the exception is appropriate.

Here, the exception from the TILA section 122(a) requirement that the finance charge be more conspicuously disclosed than other disclosures effectuates TILA's purpose of achieving a meaningful disclosure of credit terms for transactions subject to § 1026.19(f). As discussed in the section-by-section analysis of § 1026.37(l), consumers generally do not understand the finance charge and do not use it when making decisions about their loan. With respect to the comment that the finance charge be disclosed in a more prominent place on the Closing Disclosure, the Bureau believes that consumer understanding is enhanced by disclosing the finance charge with other loan calculations, such as total of payments, amount financed, and total interest percentage, for transactions subject to § 1026.19(f), and that a more prominent disclosure of the finance charge may not provide a meaningful benefit to consumers. Rather, disclosure of the finance charge separately from the information that is important to consumer understanding of credit terms may enhance consumer understanding by avoiding information overload. Although concerns regarding consumer distraction and information overload persist at the stage of the transaction where the consumer receives the Closing Disclosure, the Bureau believes that disclosing the finance charge with other loan calculations on the final page of the Closing Disclosure as a general reference for the consumer after closing will mitigate these concerns.

The Bureau also recognizes that creditors, consumer advocates, and State and Federal supervisory agencies use the finance charge when calculating or verifying the calculation of the APR, determining compliance with certain price thresholds, and for a range of other purposes, including the right of rescission pursuant to TILA section 125. 15 U.S.C. 1635. Accordingly, to preserve the finance charge disclosure for these purposes, the Bureau is requiring creditors to disclose the finance charge on the Closing Disclosure provided to consumers at least three days prior to consummation.

The Bureau also is adopting this exemption pursuant to its authority under TILA section 105(f). 15 U.S.C. 1604(f)(1). The Bureau has considered the factors in TILA section 105(f) and has determined that, for the reasons discussed above, an exemption is appropriate under that provision. Specifically, the Bureau has determined that the exemption is appropriate for all affected borrowers, regardless of their other financial arrangements and financial sophistication and the importance of the loan to them. Similarly, the Bureau has determined that the exemption is appropriate for all affected loans, regardless of the amount of the loan and whether the loan is secured by the principal residence of the consumer. Furthermore, the Bureau has determined that, on balance, the exemption will simplify the credit process without undermining the goal of consumer protection or denying important benefits to consumers. Highlighting the finance charge on the disclosure form contributes to overall consumer confusion and information overload, complicates the mortgage lending process, and hinders consumers' ability to understand important loan terms. For these same reasons, the Bureau has determined that the disclosure of the finance charge would ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances, consistent with section 1032(a) of the Dodd-Frank Act, and will improve consumer awareness and understanding of residential mortgage loans, which is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

One industry commenter was confused as to from where the Finance Charge numbers originate, but the Bureau notes that comment 38(o)(2)–1 clarifies that the finance charge is calculated in accordance with the requirements of § 1026.4 and its commentary. One industry commenter argued that if the Bureau adopts the expanded definition of the finance charge the Bureau also proposed in the TILA–RESPA Proposal, then the current $100 tolerance for the finance charge should be adjusted for inflation. The Bureau notes that this concern is moot

because the Bureau has decided not to adopt an expanded definition of the finance charge at this time. See the section-by-section analysis of § 1026.4, above.

38(o)(3) Amount Financed

TILA section 128(a)(2) and (8) requires creditors to disclose the ''amount financed,'' using that term, and a brief descriptive statement. 15 U.S.C. 1638(a)(2), (8). Current § 1026.18(b) implements this provision by requiring creditors to disclose the amount financed, using that term, together with a brief description that the amount financed represents the amount of credit of which the consumer has actual use.

The Bureau's Proposal

The Bureau proposed new § 1026.38(o)(3) to implement TILA section 128(a)(2) and (8) for transactions subject to proposed § 1026.19(f), pursuant to its implementation authority under TILA section 105(a). Proposed § 1026.38(o)(3) would have required creditors to disclose the amount financed, using that term, together with the descriptive statement, ''the loan amount available after paying your upfront finance charge.'' Proposed comment 38(o)(3)–1 would have clarified that, for purposes of § 1026.38(o)(3), the amount financed disclosure is calculated in accordance with the requirements of § 1026.18(b) and its commentary.

Comments

In response to the proposal, several consumer advocacy group and industry trade association commenters argued that the ''Amount Financed'' disclosure should be eliminated because it is confusing to consumers and since it serves no useful purpose to the consumer as the loan amount is now included in the Closing Disclosure. These commenters contended that even though this disclosure is mandated by the Dodd-Frank Act, the Bureau should exercise its exception and modification authority to eliminate it, consistent with avoiding consumer confusion and information overload. One law firm commenter argued that the ''Amount Financed'' disclosure should be moved to a more prominent part of the Closing Disclosure.

An industry commenter suggested that the Bureau describe the ''Amount Financed'' disclosure as the loan amount reduced by the prepaid finance charge. This commenter also suggested that the Bureau explain that the prepaid finance charge entails the closing costs associated with getting a mortgage loan rather than paying cash. An industry commenter sought clarification as to whether hard-coded text is required for this disclosure or if the text can change, and if the latter, sought acceptable verbiage that could be used.

Final Rule

For the reasons discussed below, the Bureau is adopting § 1026.38(o)(3) and comment 38(o)(3)–1 as proposed. Although research shows that many consumers do not fully understand the amount financed, the ''Amount Financed'' is an existing Regulation Z disclosure used to calculate the APR and helps facilitate compliance. The Bureau believes that requiring creditors to disclose the amount financed, using that term, together with the descriptive statement, ''the loan amount available after paying your upfront finance charge,'' is appropriate to serve TILA's purpose of assuring a meaningful disclosure of credit terms. Comment 38(o)(3)–1 clarifies that the amount financed is calculated in accordance with the requirements of § 1026.18(b) and its commentary.

With respect to the comment that the amount financed be disclosed more prominently on the Closing Disclosure, the Bureau believes that consumer understanding is enhanced by disclosing the amount financed with other loan calculations, such as total of payments, finance charge, and total interest percentage, for transactions subject to § 1026.19(f), and that a more prominent disclosure of the amount financed may not provide a meaningful benefit to consumers. Rather, disclosure of the amount financed separately from the information that is important to consumer understanding of credit terms may enhance consumer understanding by avoiding information overload. Although concerns regarding consumer distraction and information overload persist at the stage of the transaction where the consumer receives the Closing Disclosure, the Bureau believes that disclosing the amount financed with other loan calculations on the final page of the Closing Disclosure as a general reference for the consumer after closing will mitigate these concerns.

Accordingly, the Bureau believes that the disclosure of the amount financed would ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances, consistent with 1032(a) of the Dodd-Frank Act, and will improve consumer awareness and understanding of residential mortgage loans, which is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

38(o)(4) Annual Percentage Rate

TILA section 128(a)(4) and (8) requires creditors to disclose the annual percentage rate, together with a brief descriptive statement. 15 U.S.C. 1638(a)(4), (8). Current § 1026.18(e) implements this requirement by requiring creditors to disclose the ''annual percentage rate,'' using that term, and a brief description such as ''the cost of your credit as a yearly rate.'' 15 U.S.C. 1632(a). In addition, TILA section 122(a) requires that the annual percentage rate be more conspicuous than other disclosures, except the disclosure of the creditor's identity. This requirement is implemented in current § 1026.18(e).

The Bureau's Proposal

Proposed § 1026.38(o)(4) would have implemented the requirements of TILA section 128(a)(4) and (8) for transactions subject to § 1026.19(f) by requiring creditors to disclose the ''annual percentage rate'' and the abbreviation ''APR,'' together with the following statement: ''Your costs over the loan term expressed as a rate. This is not your interest rate.'' The Bureau also proposed to exercise its authority under TILA section 105(a) and (f), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b) to except the annual percentage rate from the conspicuous disclosure requirement under TILA section 122(a), for transactions subject to proposed § 1026.19(f).

Comments

In response to the proposal, the Bureau received several comments arguing that the Bureau should eliminate the APR from the Closing Disclosure since it is confusing, of little value to consumers, and because consumers do not understand it. These commenters contended that the Bureau's own research has found that the APR is confusing to consumers, and requires clarification through accompanying narrative. As discussed in the section-by-section analysis of § 1026.37(l)(2), an industry trade association commenter, a consumer advocacy group commenter, and a law firm commenter argued that the Bureau should use its authority under TILA sections 105(a) and (f) to exempt all residential mortgage loans from the disclosure requirements of the APR.

A trade association commenter argued that, in the credit card context, the

Board's 2009 credit card rulemaking eliminated the all-in APR for credit card statements after its quantitative consumer testing found that most consumers did not understand the all-in APR and that for some, it distracted from the effectiveness of other disclosures.

A GSE, an industry commenter, and a consumer advocacy group commenter suggested that the Bureau formulate a better explanation of the APR than the one proposed, as a clearer one will help consumers understand that APR is not just the interest rate but also the related cost of credit since creditors consistently fail to understand and correctly explain the difference between the interest rate and the APR. One consumer advocacy commenter argued that the APR is not useful for an adjustable rate loan, and several industry commenters suggested that the Bureau provide additional clarity in terms of how to calculate the APR for adjustable rate mortgage loans. An industry commenter sought clarification as to whether hard-coded text is required for this disclosure or if the text can change, and if the latter, sought acceptable verbiage that could be used.

Several industry trade association commenters favored the inclusion of the APR and disfavored making any changes to how this disclosure is calculated. A consumer commenter supported the APR disclosure but suggested disclosing it as two separate items, as with credit cards: (1) APR; and (2) all other fees. One industry commenter suggested that the finance charges used to calculate the APR should be disclosed appropriately to help consumers understand what charges are included in the APR. An industry commenter argued that the APR disclosure should include analysis of the cost-recovery period so that consumers could see that a lower APR is going to save them money over the long term. An industry commenter disfavored the placement of the APR disclosure on page 5 of the Closing Disclosure, and recommended that the Bureau provide a descriptive reminder about what the interest rate is in order to reduce consumer confusion.

Final Rule

For the reasons discussed below, the Bureau is adopting § 1026.38(o)(4) as proposed. The Bureau notes that the APR is a long-standing measure designed to provide consumers a way of measuring the total cost of credit and comparing loan products. As discussed above in the section-by-section analysis of § 1026.37(l)(2), consumer testing conducted by the Board and the Bureau, and comments received by the Bureau, consistently indicate consumer confusion over the APR. When the Bureau added the statement ''this is not your interest rate'' to the descriptive explanation of the APR during its consumer testing, although confusion was reduced, participants still did not understand how to use the APR. Instead, participants used measures they readily understood, such as the maximum interest rates, maximum periodic payments, and closing cost details to evaluate, compare, and verify loan terms. Participants were able to use these measures to evaluate and compare loans, making sophisticated trade-offs, often based on rationales involving their personal circumstances. *See* Kleimann Testing Report at 303–304.

In light of these comments concerning consumer confusion over the APR and the fact that consumers do not appear to use the APR in comparing loan offers, the Bureau is exercising its authority under TILA section 105(a) and (f), Dodd-Frank Act section 1032(a) and, for residential mortgage loans, Dodd-Frank Act section 1405(b), to except transactions subject to § 1026.19(e) from the requirement of TILA section 122(a) that the annual percentage rate disclosure be more conspicuous than other disclosures, except the disclosure of the creditor's identity. The Bureau believes that the exemption will enhance consumer understanding by separating the APR disclosure from the interest rate disclosure, which could prevent consumer confusion over the two rates and reduce the possibility of information overload for consumers attempting to compare loan terms, consistent with the purposes of TILA. In addition, the purpose of the integrated disclosure under TILA section 105(b) and RESPA section 4(a) is to ''aid the borrower . . . in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures.'' The Bureau believes that placing measures that are readily understandable to consumers on the first page of the Closing Disclosure, and complex measures that consumers find confusing on latter pages, meets this statutory objective.

The Bureau also has considered the factors in TILA section 105(f) and has determined that an exception is appropriate under that provision. Specifically, the Bureau has determined that the exemption is appropriate for all affected borrowers, regardless of their other financial arrangements and financial sophistication and the importance of the loan to them. Similarly, the Bureau has determined that the exemption is appropriate for all affected loans, regardless of the amount of the loan and whether the loan is secured by the principal residence of the consumer. Furthermore, the Bureau has determined that, on balance, the exemption will simplify the credit process without undermining the goal of consumer protection or denying important benefits to consumers. As discussed above in part II.D and in the section-by-section analysis of § 1026.37(l)(2), consumer testing and historical research indicate that consumers do not understand the APR and do not use it when shopping for a loan. Highlighting the APR on the disclosure form contributes to overall consumer confusion and information overload, complicates the mortgage lending process, and hinders consumers' ability to understand important loan terms. As such, the Bureau has determined that an exemption from the requirement that the APR be disclosed more conspicuously than other disclosures will not undermine the goal of consumer protection but, instead, will improve consumer understanding of the loans. For all these reasons, the Bureau has determined that the APR disclosure will improve consumer awareness and understanding of residential mortgage loans and is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b), and that, consistent with section 1032(a) of the Dodd-Frank Act, the disclosure would ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

As discussed in the section-by-section analysis of § 1026.37(l)(2), in response to the Bureau's Small Business Review Panel Outline and in comments on the proposal, some consumer advocacy groups expressed concern about disclosing the APR on the final page of the Loan Estimate and Closing Disclosure and suggested that the APR should be more prominently displayed on the disclosures. Specifically, this feedback stated that the APR is a widely recognized disclosure that is a useful tool for consumers in comparing and understanding mortgage loans, and that deemphasizing the APR is not the most effective way of dealing with known problems with the APR disclosure. Instead, these groups suggested that the APR disclosure could be improved through an expanded definition of the

finance charge, better descriptive language of the APR, or by supplementing the APR with other disclosures. The Bureau has considered this feedback, but for the reasons discussed above, believes that the approach to the APR adopted in the final rule could provide important benefits to consumers by emphasizing the difference between the APR and the contract interest rate and by deemphasizing historically confusing disclosures that contribute to information overload, and that other possible approaches to improving the APR would be less effective at improving the disclosure. The Bureau also intends to develop supplemental educational materials in booklets and its 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 the APR figures to think about their financial futures.

As discussed above, several commenters were confused about how to calculate the APR for adjustable rate mortgage loans. A consumer advocacy group commenter suggested disclosing the APR as two separate items, similar to what is done for credit cards: (1) APR; and (2) all other fees. Several commenters suggested that the Bureau formulate a better explanation of the APR than the one proposed. At least one industry participant in the Bureau's consumer testing of the prototype disclosures suggested that the form show the calculation for the APR. The Bureau notes, however, that TILA section 128(a)(4) and (8) requires creditors to disclose the APR, together with a brief descriptive statement of the APR, and the Dodd-Frank Act did not change the calculation of APR for integrated disclosures. The Bureau did not propose to change the calculation of APR, and notes that the calculation of APR is set forth in Appendix J to Regulation Z. For additional guidance regarding the calculation of APR for closed-end transactions, see the commentary to § 1026.17, as amended by this final rule. The Bureau is amending comment 17(c)(1)–10.ii to clarify that the effect of multiple rates must be reflected in certain of the disclosures required under §§ 1023.37(l) and 1026.38(o), but the Bureau notes that this does not change the underlying methodology for calculating the APR.

38(o)(5) Total Interest Percentage

As discussed in the section-by-section analysis of § 1026.37(l)(3), section 1419 of the Dodd-Frank Act amended TILA to add new section 128(a)(19), which requires that, in the case of a residential mortgage loan, the creditor disclose the total amount of interest that the consumer will pay over the life of the loan as a percentage of the principal of the loan. 15 U.S.C. 1638(a)(19). TILA section 128(a)(19) also requires that the amount be computed assuming the consumer makes each monthly payment in full and on time, and does not make any overpayments.

The Bureau's Proposal

Pursuant to the Bureau's implementation authority under TILA section 105(a), proposed § 1026.38(o)(5) would have implemented this new statutory requirement by requiring creditors to disclose the ''total interest percentage,'' using that term and the abbreviation ''TIP.'' For guidance on disclosure and calculation of the total interest percentage on the Closing Disclosure, proposed comment 38(o)(5)–1 would have referred creditors to the requirement to disclose the total interest percentage on the Loan Estimate, found in § 1026.37(l)(3) and its commentary. In addition, for the reasons discussed in the section-by-section analysis of § 1026.37(l)(3), the Bureau proposed to exercise its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b) to require creditors to disclose the following descriptive statement of the total interest percentage: ''This rate is the total amount of interest that you will pay over the loan term as a percentage of your loan amount.'' The Bureau alternatively proposed to use its authority under TILA section 105(a) and (f) and Dodd-Frank Act sections 1032(a) and 1405(b) to remove the total interest percentage from the Closing Disclosure required by proposed § 1026.19(f). The Bureau solicited comment on the proposed exemption.

Comments

In response to the proposal, as discussed above in the section-by-section analysis of § 1026.37(l)(3), industry commenters generally urged the Bureau to use its exception authority to remove the disclosure. They generally asserted that the disclosure would not be useful to consumers, that consumers would be confused by it, and that the disclosure would trigger information overload. For these same reasons, some commenters suggested that the Bureau should only require the disclosure in the Closing Disclosure. A number of commenters additionally asserted that the disclosure would alarm consumers when they see how much they would be paying in interest. Industry commenters further asserted that the disclosure would create compliance burden because it would be difficult to calculate and explain. Consumer advocacy group commenters expressed concerns that the disclosure could potentially mislead consumers about the cost of credit because the calculation would not include closing costs or prepaid finance charges. Several industry trade association commenters recommended that the Bureau provide additional clarification as to the calculation and meaning of the Total Interest Percentage disclosure if the Bureau decides to keep the disclosure. An industry commenter sought clarification as to whether hard-coded text is required for this disclosure or if the text can change, and if the latter, sought acceptable verbiage that could be used.

A number of industry commenters observed that the disclosure would be inaccurate for any loan paid off before maturity and for adjustable rate mortgage loans. They expressed concern that consumers could be misled by a potentially inaccurate metric. Several industry trade association commenters sought clarification as to whether the calculation of this disclosure would use the actual initial interest rate or the fully-indexed rate, and that it does not assume that payments increase as fast as possible.

Many industry commenters also argued that if the Bureau decides to finalize the disclosure, disclosing the total interest amount in the form of a number rather than as a percentage would be more comprehensible. On the other hand, a number of industry commenters suggested that disclosing a number for the total interest amount is unnecessary because of the Finance Charge disclosure in the Closing Disclosure.

A consumer advocacy group commenter strongly favored the Total Interest Percentage disclosure and some industry commenters did not object to its inclusion. Several associations of various State financial regulators and a joint letter from several consumer advocacy groups did not recommend that the Bureau remove the disclosure, but expressed concern that the disclosure could mislead consumers about the cost of credit because the calculation would not include closing costs or prepaid finance charges.

Lastly, a national trade association representing developers of timeshare and other similar fractional interest real estate products stated that the Bureau should clarify that the proposed disclosure would not apply to timeshare lenders. The trade association

commenter asserted that it believes that TILA section 103(cc)(5), as added by section 1401 of the Dodd-Frank Act, exempted timeshare lenders from compliance with, among other things, TILA section 128(a)(19) and any regulations promulgated thereunder.

Final Rule

For the reasons discussed below, the Bureau is adopting § 1026.38(o)(5) and comment 38(o)(5)–1 as proposed. As discussed above in the section-by-section analysis of § 1026.37(l)(3), the Bureau's testing indicated that consumer participants generally understood the basic concept of the disclosure, even though they did not understand its more technical aspects. Although some consumers did not understand the disclosure at all and questioned why it was included, the Kleimann Testing Report concluded that participants understood the basic concept of total interest as a percentage of principal, and that most participants used the disclosure to achieve a more complete understanding of the loan. *See* Kleimann Testing Report at 299–300. As discussed above, a number of industry commenters suggested that disclosing a number for the total interest amount is unnecessary because of the Finance Charge disclosure in the Closing Disclosure. However, the Kleimann Testing Report stated that participants used the TIP as a measure of what they would pay in interest in the Closing Disclosure. The Kleimann Testing Report further indicated that participants expressed surprise at how much they would pay in interest on their mortgage loans and appreciated the disclosure for this reason. *See* Kleimann Testing Report at 299–300. Concerns were also raised during the Bureau's Small Business Review Panel, by industry in feedback provided in response to the Small Business Review Panel Outline, in feedback received through the Bureau's Web site, and in comments that the total interest percentage could be difficult to calculate and explain to consumers, and would not likely be helpful to consumers. However, several industry participants in the testing process thought it would be helpful to consumers.

In light of the Bureau's testing of the total interest percentage disclosure and the concerns about consumers' ability to understand the disclosure, the Bureau is requiring creditors to disclose the descriptive statement, ''The total amount of interest that you will pay over the loan term as a percentage of your loan amount.'' The Bureau adopts this requirement pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). Based on consumer testing, the Bureau believes that consumer understanding of the total interest percentage disclosure may be enhanced through the descriptive statement of the total interest percentage, consistent with the purposes of TILA, and that the descriptive statement is in the interest of consumers and the public, consistent with section 1405(b) of the Dodd-Frank Act. For these reasons, the Bureau also believes that the disclosure of the descriptive statement regarding the total interest percentage may ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances, consistent with section 1032(a) of the Dodd-Frank Act.

With respect to the argument that the disclosure should not apply to timeshare lenders, the general section-by-section analysis of § 1026.19 provides a more detailed discussion of the Bureau's decision to expand the scope of some of the disclosure requirements set forth in TILA, as amended by the Dodd Frank Act. In addition, the Bureau believes that the disclosure of the total interest percentage would be just as useful to a consumer in a credit transaction secured by a consumer's interest in a timeshare plan as to a consumer in a credit transaction secured by an interest in real property or real property with a dwelling.

Accordingly, the Bureau has decided that the total interest percentage is a useful tool for consumers and is not adopting the proposed alternative of exempting transactions subject to § 1026.19(e) and (f) from the requirements of TILA section 128(a)(19). Based on these considerations, the results of the Bureau's consumer testing, and the analysis discussed elsewhere in this final rule, the Bureau believes that the proposed exemption is not appropriate.

For purposes of § 1026.38(o)(5), comment 38(o)(5)–1 requires that the creditor compute the total interest percentage in accordance with § 1026.37(l)(3) and its commentary. The calculation for the TIP is specifically set forth in TILA section 128(a)(19) and requires that the calculation be based on the assumption that the consumer makes each monthly payment in full and on-time, and does not make any over-payment. As discussed above, in response to the comments received, the Bureau is adopting comment 37(l)(3)–2 to provide further guidance to creditors on calculation of the total interest percentage for adjustable rate mortgage loans. In particular, when creditors use an initial interest rate that is not calculated using the index or formula for later rate adjustments, the disclosure should reflect a composite annual percentage rate based on the initial rate for as long as it is charged and, for the remainder of the term, the rate that would have been applied using the index or formula at the time of consummation. The Bureau is also adopting comment 17(c)(1)–10.ii to clarify that the effect of the multiple rates must be reflected in the calculation of certain disclosures, including the total interest percentage.

38(o)(6) Approximate Cost of Funds

The Bureau's Proposal

The Dodd-Frank Act amended TILA to add new section 128(a)(17). 15 U.S.C. 1638(a)(17). Among other things, that section requires creditors to disclose, in the case of residential mortgage loans, ''the approximate amount of the wholesale rate of funds in connection with the loan.'' In light of several uncertainties and interpretive challenges in TILA section 128(a)(17), the Bureau proposed to interpret the ''wholesale rate of funds'' to mean the actual cost of borrowing funds for use in mortgage lending. The Bureau solicited comment on both ''lender cost of funds'' and ''average cost of funds'' pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). Proposed § 1026.38(o)(6) would have required creditors to disclose the ''approximate cost of funds,'' using that term and the abbreviation ''ACF'' and expressed as a percentage, and the statement ''The approximate cost of funds used to make this loan. This is not a direct cost to you.'' For purposes of proposed § 1026.38(o)(6), ''approximate cost of funds'' would have meant either the most recent ten-year Treasury constant maturity rate or the creditor's actual cost of borrowing the funds used to extend the credit, at the creditor's option. The Bureau solicited comment on whether another index, such as the London Interbank Offer Rate (LIBOR), would have been a more appropriate measure of the approximate cost of funds. The Bureau also solicited comment on what would be required for creditors to disclose their actual costs of funds. Since consumer testing conducted by

the Bureau suggests that consumers do not understand the disclosure and that it does not provide a meaningful benefit to consumers, the Bureau alternatively proposed to use its exception and modification authority under TILA section 105(a) and (f), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b) to exempt transactions subject to proposed § 1026.19(e) and (f) from the cost of funds disclosure requirement in TILA section 128(a)(17). The Bureau solicited comment on this proposed exemption.

Comments

Similar to the Total Interest Percentage disclosure discussed above, industry commenters generally urged the Bureau to use its exception authority to remove the Approximate Cost of Funds disclosure because they argued that the disclosure would not be useful to consumers and would generate confusion, trigger information overload, and create compliance burden because it would be burdensome to calculate and explain. Industry commenters questioned the disclosure's usefulness in helping consumers understand the cost of credit because the creditor's cost of funds is not a direct cost to consumers. They also argued that a creditor's cost of funds is a misleading measurement of a creditor's actual cost of funding mortgage loans. Commenters suggested that getting to the true cost of loans is akin to getting to the cost to a creditor of doing business, which would not only include the creditors' cost of borrowing money to fund loans, but also, for example, overhead expenses. Commenters also expressed concern that the disclosure would be viewed negatively by consumers.

A few commenters expressed concern over disclosing a metric that could provide sensitive business information to competitors. Three national trade associations representing banks and nonbank residential mortgage loan lenders predicted that it would be unlikely that creditors would choose to disclose their actual cost of funds if given the option to provide a publicly-available index. They also expressed concern about the proposed requirement that the Treasury rate disclosed must be the ''most recent'' rate, because the rate changes daily. They urged the Bureau to provide a value established within the last 60 days, because, as proposed, it would be impossible to provide an accurate disclosure three business days before closing.

Several industry commenters also argued that this disclosure could impose significant compliance burden because the cost of funds varies from creditor to creditor, and is only one of many factors impacting a particular loan's interest rate. Some industry commenters also argued that this disclosure would be very difficult for creditors to calculate without significant additional guidance from the Bureau, especially since this disclosure is dependent on the ways in which loans are originated, sold, or held.

Trade associations representing various State regulators also expressed concern that the disclosure could mislead consumers about the cost of credit and urged the Bureau to provide a more thorough explanation of the Approximate Cost of Funds disclosure. An industry commenter sought clarification as to whether hard-coded text is required for this disclosure or if the text can change, and if the latter, sought acceptable verbiage that could be used.

Lastly, a national trade association representing developers of timeshare and other similar fractional interest real estate products stated that the Bureau should clarify that the proposed disclosure would not apply to timeshare lenders. The trade association commenter asserted that it believes that TILA section 103(cc)(5), as added by section 1401 of the Dodd-Frank Act, exempted timeshare lenders from compliance with, among other things, TILA section 128(a)(17) and any regulations promulgated thereunder.

Final Rule

For the reasons discussed below, the Bureau has decided to use its exception and modification authority under TILA section 105(a) and (f), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b) to exempt transactions subject to proposed § 1026.19(e) and (f) from the cost of funds disclosure requirement in TILA section 128(a)(17). Accordingly, the Bureau is not adopting § 1026.38(o)(6).

Consumer testing conducted by the Bureau suggests that consumers do not understand the disclosure and that it does not provide a meaningful benefit to consumers. As stated in the report on the Bureau's consumer testing conducted prior to issuance of the proposal, the disclosure generally raised more questions than it answered, and most participants suggested removing it. *See* Kleimann Testing Report at 301–303. Most consumer participants stated that because the disclosure did not disclose a direct cost to them, it was not important to them. As discussed in the Kleimann Testing Report, the Bureau conducted consumer testing using the terms ''lender cost of funds,'' ''average cost of funds,'' and ''approximate cost of funds,'' along with descriptive statements of these terms. *See* Kleimann Testing Report at 297, n. 36. Even though several different approaches were used during the testing process to present the Approximate Cost of Funds disclosure, throughout five rounds of consumer testing, only one consumer showed any interest in the disclosure, stating that it was ''interesting.'' All other consumers were either confused by the disclosure or did not find it useful. In all cases, experienced and non-experienced consumers that participated in the Bureau's consumer testing of the cost of funds disclosure questioned the disclosure and were generally unable to articulate how to use the information. While participants were able to read that the Approximate Cost of Funds was not a direct cost to them, they questioned why it was being disclosed if it was not a cost to them and/or wanted to know who was paying it. The Bureau's consumer testing results suggest that the disclosure is unlikely to provide a meaningful benefit to consumers in the form of useful information, and that consumers are likely to be confused by the Approximate Cost of Funds disclosure and are unlikely to use it when evaluating loans, which lends support to commenters' concerns about the disclosure confusing consumers and triggering information overload. Industry participants also believed that consumers would be confused by the cost of funds disclosure. Even some industry participants at the Bureau's consumer testing were confused by the disclosure. *See* Kleimann Testing Report at 301–303. The Bureau's consumer testing results further support industry commenters' concerns about consumers reacting negatively to the disclosure as some consumers expressed feeling threatened or other negative reactions after reading the disclosure. *See* Kleimann Testing Report at 302. Accordingly, the Bureau believes that the Approximate Cost of Funds disclosure would not provide consumer protection benefits, and that this disclosure could harm consumer understanding and risk information overload.

The Bureau also believes this approach will simplify the disclosure forms and reduce compliance burden. Based on concerns raised by the Small Business Review Panel, industry feedback provided in response to the Bureau's Small Business Review Panel Outline, feedback provided through the Bureau's Web site in the Know Before

You Owe initiative, and in comments received, the Bureau believes that the disclosure may be very burdensome for creditors to calculate and explain, and may result in the disclosure of potentially sensitive business information. Creditors may have different costs of funds for different loan products. For example, a creditor may have one cost of funds for a 30-year fixed loan, but a different cost of funds for a 3/1 adjustable rate mortgage loan. There could be significant administrative burden and compliance risk if the creditor were required to track the various cost of funds for all the loan products it offers. Additional training would also likely be required so that a creditor could make sure its staff could explain the disclosure to consumers. Further, if creditors are permitted to disclose a publicly-available index that does not reflect their actual cost of funds, the disclosure would be misleading instead of being protective of consumer interests. In light of testing results that suggest that the Approximate Cost of Funds disclosure would not be useful to consumers, the Bureau does not believe that these significant compliance burdens are counterbalanced by the consumer benefit of the disclosure.

As discussed above, some industry commenters urged that, if the Bureau decided to retain this disclosure, various modifications be made to the rate requirements and that the Bureau provide additional explanation and guidance for how to calculate this disclosure, including whether hard-coded text is required or if the text can change. A national trade association representing developers of timeshare and other similar fractional interest real estate products stated that the Bureau should clarify that the proposed disclosure would not apply to timeshare lenders. As the Bureau has decided not to adopt § 1026.38(o)(6), the issues addressed in these and similar comments are moot.

The Bureau believes the exemption will carry out the purposes of TILA, consistent with TILA section 105(a), by avoiding consumer confusion and information overload, thereby promoting the informed use of credit. For these same reasons, the exemption will help ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to better understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a), and will improve consumer awareness and understanding of residential mortgage loans, which is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b). Finally, the Bureau has considered the factors in TILA section 105(f) and has determined that, for the reasons discussed above, an exception is appropriate under that provision. Specifically, the Bureau has determined that the exemption is appropriate for all affected borrowers, regardless of their other financial arrangements and financial sophistication and the importance of the loan to them. Similarly, the Bureau has determined that the exemption is appropriate for all affected loans, regardless of the amount of the loan and whether the loan is secured by the principal residence of the consumer. Furthermore, the Bureau has determined that, on balance, the exemption will simplify the credit process without undermining the goal of consumer protection or denying important benefits to consumers. Based on these considerations, the results of the Bureau's consumer testing, and the analysis discussed elsewhere in this final rule, the Bureau has determined that an exemption is appropriate.

38(p) Other Disclosures

As discussed below, proposed § 1026.38(p) would have implemented statutory provisions requiring creditors to disclose information regarding appraisals, contract details, liability after foreclosure, refinancing, and tax deductions. These disclosures would have been provided under the heading ''Other Disclosures.''

38(p)(1) Appraisal

As noted above in the section-by-section analysis of § 1026.37(m)(1), the Dodd-Frank Act amended ECOA to require creditors to provide consumers with a copy of any written appraisal conducted for a loan that is or will be secured by a first lien on a dwelling, and also added a requirement that creditors disclose that right to consumers at the time of application. ECOA section 701(e); 15 U.S.C. 1691(e). In addition, the Dodd-Frank Act amended TILA to require creditors to provide consumers with an appraisal copy at least three days prior to consummation of certain ''higher-risk'' mortgages. TILA section 129H(c)–(d); 15 U.S.C. 1639h(c)–(d). As discussed above, these provisions were implemented in separate Bureau and joint interagency rulemakings, respectively. The Bureau also proposed appraisal disclosures similar to those required by the statutes to be included on the Loan Estimate in transactions subject to either ECOA section 701(e) or TILA section 129H, as implemented in Regulations B and Z, respectively, pursuant to its authority under TILA section 105(a) and Dodd-Frank Act section 1032(a).

In the proposal, the Bureau stated its intent to harmonize the appraisal notice proposed in § 1026.38(p)(1) with the final rules implementing the statutory appraisal disclosure requirements, both of which have been issued since the proposal. The Bureau states in the proposal that, as proposed, the notice required by § 1026.38(p)(1) was consistent with the Bureau's 2013 ECOA Appraisals Rule and the 2013 Interagency Appraisals Rule. As stated in the proposal, the Bureau believed the additional disclosure reminding consumers of their right to receive a copy of an appraisal conducted for their loan will promote the informed use of credit by consumers, consistent with TILA section 105(a), and ensure that the features of mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the loans, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a).

Specifically, the Bureau proposed, pursuant to its authority under TILA section 105(a) and Dodd-Frank Act section 1032(a), that creditors provide a disclosure regarding the right to receive an appraisal on the Closing Disclosure the consumer receives three days prior to consummation. Like proposed § 1026.37(m)(1), this disclosure requirement would have applied only to transactions subject to either ECOA section 701(e) or TILA section 129H, as implemented in Regulations B and Z, respectively. Proposed § 1026.38(p)(1)(i) would have required the creditor to disclose that, if there was an appraisal of the property in connection with the loan, the creditor is required to provide the consumer with a copy of such appraisal at no additional cost to the consumer at least three days prior to consummation. Proposed § 1026.38(p)(1)(ii) would have required the creditor to disclose that, if the consumer has not yet received a copy of the appraisal, the consumer should contact the creditor using the information disclosed pursuant to § 1026.38(r). Proposed § 1026.38(p)(1) would have required these disclosures to be provided under the subheading ''Appraisal.'' Proposed comment 38(p)(1)–1 would have provided guidance regarding the applicability of § 1026.38(p)(1). The comment would have stated that if a transaction is not

subject to either ECOA section 701(e) or TILA section 129H, as implemented in Regulations B and Z, respectively, the disclosure required by proposed § 1026.38(p)(1) may be omitted from the Closing Disclosure. Comments received in relation to the appraisal disclosure generally are discussed in the section-by-section analysis of § 1026.37(m)(1). The Bureau did not receive any comments specifically related to proposed § 1026.38(p)(1) and is adopting it as proposed based on the authority stated in the proposal. The Bureau is adopting comment 38(p)(1)–1 as revised to delete the reference to the disclosures being made as applicable, for the reasons stated in the section-by-section analysis of § 1026.37.

38(p)(2) Contract Details

TILA section 128(a)(12) requires the creditor to provide a statement that ''[t]the consumer should refer to the appropriate document for any information such document provides about nonpayment, default, the right to accelerate the maturity of the debt, and prepayment rebates and penalties.'' 15 U.S.C. 1638(a)(12). This requirement is currently implemented in § 1026.18(p), which requires the creditor to provide a statement that the consumer should refer to the appropriate contract document for information pertaining to nonpayment, default, the right to accelerate the maturity of the loan obligation, and prepayment rebates and penalties. Section 1026.18(p) also provides the creditor the option to disclose a reference to the contract document for information regarding security interests and assumption of the legal obligation.

The Bureau proposed § 1026.38(p)(2) to implement TILA section 128(a)(12) for transactions subject to § 1026.19(f), pursuant to its implementation authority under TILA section 105(a). Like current § 1026.18(p), proposed § 1026.38(p)(2) would have required the creditor to disclose a statement that the consumer should review the loan contract for additional information about loan terms. Specifically, under proposed § 1026.38(p)(2), the creditor would have been required to state that the consumer should refer to the appropriate loan document and security instrument for information about nonpayment, what constitutes a default under the legal obligation, circumstances under which the creditor may accelerate the maturity of the obligation, and the rules for prepayments. Proposed § 1026.38(p)(2) would have required this information to be disclosed under the subheading ''Contract Details.'' The Bureau did not receive any comments on proposed § 1026.38(p)(2) and is adopting it as proposed based on the authority stated in the proposal.

38(p)(3) Liability After Foreclosure

As discussed in the section-by-section analysis of proposed § 1026.37(m)(7), section 1414(c) of the Dodd-Frank Act created new TILA section 129C(g), which establishes certain requirements for residential mortgage loans subject to protection under a State's anti-deficiency law. 15 U.S.C. 1639c(g). TILA section 129C(g)(2) generally requires the creditor to provide a written notice to the consumer describing the protection provided by the applicable State's anti-deficiency law and the significance for the consumer of the loss of such protection. For refinance transactions only, TILA section 129C(g)(3) generally requires creditors that receive from or provide to the consumer an application for refinancing that would cause the loan to lose the protection of an anti-deficiency law to provide a written notice to the consumer describing the protection provided by the anti-deficiency law and the significance for the consumer of the loss of such protection. As discussed above, TILA sections 129C(g)(2) and 129C(g)(3) are implemented in § 1026.37(m)(7), which is required for refinance transactions only.

Proposed § 1026.38(p)(3) would have implemented the requirements of TILA sections 129C(g)(2) and 129C(g)(3) for all transactions subject to § 1026.19(f), not limited to refinance transactions, pursuant to the Bureau's implementation authority under TILA section 105(a). Specifically, under proposed § 1026.38(p)(3), if State law may offer consumers protection from liability, the creditor would have been required to disclose a brief statement that State law may protect the consumer from liability for the unpaid balance. The statement also would have been required to advise the consumer that any protection afforded under State law may be lost if the consumer refinances the loan or incurs additional debt on the property and that the consumer should consult an attorney for additional information. However, if State law does not protect the consumer from liability for the unpaid balance, proposed § 1026.38(p)(3) would have required the creditor to disclose that fact. The information required by proposed § 1026.38(p)(3) would have been disclosed under the subheading ''Liability after Foreclosure.'' Proposed comment 38(p)(3)-1 would have clarified that whether the consumer is afforded protection from liability in a foreclosure varies by State and that proposed § 1026.38(p)(3) requires the creditor to provide a general description of the applicable State's requirements. Proposed comment 38(p)(3)–1 also would have clarified that any type of protection afforded by State law, other than a statute of limitations, requires a statement that State law may protect the consumer from liability for the unpaid balance.

Several different industry commenters criticized the disclosure required by § 1026.38(p)(3) as too simplified to distill the complex State law concepts the disclosure is intended to describe. Further, the commenters noted that applicable State anti-deficiency laws are fact-dependent and may not be accurately described by the two ''check box'' disclosures shown to illustrate § 1026.38(p)(3) on proposed form H–25. These commenters stated that the creditor or settlement agent would, in effect, be practicing law by attempting to complete the disclosure required by § 1026.38(p)(3). These commenters suggested that the proposed disclosure be removed or changed so as not to require the creditor to make a choice about the applicability of State anti-deficiency laws. In contrast, a document preparation company commented that the liability after foreclosure disclosure was appropriately high-level to put consumers on notice without being misleading. A national trade association representing developers of timeshare and other similar fractional interest real estate products stated that the Bureau should clarify that the proposed disclosure would not apply to timeshare lenders. The trade association commenter asserted that it believes that TILA section 103(cc)(5), as added by section 1401 of the Dodd-Frank Act, exempted timeshare lenders from compliance with, among other things, TILA section 129C(g) and any regulations promulgated thereunder.

As stated in the proposal, pursuant to the Bureau's authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b), the disclosures required by proposed § 1026.38(p)(3) modified the statutory requirements that the creditor or loan originator must describe the protection provided by the applicable State's anti-deficiency law, for all transactions subject to proposed § 1026.19(f). The Bureau believes that the generalized anti-deficiency disclosure required by proposed § 1026.38(p)(3) is effective at informing consumers about the existence or absence of State anti-deficiency laws, and that a more detailed State-specific disclosure as

described in TILA section 129C(g) could be confusing for consumers and costly and burdensome to implement. The Bureau does not believe that the high-level disclosure required by § 1026.38(p)(3) constitutes the practice of law. Instead, as stated in the proposal, the Bureau recognizes that significant State law variations exist regarding anti-deficiency protection and for this reason, § 1026.38(p)(3) requires creditors to disclose a statement that consumers should consult a lawyer for more information about any applicable anti-deficiency laws, as was proposed. With respect to the argument that the disclosure should not apply to timeshare lenders, the general section-by-section analysis of § 1026.19 provides a more detailed discussion of the Bureau's decision to expand the scope of some of the disclosure requirements set forth in TILA, as amended by the Dodd-Frank Act. In addition, the Bureau believes that the disclosure of the protection provided by the relevant anti-deficiency law would be just as useful to a consumer in a credit transaction secured by a consumer's interest in a timeshare plan as to a consumer in a credit transaction secured by an interest in real property or real property with a dwelling.

One large bank commenter suggested that the Bureau clarify that § 1026.38(p)(3) is a safe harbor that would immunize a creditor from any State law claims arising out of the use of the disclosure language because creditors may have increased exposure to liability by using language not precise enough to accurately describe each State's anti-deficiency laws. The Bureau has no authority to immunize creditors with respect to State law. However, the Bureau is finalizing amendments to the rules regarding preemption of inconsistent State disclosure requirements and exemptions from State laws, which are discussed under the section-by-section analyses of §§ 1026.28 and 1026.29 above. Several trade associations representing mortgage lenders requested guidance on whether § 1026.38(p)(3) would require the creditor to determine whether the property is in a State that has an anti-deficiency law. The Bureau believes that such guidance is unnecessary because § 1026.38(p)(3), as finalized and as illustrated by form H–25 of appendix H to Regulation Z, clearly requires the creditor to determine whether, after a foreclosure that does not cover the amount of unpaid balance on the loan, State law may protect the consumer from liability for the unpaid balance after foreclosure or, alternatively, whether State law does not protect the consumer from liability.

For the aforementioned reasons, the Bureau is adopting § 1026.38(p)(3) as proposed, based on the authority stated in the proposal. The Bureau is adopting comment 38(p)(3)–1 substantially as proposed but with minor modifications for clarity. Specifically, the Bureau believes the modifications from TILA section 129C(g) will ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, consistent with Dodd-Frank Act section 1032(a), and will improve consumer awareness and understanding of residential mortgage loans, which is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

38(p)(4) Refinance

Proposed § 1026.38(p)(4) would have implemented TILA section 128(b)(2)(C)(ii) for transactions subject to § 1026.19(f) by requiring the creditor to disclose the statement required by proposed § 1026.37(m)(5), regarding the consumer's future ability to refinance his or her loan. For a detailed discussion of the Bureau's implementation of TILA section 128(b)(2)(C)(ii), see the section-by-section analysis of § 1026.37(m)(5) above. The Bureau did not receive any comments specifically on § 1026.38(p)(4) and is adopting it as proposed, based on the authority stated in the proposal.

38(p)(5) Tax Deductions

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Bankruptcy Act) amended TILA to add new section 128(a)(15), 15 U.S.C. 1638(a)(15), which requires that, in the case of a consumer credit transaction that is secured by the principal dwelling of the consumer in which the extension of credit may exceed the fair market value of the collateral, the creditor must disclose certain tax implications for the consumer. Public Law 109–8, 119 Stat. 23. The Board stated its intent to implement the Bankruptcy Act amendments in an advance notice of proposed rulemaking published in October 2005 as part of its ongoing review of Regulation Z. 70 FR 60235 (Oct. 17, 2005). The issue was addressed again in the Board's 2009 Closed-End Proposal, although a final rule was not adopted. 74 FR 43232, 43310.

In the 2009 Closed-End Proposal, the Board proposed to implement TILA section 128(a)(15) by requiring creditors to provide the disclosure required by TILA section 128(a)(15) for transactions secured by a dwelling. 74 FR 43310–11. The proposed rule permitted, but did not require, creditors to provide the disclosure in transactions secured by real property that does not include a dwelling, even though the statute limits the disclosure to transactions secured by the principal dwelling of the consumer. *Id.* The Board reasoned that it would be unnecessarily burdensome to require creditors to create separate disclosures for transactions secured by real property and those secured by a dwelling and proposed that the creditor be permitted, but not required, to provide disclosures regarding Federal tax implications for transactions secured by real property. *Id.*

Proposed § 1026.38(p)(5) would have implemented the requirements of TILA section 128(a)(15) for transactions subject to proposed § 1026.19(f), including transactions secured by real property that does not include a dwelling, pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). Specifically, for all transactions subject to § 1026.19(f), proposed § 1026.38(p)(5) would have required creditors to state that, if the consumer borrows more than the value of the property, the interest on the loan amount above the market value is not deductible from Federal income taxes. Proposed § 1026.38(p)(5) also would have required a statement advising the consumer to consult a tax professional for additional information. The Bureau stated in the proposal that it believed the proposed disclosure would promote the informed use of credit in all transactions subject to § 1026.19(f), and therefore would be consistent with the purposes of TILA. The proposal further stated that the Bureau believed requiring the disclosure for all transactions subject to proposed § 1026.19(f), whether secured by the consumer's principal dwelling or other real property, would facilitate industry compliance by reducing the time and resources that would be expended to determine whether a loan transaction is subject to the disclosure requirements regarding the deductibility of Federal income taxes. In addition, the Bureau stated it believed that the proposed disclosure would ensure that the features of mortgage transactions are disclosed in manner that ensures that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the cost,

benefits, and risks associated with the transaction, consistent with Dodd-Frank Act section 1032(a) and would improve consumer awareness and understanding of residential mortgage loans, which is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

A GSE commented that the proposed tax deduction disclosure is overly simplistic, to the consumer's potential detriment. The GSE pointed out that a consumer still may not be able to take advantage of a tax deduction even if the loan amount is not greater than the value of the home if the consumer does not itemize deductions on his or her federal tax return. Instead, the GSE suggested the Bureau adopt more general language to state that mortgage interest payments may be deductible and to consult a tax expert for details. The information required to be included in the tax deduction disclosure, specifically, that the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes, is set forth in TILA section 128(a)(15). Moreover, the Bureau does not believe that the disclosure could be detrimental to consumers. On the contrary, the disclosure illustrated by proposed form H–25 of appendix H to Regulation Z advises the consumer to consult a tax advisor for more information, which the Bureau believes may alert consumers to the fact that additional tax information may be obtained from other sources and activate consumers to seek such advice. Accordingly, the Bureau is adopting § 1026.38(p)(5) as proposed, based on the authority stated in the proposal.

38(q) Questions Notice

Proposed § 1026.38(q) would have required the creditor to provide a statement that the consumer should contact the creditor with any questions about the disclosures required under § 1026.19(f), a reference to the Bureau's 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 proposed to require that the Closing Disclosure contain such a notice based on its authority under TILA section 105(a), RESPA section 19(a), and Dodd-Frank Act section 1032(a). The Bureau stated in the proposal that it believed this disclosure would effectuate the purposes of TILA and RESPA by facilitating the informed use of credit and ensuring that consumers are provided with greater and timelier information on the costs of the closing process, and would also ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to better understand the costs, benefits, and risks associated with the transaction in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a).

The Bureau stated in the proposal that requiring disclosure of this notice would complement proposed § 1026.19(f)(1)(ii), which requires delivery of the Closing Disclosure three business days prior to consummation. The proposal noted that TILA section 128(b)(2)(D) requires that a corrected TILA disclosure be received by the consumer three business days prior to consummation if the APR as initially disclosed becomes inaccurate, and stated that the Bureau understands that because of the high frequency of annual percentage rate changes triggering the corrected TILA disclosure obligation, many creditors currently provide the corrected TILA disclosure as a matter of course even if it is not required. The proposal also noted that RESPA section 4 requires that the RESPA settlement statement be provided ''at or before closing,'' however, and stated that the Bureau understands that it is typically given at closing. Section 1026.19(f)(1)(ii) reconciles the two provisions by requiring that consumers be given all of the RESPA- and TILA-mandated disclosures three business days prior to consummation. The Bureau stated that it expected that during this three-business-day period, the consumer would be able to review the Closing Disclosure, contact the creditor with questions regarding the information contained on the Closing Disclosure, and correct any errors prior to consummation.

Under proposed § 1026.38(q)(1), the required notice would have included a statement directing the consumer to contact the creditor with any questions about the disclosures required under § 1026.19(f). The Bureau stated its belief in the proposal that the notice required under proposed § 1026.38(q) should in all cases reference the creditor, rather than the closing agent, even if the closing agent provides the disclosures required under § 1026.19(f) because the creditor is better positioned to answer the consumer's questions relating to the disclosures. The Bureau sought comment, however, on whether the notice required under proposed § 1026.38(q) should include a statement directing the consumer to contact the creditor or the closing agent with questions. Proposed § 1026.38(q)(2) would have required the questions notice also to direct the consumer to the Bureau's Web site to obtain more information or make a compliant. The Bureau stated in the proposal that it plans for the Bureau's Web site to offer important information and useful tools that consumers can access at key points in the mortgage origination process, including during the three-business-day period between the consumer's receipt of the Closing Disclosure and consummation. The proposal stated that directing consumers to this Web site would therefore promote consumer understanding of credit terms and closing costs and of benefits and risks associated with the transaction in light of the facts and circumstances.

Proposed § 1026.38(q)(3) also would have included a prominent question mark in the disclosure. The Bureau also proposed comment 38(q)(3)–1, which would have clarified that the prominent question mark was an aspect of the proposed Closing Disclosure form H–25 of appendix H to Regulation Z, the standard form or model form. The comment would have provided further guidance regarding the graphic depiction of the prominent question mark. The comment would have clarified that if the creditor or closing agent deviates from the depiction of the question mark as shown on form H–25, the creditor or closing agent complies with § 1026.38(q) if the size and location of the question mark on the Closing Disclosure are substantially similar in size and location to the question mark shown on form H–25, and the creditor or closing agent otherwise complies with § 1026.38(t)(5) regarding permissible changes to the form of the Closing Disclosure. The Bureau noted in the proposal that consumer testing conducted by the Bureau indicated that use of the prominent question mark icon in the questions notice drew consumers' attention to the notice.

A large bank commented that the notice should direct the consumer to the creditor or the settlement agent, depending on the type of question. The commenter suggested that the language be revised to state that the borrower should contact the creditor to resolve issues regarding loan terms and the settlement agent with respect to closing costs. The commenter stated that directing questions to both the settlement agent and the creditor would permit those parties to work together to amicably resolve issues before a consumer submitted a complaint. Similarly, a national title company commented that the disclosure should direct consumers to both the creditor and the settlement agent because where

a settlement agent prepares the form and handles a closing, the settlement agent would likely receive most of the consumers' questions. The commenter suggested that the disclosure should identify both the settlement agent and the creditor and explain the nature of their knowledge.

The Bureau is persuaded that directing questions solely to the creditor would not be in the best interests of consumers because there are many types of questions for which the creditor is not in the best position to answer, such as questions related to the payment of a prorated real estate tax or other settlement costs. The Bureau does not believe, however, that a disclosure directing consumers to a settlement agent for certain types of questions and to the creditor for other types of questions is in the best interest of consumers given the multitude of reasons that a consumer may have questions about a loan transaction. Accordingly, the Bureau is revising § 1026.38(q)(1) to require a statement that if the consumer has any questions, he or she should use the contact information disclosed under § 1026.38(r). The Bureau believes that directing a consumer to all of the professionals involved in the transaction—the lender, the mortgage broker, the real estate brokers, and the settlement agent—will make it more likely that the consumer will find the most appropriate person to answer his or her question. Accordingly, consistent with Dodd-Frank Act section 1032(a), the revision will ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances. The revision is also consistent with the purposes of TILA and RESPA, because it will promote the informed use of credit by consumers, and ensure effective disclosure to consumers.

For the aforementioned reasons, the Bureau is adopting § 1026.38(q)(3) as proposed, based on the authority stated in the proposal. The Bureau is adopting § 1026.38(q)(1) with a revision to require a statement directing the consumer to the information disclosed under § 1026.38(r) rather than to the creditor. The Bureau is adopting § 1026.38(q)(2) substantially as proposed but with minor revisions for clarity, including to state that the uniform resource locator address to the Bureau's Web site must be disclosed. The Bureau is adopting comment 38(q)(3)–1 substantially as proposed but with a minor modification to remove references to the closing agent because under § 1026.19(f)(1)(v), a settlement agent is required to comply with the relevant requirements of § 1026.19(f) if it provides the Closing Disclosure, which would include the requirements of § 1026.38(q). The Bureau is adopting the revisions to § 1026.38(q)(1) and (2) based on its authority under TILA section 105(a), RESPA section 19(a), and Dodd-Frank Act section 1032(a).

38(r) Contact Information

Under TILA section 128(a)(1) and Regulation Z § 1026.18(a), the TILA disclosures must include the identity of the creditor. Comment 18(a)–1 clarifies that the ''identity'' of the creditor must include the name of the creditor, but may also include the creditor's address and/or telephone number. As stated in appendix C to Regulation X, the RESPA GFE must include the name, address, phone number, and email address (if any) of the loan originator. As stated in appendix A to Regulation X, the RESPA settlement statement must include the name and mailing address of the lender and the name, address, and phone number of the settlement agent. Moreover, TILA section 129B(b)(1)(B), which was added to TILA by section 1402 of the Dodd-Frank Act, provides that each mortgage originator must include on all loan documents any unique identifier of the mortgage originator provided by the NMLSR. However, TILA, RESPA, and their implementing regulations currently do not expressly require the disclosure of: (1) The email address of the creditor (unless the creditor is also the loan originator, in which case it must be disclosed on the GFE but not on the RESPA settlement statement); (2) the name, email address, and phone number of the consumer's primary contact with the creditor; (3) the email address of the closing agent; (4) the name, email address, and phone number of the consumer's and seller's real estate brokers, if any; or (5) the license number or other unique identifier issued by the applicable jurisdiction or regulating body with which a closing agent or real estate broker is licensed and/or registered, if any.

The Bureau received feedback from the public through its Know Before You Owe initiative that requested contact information on the disclosure to appear only on one part of the Closing Disclosure. Based on this feedback, the Bureau tested a prototype design with contact information for the creditor, mortgage broker, and other parties related to the transaction in one table. During consumer testing, consumers and industry participants found the contact information table useful and easy to follow, and indicated that it contained the basic information they needed to follow up with the various parties related to the transaction.

Therefore, the Bureau proposed to require that the Closing Disclosure contain a contact information table as set forth in proposed § 1026.38(r) based on its authority under TILA sections 105(a), RESPA section 19(a), Dodd-Frank Act section 1032(a) and, for residential mortgage loans, Dodd-Frank Act section 1405(b). The Bureau stated its belief in the proposal that the contact information table required to be disclosed under proposed § 1026.38(r) will effectuate the purposes of TILA and RESPA by facilitating the informed use of credit and ensuring that consumers are provided with greater and more timely information on the costs of the closing process. The Bureau believed that providing consumers with multiple types of contact information for the critical non-seller parties participating in the transaction will allow consumers easier access to information relevant to the transaction (including costs), which in turn enhances consumer understanding of the costs, benefits, and risks associated with the transaction in light of the facts and circumstances (which is consistent with Dodd-Frank Act section 1032(a)). The Bureau also stated its belief in the proposal that such disclosure will improve consumers' awareness and understanding of residential mortgage transactions, which is in the interest of consumers and the public (which is consistent with Dodd-Frank Act section 1405(b)).

Moreover, the Bureau proposed § 1026.38(r) based on its mandate under sections 1032(f), 1098, and 1100A of the Dodd-Frank Act to propose rules and forms that combine the disclosures required under TILA and sections 4 and 5 of RESPA into a single, integrated disclosure for mortgage loan transactions covered by those laws. As discussed above, appendix C to Regulation X states that the RESPA GFE must include the name, address, phone number, and email address (if any) of the loan originator, and pursuant to appendix A to Regulation X, the RESPA settlement statement must include the name and mailing address of the lender and the name, address, and phone number of the settlement agent. Accordingly, as part of the Bureau's statutory mandate to integrate the TILA and RESPA disclosures, the Bureau stated in the proposal that it must integrate the disclosures currently required under Regulation X with the

TILA-mandated disclosures of the creditor's identity, discussed above.

As noted above, TILA section 129B(b)(1)(B), as added by section 1402 of the Dodd-Frank Act, provides that each mortgage originator must include on all loan documents any unique identifier of the mortgage originator provided by NMLSR. As discussed in the section-by-section analysis of § 1026.37(k), since the proposal was issued, new TILA section 129B(b)(1)(B) has been implemented in the Bureau's 2013 Loan Originator Final Rule as § 1026.36(g). The Bureau proposed to use its authority under TILA section 105(a), Dodd-Frank Act section 1032(a) and, for residential mortgage loans, Dodd-Frank section 1405(b) to include in the contact information table to be disclosed under § 1026.38(r) the NMLSR identification number and State license number for the creditors, mortgage brokers, and the individual persons employed by such entities, as applicable, since the additional information of the NMLSR and license numbers for State regulated settlement service providers will improve consumer awareness and understanding of transactions involving residential mortgage loans and is therefore in the interest of consumers and the public by providing the consumer with information about the licensing of the settlement service providers. The proposal's requirement to include the NMLSR ID on the Closing Disclosure complements those adopted in § 1026.36(g) in the Bureau's 2013 Loan Originator Final Rule. Section 1026.36(g) as finalized requires a loan originator organization to include its name and NMLSR ID as well as the name and NMLSR ID of any individual loan originator with primary responsibility for the loan origination on certain specified loan documents for all consumer credit transactions secured by a dwelling.

The Bureau also stated its belief in the proposal that the disclosure of contact information in a tabular format as required by proposed § 1026.38(r) would complement § 1026.19(f)(1)(ii), which requires delivery of the Closing Disclosure three business days prior to consummation. As noted above, § 1026.19(f)(1)(ii) reconciles the TILA and RESPA timing provisions by requiring that consumers be given the integrated disclosures three business days prior to consummation. During this three-business-day period, the Bureau stated its expectation in the proposal, that the consumer can review the Closing Disclosure, contact the creditor, closing agent, mortgage broker, and real estate brokers with questions regarding the information contained on the Closing Disclosure, and correct any errors prior to consummation. Accordingly, the contact information table required under proposed § 1026.38(r) would have made it easier for consumers to contact the critical non-seller parties participating in the transaction during the three-business-day period prior to consummation. The inclusion of primary contact email addresses and phone numbers in the table also would have facilitated efficient communication between the consumer and the other parties.

As applicable, the table required by proposed § 1026.38(r) would have included contact information for the creditor, the mortgage broker, the consumer's real estate broker, the seller's real estate broker, and the closing agent. The table would include the following contact information for each party, as applicable: name, address, NMLSR identification/license number, name of primary contact, NMLSR identification/license number of the primary contact, email address of primary contact, and phone number of primary contact.

Proposed comments 38(r)–1 through –6 would have provided additional guidance regarding these required disclosures. For instance, proposed comment 38(r)–3 would have clarified that the address disclosed in the contact information table is the identified party's place of business where the primary contact for the transaction is located (usually the local office), rather than a general corporate headquarters address. Similarly, proposed comment 38(r)–6 would have clarified that the primary contact working at the identified party is the individual who interacts most frequently with the consumer and who has an NMLSR identification number or, if none, a license number, or other unique identifier to be disclosed under proposed § 1026.38(r)(3) and (5), as applicable, and provides examples of the primary contact to be disclosed in a given transaction.

Comments received related to the contact information table generally are discussed in the section-by-section analysis of § 1026.37(k), above. Specifically with respect to the contact information table required by § 1026.38(r), a large bank requested that the Bureau eliminate the requirement to disclose the real estate brokers' names and contact information because real estate brokers are less relevant at the closing stage of the loan process and it would be burdensome for lenders to obtain such information. A large bank also requested guidance on whether the primary contact for the creditor must be the loan originator's name or whether the creditor may designate any individual as its contact. A national trade association representing developers of timeshare and other similar fractional interest real estate products stated that the Bureau should clarify that the proposed disclosure of the creditor's NMLSR identification number would not apply to timeshare lenders. The trade association commenter asserted that it believes that TILA section 103(cc)(5), as added by section 1401 of the Dodd-Frank Act, exempted timeshare lenders from compliance with, among other things, TILA section 129B(b)(1)(B) and any regulations promulgated thereunder.

With respect to the commenter's request to eliminate the requirement to disclose real estate brokers' contact information, the Bureau declines to eliminate that requirement because it believes consumers will benefit from disclosure of real estate broker contact information at closing. Indeed, consumers' relationships with real estate brokers differ widely and there may be some consumers who consult their real estate broker at the closing stage of a transaction. A consumer may find it easier to ask a question with such contact information being readily available on the Closing Disclosure. Moreover, the Bureau does not believe it is particularly burdensome for a creditor to obtain the name and contact information for the real estate brokers in the transaction. The creditor could obtain such information from the real estate purchase and sale contract or from the consumer directly.

Regarding the request for guidance on whether a creditor may designate any individual as a contact for the consumer, § 1026.38(r)(4) would have required disclosure of the name of the natural person who is the primary contact for the consumer which, in the case of the creditor is likely to be the loan originator. Section 38(r)(4) would not have permitted designation of a natural person completely unrelated to the consumer's transaction as the primary contact for the consumer in all instances but there may be situations where, depending on the facts and circumstances, the primary contact for the consumer is not the loan originator. With respect to the request that the proposed disclosure of the creditor's NMLSR identification number not apply to timeshare lenders because such lenders are exempt from TILA section 129B(b)(1)(B), that section of TILA is implemented by the 2013 Loan Originator Final Rule as § 1026.36(g). Section 1026.38(r)(3) and (5) requires

disclosure of the creditor's NMLSR identification number pursuant to the Bureau's authority under TILA section 105(a), Dodd-Frank Act section 1032(a) and, for residential mortgage loans, Dodd-Frank section 1405(b). This final rule does not implement TILA section 129B(b)(1)(B) and thus, the commenter's request for an exemption is not relevant to the NMLSR identification number required by § 1026.38(r)(3) and (5).

As discussed more fully in the section-by-section analysis of § 1026.37(k), two GSEs commented and requested in an ex parte meeting that disclosure of a State-issued license number or other unique identification number also include the State that issued the license. In response to this comment, the Bureau is revising § 1026.38(r)(3) and (5) to require disclosure of a two letter abbreviation to designate the State, territory, or locality issuing a license identification number or other unique identifier when such is disclosed. The Bureau is likewise revising comments 38(r)–4 and –5 to clarify how to disclose such abbreviation. Also in response to the GSE's comment, the Bureau is revising the design of the contact information table in form H–25 of appendix H to Regulation Z to provide separate rows for disclosure of an NMLSR ID and the State license identification number or other unique identifier. This revision also enables the insertion of the abbreviation for the State issuing the license as required by revised § 1026.38(r)(3) and (5).

For the reasons discussed and based on the legal authority discussed above and in the proposal, the Bureau is adopting § 1026.38(r) as revised. The Bureau is further revising § 1026.38(r) to use the term settlement agent, rather than closing agent, to conform to form H–25 of appendix H to Regulation Z. The Bureau did not receive comments on any of the proposed commentary to § 1026.38(r). The Bureau is adopting comments 38(r)–1, –4, and –5 as revised to delete the reference to disclosing ''N/A'' for an NMLSR ID for the reasons discussed in the section-by-section analysis of § 1026.38 and comments 38–1 and 38(r)–2 are revised with minor modifications for clarity. The Bureau is further revising comments 38(r)–4 and –5 to require disclosure of the abbreviation of the State issuing a license identification number for the reasons discussed above. Lastly, the Bureau is revising comments 38(r)–1, –3, –4, –5, and -6 to refer to settlement agent, rather than closing agent for the subheading and content of the disclosures to conform with form H–25 and to remove references to the closing agent, for the same reasons described in the section-by-section analysis of § 1026.38(q) above. The Bureau is also adding comment 38(r)–7 to clarify that disclosure of a general number or email address for the lender, mortgage broker, real estate broker, or settlement agent, as applicable, satisfies the requirements of § 1026.38(r)(6) and (7) under certain circumstances, in response to comments discussed in the section-by-section analysis of § 1026.37(k).

38(s) Signature Statement

For the reasons discussed and based on the legal authority set forth in the section-by-section analysis of § 1026.37(n), proposed § 1026.38(s) would have implemented the requirements of TILA section 128(b)(2)(B)(i) for transactions subject to § 1026.19(f). The disclosure requirements in proposed § 1026.38(s) would have mirrored the requirements in § 1026.37(n). Proposed comment 38(s)–1 would have cross-referenced the commentary to proposed § 1026.37(n) for guidance regarding optional signature requirements and signature lines for multiple consumers.

As described in the proposal, during the Bureau's Small Business Review Panel, some industry participants expressed concern that consumers might be confused about the effect of signing the Closing Disclosure to acknowledge receipt. Small Business Review Panel Report at 29. Based on this feedback, the Panel recommended that the Bureau consider whether to revise the signature statement on the prototype form, or whether additional guidance should be provided to clarify the effect of a signature line on the consumer's legal obligation. *Id.*

Comments received with respect to the signature statement required by § 1026.37(n) that also relate to the disclosure required by § 1026.38(s) are discussed in the section-by-section analysis of § 1026.37(n). Specifically with respect to the disclosure required by § 1026.38(s), several varied industry commenters stated their belief that the statement following the signature line would be confusing when the consumer received the Closing Disclosure at closing when the transaction will almost certainly be consummated. Though § 1026.19(f) typically requires receipt by the consumer of the Closing Disclosure three business days before consummation, a consumer may receive the Closing Disclosure on the day of closing under the limited circumstances permitted by § 1026.19(f). Similarly, certain commenters objected to the word ''Applicant'' being shown under the signature line on form H–25 given that in the closing stage of a transaction, the consumer is more typically referred to as the borrower. One national title company praised the signature line disclosure as clear and to the point.

Several industry commenters requested guidance on who meets the definition of consumer and, specifically, whether a non-applicant with the right to cancel would be required to sign the Closing Disclosure pursuant to § 1026.38(s) if a creditor elected to include the signature line. A GSE requested that the Bureau add a statement with the signature line that the information from the consumer and settlement agent were true and correct as an anti-fraud measure. The GSE noted that such statements were included on previous versions of the disclosure required by Regulation X and are needed to deter fraud.

With respect to comments that the statement beneath the signature line as illustrated by proposed form H–25 would be confusing, the Bureau believes the statement is not confusing, because it pertains to the act of signing the disclosure and not the act of signing a promissory note or security instrument. The Bureau has considered the Small Business Review Panel's recommendation and believes, based on several rounds of consumer testing, that consumers understand the disclosure in proposed § 1026.38(s) to mean that they are not obligated to complete the loan transaction just because they signed the Closing Disclosure. Indeed, the Bureau further believes consumers will understand the proposed disclosure in § 1026.38(s) given that § 1026.19(f) requires delivery of the Closing Disclosure three days before consummation. As a result, the Bureau believes, as stated in the proposal, that the disclosure is appropriate. The statement as required by § 1026.38(s) reads: ''By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form.'' Under § 1026.19(f), the act of signing the disclosure may take place days before the signature of the promissory note and security instrument. Even at the consummation or settlement of the transaction, the settlement agent may review the Closing Disclosure before the consumer executes the promissory note and security instrument. The consumer's signature signifies only receipt of the Closing Disclosure and the statement is clear that signing of the form in and of itself does not obligate the consumer to proceed with the loan transaction. In addition, the Bureau does not believe that use of the word ''Applicant'' under

the signature line is confusing for the same reasons, and because it would be inaccurate to refer to the consumer as a borrower prior to executing the promissory note. The word ''Applicant'' reflects that the consumer is not yet obligated to proceed with the transaction simply by virtue of signing the Closing Disclosure. That is true whether the consumer is signing the Closing Disclosure at the closing table or three days before closing. Moreover, to the extent that creditors believe the signature line and accompanying statement are confusing, they may be omitted at the creditor's option under § 1026.38(s). For the reasons above, the Bureau declines to revise the statement required along with the signature line or the design of the signature line in form H–25. The Bureau is adopting § 1026.38(s) and comment 38(s)–1 as proposed.

With respect to consumers in rescindable transactions, the definition of consumer is the one provided in § 1026.2(a)(11) which does include a non-applicant co-owner of a principal dwelling in a transaction governed by §§ 1026.15 and 1026.23. As clarified by comment 17(d)–2, § 1026.17(d) requires the disclosures required by § 1026.19(f) to be given to each consumer who has the right to rescind under § 1026.23. Accordingly, because a non-applicant co-owner has the right of rescission under § 1026.23, the creditor would be required to deliver the Closing Disclosure to each such non-applicant co-owner and do so separately from any other consumer to whom the Closing Disclosure is required to be delivered. To the extent that such consumers' names do not fit on the space allocated for a signature on form H–24, comment 37(n)–2 provides that an additional page may be added to the Closing Disclosure.

With respect to the GSE commenter's request for an anti-fraud statement, the purpose of the integrated disclosures is to promote the informed use of credit and more effective advance notice of settlement costs to enable consumers to better understand the costs, benefits, and risks associated with mortgage transactions. While deterring fraud is undoubtedly an interest of secondary market investors in residential mortgage loans, the Bureau is concerned that including such information would lead to information overload because it is not related to the consumer's understanding or evaluation of their loan terms and costs. Secondary market investors and creditors may request such a statement from consumers in a separate document, provided such document complies with the requirements and restrictions of § 1026.38, including the segregation requirements of § 1026.38(t).

For the reasons discussed and pursuant to the legal authority described above and in the proposal, the Bureau is adopting § 1026.38(s) substantially as proposed, with minor modifications for clarity and to conform to § 1026.37(n), and require that the statement disclosed with the signature line be above the signature line. The Bureau is adopting comment 38(s)–1 as proposed.

38(t) Form of Disclosures

As discussed above, the Bureau proposed to exclude transactions subject to proposed § 1026.19(f) from the coverage of § 1026.17(a) and (b). Consequently, the implementation of TILA sections 122(a) and 128(b)(1) in § 1026.17(a)(1), requiring that the disclosures be clear and conspicuous and that they be segregated from everything else, does not apply to the integrated disclosures set forth in § 1026.38 under this proposal. As described in the section-by-section analysis of proposed § 1026.37(o), the Bureau, pursuant to its implementation authority under TILA section 105(a), proposed to implement the statutory segregation and clear and conspicuous requirements of TILA sections 122(a) and 128(b)(1) for the disclosure required by proposed § 1026.38 in new § 1026.38(t). The Bureau stated its belief in the proposal that these requirements will assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him or her and avoid the uninformed use of credit.

38(t)(1) General Requirements

Similar to proposed § 1026.37(o)(1), proposed § 1026.38(t)(1) would have established the requirements that the disclosures required by § 1026.38 be clear and conspicuous, in writing, and grouped together, segregated from everything else, and provided on separate pages that are not commingled with any other documents or disclosures, including any other disclosures required by State or other laws. Proposed comment 38(t)–1 would have clarified that the clear and conspicuous standard requires that the disclosures be legible and in a readily understandable form. This guidance is adopted from existing comment 17(a)(1)–1. The comment would have clarified that proposed § 1026.37(o)(1) requires that the disclosures be grouped together, segregated from everything else, and provided on separate pages that are not commingled with any other documents or disclosures, including any other disclosures required by State or other laws. This proposed requirement would be stricter than the guidance found in existing comment 17(a)(1)–2, which provides that the disclosures may be grouped together and segregated from other information in a variety of ways other than a separate piece of paper.

The Bureau stated in the proposal that it recognized that, in certain credit sale and other non-mortgage, closed-end credit transactions, creditors include the disclosures required by § 1026.18 in the loan contract or some other document and ensure that they are grouped together and segregated by outlining them in a box or other means authorized by comment 17(a)(1)–2. However, as also described above in the discussion of § 1026.37(o), the Bureau stated its belief in the proposal that this approach is virtually never employed for mortgage credit, for which the new disclosures under §§ 1026.19(f) and 1026.38, rather than § 1026.18 disclosures, are required. For the reasons stated in that discussion, the Bureau believed that requiring the § 1026.38 disclosures to be delivered as a separate document does not present any significant new obligation that mortgage lenders do not already effectively observe and maximizes the benefits of the forms. The Bureau sought comment in the proposal, however, on whether there currently are transactions subject to § 1026.19(f) that may be burdened by the adoption of this requirement. Comments received in relation to this issue are discussed in the section-by-section analysis of § 1026.19(f).

Also, similar to § 1026.37(o)(1)(ii), proposed § 1026.38(t)(1)(ii) would have provided that the disclosures shall contain only the information required by § 1026.38(a) through (s) and that they generally shall be made in the same order, and positioned relative to the master headings, headings, subheadings, labels, and similar designations in the same manner, as shown in form H–25. Proposed comment 38(t)–2 would have provided guidance on the treatment of balloon payment loans with leasing characteristics. The Bureau did not receive any comments regarding § 1026.38(t)(1) and thus is adopting § 1026.38(t)(1)(ii) and comments 38(t)(1)–1 and –2 substantially as proposed, with minor modifications for clarity. The Bureau is adopting § 1026.38(t)(1)(i) as revised to delete the requirement that the disclosures be on separate pages that are not commingled with any other documents or disclosures because the Bureau believes that requirement is redundant to the requirement that the disclosures be grouped together and segregated from

everything else. Accordingly, final § 1026.38(t)(1)(i) as revised requires only that the disclosures to be grouped together and segregated from everything else.

38(t)(2) Headings and Labels

Similar to § 1026.37(o)(2), proposed § 1026.38(t)(2) would have provided that, wherever form H–25 designates the required master heading, heading, subheading, label, or similar designation for a disclosure as ''estimated,'' that corresponding master heading, heading, subheading, label, or similar designation required by § 1026.38 must include the word ''estimated,'' even if the provision requiring such heading, label, or similar designation does not contain the word. As noted in the proposal, many of the items that are required to be only good faith estimates when included in the § 1026.37 disclosures, in accordance with § 1026.19(e), will be actual terms and costs when stated in the § 1026.38 disclosures, as required by § 1026.19(f). As further noted in the proposal and above in the section-by-section analysis of § 1026.37(o), many of the disclosure items required by § 1026.38 cross-reference their counterparts in § 1026.37. To avoid confusion over which items must be designated as ''estimates,'' the content provisions of § 1026.37 would not have included in any of the master headings, headings, subheadings, labels, and similar designations the word ''estimated.'' Instead, § 1026.37(o)(2) effectively would have incorporated by reference the ''estimated'' designations reflected on form H–24 of appendix H to Regulation Z. Accordingly, proposed § 1026.38(t)(2) also would have incorporated by reference the ''estimated'' designations reflected on form H–25 of appendix H to Regulation Z. Proposed comment 38(t)(2)–1 would have provided guidance regarding the requirement to disclose certain amounts as estimated amounts based on the designations within form H–25.

A document preparation company requested that the Bureau revise § 1026.38(t)(2) to permit disclosure of an ''e'' to denote an estimate following certain disclosures on the Closing Disclosure for certain transactions where frequently changing interest rates could vary many of the amounts disclosed from what is stated on the Closing Disclosure. The commenter noted that the construction phase of construction-to-permanent loans typically have interest rates that change frequently and which could lead to significant changes to the amounts disclosed for the initial and projected payments, total of payments, total finance charge, annual percentage rate, and amount financed.

The Bureau does not believe that a special rule is required for disclosure of estimated figures in transactions with interest rates that change frequently, however, because the Closing Disclosure is designed to inform consumers of changes to their estimated payments after closing. Indeed, where a transaction has an adjustable interest rate, the Loan Terms table required by § 1026.38(b) would disclose to the consumer how soon the interest rate can adjust and how high the periodic payments could go. Moreover, the Projected Payments, Adjustable Payment and Adjustable Interest Rate tables would provide more information to consumers about the frequency of adjustment of their interest rate and how such changes in the interest rate could affect their periodic payment. In short, while it is true that many of the amounts disclosed on the Closing Disclosure will change after closing for adjustable rate transactions, the Bureau believes that the Closing Disclosure adequately informs consumers of those potential changes without any additional notations on the form.

The Bureau is aware that other disclosures provided under Regulation Z are labeled as estimates when information is unknown. However, the Bureau is concerned that labeling certain specific items on the Closing Disclosure as estimates may result in consumer confusion regarding the nature of the Closing Disclosure. In addition, the Closing Disclosure uses the term ''estimated'' in specific areas to inform the consumer when certain recurring costs may change in the future, such as future payments for taxes and property insurance; the intended effect of the term in such areas may be affected by more liberal use of that term in other places on the form. Further, the Bureau does not believe it is necessary to state that disclosures on the Closing Disclosure are estimates when they are based on the best information reasonably available, because the final rule requires that consumers receive revised disclosures with the actual terms if information changes that would have made a previous disclosure inaccurate. Under § 1026.19(f)(2)(i) and (ii), creditors must provide revised disclosures if information on disclosures provided under § 1026.19(f)(1)(i) becomes inaccurate; and consumers will receive by consummation corrected disclosures stating the actual terms of the transaction. In addition, pursuant to final § 1026.19(f)(2)(iii), consumers will receive corrected disclosures after consummation if a subsequent event changes an amount actually paid by the consumer. This approach is consistent with what the Bureau believes is the current practice under current Regulation X, which provides that the RESPA settlement statement must state the actual charges paid by the borrower and seller, and does not provide for estimates, even if the RESPA settlement statement is revised during settlement to reflect changes.

The Bureau is adopting § 1026.38(t)(2) substantially as proposed but, as it did for the corresponding provision in § 1026.37(o)(2), the Bureau is expanding § 1026.38(t)(2) to require the capital letter designations in the headings and labels on form H–25 to be disclosed, as applicable. The Bureau makes this revision to clarify that the capital letter designations shown before or after certain of the headings and labels on form H–25 are required, even though the specific provisions of the corresponding disclosures in § 1026.38 do not contain the initial capital letter. The Bureau is also revising the description of § 1026.38(t)(2) from ''Estimated disclosures'' to ''Headings and labels.'' The Bureau is adopting § 1026.38(t)(2) as revised and comment 38(t)(2)–1 with modifications for clarity.

38(t)(3) Form

Similar to § 1026.37(o)(3), proposed § 1026.38(t)(3) also would have provided that, for a transaction that is a federally related mortgage loan, as defined in Regulation X, the disclosures must be made using form H–25 of appendix H to Regulation Z. As discussed in the proposal, certain closed-end consumer credit transactions are subject to the requirements of § 1026.19(f) but do not fit the Regulation X definition of ''federally related mortgage loan.'' These include construction-only loans with terms of less than two years that do not finance the transfer of title to the consumer and loans secured by vacant land on which a home will not be constructed or placed using the loan proceeds within two years after settlement of the loan. *See* § 1024.5(b)(3) and (4). In addition, transactions subject to § 1026.19(f) but not subject to RESPA would include loans secured by non-residential real property, provided they are made primarily for a consumer purpose as required by § 1026.1(c)(1)(iv). *See* 12 CFR 1024.2, definition of ''federally related mortgage loan,'' paragraph (1)(i) (requiring that the securing property be ''residential real property'').

As with transactions subject to § 1026.19(e), for such transactions that are subject to § 1026.19(f), because they

are subject to TILA and are secured by real property, but that are not subject to RESPA, the Bureau stated in the proposal that it would not mandate the use of form H–25 as a standard form. TILA section 105(b) provides that nothing in TILA may be construed to require a creditor to use any model form or clause prescribed by the Bureau under that section. Accordingly, proposed § 1026.38(t)(3) would have provided that, for transactions subject to § 1026.38 that are not federally related mortgage loans, the disclosures must be made with headings, content, and format substantially similar to form H–25 but does not mandate the use of that form. Consistent with TILA section 105(b), proposed comment 38(t)(3)-1 would have explained that, although use of the form as a standard form is not mandatory for such transactions, its use as a model form, if properly completed with accurate content, constitutes compliance with the clear and conspicuous and segregation requirements of § 1026.38(t)(1). Similar to § 1026.37(o)(3)(iii), proposed § 1026.38(t)(3)(iii) also would have provided that the disclosures may be provided in electronic form, subject to compliance with the E-Sign Act. This provision parallels existing § 1026.17(a)(1).

As discussed in the section-by-section analysis of proposed § 1026.37(o)(3), the Bureau proposed the requirement that creditors use the standard form for federally related mortgage loans pursuant to RESPA section 4(a), as amended by the Dodd-Frank Act. 12 U.S.C. 2603(a). As discussed above, although the Dodd-Frank Act eliminated one reference in RESPA section 4(a) to a ''standard'' form, it left the other such reference in place, as well as another such reference in section 4(c). More notably, in amending section 4(a), Congress did not include an explicit prohibition of a mandatory-use form. For this reason, the Bureau does not believe that Congress intended to eliminate standard-form authority from RESPA section 4.

The Bureau also proposed the mandatory form pursuant to its authority in RESPA section 19(a) to prescribe such rules and regulations as may be necessary to achieve RESPA's purposes. 12 U.S.C. 2617(a). RESPA's purposes include the establishment of more effective advance disclosure to home buyers and sellers of settlement costs. 12 U.S.C. 2601(b)(1). The Bureau stated its belief in the proposal, based on consumer testing results, that the purpose of more effective advance disclosure of settlement costs is better achieved if all lenders provide those disclosures in a standardized format. In the Bureau's consumer pre-proposal testing, participants were able to compare the costs disclosed on the Loan Estimate and Closing Disclosure more easily when they were provided in a format that matched closely. In addition, as stated in the proposal, participants better understood the costs disclosed in the Closing Disclosure after gaining experience using the matching format of the Loan Estimate. Further, the Bureau stated its belief in the proposal that disclosure of settlement costs alone, without the context provided by the credit terms, is far less effective in aiding consumer understanding of the transaction. This is consistent with HUD's rationale for including credit terms in the required RESPA GFE, in HUD's 2008 RESPA Final Rule. *See* 73 FR 68204, 68214–15 (Nov. 17, 2008). This is also the stated purpose of the integrated disclosure under RESPA section 4(a).

Accordingly, as stated in the proposal, the Bureau is authorized under RESPA section 19(a) to require the standard form for the disclosure of all of the information it contains, both settlement costs and credit terms alike. The Bureau further stated in the proposal that it was using this authority to require a standard form for federally related mortgage loans under § 1026.38(t)(3)(i). As described above, for transactions subject to § 1026.19(f), the Bureau is using its authority under TILA section 105(b) to establish a model disclosure for credit transactions subject to TILA and not RESPA. For a detailed description of the Bureau's implementation of these rules and use of TILA section 105(a) authority, see the section-by-section analysis of § 1026.37(o)(3).

As discussed in the proposal, during the Small Business Review Panel, several settlement agents requested that the Bureau require the use of a standard integrated disclosure form. The settlement agents stated that if the forms were only models, creditors would establish inconsistent requirements, which would be more expensive for small settlement agents. *See* Small Business Review Panel Report at 19. Feedback requesting both standard and model forms was also submitted by industry trade associations in response to the Small Business Review Panel Outline. In consideration of the recommendation of the Small Business Review Panel, the Bureau sought comment in the proposal on the advantages, such as cost-saving benefits, and disadvantages of requiring a standard form for the Closing Disclosure for federally related mortgage loans and model forms for other credit transactions subject to proposed § 1026.19(f). *Id.* at 28. The comments received on that topic are discussed in the section-by-section analysis of § 1026.37(o)(3). For the reasons discussed with respect to § 1026.37(o)(3), the Bureau is adopting § 1026.38(t)(3)(ii) and (iii) as proposed and is adopting § 1026.38(t)(3)(i) and comment 38(t)(3)–1 substantially as proposed but with minor modifications for clarity.

A document preparation company requested that the Bureau permit deviation from the required format for disclosures to be optimized to show on a computer screen or a tablet. For the reasons discussed in the section-by-section analysis of § 1026.37(o)(3)(iii), the Bureau declines to permit such deviations at the present time.

38(t)(4) Rounding

Similar to § 1026.37(o)(4), proposed § 1026.38(t)(4) would have required certain numerical amounts on the Closing Disclosure to be rounded. The Bureau proposed this requirement for the same reasons as the requirements of § 1026.37(o)(4), namely to reduce information overload, aid in consumer understanding of the transaction, prevent misconceptions regarding the accuracy of certain estimated amounts (*e.g.,* estimated property costs over the life of the loan), and ensure a meaningful disclosure of credit terms. For a detailed description of the Bureau's use of its authority under TILA section 105(a), RESPA section 19(a), and section 1405(b) of the Dodd-Frank Act in requiring rounded numbers on the integrated disclosures, see the section-by-section analysis of proposed § 1026.37(o)(4). Proposed comment 38(t)(4)–1 would have clarified that consistent with § 1026.2(b)(4) all numbers are to be disclosed as exact numbers, unless required to be rounded by proposed § 1026.38(t)(4). Proposed comment 38(t)(4)–2 would have referred to commentary to § 1026.37(o)(4) for guidance.

Comments received related generally to rounding numbers on the integrated disclosures are discussed in the section-by-section analysis of § 1026.37(o)(4). The Bureau did not receive any comments related specifically to the rounding provisions in § 1026.38(t)(4). Because the Bureau continues to believe that the rounding of certain numbers disclosed on the Closing Disclosure will effectuate the purposes of TILA and RESPA, the Bureau is adopting § 1026.38(t)(4)(i), (t)(4)(ii) and comment 38(t)(4)–2 substantially as proposed, except for modifications for clarity and

technical revisions to § 1026.38(t)(4)(ii) to correct cross-references and to § 1026.38(t)(4)(i)(C) to add the alternative Calculating Cash to Close table under § 1026.38(e) and to revise the subheading as finalized in the Calculating Cash to Close table under § 1026.38(e) and (i) and to § 1026.38(t)(4)(i)(E) to revise a cross-reference.

The Bureau is also adding § 1026.38(t)(4)(iii) to provide, consistent with § 1026.37(o)(4)(i)(B), that the dollar amount required to be disclosed by § 1026.38(b) pursuant to § 1026.37(b)(1), for the loan amount, shall be disclosed as an exact number, except that decimal places shall not be disclosed if the amount of cents is zero. The Bureau believes, based on its consumer testing, that disclosing the loan amount without cents if the amount of cents is zero, will be easier for a consumer to understand and reduce the potential for information overload. The Bureau's Quantitative Study used prototype Closing Disclosures that disclosed the loan amount on page 1 in this manner, and the consumer participants using the Bureau's integrated disclosures were able to identify the loan amount on the Closing Disclosure statistically significantly better than those using the current disclosures. *See* Kleimann Quantitative Study Report at 54–55. The Bureau is also revising comment 38(t)(4)–1, which provides general guidance regarding rounding, for clarity and to reflect the change adopted in § 1026.38(t)(4)(iii).

38(t)(5) Exceptions

The Bureau stated its belief in the proposal that it must specify the changes to the format of the Closing Disclosure that are required and permissible, to ensure the disclosures provided to consumers convey the information required by § 1026.38 in a clear, understandable, and effective manner for consumers. Accordingly, pursuant to its authority under RESPA section 19(a), TILA section 105(a), and section 1032(a) of the Dodd-Frank Act, the Bureau proposed § 1026.38(t)(5) to provide for a specific list of exceptions to the format of the Closing Disclosure, as illustrated in form H–25 of appendix H to Regulation Z. For a detailed description of the Bureau's use of its authority under TILA section 105(a), RESPA section 19(a), and section 1405(b) of the Dodd-Frank Act in providing for a list of exceptions to the required format, see the section-by-section analysis of proposed § 1026.37(o)(5).

The requirements of proposed § 1026.38(t)(5) would have mirrored those of § 1026.37(o)(5), with appropriate differences for the different format, timing, and use of the two disclosures. Like § 1026.37(o), proposed § 1026.38(t)(5)(i) would have required modification to indicate the frequency of payment or applicable unit-period for the transaction; proposed § 1026.38(t)(5)(ii) would have permitted lender credits to be deleted from the Cash to Close disclosure required by proposed § 1026.38(d); proposed § 1026.38(t)(5)(iii) would have permitted the addition of administrative information in a certain space on the form; and proposed § 1026.38(t)(5)(ix) would have permitted translation of the form into languages other than English. In contrast to § 1026.37(o)(5)(iii), proposed § 1026.38(t)(5) would not have permitted a creditor to insert a logo or slogan on the Closing Disclosure with the creditor information required by proposed § 1026.38(a)(4)(iii). Comments received related to § 1026.38(t)(5)(i), (ii), (iii), and (ix) are discussed in the section-by-section analysis of the corresponding paragraph in § 1026.37(o)(5).

While § 1026.37(o)(5) does not permit the deletion of lines from the form H–24 of appendix H to Regulation Z for the information required to be disclosed by § 1026.37(f) and (g), proposed § 1026.38(t)(5)(iv) would have permitted the deletions of lines in certain circumstances from proposed form H–25 of appendix H to Regulation Z. Section 1026.37(o) does not permit the use of more than one page for closing cost details on the Loan Estimate, except for the services for which a consumer can shop under § 1026.37(f)(3) which may be placed on an additional page at the end of the Loan Estimate under the circumstances permitted by § 1026.37(o)(5)(viii). In contrast, proposed § 1026.38(t)(5)(v) would have permitted the expansion of the information required by § 1026.38(f), (g), and (h) over two pages in certain circumstances to accommodate the closing costs and itemization required on the Closing Disclosure, provided that the Loan Costs and Other Costs under § 1026.38(f) and (g), respectively, are each disclosed on a single page.

The Bureau stated its understanding in the proposal that the Closing Disclosure may be provided to parties other than consumers, unlike the Loan Estimate. In light of privacy considerations that may arise, proposed § 1026.38(t)(5)(vi) would have permitted the creditor or settlement agent preparing the disclosure to leave certain information regarding the consumer's transaction blank in the disclosure provided to the seller and vice versa. Similarly, proposed § 1026.38(t)(5)(vii) would have permitted the creditor or settlement agent preparing the disclosure to delete certain information regarding the consumer's transaction from the disclosure provided to a seller or third party. For example, proposed § 1026.38(t)(5)(vii) would have permitted the disclosures regarding the consumer's credit transaction required by § 1026.38(l) through (s) to be deleted from the form provided to a seller. An illustration of such form was provided in proposed form H–25(I) of appendix H to Regulation Z. Further, considering that some credit transactions may not involve sellers, proposed § 1026.38(t)(5)(viii) also would have permitted use of a modified version of the form for credit transactions that do not involve a seller, such as a refinance transaction, which was illustrated in proposed form H–25(J). Proposed § 1026.38(t)(5)(x) would have permitted the addition of a page for customary recitals and information used locally in real estate settlements.

Proposed comment 38(t)(5)–1 would have clarified that any changes not specified in proposed § 1026.38(t)(5) may affect the substance, clarity, or meaningful sequence of the disclosure and cause the creditor to lose protection from civil liability under TILA. Similar to comments 37(o)(t)–2 through –5, proposed comments 38(t)(5)–2 through –4 would have provided guidance regarding manual completion of the form, modifications to accommodate additional contact information, and the addition of signature lines permitted by § 1026.38(t)(5). In addition, because certain disclosures required by proposed § 1026.38 would have been permitted by proposed § 1026.38(t) to be disclosed over two pages, even though they are illustrated on form H–25 of appendix H to Regulation Z as disclosed on one page, proposed comment 38(t)(5)–6 would have permitted modifications to the page number references illustrated on form H–25 accordingly. Proposed comments 38(t)(5)(iv)–1 and 38(t)(5)(v)–1 and –2 would have provided clarification about permissible changes to the required disclosure of closing cost details when the space provided on form H–25 does not accommodate all of the costs required to be disclosed. Proposed comments 38(t)(5)(viii)–1 and –2 would have provided clarifications regarding modifications permitted for transactions without a seller. Lastly, proposed comment 38(t)(5)(x)–1 would have provided clarification regarding adding an additional page for customary

recitals and information typically used locally in real estate settlements.

A national title insurance company suggested that the Bureau expressly prohibit the insertion of a logo or slogan on the Closing Disclosure. Several trade associations representing mortgage lenders requested guidance on how to disclose closing costs on an additional page and asked whether that additional page could be divided into two parts in order to keep items within categories grouped together. The Bureau received comments from two document preparation companies requesting guidance on when additional pages were permitted to be added to both the Loan Estimate and the Closing Disclosure.

With respect to the comment that the Bureau should expressly prohibit insertion of a logo or slogan, § 1026.38(t)(1)(ii) states that disclosures shall be made in the same order, and positioned relative to the master headings, headings, subheadings, labels, and similar designations in the same manner, as shown in form H–25, except as provided in § 1026.38(t)(5). Accordingly, because the insertion of a logo or slogan is not listed in § 1026.38(t)(5), it is prohibited by § 1026.38(t)(1)(ii).

Regarding the disclosure of closing cost details on an additional page, the intent of proposed § 1026.38(t)(5)(v) was to keep the disclosures required by § 1026.38(f), (g), and (h) grouped together, even when disclosed over two pages. Specifically, proposed § 1026.38(t)(5)(iv) and (v) would have required that when disclosed over two pages, the information required by § 1026.38(f) be disclosed on a separate page from § 1026.38(g) and that the information required by § 1026.38(h) be disclosed on the same page as the information required by § 1026.38(g). An example of the disclosure of closing costs over two pages pursuant to proposed § 1026.38(t)(5)(v) was included as form H–25(H) in the proposal.

The Bureau believes, from its review of the comments received regarding proposed § 1026.38(t)(5)(v) and proposed comment 38(t)(5)–5, that commenters were confused about how these provisions worked together. Accordingly, the Bureau is revising proposed § 1026.38(t)(5)(v) to refer to disclosure of the Closing Cost Details ''over two pages,'' rather than on ''an additional page.'' The Bureau acknowledges that it used the term ''additional page'' in other sections of the proposal to describe a page added to the end of the Loan Estimate or Closing Disclosure as permitted in limited circumstances. The Bureau is also reorganizing proposed § 1026.38(t)(5)(iv) and (v) into one paragraph, finalized as § 1026.38(t)(5)(iv), titled ''Closing Cost Details'' and separated into two sub-paragraphs to improve clarity regarding the interaction of these two requirements.

Final § 1026.38(t)(5)(iv)(A) addresses adding or deleting line numbers in the Closing Cost Details table while final § 1026.38(t)(v)(iv)(B) addresses disclosing closing costs over two pages in that table if the addition or deletion of line numbers under § 1026.38(t)(5)(iv)(A) is insufficient to make all required disclosures. This reorganization is intended to clarify that the two permissible modifications to the Closing Cost Details table work together. This reorganization is also intended to signify that the disclosure of the information required by § 1026.38(f), (g), and (h) over two pages is unique to the Closing Cost Details section and to distinguish it from the limited permission to add additional pages to the end of the Closing Disclosure as clarified by comment 38(t)(5)–5. The Bureau believes that the reorganized § 1026.38(t)(5)(iv) will alleviate the confusion over the special rules related to the Closing Cost Details. To correspond to these changes, the Bureau is renumbering proposed comment 38(t)(5)(v)–1 as comment 38(t)(5)(iv)–2, revising the reference to § 1026.38(t)(5)(v)(B) and describing disclosure of closing cost details over two pages rather than on an additional page. The Bureau is also renumbering proposed comment 38(t)(5)(v)–2 as comment 38(t)(5)(iv)–3, noting that when closing cost details are disclosed over two pages, the pages should be numbered 2a and 2b, and adding a reference to form H–25(H) for an example of this disclosure.

With respect to the requests for guidance regarding additional pages, the Bureau notes that if an additional page is permitted to be added to the Closing Disclosure for a required disclosure that does not fit in the space allocated for it on form H–25, it is specified in the specific sub-section of § 1026.38 or its associated commentary. Proposed comment 38(t)(5)(x)–1 would have provided guidance regarding the permission to add an additional page for customary recitals and information. The Bureau is adopting comment 38(t)(5)(x)–1 as proposed, but is renumbering it as comment 37(t)(5)(ix)–1 to correspond with renumbered § 1026.38(t)(5)(ix).

The Bureau is adopting § 1026.38(t)(5)(viii) substantially as proposed, except that it is renumbered as final § 1026.38(t)(5)(vii), the name of the table referred to in § 1026.38(t)(5)(vii)(B) is being revised from ''Disbursements to Others'' to ''Payoffs and Payments,'' with minor modifications for clarity, and the Bureau is noting that the modifications in § 1026.38(t)(v)(vii) are permitted only when the alternative tables are disclosed pursuant to § 1026.38(d)(2) and (e). The Bureau conducted consumer testing of revised disclosures for transactions without sellers after issuing the proposal and the heading ''Payoffs and Payments'' performed better with consumers than ''Distributions to Others.'' *See* Kleimann Post-Proposal Testing Report at 71. Accordingly, the Bureau is making this modification to utilize plain language and to aid consumer understanding of the transaction, consistent with the purposes of TILA and RESPA. In addition, proposed § 1026.38(t)(5)(viii)(C) is deleted, as such modifications are not permitted because the alternative Calculating Cash to Close table under § 1026.38(e) is required to use this modification. Proposed § 1026.38(t)(5)(viii)(D) is adopted as final § 1026.38(t)(5)(vii)(C), with modifications for clarity. The Bureau is also revising comment 38(t)(5)(viii)–1 for the same reason, to clarify that the alternative tables pursuant to § 1026.38(d)(2) and (e) are required to be disclosed to use the modification permitted under § 1026.38(t)(5)(vii), which comment is renumbered as 38(t)(5)(vii)–1. The Bureau is renumbering proposed comment 38(t)(5)(viii)–2 as final comment 38(t)(5)(vii)–2 and is revising it to note that the label ''Appraised Prop. Value'' should be ''Estimated Prop. Value'' when there is no appraisal in a transaction without a seller for the reasons discussed in the section-by-section analysis of § 1026.38(a)(3)(vii).

The Bureau did not receive any comments regarding § 1026.38(t)(5)(i) or (ii) and is adopting them as proposed except for a technical revision to § 1026.38(t)(5)(ii) to revise a cross-reference. For the reasons discussed in the section-by-section analysis of § 1027.37(o)(5)(v), the Bureau is revising § 1026.38(t)(5)(iii) to permit the disclosure of administrative information centered at the bottom of each page of the Closing Disclosure, rather than in the top and right of only the first page as proposed. The Bureau is revising proposed § 1026.37(t)(5)(iv) and (v) as described above and adopting them as renumbered § 1026.37(t)(5)(iv)(A) and (B). The Bureau did not receive any comments on proposed

§ 1026.38(t)(5)(vi) and (vii) and is adopting them as proposed except that they are renumbered as § 1026.39(t)(5)(v) and (vi), respectively. The Bureau is adopting proposed § 1026.38(t)(5)(viii) for transactions without a seller as revised for the reasons discussed above and renumbered as § 1026.38(t)(5)(vii). The Bureau did not receive any comments on proposed § 1026.38(t)(5)(x) and is adopting it as proposed but renumbered as § 1026.38(t)(5)(ix).

Comments regarding proposed § 1026.38(t)(5)(ix), which would have permitted creditors to translate the Closing Disclosure into other languages, are discussed in the section-by-section analysis of § 1026.37(o)(5)(iv). The Bureau is finalizing proposed § 1026.38(t)(5)(ix) substantially as proposed, except that it is renumbering it as § 1026.38(t)(5)(viii) and is modifying the provision to provide clarity regarding the modifications permitted to form H–25 to accommodate the translation into a language other than English. Final § 1026.38(t)(5)(viii) permits creditors to modify form H–25 to the extent that translation prevents the headings, headings, labels, designations, and required disclosure items under § 1026.38 from fitting in the space provided on form H–25. The Bureau is also adding comment 38(t)(5)–7 to provide additional guidance regarding the modifications to form H–25 that are permitted to accommodate translation of the Closing Disclosure into languages other than English.

The Bureau did not receive comments on proposed comments 38(t)(5)–1, –2, –4, and –6 and is adopting them as proposed, except that comment 38(t)(5)–1 is revised slightly for clarity and comment 38(t)(5)–2 is revised for clarity to delete the reference to the electronic, machine readable format requirement proposed as § 1026.25 because the proposed requirement to retain records in an electronic, machine readable format is not being adopted in this final rule. The Bureau is also removing proposed comment 38(t)(5)–3 because the guidance provided in that comment has been incorporated into final comment 38(r)–1. The Bureau is adopting proposed comments 38(t)(5)–5 with respect to additional pages as revised for the reasons discussed above. The Bureau is adopting proposed comments 38(t)(5)(iv)–1 and 38(t)(5)(v)–1 and –2 with respect to Closing Cost Details as revised for the reasons discussed above and renumbered as comments 38(t)(5)(iv)–1, –2, and –3. The Bureau is adopting proposed comments 38(t)(5)(viii)–1 substantially as proposed with a minor modification for clarity but renumbered as 38(t)(5)(vii)–1. The Bureau is adopting proposed comment 38(t)(5)(viii)–2 with respect to transactions without a seller as revised for the reasons discussed above and renumbered as comment 38(t)(5)(vii)–2. The Bureau is adopting proposed comment 38(t)(5)(x)–1 as proposed except that it is renumbered as comment 38(t)(5)(ix)–1. The Bureau is also adding comment 38(t)(5)–3 to provide additional guidance regarding the modification of unit-periods disclosed on the Closing Disclosure, and to clarify that the term ''unit-period'' as used in § 1026.38 has the same meaning as in appendix J to Regulation Z.

Section 1026.39 Mortgage Transfer Disclosures

TILA section 131(g) and § 1026.39 of Regulation Z currently require the creditor that is the new owner or assignee of a mortgage loan to notify the consumer of the sale or transfer of a mortgage loan no later than 30 days after the date on which the new owner/assignee acquired the loan.[304] These requirements apply to open- and closed-end consumer credit transactions that are secured by consumers' principal dwellings.[305] Section 1414(d) of the Dodd-Frank Act amended TILA section 129C to impose additional disclosure requirements on new owners or assignees of residential mortgage loans. Specifically, section 129C(h) requires a person who becomes a creditor of an existing ''residential mortgage loan'' to disclose the following regarding partial payments: (i) the creditor's policy regarding the acceptance of partial payments; and (ii) if they are accepted, how such payments will be applied to the mortgage loan, and if such payments will be placed in escrow. 15 U.S.C. 1639c(h). This requirement is in addition to the identical disclosure required before settlement that was added to TILA by section 1414(d) of the Dodd-Frank Act, which the Bureau proposed to implement in proposed § 1026.38(l)(5) pursuant to its authority under TILA section 105(a), as described above.

These new section 1414(d) partial payment disclosures apply to ''residential mortgage loans.'' Section 1401 of the Dodd-Frank Act amended TILA section 103 to define ''residential mortgage loan'' as any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, or residential real property that includes a dwelling. ''Residential mortgage loan'' specifically excludes a consumer credit transaction under an open credit plan or, for purposes of certain sections of TILA, including TILA section 129C, timeshare plans described in section 101(53D) of title 11 of the United States Code. 15 U.S.C. 1602(cc)(5).

Coverage and Timing of the Partial Payment Policy Disclosure

The disclosures required by new TILA section 129C(h) and pre-existing section 131(g) must be provided in connection with the transfer or assignment of a mortgage loan generally. However, the disclosures apply to different categories of mortgage loans. The requirements in TILA section 131(g) apply to both closed-end credit transactions and open-end home equity lines of credit that are secured by a consumer's principal dwelling. In contrast, TILA section 129C(h) applies only to closed-end credit. However, TILA section 129C(h) is not limited to closed-end loans secured by the consumer's principal dwelling. Rather, section 129C(h) applies to closed-end credit secured by a dwelling or residential real property with a dwelling.

Sections 131(g) and 129C(h) also differ on the timing requirements for disclosures. TILA section 131(g) expressly provides that the disclosure must be provided no later than 30 days after the date on which a mortgage loan is sold or otherwise transferred or assigned. TILA section 129C(h), on the other hand, simply provides that a new creditor of an existing residential mortgage loan must disclose its partial payment policy at the time the person ''becomes a creditor.'' Thus, TILA section 129C(h) requires the disclosure when the person acquires the loan.

The Bureau stated its belief in the proposal that combining and harmonizing the disclosures required on new ownership and partial payment policies would promote the informed use of credit by consumers and facilitate compliance by persons covered by these requirements. The proposal would have

[304] 75 FR 58489 (Sept. 24, 2010). The Bureau restated § 226.39 as § 1026.39. 76 FR 79768 (Dec. 22, 2011).

[305] On May 20, 2009, the Helping Families Save Their Homes Act of 2009 was signed into law. Public Law 111–22, 123 Stat. 1632 (2009). Section 404(a) of the Helping Families Save Their Homes Act of 2009 amended TILA to establish a new requirement in TILA section 131(g) for notifying consumers of the sale or transfer of their mortgage loans for consumer credit transactions secured by the principal dwelling of a consumer. The creditor that is the new owner or assignee of the mortgage loan must provide the required disclosures no later than 30 days after the date on which it acquired the loan. 15 U.S.C. 1641(g). The Board implemented TILA section 131(g) in Regulation Z as § 226.39.

combined the partial payment policy disclosure required after consummation with the mortgage loan transfer disclosure currently required by § 1026.39. The combined disclosure would have been provided to consumers no later than 30 days after the loan was sold or transferred. The proposal would also have broadened the scope of § 1026.39 to require the loan transfer disclosure for credit transactions secured by all dwellings, rather than principal dwellings only. The Bureau believed the disclosures regarding the identity of a consumer's new creditor, and the new creditor's partial payment policy, would be just as useful to a consumer whose closed-end credit transaction is secured by a second or vacation home as it would to a consumer whose closed-end loan is secured by a principal dwelling. In addition, the Bureau stated that it believed that adjustment of the scope of § 1026.39 to include closed-end credit transactions secured by a dwelling would facilitate compliance. Covered persons would not have to determine whether and which disclosures would be triggered when a closed-end transaction secured by a dwelling is transferred.

The Bureau also proposed to extend the scope of § 1026.39 to include closed-end credit transactions subject to proposed § 1026.19(f) (*i.e.,* closed-end transactions secured by real estate, other than reverse mortgage transactions subject to § 1026.33), as well as closed-end transactions secured by a dwelling. This adjustment would have harmonized the coverage of the mortgage loan transfer disclosure, the post-consummation partial payment policy disclosure, and the pre-consummation partial payment policy disclosure which extends to closed-end transactions secured by real estate but not a dwelling. The Bureau explained that applying the pre- and post-consummation partial payment policy disclosures to the same loans would promote the informed use of credit, because consumers who receive the disclosure before consummation would be informed if the policy has changed with the new ownership of the loan. In addition, the Bureau stated that it believed disclosures regarding the identity of a consumer's new creditor, and the new creditor's partial payment policy, would be just as useful to a consumer whose closed-end consumer credit transaction is secured by real estate that does not include a dwelling, or non-residential real estate, as it would to a consumer whose closed-end loan is secured by a dwelling.

This proposed adjustment to the scope of § 1026.39 would not have excluded reverse mortgage transactions subject to § 1026.33, as such transactions are not currently excluded from coverage under § 1026.39 generally. However, as discussed below in the section-by-section analysis of § 1026.39, the Bureau proposed to exclude reverse mortgage transactions subject to § 1026.33 from the requirement to disclose a partial payment policy in proposed § 1026.39(d)(5). In addition, the proposal's scope would not have excluded credit transactions relating to timeshare plans as described in 11 U.S.C. 101(53D), even though such timeshare transactions are excluded from the definition of ''residential mortgage loan'' under TILA section 103. The Bureau stated that it believed a new creditor's partial payment policy would be just as useful to a consumer whose closed-end credit transaction is secured by such a timeshare plan as to a consumer of a principal-dwelling secured transaction. It noted that timeshare transactions would generally be covered by proposed § 1026.19(f) as transactions secured by real estate.

The Bureau proposed the adjustments discussed above pursuant to its authority under TILA section 105(a) to effectuate the purposes of TILA and Regulation Z and facilitate compliance with the statute. The Bureau stated in the TILA–RESPA Proposal its belief that this adjustment effectuates the purposes of TILA under TILA section 102(a), because it would ensure meaningful disclosure of credit terms to consumers and facilitate compliance with the statute. In addition, the Bureau stated in the proposal that it believed, consistent with section 1032(a) of the Dodd-Frank Act, this adjustment would ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances. Further, the Bureau proposed this modification of the disclosure requirements for residential mortgage loans based on its authority under Dodd-Frank Act section 1405(b), as it believed the modification would improve consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures, and would be in the interest of consumers and in the public interest.

39(a) Scope

For the reasons discussed above, the Bureau proposed amendments to § 1026.39(a) to expand the coverage of the disclosures required when ownership of a mortgage loan is transferred to closed-end credit transactions secured by a dwelling or real property. The Bureau proposed to retain the scope for open-end credit transactions to those secured by the consumer's principal dwelling.

The Bureau did not propose to change the scope of the term ''covered person'' under § 1026.39(a)(1). When the Board issued § 1026.39 to implement TILA section 131(g), it applied the notice requirements to ''covered persons,'' rather than ''creditors'' as defined under TILA and Regulation Z.[306] The Board took this action, noting that section 131(g) requires notices to be provided by a ''creditor that is the new owner or assignee of the debt.'' [307] The Board stated that Congress did not intend the word ''creditor'' in section 131(g) to have the same meaning as ''creditor'' under TILA and Regulation Z.[308] The term ''creditor'' generally refers to a person to whom the credit obligation is initially made payable and that regularly engages in extending consumer credit. 15 U.S.C. 1602(g); 12 CFR 1026.2(a)(17). The Board concluded that ''to give effect to the legislative purpose, the term 'creditor' in Section 404(a) must be construed to refer to the owner of the debt following the sale, transfer or assignment, without regard to whether that party would be a 'creditor' for other purposes under TILA or Regulation Z.'' [309]

Similar to section 131(g), the post-consummation disclosure requirement of TILA section 129C(h) applies to ''a person becoming a creditor with respect to an existing residential mortgage loan.'' [310] The Bureau stated in the proposal that to give effect to the legislative purpose of section 1414(d) of the Dodd-Frank Act, the post-consummation disclosure requirement of TILA section 129C(h) should apply without regard to whether the person would be a ''creditor'' under TILA and Regulation Z for the same reasons cited by the Board in implementing TILA section 131(g).[311] For these reasons, the Bureau proposed to retain the term

[306] *Id.*

[307] Public Law 111–22, § 404(a); 15 U.S.C. 1641(g).

[308] 75 FR 58489, 58490–1.

[309] *Id.*

[310] 15 U.S.C. 1639c(h).

[311] 75 FR 58490–91.

''covered person'' under § 1026.39(a)(1) and its definition.

Final Rule

The Bureau did not receive comments on proposed § 1026.39(a). Accordingly, the Bureau is adopting the amendments to § 1026.39(a) as proposed based on the authority, and for the reasons stated in the proposal.

39(d) Content of Required Disclosures

As discussed above, the Bureau stated in the proposal that it believed the adjustment to the scope of § 1026.39 would promote the informed use of credit and facilitate compliance with the statute. The Bureau proposed amendments to § 1026.39(d) to add the additional partial payment policy disclosure requirement of TILA section 129C(h) in new § 1026.39(d)(5). Pursuant to its implementation authority under TILA Section 105(a), the Bureau proposed to integrate the timing of this disclosure requirement with the disclosure required by TILA section 131(g). The Bureau stated in the proposal that it believed consumers may be better informed regarding the transfer of ownership of their mortgage loans if the required disclosures integrated the information applicable to the new creditor into one single disclosure, rather than consumers having to receive separate mailings at different times. In addition, the Bureau stated its belief that, consistent with section 1032(a) of the Dodd-Frank Act, the integration of these disclosure requirements would ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

The proposed amendments to § 1026.39(d) would have also required the mortgage transfer disclosure for credit transactions that are mortgage loans for purposes of § 1026.39, except that the partial payment policy disclosure under proposed § 1026.39(d)(5) would only have been required for mortgage loans that are closed-end consumer credit transactions secured by a dwelling or real property other than reverse mortgage transactions subject to § 1026.33. The Bureau believed that this integrated mortgage transfer disclosure would also facilitate compliance with the statute. Covered persons would have to analyze the timing requirements and scope of only one transfer disclosure, rather than two separate disclosures for one transfer of a mortgage loan. The Bureau stated that it would not require the partial payment policy disclosure under proposed § 1026.39(d)(5) for open-end credit transactions and closed-end reverse mortgage transactions subject to § 1026.33. The partial payment policy disclosure required by TILA section 129C(h) is not required for open-end credit transactions. The pre-consummation partial payment policy disclosure set forth in proposed § 1026.38(l)(5) for loans subject to proposed § 1026.19(f) would not be required for closed-end credit reverse mortgage transactions subject to § 1026.33. Reverse mortgage transactions do not require consumers to make regular periodic payments to the creditor. Requiring the disclosure in these transactions would not have been practical. The Bureau stated in the proposal that it believed excluding reverse mortgage transactions from the partial payment policy disclosure in § 1026.39(d)(5) would be appropriate and facilitate compliance with the statute.

The proposed amendments also would have added comment 39(d)–2, which would have clarified that the partial payment policy disclosure is required only for closed-end mortgage loans secured by a dwelling or real property, other than reverse mortgage transactions subject to § 1026.33. Proposed comment 39(d)(5)–1 would have clarified that covered persons are permitted to use the format for the disclosure that is illustrated in proposed form H–25 of appendix H to Regulation Z for the information required to be disclosed by proposed § 1026.38(l)(5), with appropriate modifications that do not affect the substance, clarity, or meaningful sequence of the disclosure.

The Bureau received one comment on the amendments to § 1026.39(d) from a GSE, which also provided comments to the Bureau's proposed pre-consummation partial payment policy disclosure set forth in § 1026.38(l)(5). The GSE opposed the proposed requirement to make persons subject to § 1026.39 provide the partial payment policy disclosure required by TILA section 129C(h) at the time when the ownership of a mortgage loan is transferred. It stated that the loan servicer, not the loan purchaser, such as a mortgage investor, decides whether or not to accept partial payments.

The GSE commenter stated that it believed consumers would likely be frustrated and confused if they received information about the acceptance of partial payments from an entity, such as an investor, that is not capable of accepting partial payments. The GSE commenter requested that the Bureau require that servicers, instead of ''covered persons'' under § 1026.39, provide the partial payment policy notice in a separate transmittal. The GSE commenter further suggested limiting the requirement to provide the partial payment policy notice to situations where the servicer has a policy of not accepting any partial payments, so as to avoid the confusion that may arise from any truncated description of the servicer's policy. The Bureau did not receive comments on the other aspects of the proposed amendments to § 1026.39(d) and related commentary.

As discussed above in the section-by-section analysis of § 1026.38(l)(5), the Bureau recognizes that the ownership of a mortgage loan post-consummation and the servicing of the loan can be bifurcated. Additionally, the transfer of a mortgage loan's ownership may not coincide with the transfer of the loan's servicing rights. Although collecting and allocating payments are typically the duties of a servicer, TILA section 129C(h) clearly establishes a disclosure obligation on the new creditor of an existing mortgage loan. For the reasons discussed, the Bureau interprets the reference to ''creditor'' in TILA section 129C(h) to mean the owner of the loan. Regulation Z currently implements the same reference in TILA section 131(g) to ''creditor'' to mean the owner of the loan. The Bureau believes that integrating the partial payment policy disclosure with the existing mortgage transfer disclosures required by current § 1026.39 benefits consumers and persons subject to § 1026.39.

For the reasons discussed above, the Bureau is finalizing the amendments to § 1026.39(d) and its commentary substantially as proposed, with revisions to enhance clarity. The Bureau is adopting the amendment to current § 1026.39(d) as proposed, which provides that the partial payment policy disclosure required by § 1026.39(d)(5) is not required for open-end credit transactions and closed-end credit reverse mortgage transactions subject to § 1026.33. The final rule adds the additional partial payment policy disclosure requirement of TILA section 129C(h) to the disclosures required by current § 1026.39(d)(5). In situations where the servicing of a mortgage loan transfers to a covered person upon such covered person becoming a new creditor with respect to the loan, the covered person will have to disclose whether it accepts partial payments in accordance with final § 1026.39(d)(5). If the covered person becoming a new creditor will not also be the servicer, the new creditor will have to make arrangements with

the servicer to ensure that the consumer receives the disclosures required by § 1026.39(d)(5).

As discussed above, the post-consummation partial payment policy disclosure requirement of TILA section 129C(h) is identical to the partial payment policy disclosure required before consummation. The Bureau is adopting the partial payment policy disclosure required before consummation in § 1026.38(l)(5) pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and for residential mortgage loans, Dodd-Frank Act section 1405(b), as described above in the section-by-section analysis of § 1026.38(l)(5). For reasons discussed in the section-by-section analysis of § 1026.38(l)(5), the Bureau is revising the disclosures proposed in § 1026.38(l)(5) in adopting that section. Accordingly, the Bureau is adopting § 1026.39(d)(5), and comments 39(d)–2 and 39(d)(5)–1 substantially as proposed, to conform the disclosures in final § 1026.39(d)(5) to the disclosures in § 1026.38(l)(5).

The Bureau adopts the amendments to § 1026.39(d) pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and for residential mortgage loans, Dodd-Frank Act section 1405(b). The Bureau believes that consumers will be better informed regarding the transfer of ownership of their mortgage loans if the required disclosures integrate the information applicable to the new creditor into one single disclosure provided at one time. In addition, consistent with section 1032(a) of the Dodd-Frank Act, the integration of these disclosure requirements would ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances. Further, for reasons described above in the section-by-section analysis of § 1026.38(l)(5), the Bureau believes that the modification made to the statutory requirement to disclose how a consumer's partial payments will be applied to the consumer's account, and whether any penalties will apply, will improve consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures. The modifications will also be in the interest of consumers and in the public interest.

Appendix D—Multiple Advance Construction Loans

Currently, appendix D to Regulation Z provides guidance concerning the disclosure of multiple-advance construction loans, including such loans that may be permanently financed by the same creditor. Dodd-Frank Act section 1032(f) requires that the Bureau propose rules and forms that combine the disclosures required under TILA and RESPA sections 4 and 5 into a single, integrated disclosure for mortgage loan transactions covered under TILA and RESPA. Proposed revisions to part II of appendix D would have excluded loans that are subject to § 1026.19(e) and (f) from the guidance provided under paragraph A.1 of part II, but would have included those loans in the guidance provided under paragraph A.2 of part II. Proposed revised comment app. D–6 would have clarified that some home construction loans that are secured by a dwelling are subject to § 1026.18(s) and not § 1026.18(g), with a reference to proposed comment app. D–7. One illustration of the application of appendix D to transactions subject to § 1026.18(s) also would have clarified that, where interest is payable on the amount actually advanced for the time the amount is outstanding, the construction phase must be disclosed pursuant to appendix D, part II.C.1, and the interest rate and payment summary table disclosed under § 1026.18(s) in such cases must reflect only the permanent phase of the transaction.

Proposed comment app. D–7 would have clarified that some home construction loans that are secured by real property are subject to §§ 1026.37(c) and 1026.38(c) and not § 1026.18(g). Under § 1026.17(c)(6)(ii), when a multiple-advance construction loan may be permanently financed by the same creditor, the construction phase and the permanent phase may be treated as either one transaction or more than one transaction. Two illustrations would have further clarified the application of appendix D to transactions subject to §§ 1026.37(c) and 1026.38(c).

The first illustration would have clarified that, if a creditor elects pursuant to § 1026.17(c)(6)(ii) to disclose the construction and permanent phases as separate transactions, the construction phase must be disclosed according to the rules in proposed §§ 1026.37(c) and 1026.38(c). Under proposed §§ 1026.37(c) and 1026.38(c), the creditor would have been required to disclose the periodic payments during the construction phase in the projected payments table. The provision in appendix D, part I.A.3, which allows the creditor to omit the number and amounts of any interest payments ''in disclosing the payment schedule under § 1026.18(g)'' would not have applied because the transaction would have been governed by §§ 1026.37(c) and 1026.38(c) rather than § 1026.18(g). The creditor would have determined the amount of the interest only payment to be made during the construction phase using the assumption in appendix D, part I.A.1. Also, because the construction phase would be disclosed as a separate transaction and its terms would not repay all principal, the creditor would have been required to disclose the construction phase transaction as a balloon product, pursuant to proposed §§ 1026.37(a)(10)(ii)(D) and 1026.38(a)(5)(iii), in addition to reflecting the balloon payment in the projected payments table.

The second illustration would have clarified that, if the creditor elects to disclose the construction and permanent phases as a single transaction, the repayment schedule must be disclosed pursuant to appendix D, part II.C.2. Under proposed appendix D, part II.C.2, the projected payments table would have been required to reflect the interest only payments during the construction phase in a first column, followed by the appropriate column(s) reflecting the amortizing payments for the permanent phase. The creditor would have determined the amount of the interest only payments to be made during the construction phase using the assumption in appendix D, part II.A.1.

Several national trade association commenters representing the financial services industry stated that requiring that the integrated disclosures be used to disclose the terms of construction loans to consumers could affect the availability of construction loans. The integrated disclosure requirements of this final rule apply to construction loans. The scope of the integrated disclosure requirements is discussed above in the section-by-section analysis of § 1026.19.

Several industry commenters also stated that additional examples would be helpful for implementation. The extent to which the Bureau believes samples of construction loans are necessary is discussed below under the section-by-section analysis of appendix H to Regulation Z. The Bureau received no other comments on the proposed amendments to appendix D. Accordingly, the Bureau is adopting the revisions to part II of appendix D and comments app. D–6 and D–7 as

proposed with minor modifications to provide clarity.

The Bureau is exercising its authority under TILA section 105(a) and Dodd-Frank Act section 1405(b) to amend appendix D to Regulation Z by revising the guidance provided in appendix D and the commentary to the appendix to assist in the integration of these disclosures. In addition to effectuating the mandate in Dodd-Frank Act sections 1032(f), 1098, and 1100A to integrate the mortgage loan disclosure requirements under TILA and RESPA, the Bureau believes that these revisions are necessary and proper to effectuate the purposes of TILA by promoting the informed use of credit because the proposed revisions assist consumers' understanding of their legal obligations to the creditor. In addition, consistent with section 1405(b) of the Dodd-Frank Act, these revisions will improve consumer awareness and understanding of transactions involving residential mortgage loans and are, therefore, in the interest of consumers and the public.

Appendix H—Closed-End Forms and Clauses

The Bureau proposed to add forms H–24, H–25, H–26, and H–27 to appendix H to Regulation Z. Forms H–24 and H–25 would have provided blank forms for the Loan Estimate and Closing Disclosure illustrating the inclusion or exclusion of information as required, prohibited, or applicable under §§ 1026.37 and 1026.38. In addition, form H–24 would have provided examples of completed Loan Estimates in whole or in relevant part for a fixed rate transaction, an interest only adjustable rate transaction, a refinance with a prepayment penalty, a loan with a balloon payment, and a loan with negative amortization. Form H–25 would have provided examples of completed Closing Disclosures in whole or in relevant part for a fixed rate transaction, a purchase transaction with funds from a second loan, a transaction in which a second loan is satisfied outside of closing, samples of a refinance transaction, and examples of the modifications to the Closing Disclosure permitted pursuant to proposed § 1026.38(t)(5)(v) through (viii).

The Bureau proposed forms H–24 and H–25 pursuant to the authority and for the reasons described above in the section-by-section analysis of §§ 1026.37(o) and 1026.38(t). Specifically, the Bureau proposed forms H–24 and H–25 as standard forms that would have been required for transactions that were subject to proposed § 1026.19(e) and (f) and were federally related mortgage loans, as defined in Regulation X. For transactions that were subject to proposed § 1026.19(e) and (f) but were not federally related mortgage loans, the forms in H–24 and H–25 would have been models for compliance with the applicable requirements of §§ 1026.19, 1026.37, and 1026.38. For these transactions, the Bureau also proposed these forms pursuant to its authority to publish model forms under TILA section 105(b) and (c).

Transactions subject to proposed § 1026.19(e) would have been subject to additional disclosure requirements under proposed § 1026.19(e)(1)(vi), (2)(ii), and (3)(ii)(C). Proposed form H–26 would have provided a model form for compliance with the statement required by proposed § 1026.19(e)(2)(ii) when a creditor provides a written estimate of terms or costs specific to a consumer before the consumer receives the disclosures required under § 1026.19(e)(1)(i) and indicates intent to proceed with the transaction. Consistent with proposed § 1026.19(e)(2)(ii), this statement would have been required to be placed at the top of the front of the first page of the estimate in a font size that is no smaller than 12-point font.

Proposed form H–27(A) would have provided a model form for the written list of settlement service providers required by proposed § 1026.19(e)(1)(vi) and the statement required by § 1026.19(e)(3)(ii)(C) that the consumer may select a settlement service provider that is not on the list. Proposed forms H–27(B) and (C) would have been samples for this form. The Bureau proposed forms H–26 and H–27 pursuant to its authority to publish model forms under TILA section 105(b) and (c). The Bureau also proposed to make conforming amendments to samples H–13 and H–15 and their associated comments pursuant to its authority to publish model forms under TILA section 105(b) and (c).

The Bureau noted in the proposal that, during the Small Business Review Panel, several small business representatives requested that the Bureau provide detailed guidance on how to complete the integrated forms, including, as appropriate, samples of completed forms for a variety of loan transactions. *See* Small Business Review Panel Report at 28. Similar feedback was also submitted by several industry trade associations in response to the Small Business Review Panel Outline. Based on this feedback and consistent with the Small Business Review Panel's recommendation, the Bureau proposed the examples described above, which, of course, added significant length to the proposed rule. The Bureau sought comment on whether the number and types of examples are beneficial to industry or whether certain examples should be added to or deleted from the rule, including sample forms in other languages, such as Spanish.

The Bureau also received feedback from industry stakeholders during its outreach prior to issuing the proposal that samples of a construction-only transaction and a transaction with both a construction and permanent financing phase would be beneficial to industry. The Bureau proposed amendments to appendix D to Regulation Z and its commentary, as described above, that related to such construction financing and would have provided guidance regarding its disclosure on the proposed integrated disclosures. The Bureau did not propose samples for construction financing because it believed that proposed forms H–24(C) and (E) would have provided the necessary illustration for such financing, because these samples would have contained the interest only period and final balloon payment, respectively, which, as described above, are product features that would be disclosed in connection with such construction financing. The Bureau noted in the proposal that one difference for the disclosure of such financing would have been that the purpose of the transaction disclosed under proposed §§ 1026.37(a)(9) and 1026.38(a)(5)(ii) would have been ''Construction.'' The Bureau sought comment on whether, in light of the proposed amendments to appendix D and its commentary, additional samples for a construction-only or construction with permanent financing would be beneficial to industry.

Comments

The Bureau received comments addressing the samples in the proposal from industry trade associations, consumer advocacy groups, settlement agents, escrow agents, document service providers, and other industry participants. Commenters generally requested more samples and guidance in appendix H, rather than less. Several commenters requested that additional samples be added to appendix H, such as samples of construction financing. Several industry trade associations representing creditors requested clarification regarding how the variations provided by proposed blank forms H–24(A) and H–25(A) relate to the proposed rule. The industry trade associations requested that the Bureau explain how the amounts and formats were the appropriate ones under the specific sections and commentary

provision of the proposed rule, including a comprehensive outline of the facts underlying each example.

Industry trade associations also requested clarification regarding whether proposed form H–25(J) would be permitted under the proposed rule to be used in all transactions that do not involve a seller. The trade associations also commented that such transactions may involve charges that would fall under ''Adjustments and Other Credits'' that are required to be disclosed under proposed § 1026.38(e), but proposed form H–25(J) does not illustrate how to factor such charges into the Cash To Close figure. One community bank commenter expressed concern that neither the model nor the sample Closing Disclosure forms provided an example where an escrow account had not been established in connection with the transaction. It asserted that creditors would need such an example to comply with proposed § 1026.38(l)(7).

A State industry trade association representing banks commented regarding proposed form H–26(B) that its member banks would prefer to use their own version of a consumer-specific worksheet, rather than one with a similar format as the proposed Loan Estimate. The trade association requested clarification regarding whether the use of their own consumer-specific worksheets would be permitted under the proposed rule. Consumer advocacy groups expressed concern that permitting the use of a worksheet using the proposed Loan Estimate disclosure form before the loan application is made would cause consumers to confuse the worksheet with the Loan Estimate, even with the required disclaimer under proposed § 1026.19(e)(2)(ii).

A trade association representing escrow agents expressed support for proposed form H–25(I) that would have illustrated the modifications permitted by proposed § 1026.38(t)(5)(vii) for a Closing Disclosure provided to a seller. A trade association representing banks and a document software company requested a clarification regarding the dates disclosed under the Adjustable Payment and Adjustable Interest Rate tables in proposed form H–24(C) under proposed § 1026.37(i) and (j). A document software company requested a sample illustrating the proper treatment of an introductory interest rate and a preferred interest rate. The document software company also requested that the administrative information appearing at the bottom of proposed forms H–24 and H–25 be removed, and that administrative information be expressly permitted by the regulation to appear at the bottom of the form.

An industry trade association representing creditors suggested a revision to proposed form H–24 with respect to the expiration of cost estimates on the disclosures. A State trade association representing banks stated that the proposed illustration of the written list provided in proposed form H–27(B) made it unclear whether creditors are required to list the estimated cost for a service provider because the sample lists the survey fee for only one of the providers listed. An individual settlement agent noted inconsistencies in the samples regarding the alphabetizing of charges on the Loan Estimate. An individual escrow agent commented that the proposed samples of form H–25 illustrate both consumer and seller information on the same disclosure and expressed confidentiality and privacy concerns. Several commenters, including industry trade associations and consumer advocacy groups commented that the final rule should provide sample Spanish or other non-English language forms, and that the Bureau should use consumer testing to enhance the effectiveness of such sample forms.

Discussion

The Bureau has considered the comments regarding the proposed forms and samples of appendix H to Regulation Z. The comments requesting changes to the information required to be disclosed or clarification regarding the disclosure requirements under §§ 1026.37 and 1026.38 are discussed within their respective section-by-section analyses.

Additional samples. Regarding the comments that the Bureau add additional samples of the Loan Estimate and Closing Disclosure to appendix H, the Bureau notes that it proposed sample disclosures illustrating a large number of disclosure requirements and variations permitted or required by §§ 1026.37 and 1026.38. For example, the Bureau proposed samples that include a fixed rate, adjustable rate, interest only, refinance, balloon payment, negative amortization, a refinance transaction, a violation of the limitations on increases under § 1026.19(e)(3), as well as several modifications permitted under proposed § 1026.38(t)(5). In response to this comment, however, the Bureau has determined to modify several of the proposed samples to illustrate additional variations in the information required or permitted to be disclosed. For example, the Bureau has revised proposed form H–24(B) to illustrate the disclosure of the existence of a prepayment penalty in a transaction under § 1026.37(b)(4). In addition, the Bureau has modified proposed forms H–25(E), (F), and (G) to illustrate the alternative tables permitted under final §§ 1026.37(d)(2) and (h)(2) and 1026.38(d)(2) and (e) for transactions without sellers.

Specifically with respect to the comments requesting that samples of construction financing be added to appendix H, the Bureau has determined not to add such samples to appendix H. While the commenters noted areas in which clarification in the proposed disclosure requirements would facilitate compliance, the comments did not provide any information regarding aspects of construction financing that would require different disclosures than are illustrated by forms H–24(C) and (E). The Bureau continues to believe that forms H–24(C) and (E) provide sufficient illustration of disclosures for such financing, because these samples contain the interest only period and final balloon payment that would be disclosed in connection with such construction financing.

The Bureau also does not believe additional samples are necessary to illustrate the treatment of an introductory interest rate and a preferred interest rate. As noted above in the section-by-section analysis of § 1026.37(b)(2), the Bureau intended the proposed provision to require disclosure of an introductory interest rate. Accordingly, the sample forms for adjustable rate loans in the proposal illustrated the disclosure of an introductory interest rate, as applicable. In addition, clarification of the disclosure of preferred interest rates in the integrated disclosures is described in the section-by-section analyses of § 1026.37(a)(10)(i)(B) and (b)(6), and other applicable sections for which such clarification was sought, and considering the clarification provided, the Bureau believes additional samples are unnecessary.

Additional facts and explanations for the samples. Regarding the comments seeking clarification regarding how the variations provided by proposed blank forms H–24(A) and H–25(A) relate to the proposed rule, and requesting detailed explanations and facts regarding the samples, the Bureau believes that such explanations are unnecessary. The descriptions provided before each form illustrate the basic facts regarding the transaction and/or note the disclosure requirements being illustrated. The forms that provide samples of disclosures for particular transactions, which illustrate particular disclosures

required by §§ 1026.37 and 1026.38 (*i.e.,* the non-blank forms), are intended to do only that, and not to demonstrate how to comply with §§ 1026.37 and 1026.38 in particular factual scenarios. The Bureau notes that such guidance is provided in the official commentary to Regulation Z. However, the Bureau understands that some additional details in descriptions may facilitate compliance, and thus, the Bureau has modified certain of the descriptions of the forms, as described below. The Bureau also notes that the blank model forms H–24(A), H–24(G), H–25(A), and H–25(J) provide additional pages for the variable disclosure requirements under §§ 1026.37 and 1026.38, which is stated in the descriptions of such forms. For example, form H–24(A) contains two versions of page one to reflect the two possible disclosures under § 1026.37(a)(7)(i) and (ii); four versions of page two to reflect the possible permutations of the disclosures under § 1026.37(i) and (j); and four versions of page three to include two pages with the variable disclosure requirements under § 1026.37(n)(1) and (2) for transactions subject to 15 U.S.C. 1639h or 1691(e) for which the disclosure under § 1026.37(m)(1) is required, and two such pages for which the disclosure under § 1026.37(m)(1) is not required.

Modifications to the Closing Disclosure. The Bureau also believes that clarifications regarding the proper use of proposed form H–25(J), which would have illustrated the modifications permitted for a transaction without a seller under proposed § 1026.38(t)(5)(viii), are unnecessary within appendix H. The Bureau notes that under proposed § 1026.38(t)(5)(viii), the modification would have been permitted to be used in all transactions that do not involve a seller, not only refinance transactions. Regarding the comment that transactions without sellers may involve charges that would fall under ''Adjustments and Other Credits'' that are required to be disclosed under proposed § 1026.38(i), the Bureau observes that such charges would have been disclosed under the table permitted by proposed § 1026.38(t)(5)(viii)(B). As described in the section-by-section analysis of § 1026.38(t)(5)(vi) above, the Bureau is modifying the provision permitting this table in transactions without sellers to renumber the provision, as described above, and to revise the heading and the label of the total amount in the table. In addition, the Bureau is revising § 1026.38(d) and (e) to provide for alternative Costs at Closing and Calculating Cash to Close tables for transactions without sellers, as described in their respective section-by-section analyses. The Bureau is making these modifications in response to comments and based on the Bureau's post-proposal consumer testing. For the aforementioned reasons, the Bureau is finalizing form H–25(J) with modifications to the description to reflect the renumbering of the paragraph permitting this modification for transactions without a seller under § 1026.38(t)(5)(vii) of this final rule, to reflect the alternative tables described above, and with the modifications to the format described above.

Regarding the concern that form H–25 illustrates both consumer and seller information on the same disclosure, causing confidentiality and privacy concerns, the Bureau observes that proposed § 1026.38(t)(5)(vi) and (vii) permitted creditors to disclose consumer and seller information on separate disclosures, and permitted a version of the Closing Disclosure that contained only information that pertained to the seller. These provisions are adopted as proposed, renumbered as § 1026.38(t)(5)(v) and (vi).

Consumer-specific worksheets. The Bureau understands commenters' concerns regarding the consumer-specific worksheet illustrated in proposed form H–26(B). The Bureau notes that the proposal would not have required the use of the worksheet illustrated in form H–26(B), or any other particular format of consumer-specific estimate. The proposal only intended the sample to be an example of a consumer-specific estimate that had a similar format as the proposed Loan Estimate. However, the Bureau understands that this sample caused confusion. The Bureau also understands commenters' concerns that the sample, because of its similarity to the Loan Estimate form, would cause consumer confusion, even with the disclaimer required under § 1026.37(e)(2)(ii). The Bureau recognizes that receipt of a consumer-specific estimate in format similar to form H–24, before the consumer receives the disclosures required under § 1026.19(e)(1)(i), could be confusing or misleading to consumers in some circumstances. In addition, as discussed in the section-by-section analysis of § 1026.19(e)(2)(ii), there was some confusion from industry commenters regarding whether the format of the worksheet illustrated by H–26(B) was required. Accordingly, the Bureau is not adopting form H–26(B). The Bureau believes that § 1026.19(e)(2)(ii) and model form H–26 in the final rule provide sufficient clarity regarding the requirement to include the specified statement on a consumer-specific estimate. In addition, as described in the section-by-section analysis of § 1026.19(e)(2)(ii), the Bureau is adopting in § 1026.19(e)(2)(ii) a provision prohibiting creditors from providing a written estimate of terms or costs with headings, content, and format substantially similar to form H–24 or H–25.

Administrative information. Regarding commenters' requests that administrative information be expressly permitted by the regulation to appear at the bottom of the form, as appeared to be illustrated by proposed forms H–24 and H–25, the Bureau, as described in the respective section-by-section analyses of §§ 1026.37(o)(5)(v) and 1026.38(t)(5)(iii), is modifying the proposed provisions to permit the addition of administrative information at the bottom of each page. Accordingly, forms H–24 and H–25 will include a particular form of administrative information, but which is not intended to be a requirement that administrative information must appear as it is illustrated in these samples. The Bureau understands the document software companies and others in the industry have different forms of administrative information, such as footers to identify forms as particular versions, which may include their company name with such identifying information.

Spanish language forms. As discussed in the section-by-section analyses of §§ 1026.37(o)(5) and 1026.38(t)(5), and in part III above, in response to feedback and public comments requesting the Bureau include and test with consumers Spanish language versions of the integrated disclosures in the final rule, the Bureau is finalizing versions of the Loan Estimate and the Closing Disclosure translated into Spanish, as permitted under §§ 1026.37(o)(5)(ii) and 1026.38(t)(5)(viii). The Bureau conducted four rounds of qualitative consumer testing to ensure the effectiveness of the translations. The Bureau is finalizing these versions as model and sample forms H–28(A) through (H) of appendix H to Regulation Z. Each of these forms is a translated version of a specific form under forms H–24 and H–25, which is noted in the description of each form. Specifically, the Spanish language forms include: A blank model Loan Estimate and a blank model Closing Disclosure, which are translated versions of forms H–24(A) and H–25(A); a blank model Loan Estimate and a blank model Closing Disclosure with modifications for transactions without a seller, which are translated versions of forms H–24(G)

and H–25(J); and translations of sample forms H–24(C), H–24(D), H–24(E), H–24(F), H–25(B), and H–25(E). While these model forms are translations of forms H–24 and H–25 made pursuant to §§ 1026.37(o)(5)(ii) and 1026.38(t)(5)(viii), they are not standard forms that are required to be used for federally related mortgage loans pursuant to §§ 1026.37(o)(3) and 1026.38(t)(3) when the disclosure is translated into Spanish under §§ 1026.37(o)(5)(ii) and 1026.38(t)(5)(viii). Sections 1026.37(o)(5)(ii) and 1026.38(t)(5)(viii) permit the translation of the disclosures required under §§ 1026.37 and 1026.38, but do not require a particular translation. Accordingly, under §§ 1026.37(o)(3) and 1026.38(t)(3), form H–28 is not a standard form that is required for Spanish language translations.

In the proposal, the Bureau referred generally to the Loan Estimate and Closing Disclosure as form H–24 and form H–25, respectively, and the pre-disclosure disclaimer and written list of service providers as form H–26 and form H–27, respectively. The Bureau intended these references to be inclusive of all forms under these forms, including both the blank or sample forms. The Bureau did not receive any comments regarding this usage of the form numbers and thus, believes it provided sufficient clarity regarding the Bureau's references to the forms collectively. Accordingly, in this final rule, the Bureau likewise refers to the forms, including form H–28, collectively in this manner where appropriate.

Final Rule

For the reasons discussed above, the Bureau is adopting forms H–26(A), H–27(A), H–27(B), and H–27(C) as proposed, with minor modifications to the titles of the forms to clarify their status as model or sample forms, a minor modification for clarity to the directional language in the header of form H–27 to refer expressly to the Loan Estimate, and renumbering form H–26(A) as H–26. The Bureau is not adopting form H–26(B), based on comments raising concerns about the similarity of the format of the worksheet sample to the format of form H–24, and thus, form H–26 does not require a letter subdesignation. The Bureau is also adopting the conforming amendments to samples H–13 and H–15 and their associated comments as proposed.

With respect to the Loan Estimate and Closing Disclosure, and the proposed samples of such disclosures for particular transactions in appendix H, as noted above, the Bureau is modifying the titles and descriptions of such forms to provide greater clarity that such forms are model forms under Regulation Z. Although forms H–24 and H–25 are model forms under Regulation Z, the Bureau notes that such forms are standard forms pursuant to RESPA section 19(a) authority that are required to be used for federally related mortgage loans pursuant to §§ 1026.37(o)(3) and 1026.38(t)(3). Forms H–24(A) and (G), and forms H–25(A), and (H) through (J) are blank forms, and illustrate the required master headings, headings, subheadings, etc., that are required by §§ 1026.37 and 1026.38. The other forms under H–24 and H–25 illustrate the disclosures required under §§ 1026.37 and 1026.38, for particular types of transactions. For federally related mortgage loans, the disclosures under §§ 1026.37 and 1026.38 are required to be made as illustrated by such forms, including their formatting (*e.g.,* using bold font where illustrated). The Bureau has added comment app. H–30 to add clarity regarding this issue.

In addition, the Bureau notes, as described above, that it has revised the design of the disclosures based on public comment and its post-proposal qualitative and quantitative testing. For example, commenters stated that the underscoring in forms H–25 for the disclosures in the Security Interest and Partial Payments disclosures under § 1026.38(l)(5) and (l)(6) would be difficult to comply with and decrease readability for consumers. Based on this comment, the Bureau has removed the underscoring in the disclosure required by § 1026.38(l)(6) from samples H–25(B), (E), (F), and (G) and instead used italicized font to emphasize that this text was inputted by the creditor. The underscoring no longer appears in the disclosure required by § 1026.38(l)(5), because of modifications to the required disclosure (see the section-by-section analysis of § 1026.38(l)(5)). However, the Bureau has retained the underscoring in the blank model forms for the disclosure under § 1026.38(l)(5) as well as added it for the Late Payment disclosures under §§ 1026.37(m)(4) and 1026.38(l)(3), to clarify that the information in the underscore is to be completed by the creditor. The modifications to the design of the Loan Estimate and Closing Disclosure for particular disclosures under §§ 1026.37 and 1026.38 are discussed in more detail their respective section-by-section analyses. The Bureau has incorporated these changes into the forms included in appendix H, to reflect these changes in the design of the integrated disclosure. Other than incorporating these design changes, the Bureau is adopting forms H–24(A), H–24(E), H–24(F), H–25(A), H–25(B), H–25(C), H–25(D), H–25(H), and H–25(I) as proposed.[312] The Bureau is making a minor modification to the description of H–25(B) to note that the product of the transaction illustrated is unchanged from the transaction illustrated by form H–24(B), and minor modifications to the descriptions of forms H–25(H) and H–25(I) to reflect the renumbering of the modifications permitted by § 1026.38(t)(5).

The Bureau is modifying form H–24(B) to also illustrate a prepayment penalty, and is modifying the description to reflect that fact. The Bureau is also modifying the description of form H–24(C) to clarify that the sample illustrates an introductory interest rate, and to reflect certain minor modifications to the transaction illustrated. The Bureau is modifying form H–24(D) to provide an illustration of a different refinance transaction and to provide additional facts in the description. In addition, as described in the section-by-section analyses of § 1026.37(d) and (h), the final rule provides for optional alternative Costs at Closing and Calculating Cash to Close tables for transactions without a seller. Accordingly, in addition to the blank Loan Estimate form H–24(A), the Bureau is adding a blank Loan Estimate form H–24(G) in appendix H, which includes the optional alternative tables permitted by § 1026.37(d)(2) and (h)(2).

The Bureau is modifying form H–25(E) to be related to the transaction illustrated by form H–24(D), as modified, and to provide additional detail in the description. The Bureau is also modifying form H–25(F) to reflect a transaction with a violation of the good faith estimate requirements of § 1026.19(e)(3), and a refund related to such violation under § 1026.19(f)(2)(v), and has revised the description accordingly. The Bureau is also modifying form H–25(G) to provide an illustration of a refinance transaction in which the consumer must pay funds at consummation, and has revised the description accordingly. The Bureau is modifying form H–25(J) to a provide a blank model form that includes the alternative Costs at Closing and Calculating Cash to Close tables provided under § 1026.38(d)(2) and (e), as well as the modifications under § 1026.38(t)(5)(vii).

[312] Form H–24(A), § 1026.38(k)(2)(vi), and comment 38(r)–4 include technical corrections from the rule issued on Nov. 20, 2013. The Bureau is not publishing these technical corrections for public notice and comment because it has good cause to believe that it would be unnecessary to do so. *See* 5 U.S.C. 553(b).

In addition, as noted in the section-by-section analysis of § 1026.20(e), the Bureau is adopting in this final rule provisions requiring the Post-Consummation Escrow Cancellation Disclosure required under TILA section 129D(j)(1)(B). Accordingly, the Bureau is adopting model form H–29, which can be used by creditors or servicers to comply with the disclosure requirements regarding the cancellation of an escrow account established in connection with a closed-end transaction secured by a first lien on real property or a dwelling, which are adopted in § 1026.20(e). The Bureau is also adopting comment app. H–29, as proposed by the Board in the Board's 2011 Escrows Proposal, with modifications to apply the comment specifically to model form H–29. The Board received comments regarding the content and format of the Board's proposed form for the Post-Consummation Escrow Cancellation Disclosure. As discussed in the section-by-section analysis of § 1026.20(e), the Bureau has reviewed those comments and incorporated them into its design of model form H–29, which is also based on the content and format of the Pre-Consummation Escrow Establishment Disclosure and the Pre-Consummation Escrow Waiver Disclosure that the Bureau is implementing in this final rule under § 1026.38(l)(7), which was developed using extensive consumer testing, to ensure the two disclosures present information in a similar manner for consumers. At the Bureau's consumer testing, consumer participants were able to understand the escrow accounts that would be established in connection with the transaction, and the consequences of waiving such an escrow account. *See* Kleimann Testing Report at 223. Accordingly, the Bureau believes the language and format of model form H–29 will be effective in aiding consumer understanding of the consequences of the cancellation of their escrow accounts. Accordingly, the Bureau is adopting model form H–29 and the Board's proposed comment app. H–29, with modifications to apply the comment specifically to model form H–29. Comment app. H–29.i states that the model form illustrates, in the tabular format, the disclosures required by § 1026.20(e). Comment app. H–29.ii specifies that a creditor satisfies § 1026.20(e) if it provides model form H–29, or a substantially similar notice, which is properly completed with the disclosures required by § 1026.20(e). Comment app. H–29.iii and app. H–29.iv provide guidance regarding the formatting requirements. Comment app. H–29.v clarifies that creditors and servicers may use color, shading and similar graphic techniques with respect to the notice, so long as the notice remains substantially similar to model form H–29.

As noted above, the Bureau is also adopting several Loan Estimates and Closing Disclosures translated into the Spanish language. The Bureau is adopting model forms H–28(A), H–28(F), H–28(I), and H–28(J), which are Spanish translations of the blank Loan Estimate and Closing Disclosure model forms H–24(A), H–25(A), H–24(G), and H–25(J), as is permitted under §§ 1026.37(o)(5)(ii) and 1026.38(t)(5)(viii), respectively. The Bureau is also adopting sample forms H–28(B), H–28(C), H–28(D), and H–28(E), which are Spanish language translations of the Loan Estimate sample forms H–24(C), H–24(D), H–24(E), and H–24(F), respectively, as is permitted under § 1026.37(o)(5)(ii). In addition, the Bureau is also adopting sample forms H–28(G) and H–28(H), which are Spanish language translations of the Closing Disclosure sample forms H–25(B) and H–25(E), respectively, as is permitted under § 1026.38(t)(5)(viii). Forms H–28(A) through H–28(J) are model forms under Regulation Z. However, unlike forms H–24(A), H–24(C), H–24(D), H–24(E), H–24(F), H–24(G), H–25(A), H–25(B), H–25(E), and H–25(J), they are not required standard forms for federally related mortgage loans under §§ 1026.37(o)(3) and 1026.38(t)(3). Accordingly, for federally related mortgage loans, they are not required to be used.

As noted above, the Bureau is adopting forms H–24, H–25, H–26, H–27(A), and H–28 including the forms H–24(B) through (F), H–25(B) through (G), and H–28(B) through (H) (which are sample forms illustrating the disclosures required by §§ 1026.37 and 1026.38 for particular transactions), as model forms. To provide greater clarity regarding the model form status of forms H–24, H–25, H–26, H–27, and H–28, the Bureau is amending comment app. G and H–1 to list forms H–24, H–25, H–26, H–27, and H–28 as model forms for which the formatting changes listed in the comment are not permitted. The Bureau believes this revision to comment app. G and H–1 will facilitate compliance with the disclosure requirements of this final rule, which is one of the purposes of the integrated disclosure requirements set forth by the Dodd-Frank Act. The Bureau is adopting these forms pursuant to its authority to publish model forms under TILA section 105(b) and (c). In addition, the Bureau adopts the aforementioned forms, samples, and descriptions in appendix H to Regulation Z pursuant to its mandate to publish integrated disclosures under Dodd-Frank Act sections 1098 and 1100A, implementation authority of TILA section 105(a), and RESPA section 19(a). The Bureau believes the extensive forms (many of which illustrate particular disclosures required under §§ 1026.37 and 1026.38 for particular product types), and descriptions adopted in appendix H for the integrated disclosures will further the purposes of the integrated disclosures, as stated by Dodd-Frank Act sections 1098 and 1100A, to aid consumer understanding and facilitate compliance with the disclosure requirements. The Bureau believes that the extensive forms and descriptions the Bureau is adopting for the integrated disclosures will assist industry in complying with the disclosure requirements of §§ 1026.37 and 1026.38, which in turn, will assist consumers in understanding their transactions, because they will help ensure their disclosures are completed in compliance with the regulations. The Bureau believes the adopted forms and descriptions effectuate the purposes of TILA and RESPA, as they will ensure a meaningful disclosure of credit terms to consumers and promote the informed use of credit and more effective advance disclosure to home buyers and sellers of settlement costs. In addition, consistent with section 1032(a) of the Dodd-Frank Act, the Bureau believes they will ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

VI. Effective Date

A. The Bureau's Proposal

As discussed in part I above, the Bureau is adopting rules and disclosures that combine the pre-consummation disclosure requirements of TILA and sections 4 and 5 of RESPA. The Dodd-Frank Act does not impose a deadline for issuing final rules and disclosures in connection with its mandate to integrate disclosure requirements or provide a specific amount of time for entities subject to those rules to come into compliance. As also discussed in part II.E, above, the Dodd-Frank Act establishes two goals for the TILA–RESPA mortgage disclosure integration: To improve consumer understanding of mortgage loan transactions; and to facilitate industry compliance with

TILA and RESPA. Dodd-Frank Act sections 1098 and 1100A. In addition, TILA section 105(d) generally provides that a regulation requiring any disclosure that differs from the disclosures previously required shall have an effective date no earlier than ''that October 1 which follows by at least six months the date of promulgation,'' except that the Bureau may at its discretion lengthen the period of time permitted for creditors or lessors to adjust their forms to accommodate new requirements. 15 U.S.C. 1604(d). The Bureau must balance these statutory objectives and requirements in considering the length of the implementation period.

Because the final rule will provide important benefits to consumers, the Bureau seeks to make it effective as soon as realistically possible. However, the Bureau understands that the final rule will require creditors, mortgage brokers, and settlement agents to make extensive revisions to their software, to change their dealings and information sharing practices with each other and other settlement service providers, and to retrain their staffs. In addition, some entities will be required to implement other Dodd-Frank Act provisions, which are subject to separate rulemaking deadlines under the statute and have separate effective dates. Therefore, the Bureau solicited comment on when the final rule should be effective. In particular, the Bureau sought comment on how much time industry needs to make these changes, and specifically requested details on the required updates and changes to systems and other measures that would be required to implement the rule and the amount of time needed to make those changes.

Furthermore, in light of the feedback provided by small entity representatives during the SBREFA process, as reflected in the Small Business Review Panel Report, the Bureau solicited comment on whether small entities affected by the rule should have more time to comply with the final rule than larger entities. In soliciting comment on this issue, however, the Bureau noted its concern that a bifurcated implementation period could be detrimental to consumers. During any period where only larger entities must comply with the final rule, consumers potentially would receive different disclosures and be subject to different sets of consumer protections depending on their choice of creditor, mortgage broker, or settlement agent. In addition, larger entities that are subject to the final rule and that purchase loans from small entities may nevertheless insist that small entities comply with the final rules. Accordingly, the Bureau solicited comment on whether any separate compliance period for larger entities should take into account the relationship between larger and smaller entities.

B. Comments

In response to the proposed rule, the Bureau received many comments concerning the effective date and implementation period. While consumer advocacy groups did not submit comments on the topic, a large number of industry commenters addressed the issue in detail. The spectrum of timing suggestions for the implementation period ranged from one industry commenter that suggested 12 months, many commenters that advocated for 18 to 24 months, and one industry commenter that suggested 36 months. No commenters provided statistical data to support their arguments, though a number of commenters described their experiences in implementing other recent mortgage initiatives such as HUD's earlier changes to the disclosure forms under RESPA. Industry commenters also commented on other aspects of the implementation period and the effective date, including providing suggestions for Bureau assistance during the implementation period and the applicability of the effective date to entities of different sizes.

Implementation Period

The lone industry commenter to argue that industry could successfully implement the final rule within 12 months asserted that such a period should be more than sufficient for industry to implement the new disclosures and update technology and software programs, as the current disclosure forms are already implemented in all loan origination software and could be updated quickly. The vast majority of commenters however, urged an implementation period of at least 18 to 24 months to implement the many changes in the final rule.

Commenters argued that there are many major rulemakings that will affect disclosures, including the Title XIV Rulemakings that were issued by the Bureau in January 2013, and that as a result, the mortgage industry is facing major regulatory amendments in almost every area. According to these commenters, while it is difficult to predict all of the compliance challenges posed by the intertwined mortgage reforms, the unprecedented scope and broad impact of these new requirements will force creditors and servicers to define and implement new business models that are sustainable in this changed regulatory environment. These commenters argued that creditors could seek to eliminate operational risk through scaling back or discontinuing their lending activities if the duration of the implementation period is insufficient, which would be harmful to both consumers and the industry.

Various commenters also noted that, unlike the Title XIV Rulemakings, Congress did not provide an issuance date or implementation date for the integrated disclosures final rule, so they argued that this weighs in favor of providing sufficient time to ensure successful implementation. These commenters contended that given the enormity of the operational changes that will accompany the integration of these forms, an implementation period of at least 18 to 24 months is required to allow creditors and the title and settlement industries sufficient time to implement final changes through necessary staff training on the new requirements, revisions to policies, procedures, and other materials, software/data/technology processing changes, education of related industry professionals (*e.g.,* settlement agents), and coordination with other regulatory changes required under the Dodd-Frank Act. One industry commenter noted that its vendors have estimated that developing the forms will take 18 to 24 months, and also estimated that an additional six to 12 months will be necessary to implement them. Another industry commenter argued that the Bureau should coordinate the implementation dates of all mortgage-related rules and allow a 24-month implementation period for use of the new disclosure forms. One trade association commenter urged the Bureau to allow for a minimum of 18 months from the date of any final rule issuance to ensure that banks of all sizes are able to properly incorporate and implement these rules in an orderly and efficient manner.

One trade association commenter argued that the proposed changes to the disclosure forms and the underlying rules will be pervasive and will necessitate changes to all of the systems that support the lending process. According to this commenter, changes will be required to user interfaces used by creditors to review and complete the forms, underlying programming logic and/or rules engines, supporting databases, the user interface where consumers review and sign documents, data input exchanges, data output exchanges, document/data retention systems, and compliance tracking systems. According to this commenter,

not only will software systems need to be updated, but systems for the various loan types offered by creditors will need to be tested, adjusted, and retested. This commenter stated that this is a process that can take months and often involves not only compliance personnel, but also impacts operating systems and processes and can require guidance from legal and regulatory advisors. This commenter argued that it is only after this lengthy process is complete that staff training can begin, and that training will need to be broad-based and include mortgage loan originators, personal bankers doing home equity loans, processors, closers, third-party closing agents, customer service representatives, and operations personnel who input loan data into the creditor's data processing systems, etc. Given these considerations, this commenter argued that it is highly unlikely that this can be accomplished and completed in a period less than 12 months and, therefore, that a reasonable implementation period would be 18 months, at a minimum.

In addition, commenters argued that creditors will have to reconsider and likely renegotiate their arrangements with third-party service providers, in light of reduced tolerances and increased responsibilities for creditors. Some commenters contended that creditors will need to coordinate with affiliated and third-party settlement providers to ensure that consumers are receiving disclosures consistent with the new requirements. According to these commenters, since many creditors will need to rely on third parties to fulfill a significant portion of their responsibilities under the rule, it is critical that creditors have the time to work with service providers to ensure compliance and mitigate operational risk. One trade association commenter argued that whenever existing forms are modified or combined, the implementation of the revised forms inevitably takes longer than expected, in part due to the number of systems that have to be updated. According to some commenters, all of the above issues will be even more severe for smaller creditors.

Some commenters argued that all loan products, sales and marketing arrangements, compensation schemes, business relationships, and transaction timing requirements are built on the basis, or in consideration of, the RESPA and TILA statutes. Therefore, these commenters contended that altering the body of mortgage disclosures requires a reconstruction of the entire loan delivery system for creditors. According to these commenters, the new forms impose several significant changes to how real estate closings are handled, causing dramatic systemic effects on the nature of the relationship among the parties. For example, these commenters pointed out that the rule impacts the relationship between creditors and settlement agents as the creditor will now be responsible for the Closing Disclosure.

Some industry commenters stated that they confirmed with their compliance system vendors that it will take a considerable period of time to construct new disclosure and compliance arrangements, including time to develop and test new systems, provide creditors the chance to review vendor systems for compliance with the rules and integrate the new systems into their systems and product lines, and build in time to troubleshoot and test these systems as a means of quality control. A GSE commenter argued that software release dates are often set months, even a year, in advance, and if the industry is implementing this rule at the same time as the other Title XIV Rulemakings, it may need a longer implementation period. Another industry commenter contended that technology systems will require an extensive coding and reprogramming process. In addition, according to this commenter, other forms used at closing are based on the HUD–1, and so those forms will need to be reprogrammed accordingly as well. Several commenters argued that something as simple as creating a multi-sided document is a huge technical endeavor. A trade association commenter argued that because of the lack of specific hard-coded items on the Closing Disclosure, and because of the alphabetical order requirement for the listing of closing costs, effective implementation will require developing a more dynamic software program. Due to the significant changes from the current disclosure forms and processes, a trade association commenter contended that the industry will need roughly 24 months to implement the disclosures and rule once they are final. A law firm commenter contended that the time required for many of the changes, such as the disclosure changes and the data retention requirements, is cumulative, rather than concurrent, because many elements of the disclosures require independent systems development and engineering.

A GSE commenter urged the Bureau to develop a reasonable implementation plan that focuses on resolving data standardization issues, allows the States with existing exemptions to amend relevant laws and regulations to provide for State integrated disclosure forms that are substantially similar to the Bureau's disclosure forms, and allows large and small creditors to implement the Bureau and State regulations at the same time. This commenter argued that, by doing so, the Bureau's goals in promulgating the integrated disclosures will be better achieved and the overall costs and burdens on the industry—and, ultimately, consumers—will be mitigated most effectively.

Some commenters pointed to HUD's 2008 RESPA Final Rule as further justification for an 18 to 24-month implementation period. The commenters noted that when HUD revised Regulation X in 2008,[313] it provided a 13.5-month compliance period that proved insufficient, causing HUD to announce six weeks before the effective date that it would refrain from enforcing the new rules for the first four months following the effective date. One commenter noted that at roughly the same time as the implementation of HUD's 2008 RESPA Final Rule, the Board implemented the MDIA amendments to TILA which established new timeframes for the disclosure process and new requirements for redisclosure where costs increase beyond tolerances. A number of industry commenters and a trade association commenter noted that the implementation of HUD's 2008 RESPA Final Rule also caused HUD to issue several iterations of HUD's RESPA FAQs, each with a growing number of technical questions, in part because the application of the new regulation to the hundreds of transactional variances across all states and loan types posed insurmountable challenges. One trade association commenter argued that these post-implementation guidance updates created compliance uncertainty, because some loans that were compliant upon origination became non-compliant as provisions were amended and commentary and clarifications were issued or updated.

Since the Bureau is comprehensively revising regulations for both RESPA and TILA, these commenters argued that clearly a longer implementation period is warranted than was provided for HUD's 2008 RESPA Final Rule. A law firm commenter pointed to the implementation period of HUD's revised RESPA GFE and RESPA settlement statement, and argued that the integrated forms will require an even

[313] As described above in part II.B, HUD's 2008 RESPA Final Rule required new disclosure forms and contained new rules, including a new definition of application and tolerances for estimated settlement charges, which were intended to facilitate consumer shopping and protect consumers from increased charges at closing.

greater overhaul of systems because they contain very different elements, such as the projected payments table, which is very different from the current interest rate and payment summary table. These commenters also argued that, in light of that past experience and confusion and disorder within the industry that resulted, it is especially imperative that this reform is done correctly, rather than quickly, and that any changes to the current system should be established and implemented judiciously.

Separate Effective Dates for Different Sizes and Types of Entities

During the Small Business Review Panel process,[314] 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.[315] Accordingly, as discussed above, the Bureau solicited comment on whether the exemption period should differ depending on the size of the business entity.

While one trade association commenter urged the Bureau to issue final rules with an effective date that is a minimum of 24 months after publication for financial institutions with less than $10 billion in assets, commenters generally disfavored a bifurcated approach and emphasized that it would be unreasonable and disruptive to adopt different implementation timeframes for entities of different sizes.

For instance, a credit union trade association commenter argued that all institutions should be subject to the same effective date. While recognizing that it may take smaller entities more time to harmonize their practices and procedures with the integrated disclosures, one State attorney general and several industry commenters did not believe that the Bureau should grant smaller entities more time to comply with the final rule than larger entities. These commenters argued that the same implementation period for all covered entities will allow consumers to comparison shop. In addition, these commenters reiterated the Bureau's concern that a bifurcated implementation period could be detrimental to consumers, as during any time period where larger entities were required to comply with the final rule but smaller entities were not, consumers could potentially receive different disclosures depending on which business entity they worked with to obtain credit. This would not only be confusing to consumers, but, potentially, confusing to lending entities, especially in those situations where a small entity acts as a correspondent lender for a large entity.

One trade association commenter argued that because lending is interconnected—large creditors use small creditor correspondents, which use vendors—there is a need to make sure that the rule is being implemented by small creditors regardless. A law firm commenter contended that a separate effective date for small entities would not be helpful, because forms vendors will have to be ready at the earliest effective date anyway. This commenter suggested instead that the Bureau consider delaying the effective dates of certain elements of the rule, such as applicability to construction loans, as doing so would neither result in consumers receiving different disclosures from different creditors nor negatively affect consumer shopping.

Several commenters favored a grace period after the effective date since this will be such a large undertaking. They noted that they learned from implementing HUD's 2008 RESPA Final Rule that additional time is needed after creditors make all of their system changes to work out the kinks, and asserted that this rule imposes much more extensive changes than HUD's 2008 RESPA Final Rule. A law firm commenter also suggested a temporary reprieve from liability if a creditor can demonstrate a good faith effort to comply, similar to HUD's enforcement reprieve for the revised RESPA GFE and RESPA settlement statement. One commenter recommended a grace period of 90 days.

A State housing agency association asked the Bureau to extend the effective date for housing finance agencies (HFAs). This commenter contended that it is entirely appropriate for the Bureau to grant HFAs additional time to adopt the integrated disclosures.

Bureau Guidance During the Implementation Period

Various commenters anticipated that the Bureau will need to provide guidance during the implementation period because of the many interpretive and technical issues that will arise. Some commenters urged the Bureau not to require implementation until the Bureau has the chance to provide guidance through iterations of rules and disclosures. According to these commenters, implementing revised mortgage disclosure forms is unquestionably a costly, time-consuming task for all, and rules that need to be implemented without adequate guidance increase costs yet further. Several industry commenters reminded the Bureau to be aware of the effect that providing guidance through frequently asked questions (FAQs), clarifications, and amendments can have on development and implementation when determining an implementation period. Some commenters urged an implementation period of 24 months in part because they anticipate that the Bureau will need to provide significant, additional guidance at a later date on the use of the Loan Estimate and Closing Disclosures and other related issues, in which case the industry will need time to analyze and comply with the guidance.

One trade association commenter argued that the Bureau should include a period for stakeholder questions and Bureau responses to those questions, and that the implementation period should begin only after all questions are addressed. Several trade association and industry commenters suggested that the Bureau adopt an implementation period timeframe whereby it would conduct meetings with industry after the rule is finalized and then issue an extended commentary six months after issuance to address concerns raised at those meetings.

In light of the above concerns, some commenters suggested that the Bureau adopt a staged implementation period to allow for the most effective and efficient rollout. According to these commenters, the first stage would involve the Bureau accepting questions orally and in writing from creditors, systems providers, and other stakeholders, through workshops and webinars for at least the first three months after the rule is finalized. The second stage would involve the Bureau posting answers to questions publicly on the Bureau's Web site as FAQs. The third stage would involve providing the public an opportunity to comment on the FAQs and, after consideration of those

[314] *See* part III.D, above, for a discussion of the Bureau's Small Business Review Panel process.

[315] 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.

comments, the Bureau would incorporate any necessary changes into the official commentary. Finally, the fourth stage would commence an implementation period of at least 18 months to allow training, systems changes, and other implementation actions to begin in earnest. This last stage would follow either the second or third stage, as described above and depending on the extent of guidance needed. According to these commenters, this approach would ensure prompt and reliable guidance while, at the same time, providing an efficient and reasonable implementation period.

C. The Effective Date

This final rule is effective on August 1, 2015. The final rule applies to transactions for which the creditor or mortgage broker receives an application on or after that date, with the exception of new § 1026.19(e)(2), and the amendments of the final rule to §§ 1026.28, and 1026.29, which are effective on August 1, 2015, because they apply without respect to whether an application has been received on that date.

Applications Received On or After

The Bureau considers the amendments in this final rule to create a single integrated disclosure regime. The Bureau also understands that the current disclosures under TILA and RESPA consist of one disclosure regime under each statute, and therefore does not believe that a consumer receiving the current disclosures for a transaction for which the creditor receives an application before the effective date should subsequently receive the Bureau's new integrated disclosures. Accordingly, the effective date for this final rule applies to applications received by a creditor or mortgage broker on or after August 1, 2015 (with the exception of new § 1026.19(e)(2) and amendments of the final rule to provisions regarding preemption of State law under §§ 1026.28(a)(1) and 1026.29).

This means that if the creditor receives an application before the August 1, 2015 effective date, not only shall the current early disclosures (*i.e.,* the early TILA disclosure and the RESPA GFE) be provided for the transaction, but the current final disclosures (*i.e.,* the final TILA disclosure and the RESPA settlement statement) shall also be provided for that transaction, even when consummation of the transaction will occur, and thus the final disclosures will be provided, after August 1, 2015. For example, if a creditor receives an application for a mortgage loan subject to § 1026.19(e) and (f) on July 31, 2015, the current rules will apply for that transaction from application through consummation and thereafter. Accordingly, the creditor would provide the current early disclosures within the timeframes required under the current rules. In addition, even if settlement occurred 60 days later, after August 1, 2015, the current final disclosures would be provided to the consumer. Further, the creditor and other parties, as applicable, would also have to comply with any other rules that apply under the current regulatory regime with respect to the transaction, including existing requirements relating to tolerances for increases in estimated settlement charges under Regulation X, receipt by the consumer of the final TILA disclosure at least three business days before consummation when the disclosed APR becomes inaccurate under the tolerances provided under TILA, and responsibilities of the person conducting the settlement for providing the RESPA settlement statement. This final rule and its new integrated disclosure requirements would not apply to the transaction because the final rule is only effective for transactions for which the application is received on or after August 1, 2015 (with the exception of §§ 1026.19(e)(2), 1026.28, and 1026.29, as described above).

The Bureau notes that the above-described approach to the effective date has become a standard feature of recent mortgage disclosure rulemakings by both the Board and HUD. For example, as described above in part II.B, in HUD's 2008 RESPA Final Rule, HUD issued extensive revisions to the RESPA GFE and RESPA settlement forms required under Regulation X, as well as revisions to other requirements relating to mortgage loan transactions. HUD applied the final rule prospectively to mortgage applications received on or after January 1, 2010. 73 FR 68204 (Nov. 17, 2008); HUD RESPA FAQs p. 1, #1 (''GFE-General'') (requiring use of the revised RESPA GFE beginning January 1, 2010 and use of the revised RESPA settlement statement for all transactions in which the revised GFE was used; and permitting the continued use of the prior RESPA settlement statement for applications received prior to January 1, 2010). Similarly, in 2010, the Board issued the MDIA Interim Rule, which included substitution of the interest rate and payment summary tables for the then-existing payment schedule in the TILA disclosure requirements. 75 FR 58470 (Sept. 24, 2010). The Board required compliance with these requirements for transactions for which an application for credit was received by the creditor on or after January 30, 2011. In addition, the Board has issued other final rules amending requirements relating to mortgage loan transactions that have become effective based on the date the creditor receives the consumer's application. *See* 73 FR 44522, 44594–5 (July 30, 2008). The Bureau has also followed this approach in its other mortgage rulemakings. For example, the Bureau's 2013 ATR Final Rule becomes effective based on the date the creditor receives the consumer's application.[316]

The Bureau believes that following this approach in this final rule provides a benefit to consumers by facilitating a more effective, consolidated disclosure scheme for their transactions. The Bureau believes that providing consumers with the current RESPA GFE and early TILA disclosure for applications received before the August 1, 2015 effective date, followed by the Closing Disclosure that is being implemented under this final rule would be detrimental to consumers because consumers would be confused if they had to compare two substantially different sets of disclosures at or before consummation. HUD has designed the RESPA GFE and the RESPA settlement statement to provide information to the consumer that is intended to enable comparisons between the two disclosures. For example, the RESPA settlement statement identifies next to the labels for certain final settlement charges the location where the estimate for that charge is displayed on the RESPA GFE. In addition, the early and final TILA disclosures contain the same sets of information and the model forms under Regulation Z do not differentiate between the two disclosures (other than rules with respect to the labeling of estimates). If consumers were to receive the early TILA disclosure and RESPA GFE at application and then receive the Closing Disclosure three business days before consummation, they would not be able to use these aspects of the disclosures to compare their estimated and final loan terms and costs using the current disclosures. Accordingly, making the date the application is received the key date for determining whether the current disclosure rules or the Bureau's new disclosure rules apply to the transaction will enable consumers to reap the benefits of either the current consolidated disclosure schemes or the

[316] *See* 78 FR 6408, 6555 (Jan. 30, 2013); 78 FR 35430, 35492 (June 12, 2013).

Bureau's new consolidated disclosure scheme.

Although the Bureau's Quantitative Study has concluded that its integrated disclosures perform better than the current disclosures at enabling the comparison of estimated and final loan terms and costs, *see* Kleimann Quantitative Study Report at 46–47, the Bureau believes it has achieved this enhanced performance by matching the designs of the Loan Estimate and Closing Disclosure as closely as possible. In addition, although the Closing Disclosure also performed better than the current final TILA disclosure and RESPA settlement statement with respect to questions that did not require such comparison and merely required respondents to identify or understand the final loan terms and costs, *see* Kleimann Quantitative Study Report at 47–48, the Bureau believes that the consumer confusion that would result upon receipt of a disclosure three business days before consummation that is substantially different from that received at application would outweigh any such benefit.

For these reasons, the Bureau believes this approach will make it easier for consumers to understand how and why any costs may have changed during the transition to the integrated disclosures required under this final rule. The Bureau believes that this approach will better ensure that consumers receive the full benefits of the integration without disruption and allow the Bureau to coordinate the changes in a way that improves overall consumer understanding of the disclosures and their transactions. Accordingly, the Bureau believes that consumer understanding is aided under this approach, and believes the approach is appropriate to improve the informed use of credit.

The Bureau also believes this approach facilitates compliance with the integrated disclosure requirements, which is one of the purposes of the integrated disclosures as mandated by the Dodd-Frank Act. Making the application date of a transaction the key date for determining whether the current or new disclosure rules apply enables creditors to use one computer system for that transaction from application through consummation and settlement. Creditors would not need to transfer pending transactions from their current origination, disclosure, and compliance computer systems to their new systems while the transaction is in process. In addition, new requirements, such as those restricting the amounts by which certain charges are permitted to increase from their estimates and the timing of receipt of certain disclosures by consumers would not apply retroactively to transactions that began under the current rules. For these reasons, the Bureau believes applying the effective date of this final rule (with the exception of §§ 1026.19(e)(2), 1026.28, and 1026.29 of the final rule, as noted above) to applications received on or after August 1, 2015 will facilitate compliance.

Accordingly, the Bureau believes making the final rule applicable to transactions for which the creditor or mortgage broker receives an application on or after the effective date (with the exception of §§ 1026.19(e)(2), 1026.28, and 1026.29 of the final rule, as described above) is consistent with the statutory purposes of the integrated disclosure requirements in Dodd-Frank Act sections 1098 and 1100A and past effective dates provided by other Federal regulatory agencies for the implementation of mortgage rulemakings. The Bureau believes this effective date will facilitate compliance with the disclosure requirements for industry and ensure the final rule provides the substantial benefits for consumers intended by the Bureau, without detracting from consumer understanding of mortgage loan transactions during the transition to the integrated disclosures.

The Bureau is adding comment 1026.1(d)(5)–1 to provide clarity regarding the application of the effective date to transactions covered by the final rule. The comment summarizes the effective date and sets forth examples to illustrate the application of the effective date. The Bureau believes this comment will facilitate compliance with the final rule, which is one of the purposes of the integrated disclosures, as discussed above.

Predisclosure Activity

As described above, the final rule generally applies to transactions for which the creditor or mortgage broker receives an application on or after August 1, 2015. Section 1026.19(e)(2) of the final rule includes restrictions on certain activity prior to a consumer's receipt of the disclosures required by § 1026.19(e)(1)(i), which may occur prior to a consumer's submission of an application under § 1026.19(e). These include § 1026.19(e)(2)(i), which restricts the fees that may be imposed on a consumer, § 1026.19(e)(2)(ii), which requires a statement to be included on written estimates of terms or costs specific to a consumer, and § 1026.19(e)(2)(iii), which prohibits creditors from requiring the submission of documents verifying information related to the consumer's application. These provisions under § 1026.19(e)(2) are effective on August 1, 2015, regardless of whether an application has been received on that date, because the restricted activity may occur before such receipt. The Bureau believes this effective date for the restrictions under § 1026.19(e)(2) will benefit consumers and encourage consumer shopping for mortgage loans, because the provisions under § 1026.19(e)(2) will restrict such activity beginning August 1, 2015, regardless of whether or not consumers submit an application to the creditor. The Bureau believes that an approach that applies these provisions only to transactions for which the creditor has received an application would diminish the benefits of these provisions of the final rule to consumers, and would also not facilitate compliance, because it would be confusing to industry to implement the transition to these new requirements.

State Law Preemption

As described above, the final rule generally applies to transactions for which the creditor or mortgage broker receives an application on or after August 1, 2015. The final rule amends § 1026.28(a)(1) and commentary to § 1026.29 of Regulation Z, regarding the preemption of State law. The final rule amends § 1026.28(a)(1) to provide that State law requirements that are inconsistent with the requirements contained in the final rule are preempted to the extent of the inconsistency and provide a procedure under § 1026.28(a)(1) for a creditor, State, or other interested party to request the Bureau to determine whether a State law requirement is inconsistent with §§ 1026.19(e) and (f), 1026.37, and 1026.38. The final rule amends comments 29(a)–2 and –4 to § 1026.29(a), which provides procedures for a State to apply to the Bureau to exempt a class of transactions within the State from the requirements of chapter 2 (Credit transactions) or chapter 4 (Credit billing) of TILA and the corresponding provisions of Regulation Z. See the section-by-section analyses of §§ 1026.28 and 1026.29 above for additional detail regarding these amendments.

The amendments to § 1026.28 and the commentary to § 1026.29 are effective on August 1, 2015, without respect to whether an application has been received on that date. The Bureau believes that an approach that applies these provisions only to transactions for which the creditor or mortgage broker has received an application would not facilitate compliance, because it would

be confusing, and potentially burdensome for industry to implement. For example, § 1026.28(a)(1), as noted above, permits the public to submit requests to the Bureau for a determination of whether a State law requirement is inconsistent with the integrated disclosure requirements of §§ 1026.19(e) and (f), 1026.37, and 1026.38. The public should be able to submit such a request prior to the receipt of an application, and such a request should be able to apply to the State law requirements generally, rather than a particular transaction for which an application was received. The Bureau believes this approach furthers one of the purposes of the integrated disclosures under Dodd-Frank Act sections 1098 and 1100A, which is to facilitate compliance with the mortgage disclosure requirements of TILA and RESPA sections 4 and 5.

As discussed above, the Bureau is adding comment 1026.1(d)(5)-1 to provide clarity regarding the application of the effective date to transactions covered by the final rule. The comment summarizes the effective date and clarifies that new § 1026.19(e)(2), and the amendments to § 1026.28(a)(1) and the commentary to § 1026.29 in the final rule become effective on August 1, 2015. The comment also sets forth examples to illustrate the application of the effective date, including examples of the effective date of § 1026.19(e)(2) and the amendments to § 1026.28(a)(1) of the final rule.

Implementation Period

For the reasons discussed below, the Bureau believes that the implementation period is consistent with the statutory purposes of the integrated disclosure requirements in Dodd-Frank Act sections 1098 and 1100A and past periods provided by Federal regulatory agencies for the implementation of mortgage disclosure rulemakings. The Bureau believes this period, on balance, will afford industry sufficient time to implement comprehensive systems changes, integrate business practices into the new regulatory requirements of this final rule, and train staff, all of which will ensure the final rule fully provides the substantial benefits for consumers intended by the Bureau. The Bureau also believes this time period will assist in facilitating an efficient conversion of the supervisory processes of the Federal regulatory agencies responsible for examining creditors for compliance with the final rule.

TILA section 105(d). As discussed above, the Dodd-Frank Act does not impose a deadline for issuing a final rule and disclosures in connection with the mandate to integrate disclosure requirements under TILA and RESPA, or provide a specific amount of time for entities to come into compliance after the final rule is issued. However, under TILA section 105(d), a regulation requiring any disclosure that differs from the disclosures previously required shall have an effective date no earlier than ''that October 1 which follows by at least six months the date of promulgation,'' except that the Bureau may at its discretion lengthen the period of time permitted for creditors or lessors to adjust their forms to accommodate new requirements, or shorten the period where the Bureau finds that such action is necessary to prevent unfair or deceptive disclosure practices. 15 U.S.C. 1604(d).

The final rule significantly strengthens and streamlines the mortgage loan disclosures provided to consumers three days after application and at or before mortgage loan closings. The Bureau believes the final rule will deliver significant value to consumers, among other ways, by helping: (1) To ensure that they understand the costs, risks, and benefits of their loans at a time when they can still negotiate the terms of or walk away from the transaction; and (2) to minimize changes at the closing table and make it easier for consumers to understand how and why any costs may have changed. Although the Bureau desires to have the rule take effect as soon as realistically possible given its value for consumers, the Bureau has decided to use its discretion under TILA section 105(d) to lengthen the period in this instance. As described below, after consideration of public comments on this issue, the Bureau believes the changes the final rule will require to both the origination and closing processes warrant an effective date of August 1, 2015.

Comments generally support an implementation period of at least 18 months. As discussed above, virtually all comments supported an implementation period of at least 18 to 24 months for this final rule. While several commenters advocated for shorter time periods, the Bureau believes that these suggestions are neither practical nor feasible for industry as a whole, based on the Bureau's understanding of the tasks involved in implementing this final rule as described by commenters and the experience of industry in implementing recent mortgage rulemakings requiring similarly extensive revisions to software systems, as described below.

Significant changes throughout the industry. The Bureau understands that implementation of this final rule will impose significant changes and costs across the residential real estate and mortgage lending industry. As discussed above, many commenters noted that implementation of the final rule goes farther than just new disclosure forms. The final rule affects a broad range of industry, including lenders, title companies, escrow agents, closing attorneys, document software providers, mortgage brokers, and real estate agents. The final rule also affects the interactions between these sectors of industry. For example, as some commenters noted, the final rule makes several significant changes to how real estate closings are handled—creditors will be responsible for providing the Closing Disclosure (although the final rule expressly permits settlement agents to provide it as well)—and transforms the relationship between creditors and settlement agents.

The scope of software systems changes required for each sector of industry to implement the necessary amendments and to make their systems interact seamlessly with other sectors of industry is substantial. The changes in this final rule will require updates to loan origination software and origination platforms; the development of systems to produce the integrated disclosures by third-party document companies used by creditors; the development of new systems for the title insurance and settlement services industry to produce the new integrated disclosures and integrate business practices, such as disbursements of settlement funds, into such software systems, including related systems in support of escrow agents and closing attorneys. Moreover, the title insurance and settlement services industry will need to prepare their systems to interact with the systems of multiple lenders. In addition, as many commenters noted, many of these industry participants in these different sectors of industry will need to update their compliance systems, internal quality control processes, and internal audit processes.

Further, these parties may need to revise legal agreements between them to reflect changes in regulatory responsibilities under the final rule. As discussed above, some commenters noted that all loan products, sales and marketing arrangements, compensation schemes, business relationships, and transaction timing requirements are built on the basis, or in consideration of, the RESPA and TILA statutes. Therefore, the Bureau understands that altering the body of mortgage disclosures requires a reconstruction of the entire loan delivery system for creditors. Given the unprecedented

scope and broad impact of these new requirements, the Bureau understands that creditors and servicers will need to define and implement new business models that are sustainable in this changed regulatory environment.

Lastly, this broad range of industry will need to spend time before even beginning to revise their software systems, or discussing the interaction of such systems, to review the final rule and consult with their compliance staff. Additionally, industry may consult with counsel or compliance consultants before beginning such revisions or during such revisions. The different sectors of industry may also need to ensure they have a similar understanding of the requirements of this final rule to ensure their systems interact effectively. Accordingly, the Bureau believes this final rule will require more time for systems changes than a rule that affected only one sector of industry.

Staff training. The Bureau also understands that industry will be required to train vast numbers of loan origination, title insurance and settlement agent, real estate agent, and other settlement service provider personnel. In addition, the Bureau understands that much of this training cannot occur concurrently with the software systems changes described above, and can only be conducted after the software changes have been completed, so the staff personnel can train on the new software systems. The Bureau also understands that training will need to include a broad range of industry personnel, including loan originators, personal bankers doing home equity loans, loan processors, loan closers, third-party closing agents, customer service representatives, settlement agents, escrow agents, real estate agents, as well as back office personnel who may need to complete administrative functions with respect to the new integrated disclosures.

Consistent with implementation periods for past mortgage rulemakings requiring extensive software systems changes. The Bureau believes that recent rulemakings affecting the residential mortgage lending industry that required extensive software systems changes provide a basis on which to determine an appropriate implementation period for this final rule. Several commenters noted that the implementation of HUD's 2008 RESPA Final Rule effectively necessitated a period of approximately 18 months. Specifically, HUD's 2008 RESPA Final Rule provided an implementation period of approximately 13 and a half months after publication of the rule in the **Federal Register**, which final rule involved fewer changes to the mortgage disclosures. Although HUD significantly revised the design of the RESPA GFE in its 2008 RESPA Final Rule, it made fewer design changes to the RESPA settlement statement in that final rule. Even in that case, although HUD provided approximately 13 and a half months to implement the rule, HUD determined that it was necessary to exercise ''restraint in enforcing'' the new requirements for the first four months the rule was effective in the case of FHA-approved creditors that have ''demonstrated that they are making a good faith effort to comply with RESPA's new requirements.'' [317]

Similarly, when the Board amended the requirements with respect to data collection under the Home Mortgage Disclosure Act and its Regulation C in 2002, the Board initially provided approximately 10 and a half months from the publication of the final rule in the **Federal Register** to implement the amendments.[318] However, the Board concluded several months later that it was necessary to extend the implementation period by one year because of operational difficulties industry experienced in implementing the rule, which resulted in approximately a 22-month implementation period.[319]

Implementation of other rulemakings. The Bureau understands that the residential mortgage lending industry is, at the time of issuance of this final rule, implementing the Title XIV Rulemakings, which become effective in January 2014. As a result, the mortgage industry is facing major regulatory amendments impacting both loan origination practices and servicing. In addition, as noted by some commenters, some entities in the residential mortgage lending industry will be required to implement other rulemakings promulgated by other Federal agencies under the Dodd-Frank Act or in response to the recent financial crisis, such as rulemakings affecting capital and leverage standards for banking organizations and risk retention rules in residential mortgage-backed securitizations. Some of these rulemakings by other Federal agencies are expected to have effective dates or be phased in over the same timeframe as this rulemaking. Accordingly, the Bureau understands that industry resources might be strained from the implementation of other rulemakings. Given the breadth of the systems changes required to implement this final rule, the Bureau believes that providing sufficient time to implement this final rule in the context of the regulatory environment in which industry is operating is an important consideration. The Bureau believes that providing a reasonable implementation period, in light of other implementation tasks industry must complete for these other rulemakings, will help facilitate compliance with the disclosure requirements of this final rule and ensure an effective implementation of the final rule for consumers.

Concerns with an inadequate implementation period. The Bureau is concerned that an implementation period that does not allow enough time to complete the transition to the requirements of the final rule would have significant costs and inconveniences for both consumers and industry. For example, if implementation is not completed effectively, consumers could experience delayed closings due to flaws in computer systems or lengthy interactions between creditors and settlement agents due to insufficient time to work out processes, or poor closing experiences due to an insufficient time to train industry personnel. Based upon the comments received, the Bureau is concerned that some creditors might seek to eliminate operational risk through scaling back or discontinuing their lending activities if the duration of the implementation period is insufficient, which would be harmful to both consumers and the industry and lead to access to credit concerns. As discussed in part II.E above, the Dodd-Frank Act establishes two goals for the TILA–RESPA mortgage disclosure integration: to improve consumer understanding of mortgage loan transactions; and to facilitate industry compliance with TILA and RESPA. Dodd-Frank Act sections 1098 and 1100A. In adopting an effective date of August 1, 2015, the Bureau has therefore balanced the imperative to implement the new, more beneficial disclosures as quickly as realistically possible with the need to minimize costs and disruptions for consumers and industry alike. The Bureau believes, as

[317] Press Release, U.S. Dep't of Hous. & Urban Dev., HUD No. 09–215, *HUD Announces Restraint in RESPA Enforcement for First Four Months of New Rule,* (Nov. 13, 2009), available at *http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2009/HUDNo.09-215.*

[318] 67 FR 7222 (Feb.15, 2002) (final rule expanding the coverage of HMDA, redefining key terms, and requiring the collection of additional categories of data, including loan pricing data).

[319] 67 FR 30771 (May 8, 2002) (delaying the effective date of amendments to HMDA reporting requirements by one year because some entities were not able to implement them).

industry commenters noted above, that a reasonable implementation period will better ensure that consumers receive the full benefits of the integration without disruption.

Application of the effective date to all creditors. The Bureau also believes that staggered effective dates for different sizes of entities would not be practicable, and has decided not to adopt a separate effective date for small entities. Although some commenters advocated providing more time for small businesses to come into compliance with the final rule, most commenters generally disfavored a separate effective date. The Bureau has concluded that a separate small entity effective date would not be practicable for several reasons. First, as noted by some commenters, because small businesses rely heavily on third-party technology providers, a delay would not be very useful. The Bureau understands that small creditors almost universally use third-party technology vendors (*i.e.,* LOS, document preparation vendors, etc.), which will have to be ready at the earliest effective date even if there were a separate later effective date for small entities, because such vendors service lenders of all sizes. Second, the Bureau remains concerned that a bifurcated implementation period could be detrimental to consumers since comparison shopping would be complicated for consumers during the interim period. The Bureau believes that providing the same implementation period for all creditors will allow consumers to comparison shop using the same disclosures from the date they become effective. The Bureau is concerned that consumers will be confused if they have to compare loans between lenders using two substantially different sets of disclosures. Third, information flow would also be complicated for industry and secondary market investors during the interim period. In many cases, as noted by commenters, small creditors act as correspondent lenders for a larger creditor, and small mortgage brokers provide disclosures for loans provided by larger creditors. It may be unclear which disclosures are effective in such cases. For the same reasons, the Bureau has decided not to adopt a separate effective date for housing finance agencies.

With respect to the commenters that requested a grace period, delayed enforcement period, or a temporary reprieve from liability after the effective date, the Bureau believes that the implementation period for the final rule provides an appropriate and reasonable implementation schedule that balances the importance of putting new requirements in place as quickly as possible for consumers with the need to allow industry sufficient time to implement the new disclosure requirements effectively and efficiently. Accordingly, the Bureau has decided to mandate one effective date, and not adopt a staggered approach that includes a grace period, delayed enforcement period, or some other form of temporary reprieve from the requirements to comply with the final rule.

Implementation assistance. As several industry commenters suggested, the Bureau intends to provide guidance to industry regarding the implementation of this final rule. The Bureau believes that guidance in the form of plain language compliance guides, conducting roundtable meetings with stakeholders, and other compliance aids such as videos and reference charts, will assist industry in achieving an efficient implementation of the final rule. In addition, as noted below in the section-by-section analysis of § 1026.25, the Bureau will continue to monitor the GSEs' efforts to finalize their standardized dataset for the Closing Disclosure, the ''Uniform Closing Dataset (UCD).'' The Bureau believes that utilization of such a standardized dataset may enable certain efficiencies in industry's implementation of this final rule.

However, the Bureau does not believe that a staged implementation of the final rule, or the Bureau's issuance of several iterations of the rule and disclosures are necessary, as some commenters suggested. The Bureau understands that providing guidance through FAQs throughout the implementation period has the potential to negatively impact industry's efficiency in implementing the rule and understands the experience of industry in incorporating FAQs during its implementation of HUD's 2008 RESPA Final Rule. The Bureau believes that an effective date of August 1, 2015 will allow enough time for industry to analyze and incorporate any such guidance or compliance aids the Bureau provides and complete implementation in an efficient manner. In addition, the Bureau believes the effective date of this final rule will allow enough time for the Bureau to respond to stakeholder questions regarding the final rule, such as in roundtable meetings, and for industry's incorporation of such guidance.

Conclusion

For the aforementioned reasons, the Bureau believes that an effective date of August 1, 2015, provides a reasonable implementation period that will ensure that consumers receive the full benefits of the integration without disruption. The Bureau believes that this effective date ensures that the Bureau's goals in promulgating the integrated disclosures will be achieved and the overall costs and burdens on the industry—and, ultimately, consumers—will be mitigated most effectively.

The Bureau finds that this approach carefully balances the two statutory objectives for the TILA–RESPA mortgage disclosure integration set forth in sections 1098 and 1100A of the Dodd-Frank Act: to aid consumer understanding of mortgage loan transactions; and to facilitate industry compliance with TILA and RESPA.

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

A. Overview

In developing the final rule, the Bureau has considered potential benefits, costs, and impacts, and has consulted or offered to consult with the prudential regulators and the Federal Trade Commission regarding consistency with any prudential, market, or systemic objectives administered by such agencies.[320] The Bureau also held discussions with or solicited feedback from the United States Department of Agriculture Rural Housing Service, the Farm Credit Administration, the Federal Housing Administration, the Federal Housing Finance Agency, the United States Department of Housing and Urban Development, and the Department of Veterans Affairs regarding the potential impacts of the final rule on those entities' loan programs.

The Bureau is issuing final rules and forms that combine the pre-consummation TILA and RESPA disclosures for loans subject to either law or to both laws, pursuant to sections 1032(f), 1098, and 1100A of the Dodd-Frank Act. This rule finalizes most aspects of the proposed rule issued in July 2012 that implemented section 1032(f) of the Dodd Frank Act. Sections 1098 and 1100A of the Dodd-Frank Act, which amended RESPA and TILA, respectively, to mandate the integrated disclosures, state that the purposes of the disclosures are to facilitate

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

compliance with the disclosure requirements of the statutes and ''to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures.'' Dodd-Frank Act sections 1098(2)(A), 1100(A)(5). The Bureau is also implementing several new disclosure requirements added to TILA and RESPA by the Dodd-Frank Act. In addition, the Bureau is revising current regulations implementing the pre-consummation disclosure requirements of TILA and RESPA to improve consumer understanding of mortgage transactions and upfront disclosure of loan costs and terms, consistent with the purposes of TILA and RESPA.

TILA and RESPA currently require creditors and settlement agents to provide consumers who apply for mortgage loans different but overlapping disclosures regarding the loan's terms and costs. This duplication has long been recognized as inefficient and confusing for consumers and industry. Prior to the creation of the Bureau, the Board and HUD independently took steps to address these shortcomings, but neither agency had the authority to combine the duplicative disclosures. On July 21, 2011, the Dodd-Frank Act transferred authority over TILA and RESPA to the Bureau. As noted above, the Dodd-Frank Act specifically directs the Bureau to combine the TILA and RESPA mortgage disclosures.

With respect to each major provision in the final rule, the analysis considers the benefits and costs to consumers and covered persons, and in certain instances considers other impacts. The analysis also addresses comments the Bureau received on the proposed Dodd-Frank Act section 1022 analysis as well as certain other comments on the benefits or costs of provisions of the proposed rule when doing so is helpful to understanding the Dodd-Frank Act section 1022 analysis. Comments that mentioned the benefits or costs of a provision of the proposed rule in the context of commenting on the merits of that provision are addressed in the section-by-section analysis of that provision above. In this respect, the Bureau's analysis under Dodd-Frank Act section 1022 is not limited to the discussion in this part VII of the final notice. No new datasets were used in analyzing the impact of the rule, aside from more current versions of HMDA and Call Reports data.

B. Economic Overview and Provisions To Be Analyzed

In this section of the 1022 analysis, the Bureau presents a concise, high-level overview of the costs and benefits discussed in the remainder of the analysis and a brief response to the major comments received with respect to the 1022 analysis that accompanied the proposed rule. This overview is not intended to capture all details and nuances that are provided both in the rest of the 1022 analysis and in the section-by-section analysis in the preamble, but rather to provide an overview of the major costs and benefits of the rule.

1. Major Benefits of the Rule

The major benefits of the rule stem from two key consequences of the rule. The first consequence is disclosure of the terms of the transaction, including loan terms and pricing and other costs, that is easier to understand and that is potentially provided to the consumer earlier in the process than is true today.[321] In the Bureau's quantitative testing, subjects who were given the proposed disclosures answered 79.3 percent of questions correctly, versus 64.5 percent with the existing forms, a 14.8 percentage point, statistically significant, overall improvement.[322] As discussed in section III, for certain important elements, the improvement was substantially greater. The second consequence of the rule that produces major benefits is ensuring that the consumer receives the Closing Disclosure at least three business days in advance of consummation and in a format that tracks the Loan Estimate and thus facilitates easy comparison.[323] This permits consumers to compare their estimated and final loan terms and costs, with sufficient time to identify discrepancies between the Loan Estimate and actual terms of the transactions and without the pressure of doing so at the closing table.

Together, these aspects of the rule will benefit consumers by enabling them to choose loans that are better for them in terms of price or loan features and to know whether they actually get the price and loan terms that they expected when they decided which loan to take out. The improved disclosure will also give consumers a greater incentive to shop for loan terms as they will be better able to compare competing offers. And, the Loan Estimate and Closing Disclosure will provide consumers with more easily understandable information about the settlement services associated with the loan and which settlement services they can shop for. Therefore, this rulemaking might mitigate two problems in the current real estate market: Insufficient amount of shopping by consumers for loans and also for settlement services (mitigated because the disclosures are easier to understand, and thus compare)[324] and consumers not having sufficient time to ask questions, negotiate with respect to terms that have changed, and otherwise adjust the loan terms or settlement costs prior to consummation (mitigated by the clearer and more informative early and closing disclosures, and the three-business-day waiting requirement).

Quantifying these benefits is difficult, as the size of each particular effect cannot be known in advance. Small changes in behavior, however, can have very large aggregate effects, given the size of individual mortgage transactions and the size of the entire mortgage market.

For, example, consider a hypothetical example of a small share of consumers obtaining slightly less expensive mortgage loans, either by making better choices with regard to the loan they choose or because the improved comparability of the form encourages them to shop more. If the new disclosures only affect ten percent of borrowers, and only lower their interest rates by .125% (1/8 of a percentage point, the smallest typical unit of price difference in the mortgage market), this would lead to an annual saving of $1,250,000,000 for mortgage borrowers once all mortgages have been originated with the integrated disclosures and assuming total outstanding mortgage balances were to remain at their current level of roughly ten trillion dollars.

The ability of increased shopping to reduce consumer costs has been demonstrated empirically. For example, one recent study found that consumers financing a $200,000 loan save $2,700 on average by shopping at four brokers instead of shopping at two.[325] African-American consumers and consumers with low education and/or a low credit score shopping for a loan of the same amount save even more on average.[326]

Moreover, if a significant number of borrowers were to increase their amount of shopping and to shop more effectively, this might increase

[321] *See* Kleimann Testing Report and Kleimann Quantitative Study Report for more details.

[322] *See* Kleimann Quantitative Study Report at 41.

[323] While some of the amounts in the form might still change in the last three days, consumer will have at least three days to consider the loan type, the length of the loan, APR (up to 1/8th of a percentage point), and, if it is one of the terms, a prepayment penalty.

[324] Beales, Howard, Richard Craswell, and Steven Salop. ''Information Remedies for Consumer Protection.'' *The American Economic Review* 71.2 (1981) at 410–413.

[325] Woodward and Hall (2012).

[326] Id.

competition in the mortgage loan market and lead to lower prices for all consumers. The Bureau does not possess, and is not aware of, any data that would allow it to quantify with any precision the number of borrowers who would engage in incremental shopping or the effect such shopping would have in reducing the interest rate that borrowers otherwise would pay.[327] The Bureau notes that there were roughly 7,600,000 covered mortgage transactions in 2011, with a total dollar volume of $1,280,000,000,000.[328] Each basis point of reduction in average interest cost to consumers would therefore translate into total consumer savings of $128,000,000 per year.

Similarly, consumers will benefit if the improved disclosures encourage or enable greater shopping for settlement services. While the benefits of shopping for closing services are hard to quantify, if only ten percent of consumers lower their closing costs by ten percent by shopping for some of their settlement services, this would result in approximately $24 of savings per transaction on average,[329] or approximately $168,000,000 per year in consumer benefits.[330] And again, as with mortgage pricing generally, there may be further benefits that could flow from more consumers shopping for closing services, which would likely make the closing service market more competitive, resulting in spillover benefits even to the non-shoppers. At a pace of 7,600,000 covered mortgage transactions per year, each dollar of reduction in average closing costs would translate into $7,600,000 in consumer savings.

Better informed consumers might pick not only cheaper loans, but also loans with characteristics that better fit their needs. Other consumers may decide to forgo a mortgage completely after receiving better information about the costs and risks of the mortgages for which they qualify. Again, the benefits of this effect are difficult to measure precisely, but they would appear to be potentially substantial in terms of economic harm averted for homeowners. Some of the loans that were made in the housing bubble that led to the mortgage crisis showcase the potential harmful consequences of consumers choosing loans that are not a good fit for them. Taking out a loan that is a poor match for the consumer's need can have a devastating effect on that homeowner and his or her family; the monetary costs alone are estimated at $7,200.[331] In addition, research has consistently shown that each foreclosure has a number of externalities that will have a negative effect on the other homeowners in the vicinity either through the displacement of demand that otherwise would have increased the neighborhood prices, reduced valuations of future sales if the buyers and/or the appraisers are using the sold foreclosed property as a comparable, vandalism, and disinvestment.[332] Furthermore, as the recent financial crisis demonstrates, the economy as a whole can suffer grave harm if enough consumers find themselves in unaffordable mortgages. For a fuller discussion of the cost and impact of the recent financial crisis, see section II.A above.

In addition to the benefits that may result from the new initial disclosures, the new closing disclosures also may benefit consumers in several ways. First, the new disclosures have the potential to make closings more efficient, and savings to creditors and settlements agents from a more efficient closing process likely will be almost fully passed through to consumers. The potential efficiency gains come from covered persons spending less time explaining the disclosure to the consumer because the new Closing Disclosure is easier to understand and compare to the Loan Estimate and because the new Closing Disclosure will be received three business days in advance of consummation.[333] For these reasons, the Bureau believes that the rule could save up to half an hour of a covered person employee's time or $17 per closing.[334] At a pace of 7,600,000 covered mortgage transactions per year, the rule could result in saving $130,000,000 per year. The Bureau believes that most of these savings are likely to be passed on to consumers since these are marginal savings on each transaction.

Second, because of the format and timing of the new Closing Disclosure, consumers may well be better able to identify discrepancies between the final costs and estimated costs and may as a result be more likely to question and negotiate with respect to these changes. The magnitude of this benefit will depend on the extent to which there are cost increases today and the frequency with which consumers are able to successfully negotiate reductions in such changes. The Bureau is unable to quantify either of these effects, but as noted above each dollar in per-transaction average savings translates into $7,600,000 in aggregate consumer savings.

2. Major Costs of the Rule

The major costs of the rule are one-time costs, primarily labor costs, that

[327] The magnitude of such an impact would depend, in addition to the shopping effects, on the current state of competition in the mortgage market.

[328] Moody's Analytics, Credit Forecast 2012 (2012) (''Credit Forecast 2012''), available at *http://www.economy.com/default.asp* (reflects first-lien mortgage loans) (data service accessibly only through paid subscription).

[329] The Bureau assumes that closing costs are $2,400, based on a recent survey by Bankrate.com, available at *http://www.bankrate.com/finance/mortgages/closing-costs/closing-costs-by-state.aspx*. In this hypothetical scenario, 10% of consumers would save $240 each. This is consistent with a recent study by HUD and the Urban Institute, indicating that borrowers could save hundreds of dollars by shopping for title services and title insurance. See U.S. Dep't of Hous. & Urban Dev. and The Urban Inst., *What Explains Variation in Title Charges? A Study of Five Large Markets* (2012), available at *http://www.huduser.org/portal/publications/hsgfin/title_charges_2012.html* (HUD Title Charge Study).

[330] Consumers can only shop for some of the services, and the 10% savings number is chosen to reflect that.

[331] *http://www.mortgagenewsdaily.com/622008_Foreclosure_Costs.asp.*

[332] There are several papers documenting various magnitudes of the negative effect on the nearby properties. Data in Massachusetts from 1987 to 2009 indicate that aside from a 27% reduction in the value of a house (possibly due to losses associated with abandonment), foreclosures lead to a 1% reduction in the value of every other house within 5 tenths of a mile. See John Y. Campbell, Stefano Giglio, and Parag Pathak, Forced Sales and House Prices, American Economic Review 101(5) (2011), abstract available at: *http://www.aeaweb.org/articles.php?doi=10.1257/aer.101.5.2108.* Data from Fannie Mae for the Chicago MSA, show that a foreclosure within 0.9 kilometers can decrease the price of a house by as much as 8.7%, however the magnitude decreases to under 2% within five years of the foreclosure. See Zhenguo Lin, Eric Rosenblatt, and Vincent W. Yao. ''Spillover Effects of Foreclosures on Neighborhood Property Values,'' The Journal of Real Estate Finance and Economics, 2009, 38(4), 387–407. Similarly, data from a Maryland dataset for 2006–2009 show that a foreclosure results in a 28% increase in the default risk to its nearest neighbors. See Charles Towe and Chad Lawley, 2011, ''The Contagion Effect of Neighboring Foreclosures,'' SSRN Working Paper 1834805.

[333] Research indicates that cognitive processes take more time when evaluating changes in terms. *See, e.g.,* Christopher Chabris *et al., The Allocation of Time in Decision-Making,* Journal of the European Economic Association (2009) (decision-makers spend more time on decisions when their estimates of the value of the best option is closer to the estimate of the value of the next best option); Mieneke W.H. Weenig and Marleen Maarleveld, *The Impact of Time Constraint on Information Search Strategies in Complex Choice Tasks,* Journal of Economic Psychology (2002) (in complex choice tasks, screening is based on fewer attributes when time pressure is imposed).

[334] Based on an estimate of settlement agent total compensation of $34 per hour. Based on 2011Q4 weekly wages in the title abstract and settlement industry from the Bureau of Labor Statistics series ENUUS000405541191, assuming 40 hours worked per week and that 66.6 percent of compensation is wage compensation.

creditors [335] and settlement agents [336] will incur to update systems and procedures to comply with the rule.[337] The bulk of the costs imposed on creditors by the final rule are costs associated with implementing new processes necessary for compliance with the new integrated disclosure requirements. These include: training staff, coordinating with settlement agents, changing processes to ensure that consummation is not delayed due to the three-business-day waiting period, software testing, troubleshooting, and ensuring smooth system functioning across different software programs. The Bureau believes that the cost of updating software will fall largely on software vendors, on which the vast majority of creditors rely.[338] The Bureau believes that the ongoing costs of complying with the regulation will not exceed the costs of complying with the existing regulations, and therefore that the additional ongoing cost of this regulation is zero.

Because the costs of the regulation are one-time investments, firms are expected to amortize this cost over a period of years. In this analysis the Bureau amortizes all costs over five years, using a simple straight-line amortization. The Bureau estimates that the one-time costs to creditors of complying with the rule are approximately $207,000,000 per year for five years. This is approximately $27 per covered transaction, at the 2011 annual rate of originations.[339] In comparison, average creditor profits from originating a mortgage were approximately $1,100 per transaction in 2011 Q4.[340] As noted above, almost all of the costs to creditors are allocations of the labor costs associated with the employees who will perform the implementation work. It is possible that some of the employees involved in implementation will be current employees assigned to implementation related tasks as part of their regular, ongoing job responsibilities, so creditors' out-of-pocket costs might be less than estimated above. The Bureau estimates that affected employees will spend three percent of their paid time on implementation of the rule during the approximately 18 months of implementation, with many affected employees spending less time than this and a few spending a larger share of their time on implementation.

Settlement agents will also incur costs of new process implementation. Amortized over five years, settlement agents' costs are approximately $67,800,000 per year or $9 per covered transaction. Almost all of these costs are also allocated labor costs. It is possible that some of the employees involved in implementation will be current employees assigned to implementation related tasks as part of their regular, ongoing job responsibilities, so creditors' out-of-pocket costs might be less than estimated above. The Bureau estimates that the share of the affected employees' time devoted to this one-time implementation cost of the rule during the approximately 18 months of implementation is less than four percent.

As noted above, the significant costs incurred by covered persons, both creditors and settlement agents, are one-time implementation costs. The Bureau believes that the ongoing costs of the rule are negligible, relative to existing regulatory requirements, and that there may be ongoing net savings for covered persons due to fewer different forms and lower paperwork burden, including the incorporation of the ECOA Appraisal notification and the RESPA servicing application disclosure into the Loan Estimate. To the extent these savings occur, a portion, if not all, of them might be passed through to consumers.

To the extent that consumers shop more and to the extent that reduces prices in the market, creditors and providers of settlement services listed in the Loan Estimate will lose some of the markup on their products. These costs likely will be alleviated, however, by more consumers entering the market if this price decrease materializes. Again, to the extent that this price decrease occurs, relatively inefficient creditors and service providers are likely to lose market share to the more efficient creditors and service providers. While that is a cost to the less efficient entities, this is arguably a benefit to the market overall. The Bureau does not possess and is not aware of any data that would let it quantify these costs, over and above the hypothetical scenarios described above.

In addition to mandating integration of the TILA and RESPA disclosure requirements, the Dodd-Frank Act added additional mortgage loan disclosure requirements to TILA. The Bureau has decided to implement most of these additional requirement in the final rule—as part of the integrated disclosures where possible, and in separate disclosure forms where necessary. If these additional requirements were implemented separately, the aggregated cost of the multiple rules may have been greater than the cost of this final rule. The separate disclosure forms (the Post-Consummation Escrow Cancellation Notice and the Partial Payment Policy disclosure) will be relatively low cost to implement due to the fact that the creditors will be revamping their origination processes in order to be able to provide the Loan Estimate and the Closing Disclosure. Since the Bureau believes that the marginal cost of implementing the separate forms is insignificant given that the creditors and the vendors are already responsible for changing their processes for the combined TILA and RESPA forms, the Bureau concentrates this analysis on the costs of implementing the combined forms.

3. Comments on the Impact Analysis in the Proposed Rulemaking

Comments received in response to the proposed rule that are relevant to this 1022 analysis mainly addressed (i) the

[335] For the purposes of this section, the Bureau examines creditors and mortgage brokers together. Mortgage brokers are likely to incur costs, including training costs, similar to the costs that creditors will incur for their loan officers. The Bureau estimates the number of loan officers involved in rule implementation based on the number of applications and originations that each creditor processes. Thus, some of the staff included in the Bureau's estimate of loan officers are actually mortgage brokers, and thus their costs of complying are included in these calculations, including, for example, the training cost of 8 hours per loan officer.

[336] As used here, ''settlement agent'' includes anyone who can conduct the settlement, including attorneys or escrow companies in several states.

[337] Some service providers, such as software vendors, will incur costs, as well, as they update their products to comply with the final rule, but these are not covered persons for the purposes of this analysis.

[338] Some of the SERs reported that they expect vendors to pass through the cost of updating software to their clients. However, the Bureau is not aware of this happening in connection with the January 2013 rules. Moreover, there is a strong argument grounded in standard economic theory suggesting that vendors should not pass through any of these costs to their clients. Moreover, the Bureau believes that many vendor contracts are structured in a way that vendors would not be able to pass through any cost increase due to a regulation-related software update such as this one.

[339] Note that these costs are fixed. The Bureau assumes that creditors are profit maximizing and will not pass through these costs to consumers. To the extent that this assumption is not satisfied, the Bureau believes that the pass-through will be minimal. While the Bureau does not believe that this will occur and does not have any evidence suggesting that, While it is theoretically possible that some creditors may exit the mortgage market solely due to the final rule, the Bureau is not aware of any evidence supporting this and does not believe it will occur. Even if this were to occur, the Bureau believes that there will be a sufficient number of creditors left in the market to ensure that there is at most a minimal increase in prices.

[340] Mortgage Bankers Association. ''MBA: Fourth Quarter Mortgage Banker Production Profits Decline Despite Higher Origination Volumes.'' 5 April 2012. Available at *http://www.mortgagebankers.org/NewsandMedia/PressCenter/80399.htm.* Note that profit per origination reported in this quarterly survey increased since then, but the Bureau uses the Q4 2011 number to be consistent with the 2011 HMDA data used throughout the analysis.

proposed changes to the APR definition, (ii) the proposed requirement that records be maintained in electronic, machine-readable format, (iii) the proposed requirement for a new Closing Disclosure and new three-business-day waiting period if there were non-trivial changes in closing costs after the Closing Disclosure is provided to the borrower, and (iv) the impact of the proposed rule on settlement agents. As noted above, the Bureau has decided not to finalize the proposed APR and machine-readable provisions and the Bureau has narrowed the circumstances in which a new Closing Disclosure and new three-business-day waiting period is required. With respect to the impact on settlement agents, the Bureau addresses these comments in section E below. A number of commenters addressed other elements of the proposed 1022 analysis, and these likewise are addressed in section E below.

Commenters frequently asserted that the costs of implementing the regulation will ultimately fall on borrowers. The Bureau disagrees. Assuming that all of the business entities are profit-maximizing, standard microeconomic theory implies that any fixed costs should not be passed through to the consumer of the product.[341]

A land title association's comment included an economic study of some aspects of the proposed rule. The study assumed without more that because certain costs are currently adjusted within three business days of consummation, the same costs will be adjusted within three business days of consummation at the same frequency even after the final rule takes effect. The study then proceeded to quantify costs of the rule as proposed to consumers and to the economy in general. Some of the sources of crucial assumptions were not cited, such as the assumption described above, making it difficult to evaluate the study's conclusions. Moreover, the study was based on the broad ''redislosure triggers'' provided for in the proposed rule. Given that the triggers for redisclosure have been considerably narrowed in the final rule (§ 1026.19(f)(2)(i) and (ii)), aspects of the study based on the proposed triggers are no longer relevant. As a result of these numerous deficiencies, the Bureau was not able to rely on the study in preparing this final 1022 analysis.

4. Major Provisions To Be Analyzed

The analysis below considers the benefits, costs, and impacts of the following major provisions of the final rule:

1. The integration of the initial and closing disclosures (the Loan Estimate and Closing Disclosure, respectively);
2. The definition of the term ''application'';
3. Permissible changes to settlement costs and redisclosure of initial disclosures;
4. Provision of the Closing Disclosure; and
5. Implementation of certain new disclosures mandated by the Dodd-Frank Act.

With respect to each major provision, the analysis considers the benefits, costs, and impacts to consumers and covered persons. The analysis also addresses certain alternative provisions that were considered by the Bureau in the development of the final rule, but were not adopted.

C. Baseline for Analysis

Section 1022 of the Dodd-Frank Act permits the Bureau to consider the benefits and costs of the final rule solely compared to the state of the world in which the statute takes effect without an implementing regulation. As in the analysis published with the proposed rule, and to provide the public better information about the benefits and costs of the statute, however, the Bureau has chosen to evaluate the benefits, costs, and impacts of the major provisions of the final rule against a pre-statutory baseline. That is, the Bureau's analysis below considers the benefits, costs, and impacts of the relevant provisions of the Dodd-Frank Act combined with the final rule implementing those provisions relative to the regulatory regime that pre-dates the Dodd-Frank Act and remains in effect until the final rule takes effect.[342] The baseline considers economic attributes of the relevant market and the existing regulatory structure. The Bureau has not received any comments on the baseline used.

D. Coverage of the Final Rule

The final rule requires provision of the integrated disclosures for closed-end consumer credit transactions secured by real property, other than reverse mortgages subject to § 1026.33. As discussed in the section-by-section analysis of § 1026.19 above, the Dodd-Frank Act generally directs the Bureau to establish an integrated disclosure for ''mortgage loan transactions'' that are ''subject to both or either provisions of'' RESPA sections 4 and 5 and TILA. TILA and RESPA differ in the types of transactions to which their respective disclosure requirements apply. The scope of the integrated disclosure provisions reconciles these differences, recognizing that certain transaction types may be inappropriate for the integrated disclosures.

Notably, the integrated disclosure provisions of the final rule do not apply to reverse mortgages and HELOCs, which are within the statutory scope of TILA and RESPA, because those transactions are fundamentally different from other types of mortgage credit since they do not amortize in the same way as closed-end, forward mortgage loans. The integrated disclosure provisions also do not apply to dwellings that are not secured by real property,[343] which are subject to TILA but not RESPA, or to creditors that originate fewer than five loans in a year, which are subject to RESPA but not TILA. The integrated disclosure provisions do, however, apply to construction-only loans, vacant-land loans, and loans secured by 25 acres or more, although these transactions are currently exempt from RESPA coverage, because the Bureau believes that excluding these transactions would deprive consumers of the benefit of enhanced disclosures.

E. Potential Benefits and Costs to Consumers and Covered Persons

1. Integrated Initial and Closing Disclosures

The final rule requires that the Loan Estimate be provided to consumers no later than three business days after receipt of the consumer's application, to replace the early TILA disclosure and RESPA GFE, and that the Closing Disclosure be received by consumers at least three business days prior to consummation, to replace the final TILA disclosure and RESPA settlement statement. As discussed above, TILA authorizes the Bureau to publish model forms for the TILA disclosures, while RESPA authorizes the Bureau to require

[341] Note that effectively non-profit entities compete in the same market and will, at least to some extent, follow the same pattern of behavior.

[342] The Bureau has chosen, as a matter of discretion, to consider the benefits and costs of those provisions that are required by the Dodd-Frank Act in order to better inform the rulemaking. The Bureau has discretion in future rulemakings to choose the relevant provisions to discuss and to choose the most appropriate baseline for that particular rulemaking.

[343] One alternative considered by the Bureau was to include chattel loans, such as those for manufactured housing not inclusive of land, but due to the differences in the informational elements required in chattel lending compared to the informational requirements of lending secured by real property or a dwelling, chattel loans are not covered by the final rule.

the use of standard forms. The final rule requires the use of standard Loan Estimate and Closing Disclosure forms for mortgage loan transactions that are subject to RESPA and TILA. For transactions that are subject only to TILA, however, the forms are not required. Rather, consistent with the provisions of that statute, the forms are model forms. The final rule also incorporates prior informal guidance regarding compliance with HUD's 2008 RESPA Final Rule into Regulation Z and official commentary, as necessary and appropriate.

In considering the benefits and costs of the Loan Estimate and Closing Disclosure, the Bureau notes that most of the costs associated with the final rule will likely be one-time costs associated with adjusting to the new requirements, while the benefits will persist over time. The Bureau believes that because these disclosures may lead to consumers making more informed choices, some of them may obtain mortgages that are lower cost, or in some other way preferable, than the mortgages they would obtain otherwise. Consumers may also decide not to take out a mortgage at all if, given sufficient information, they decide that it is not in their interest.

a. Benefits to Consumers

i. The Loan Estimate. The integration of the early TILA disclosure and the RESPA GFE into the Loan Estimate will have several benefits for consumers. The Kleimann Quantitative Study Report shows that the Loan Estimate will facilitate better consumer understanding of the loan terms and closing costs of possible loans than do the current disclosures. The Loan Estimate will also make it easier for consumers to compare different loans, either different products from a single creditor or loans from different creditors than can be done with the current disclosures. In addition, the harmonization of the Loan Estimate and Closing Disclosure forms will make it easier for consumers to compare the estimated information they initially receive from creditors with the actual costs of the loan than can be done with the current disclosures. The benefits of this third effect are discussed below, in the section on the benefits of the Closing Disclosure.

The Loan Estimate will make it easier for consumers to understand their loan in several ways. First, the Kleimann Quantitative Study Report shows that the Loan Estimate will make it easier for consumers to understand the loan terms and closing costs of potential loans.[344] The Loan Estimate emphasizes information that is important to consumer understanding of the mortgage transaction, and deemphasizes information that is either confusing to consumers or that may not be directly utilized by consumers, such as the APR, which current TILA disclosures focus on as a measure of the cost of credit.[345] 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.[346] *See* Macro 2009 Closed-End Report at iv–v. Accordingly, the Bureau developed the Loan Estimate to prioritize and clearly display the information that consumers readily understand and is most important to them in understanding the loan and the underlying real estate transaction, such as the interest rate, monthly payment amount, and settlement costs. The design displays this key information in a manner that enables consumers to locate it quickly on the form by using highly visible headings and labels and limiting the amount of text on the form. Based on the results of its consumer testing and outreach, described in part III above and in the Kleimann Testing Report as well as the results of the Kleimann Quantitative Study Report, the Bureau believes the Loan Estimate is easier for consumers to use and understand than current Federal disclosures.[347]

The Kleimann Quantitative Study Report also shows that the Loan Estimate will make it easier for consumers to understand the risks associated with a loan because the form emphasizes risk factors that are either less prominently disclosed or are not found on current Federal disclosures. For example, the first page of the Loan Estimate clearly discloses whether a loan will or may experience future changes to interest rate, monthly payment amount, or to the loan's principal balance as a result of negative amortization, by using simple text and highly visible capitalized type in a bold font to indicate the possibility of such changes. These disclosures conform to the best practices recommended by experts in the area for presenting numeric health information, which, similar to financial information, requires numeracy skills and risk assessments. In particular, the forms ''reduce required inferences and calculations.'' [348] Furthermore, the disclosure of ranges for variable-rate products further clarifies the variable nature and potential risk of these products. Available evidence indicates that some mortgage borrowers may have difficulty understanding or at least recalling details of their mortgage, particularly the terms and features of adjustable-rate mortgages.[349] These disclosures may help reduce the likelihood that consumers will experience payment shock due to future payment changes. In addition, the Loan Estimate prominently discloses total monthly payment amounts, including estimated amounts for taxes, insurance, and assessments, and whether or not an escrow account would be established for the payment of such amounts. This disclosure will make it easier for consumers to consider the loan and underlying real estate transaction's overall affordability, as compared to current Federal forms.

The integration of the forms may also reduce the number of forms that consumers receive, mitigating ''information overload'' and making it easier for consumers to identify important information. With the current Federal disclosures, consumers who are shopping between creditors, or comparing loans from one creditor need to work through four separate forms to compare two loan products, which

[344] *See* Kleimann Quantitative Study Report at 68.

[345] As discussed in the section-by-section analyses of § 1026.37(l) and § 1026.38(o)(4), above, research conducted by the Board and HUD, as well as consumer testing conducted by the Board and the Bureau, indicate that consumers do not understand the APR or how to use it when comparing loans and often confuse the APR with the loan's interest rate.

[346] Debra Stark et al., *When is Consumer Understanding Necessary To Make Wise Home Loan Decisions? Testing Enhanced APR Disclosure and General Financial Literacy* (2013), available at *http://ssrn.com/abstract=2294590* or *http://dx.doi.org/10.2139/ssrn.2294590*. The finding presented in Stark et al. (2013) is not to the contrary. The article contends that consumers better utilize the APR when it is more prominently displayed on the first page of the disclosure accompanied by a ''lower is better'' statement. This is predicated on the assumption that lower APR is always better, which may not hold for all consumers for all loans. Consumers face a tradeoff between interest rate and finance charges, and depending on their circumstances, a higher APR loan may actually give them higher utility. In addition, the findings may not demonstrate that consumers understand and utilize the APR, but may instead demonstrate that consumers can follow the direction on the first page of the study's disclosure that the lower APR number is better.

[347] The Kleimann Quantitative Study Report, at page 41, shows that consumers were better informed after utilizing the Loan Estimate form on a variety of topics, including the APR.

[348] Paul Slovic et al., *Numeracy Skill and the Communication, Comprehension and Use of Risk-Benefit Information, in The Feeling of Risk: New Perspectives on Risk Perception 345–352* (Earthscan 2010).

[349] Brian K. Bucks & Karen M. Pence, *Do Borrowers Know their Mortgage Terms?,* J. of Urb. Econ. (2008), available at *http://works.bepress.com/karen_pence/5* and James Lacko & Janis Pappalardo, *Improving Consumer Mortgage Disclosures: An Empirical Assessment of Current and Prototype Disclosure Forms* (2007).

amount to a total of ten pages. But with the Loan Estimate, consumers need to work with only two forms to compare two loan products, and only six total pages. In addition, because the format of the Loan Estimate prioritizes the information that consumers actually use to understand and compare loans, placing it on the first page, consumers could potentially compare two loans using only the first page of the Loan Estimate for each. Since the Bureau's quantitative testing revealed [350] that the Loan Estimate is substantially more understandable for consumers than the current early TILA disclosure and RESPA GFE, the Bureau therefore believes that the new form will enable consumers to make more informed choices when they are considering a mortgage.

The Bureau believes that better understanding of closing costs and loan terms will benefit consumers in several ways. It may help consumers to make better decisions about whether to take out a loan at all, which type of loan to take out, and which creditor to borrow from. Some borrowers, such as those who may benefit slightly from refinancing or for whom whether to rent or buy is a difficult decision, will be close to the margin of taking out a loan or not taking out a loan. Improved understanding of the costs of borrowing will allow those consumers to make a more informed decision about whether to borrow.

For consumers who are borrowing, a better understanding of closing costs and loan terms will enable them to better pick the loan product that suits their needs and circumstances. It may also enable consumers to identify loans with features that are only suitable for some borrowers, such as negative amortization or balloon payments, and evaluate whether those features make sense for them. The Bureau is concerned that, prior to the mortgage crisis, some borrowers were unable to identify and understand from the Federal disclosures at the time particular loan features that presented significant risks and thus entered into loans with these features without understanding the risks they were taking. This is consistent with the literature.[351]

The Bureau believes that the Loan Estimate may also facilitate consumer shopping for loan offers and creditors, and could potentially affect both the evaluation of different offers and the number of offers consumers obtain. Existing research suggests that consumers do not shop extensively when selecting a mortgage. Surveys of mortgage borrowers suggest that roughly 20 to 30 percent of borrowers contact one creditor and a similar fraction consider only two creditors.[352] Making the terms of a given loan easier to understand will make it easier for consumers to compare loans. As noted above, the Loan Estimate prioritizes on the first page the information that consumers generally use to compare loans (*e.g.,* interest rate, monthly payment, and closing costs). As discussed in part III, above, the Bureau conducted extensive qualitative and quantitative consumer testing of the Loan Estimate to ensure that it enables consumers to understand and compare the terms and costs of various loans. During the testing process, consumers were able to use the form to compare loans and select the loan that best met their preferences (*e.g.,* a fixed rate or lower closing costs). In addition, the final rule requires that all creditors use a standard format for transactions that are subject to RESPA, which the Bureau understands to be the majority of mortgage transactions, ensuring that consumers are presented information about loan terms and costs in the same way across multiple loans and multiple creditors and making comparisons easier. Making it easier for consumers to compare products may have two effects. First, it may make shopping more effective, leading consumers to choose the loan that best meets their needs amongst a given set of loans. Second, it may also lead to more shopping, because the task of comparing loans is simpler.

In addition to providing consumers with clear information about important mortgage terms and closing costs, the Loan Estimate makes clear to consumers which settlement services they can shop for. To the extent that consumers use this information to shop for some settlement services, they may identify service providers that offer better prices or better suit their needs. In a recently released study of title services and title insurance based on RESPA settlement statements for FHA loans, HUD and the Urban Institute estimated that borrowers in some jurisdictions could save several hundred dollars if they searched for and purchased title services and title insurance of their own choosing.[353]

As noted above, the Bureau believes that increased borrower shopping, both in the mortgage and in the settlement services markets, will benefit not only borrowers who shop, but also other borrowers as well. More borrowers engaging in shopping exerts a positive externality on the rest of the borrowers due to creditors and service providers becoming more competitive, leading to lower prices for everyone and a more efficient marketplace.

ii. The Closing Disclosure. The Bureau's Quantitative Study shows that the integration of the final TILA disclosure and the RESPA settlement statement will benefit consumers by allowing them to better understand the actual terms and costs of their loan and the other costs of the loan transaction. As with the Loan Estimate, the Bureau developed the integrated Closing Disclosure through several rounds of form design and consumer testing.

The Bureau's Quantitative Study shows that the Closing Disclosure is more understandable for consumers than the current TILA disclosure and RESPA settlement statement.[354] As described below, the final rule includes a requirement that the Closing Disclosure be received by borrowers three business days prior to consummation. The Bureau also believes the Closing Disclosure will improve the ability of consumers to compare the terms and costs on the Loan Estimate with the actual loan terms and closing costs. The Bureau designed the Loan Estimate and Closing Disclosure to work together; the two forms use consistent formatting and language to facilitate consumers' ability to identify any changes that occurred during the underwriting process. For example, the first page of the Loan Estimate, where key loan terms are disclosed to consumers, is nearly identical to the first page of the Closing Disclosure, and the first page of the Closing Disclosure specifically directs consumers to compare the two forms. The second pages of the Loan Estimate and the Closing Disclosure also use the same order and grouping of settlement fees and costs, making it easier for consumers to identify changes. During the Bureau's qualitative consumer testing, consumers were able to use the second pages of the Loan Estimate and

[350] *See* Kleimann Quantitative Study Report at 45.

[351] *See, e.g.,* Benjamin J. Keys et al., *Did Securitization Lead to Lax Screening? Evidence From Subprime Loans,* 125 Q. J. of Econ. 307 (2010) available at doi:10.1162/qjec.2010.125.1.307.

[352] Jinkook Lee & Jeanne M. Hogarth, *Consumer Information Search for Home Mortgages: Who, What, How Much, and What Else?,* 9 Fin. Servs. Rev. 277 (2000), available at *http://dx.doi.org/10.1016/S1057-0810(01)00071-3.*

[353] U.S. Dep't of Hous. & Urban Dev. and The Urban Inst., *What Explains Variation in Title Charges? A Study of Five Large Markets* (2012), available at *http://www.huduser.org/portal/publications/hsgfin/title_charges_2012.html* (HUD Title Charge Study).

[354] *See* Kleimann Quantitative Study Report at 41.

the 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.[355] Results from the Kleimann Quantitative Study Report show that the respondents with the new forms scored significantly higher on various performance measures of the initial and final disclosures.[356] In addition, page three of the Closing Disclosure contains a ''Calculating Cash to Close'' table that identifies categories of costs that changed from the time the Loan Estimate was provided to the time the Closing Disclosure was provided. The Bureau believes these features will improve consumers' ability to understand their actual loan terms and costs, and compare early and final disclosures and identify changes in loan terms and costs, which may better enable consumers to recognize and question changes in settlement costs or loan terms from the Loan Estimate. This may also encourage creditors to take care to ensure that Loan Estimates are accurate and may discourage unscrupulous creditors from attempting to ''bait and switch'' consumers with initial Loan Estimates that have better loan terms or lower settlement costs than the final transaction. Further benefits of the Closing Disclosure are discussed in section D.5 below.

b. Magnitude of the Benefits to Consumers of the Revised Disclosures

Quantifying the magnitude of the benefits of the new Loan Estimate or Closing Disclosure would be very challenging. With regard to the Loan Estimate, important factors in the magnitude of the benefits to consumers would include: (1) How many consumers avoid loans that do not suit their needs; (2) how much more consumers shop; (3) how much more effective that shopping would be; and, (4) how those changes in behavior would translate into changes in the overall market for mortgage loans. The Bureau is unaware of data that would make possible reliable estimates of these effects. As noted, there is some evidence showing that increases in shopping—for example, contacting one more creditor or loan originator—can lead to substantial savings for a consumer.[357] As noted above, the Bureau believes that increased borrower shopping, both in the mortgage and in the settlement services markets, will benefit not only borrowers who shop, but also other borrowers as well. More borrowers engaging in shopping exerts a positive externality on the rest of the borrowers due to creditors and service providers becoming more competitive, leading to lower prices for everyone and a more efficient marketplace.

Similarly, quantifying the magnitude of the benefits of the integrated Closing Disclosure would be very challenging. One of the benefits discussed is that due to the three-business-day provision consumers can now better process the information regarding changes in terms. But, an estimate of how often these changes occur is necessary for the calculation of that benefit. The Bureau is unaware of any data that can provide reliable market-wide estimates of the prevalence of changes between early TILA disclosures and RESPA GFEs and final loan terms and closing costs. While the Bureau did obtain information on RESPA GFEs and RESPA settlement statements from multiple creditors since issuing the proposal, the Bureau believes that this data is not generalizable, as the creditors who shared their data are not active in all segments of the industry. Furthermore, this data only concerns originated loans, so it would not be possible to calculate the rate of attrition between application and settlement even for these creditors. In addition, the data was not comprehensive enough to provide reliable estimates since it did not include other relevant information, such as the prevalence of changes due to changed circumstances, rate locks, and tolerance cures. Other important factors affecting the consumer benefits of the Closing Disclosure include how much it would affect whether consumers recognize those changes or how they react to them and the effects on creditors' and settlement service providers' behavior. Again, the Bureau does not have a reliable way to estimate these items.

Despite the challenges to quantifying the benefits of the Loan Estimate and the Closing Disclosure, because the mortgage market is so large, even very small effects on improving consumers' ability to make informed decisions or small effects on prices from greater shopping would lead to large savings for consumers. Illustrations of this dynamic are discussed above in section B. If consumers were to benefit from a reduction in costs, some of the savings would come from reduced profits to creditors and mortgage brokers, as creditors and mortgage brokers may receive lower prices from better-informed borrowers, while other savings would come from a shift of business from less efficient to more efficient creditors and mortgage brokers. The reallocation to more efficient creditors and mortgage brokers that can originate loans at lower cost represents a net savings to society in terms of the total resources used to originate mortgage loans.

c. Costs to Consumers

As noted above, the Bureau does not believe that the integrated Loan Estimate or Closing Disclosure will impose any direct costs on consumers. The Bureau estimates that the final rule will likely reduce the cost per origination. Therefore, the Bureau does not anticipate any material adverse effect on consumers' cost or access to credit in the long or short term.[358] Over the longer term, the final rule could increase credit access if the expected cost savings materialize and the Bureau believes that competition will force creditors to pass on the savings to consumers.

d. Benefits to Covered Persons

The integration of the early TILA disclosure and the RESPA GFE, and the revised TILA disclosure and the RESPA settlement statement may benefit creditors, mortgage brokers, and settlement agents that provide the disclosures. It will reduce the number of pages of forms related to the disclosures that covered persons need to prepare and provide for each application and the number of disclosure-provision systems and processes that covered persons need to maintain. In addition, the three-page Loan Estimate replaces a three-page GFE, a two-page early TILA disclosure, a one page appraisal notification provided under ECOA section 701(e), a one-page servicing disclosure provided under RESPA section 6, and addresses other new disclosure requirements in the Dodd-Frank Act. However, this effect may be mitigated by consumers shopping more and therefore requesting more forms overall from different creditors.

Most small entities that participated in the Small Business Review Panel process stated that the integrated forms would make it easier to explain transactions to consumers. One letter from several small entity settlement agents indicated that the new forms could actually lead to more questions during a closing. However, that comment may have been driven in part by the possibility that the Bureau would require certain disclosures, such as the

[355] *See* Kleimann Quantitative Study Report at 47.

[356] *See* Kleimann Quantitative Study Report at 68.

[357] *See* Woodward & Hall.

[358] Since the marginal costs are likely to decrease or stay the same, the Bureau believes that the price of credit is similarly going to decrease or stay the same. Using the same rationale, the Bureau believes that there will be no adverse effect on consumers' access to credit.

approximate cost of funds, which may be difficult to explain to consumers. Based on its consumer testing and public comments indicating that the approximate cost of funds disclosure would be confusing to consumers and not aid consumer understanding, the Bureau determined to exempt creditors from providing such disclosure. However, the Bureau determined to require the total interest percentage disclosure on the integrated disclosures based on its consumer testing results. Information submitted by several settlement agents indicates that requiring the use of standard forms and clearer regulatory guidance could save as much as 30 minutes per closing by reducing borrowers' confusion, both by of synchronizing the Loan Estimate and the Closing Disclosure, and by standardizing forms across creditors. The final rule requires that for loans subject to RESPA, which are the majority of transactions subject to the final rule, the integrated disclosures are a standard form. Based on industry estimates, the typical hourly wage of a settlement agent is $34 per hour,[359] which translates into a dollar savings from the simplified closing forms of $17 per closing. Based on the 2011 numbers, this would result in saving of $130,000,000 per year. The Bureau believes that most of these savings are likely to be passed on to consumers since these are marginal savings per consumer and most firms operate in a competitive environment.

e. Costs to Covered Persons

As described above, the Bureau believes that the ongoing costs of compliance with the final rule and disclosure requirements it is adopting will likely be equal to or less than current ongoing compliance costs. The integrated Loan Estimate and Closing Disclosure will result in certain one-time costs to revise software and compliance systems. The Bureau believes that many of the costs of complying with these requirements would be common across the two disclosures, and therefore discussed them together here. Under the proposal, responsibility for delivering the Loan Estimate would have rested solely with the creditor. After analysis and consideration of public comments, the Bureau has decided that under the final rule the creditor will be responsible for the delivery of the Loan Estimate, but either the creditor or a mortgage broker may provide the disclosure if the mortgage broker receives the consumer's application. Creditors and mortgage brokers will need to adapt their software and compliance systems to produce the new forms.[360] In the proposal, the Bureau proposed two alternatives for provision of the Closing Disclosure. Under the first alternative, the creditor would have been solely responsible for providing the Closing Disclosure to the consumer. Under the second alternative, the creditor and the settlement agent would have been jointly responsible. For purposes of the proposed 1022 analysis, the Bureau assumed that creditors would bear the costs of implementing the requirements relating to the Closing Disclosure, but expected that, to the extent settlement agents would be involved in providing the disclosure, their costs would be similar. The Bureau also expressly requested comment on this approach to estimating costs to covered persons. After analysis and consideration of public comments received, the Bureau has decided that under the final rule the creditor will be responsible for the delivery of the Closing Disclosure, but either the creditor or a settlement agent may provide the disclosure, provided that one of them does so. Accordingly, in this final 1022 analysis, the Bureau provides estimated costs to settlement agents as well as to creditors.

In the proposed 1022 analysis, the Bureau focused on the costs to creditors of updating and revising their software and compliance systems. The Bureau recognized, however, that such systems updating is a complex process that includes costs such as learning about the requirements of the rule, and training employees.[361] In response to the Bureau's requests for comment on this aspect of the proposed 1022 analysis, the Bureau received comments stating that certain of its cost estimates were too low, as well as comments suggesting that the Bureau had failed to consider certain aspects of such systems updating costs. For example, a trade association representing the escrow industry asserted that rollout and training would take three months, and a bank suggested that the Bureau's estimate of employee training costs should not be limited to the cost of training loan officers, but should also include the cost of training back-office staff. As indicated below, the Bureau has revised its cost estimates in response to these and similar comments.

Based on industry feedback, the Bureau believes that 95 percent of originators rely on vendors. The use of loan origination software vendors by creditors will substantially mitigate the costs of revising software and compliance systems, as the efforts of a single vendor would address the needs of a large number of creditors.[362]

Based on estimates from small entities that participated in the Small Business Review Panel process, the Bureau estimates that the small fraction of creditors that maintain their own compliance software and systems each will incur costs of roughly $100,000 to update their systems to comply with the final rule. Firms are expected to amortize this cost over a period of years. In this analysis the Bureau amortizes all costs over five years, using a simple straight-line amortization. Thus, about five percent of creditors are expected to incur a cost of $20,000 per year for five years. The Bureau estimates that there were a total of 14,194 banks, savings institutions, credit unions, and mortgage companies that originated mortgages in 2011, the most recent year for which complete data are available.[363] The total one-time cost for the roughly five percent of creditors that maintain their own compliance software and systems (fewer than 1,000 of the over 14,000 creditors) is therefore $71,000,000 (rounded to the nearest $100,000). Amortized over five years, the estimated total annual cost for all such creditors to update their compliance systems is $14,200,000.

A commenter (an industry trade association representing escrow agents) specifically suggested that three months would be required for a software vendor member of the association to perform customer rollout and customer training once the vendor actually updates the

[359] Based on 2011Q4 weekly wages in the title abstract and settlement industry from the Bureau of Labor Statistics series ENUUS000405541191, assuming 40 hours worked per week and that 66.6 percent of compensation is wage compensation.

[360] The Bureau calculates the impact of the rule on creditors and mortgage brokers combined and uses the term ''creditor'' to denote both creditors and mortgage brokers below. The Bureau's method of estimation of the number of loan officers is based on the number of mortgage applications and therefore accounts for mortgage brokers as well. Therefore, any cost estimate based on the number of loan officers accounts for the costs associated with mortgage brokers as well. In terms of costs calculated on a per entity basis, the Bureau believes that creditors could outsource disclosure form provision to mortgage brokers if it were more efficient. Thus the estimates presented below are overestimates—some of creditors might incur less cost while implementing the rule provisions by outsourcing to mortgage brokers.

[361] 77 FR 51116, 51272, 51280 (Aug. 23, 2012).

[362] Based on discussions with a leading compliance firm, the Bureau believes that these updates, however, will likely be included in regular annual updates, and therefore the costs will not be directly passed on to the client creditors. As many as 95 percent of creditors, therefore, may not pay directly for software updates to comply with the new rules.

[363] 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.

software. Relying, in part, on this information, the Bureau assumes that each creditor will have an implementation team spend approximately three months of full-time equivalent work [364] on various processes necessary for implementation and rollout. For smaller creditors (small businesses according to the SBA thresholds of $500,000,000 asset size DI and $35,000,000 revenue for non-DIs), this team will consist of a compliance officer,[365] who will spend 50% of his or her time working on the implementation team, and an information technology specialist, who will also spend 50% of his or her time working on the implementation team. For a larger creditor (not a small business according to SBA), the Bureau assumes that the implementation team will consist of 8 employees, also working for three months full time, 4 compliance officers and 4 information technology specialists. These processes include reading the rule in detail, gap analysis, testing and troubleshooting software systems involved in origination, and making any necessary changes to policies and procedures. Implementation is expected to require a complete rewrite, from the ground up, of both the early disclosure and the late disclosures in the mortgage loan process, supplemented by a revamp of data standards underlying the data on these disclosures; major, foundational changes to technology systems; and intense coordination among many parties around new process flows and roles and responsibilities.[366] The total one-time cost is therefore $873,200,000 (rounded to the nearest $100,000). Amortized over five years, the estimated total annual cost for all such creditors to update their compliance systems is $174,600,000.

Covered persons will also incur one-time costs associated with training employees to use new forms and any new compliance software and systems. Several commenters suggested that the training time of a loan officer was understated in the 1022 analysis contained in the proposed rule. In line with the comments, the Bureau has adjusted the training time of a loan officer from two to eight hours, and has added 0.67 hours of back-office staff training per loan officer hour of training to its estimate. Specifically, the Bureau estimates that one trainer could train ten loan officers at a time, for an additional one hour of trainer time per ten hours of trainee time.[367] The Bureau estimates that there are 79,861 loan officers and other employees that will need training. Based on data from the Bureau of Labor Statistics, the Bureau estimates that the average total compensation of a loan officer is $48 per hour and the average total compensation of a back office support staff is $26 per hour, for a total training cost of $35,000,000. Amortized over five years, this leads to an annual cost of $7,000,000 for all mortgage creditors combined. The Bureau does not believe that there will be any ongoing training burden, over and above the already existing annual training that the loan officers are likely to receive.

Several commenters stated to the Bureau that the development of training materials might impose a cost as well.[368] The Bureau agrees. The Bureau assumes that in each institution two compliance officers will spend 30 hours each developing training materials—including reading the rule, either developing a training course or arranging for procurement of a training course, and attending relevant conferences and webinars. This results in an additional cost of $40,000,000. Amortized over five years, this leads to an annual cost of $8,000,000. Some institutions might find it less expensive to outsource this activity, thus the estimate above is likely an over-estimate.

Unless creditors choose not to divide responsibilities with settlement agents and provide the Closing Disclosure themselves, creditors need to ensure better coordination with settlement agents.[369] Such enhanced coordination is needed both to ensure that creditors comply with the rule, under which creditors are responsible for provision of the Closing Disclosure regardless of the degree of settlement agent involvement, and to ensure fewer unanticipated closing delays caused by failures to provide the Closing Disclosure in a timely manner. Several commenters stated that these costs would be substantial including individual commenters and an industry trade association. The Bureau estimates that creditors outside of the top 20 will, on average, have an attorney or a manager spend eight hours each of full-time equivalent work rearranging division of responsibility with settlement agents, and ensuring that the proper processes are in place. This results in a cost of $13,100,000 or, amortizing over five years, $2,600,000 per year. Of course larger creditors have to coordinate with a large number of settlement agents, and this requires more time and resources. The Bureau estimates that creditors in the top 20 will, on average, have fifty attorneys or managers spend one day full-time rearranging division of responsibility with settlement agents, and ensuring that the proper processes are in place. This results in a cost of $928,600 or, amortizing over five years, $186,000. Although the top 20 have to coordinate with a larger number of SAs than the smaller entities, we expect that there are economies of scale.

Taken together, the Bureau estimates that the total one-time costs of complying with the Loan Estimate and Closing Disclosure requirements for all mortgage creditors will be approximately $1,033,000,000. Amortized over five years, this is an annual cost of $206,700,000 for all mortgage creditors combined. For additional perspective, there were nearly 8,000,000 mortgage originations in 2011. The estimated one-time cost, annualized using a five-year amortization, is therefore less than $27 per origination. Note that these costs will not recur, and the Bureau expects that ongoing costs will be equal to or less than current compliance costs.

The final rule also requires itemization of certain settlement charges that are not permitted to be itemized on the current RESPA GFE and RESPA settlement statement forms, which may lead to increased costs for covered persons. In HUD's 2008 RESPA Final Rule, HUD predicted that removing itemization from the disclosures would

[364] For the purposes of this analysis, the Bureau uses full-time equivalency to simplify the presentation of calculations. Three months of full-time equivalency might be, for example, six months of 50% involvement or one month of full-time work, followed by five months of delay, followed by two more months of full-time work for some creditors.

[365] Here and below, depending on the institution, many of the tasks described, including the operational challenges of ensuring that the updated software works properly, could be performed by a loan officer, a compliance officer, or back office support staff. The Bureau believes that the choices made here and below best describe a median mortgage originator—an institution that has under $200,000,000 dollars in assets. However, the cost estimates would not change materially if other assumptions were used.

[366] The Bureau believes that coordination is going to be a one-time cost accompanied by no incremental ongoing costs. Creditors and settlement agents already have to communicate on a host of issues. Thus, both parties need to change the procedures associated with their already existing coordination. However, once these procedures are changed, the Bureau believes that the ongoing costs will be the same as now, and has not received any evidence to suggest otherwise. Even if there actually will be any ongoing costs, the Bureau believes that they will be minimal.

[367] Additional back office staff may receive training to comply with the new rules. The Bureau believes that these costs are likely to be *de minimis.*

[368] Commenters included an industry trade association representing banks and a title insurance company.

[369] These costs could have been counted instead in the Provision of Final Loan Disclosure section below.

relieve creditors from preparing lengthy lists of fees and addressing consumer questions about such fees. 73 FR 68204, 68276. However, the Bureau understands that creditors and settlement agents often provide this itemization on separate disclosures to provide additional information to consumers regarding such costs, or to comply with State law or investor requirements, which mitigates any increased costs associated with itemization.[370] Accordingly, this final rule, by including such itemization on the Loan Estimate and Closing Disclosure, may obviate the need to produce separate paperwork that creditors and settlement agents complete in some cases in connection with transactions.

As noted above, in the proposal, the Bureau stated its belief that settlement agent costs in connection with providing the Closing Disclosure would be similar to costs imposed on creditors by the Closing Disclosure requirement. The Bureau received a number of comments essentially agreeing with this view.

The Bureau estimates that each settlement agent[371] will need about 20 hours of one-time training. The ongoing periodic training time should be similar to the time that it takes currently, if not lower. This results in a cost of $45,700,000,[372] or $9,100,000 per year amortized over five years.

Similarly to creditors, settlement agents will incur costs flowing from the need to enhance coordination with creditors. The Bureau estimates that for each firm providing closing services, one settlement agent will spend two full-time weeks ensuring proper coordination with creditors. This results in a cost of $2,800,000,[373] or $600,000 per year amortized over five years.

Again, similarly to creditors, each firm conducting closings needs to update its software. While the Bureau expects that the software development costs will fall on the software vendors, the Bureau believes that there will be implementation costs that will fall on the firms conducting settlements, similar to the ones described above in the discussion of creditor costs. In particular, the Bureau assumes that one settlement agent and one information technology specialist, both working 50% of the time on the implementation process, will spend three months each reading the rule, performing gap analysis, integrating new software, and ensuring its proper operation. This results in a cost of $248,900,000, or $49,800,000 per year amortized over five years. Finally, each firm will need to develop or procure training materials. The Bureau estimates that developing training materials will take three full-time work weeks of a settlement agent. This results in a cost of $41,500,000, or $8,300,000 per year amortized over five years. If the development of training materials requires more time and expense than this, the Bureau expects firms to procure training materials at the same or lesser cost.

2. Definition of Loan Application

The final rule revises the regulatory definition of loan ''application'' to provide clarity to consumers regarding when a Loan Estimate must be provided by a creditor or mortgage broker. Under TILA and RESPA, a creditor or mortgage broker is not required to provide the good faith estimates of loan terms and settlement costs in the early TILA disclosure and RESPA GFE until it has received an ''application.'' As discussed more fully in the section-by-section analysis of § 1026.2(a)(3), under current regulations, the receipt of the following information by the creditor or mortgage broker constitutes receipt of an ''application'': (1) Borrower's name; (2) borrower's monthly income; (3) borrower's social security number to obtain a credit report; (4) the property address; (5) an estimate of the value of the property; (6) mortgage loan amount sought; and (7) any other information deemed necessary by the creditor. The seventh item could allow creditors and mortgage brokers to delay providing the integrated Loan Estimate until after collection of the six specific items, to collect any information they deem ''necessary.'' The final rule removes the seventh item (''any other information deemed necessary by the creditor'') from the definition of ''application.''

a. Benefits to Consumers

By establishing a bright line standard governing when the Loan Estimate must be provided, the final rule will enable consumers to understand the application stage of their mortgage loan transactions, specifically, when they can obtain the Loan Estimate that contains reliable estimates that are subject to the good faith estimate and tolerance requirements of § 1026.19(e). This bright line standard will better enable consumers to plan their shopping for mortgage loans, since it clearly delineates the date by which a consumer will receive a Loan Estimate and thus will have all of the information necessary for shopping. In addition, this bright line standard will make compliance more straightforward for industry and supervisory agencies that examine for compliance with the integrated disclosure requirements.

The Bureau believes that the final rule may benefit consumers by causing creditors to provide consumers Loan Estimates marginally earlier in the lending process than under the current definition, which will give consumers a longer period during which they can rely on the Loan Estimates in shopping for their loan. Removing the seventh item may allow consumers, at an early stage of the process, to receive earlier Loan Estimates that are subject to the limitations on increases imposed by § 1026.19(e)(3), whereas today, at an early stage of the process, consumers may receive only informal estimates that are not subject to those protections. Improved consumer shopping for mortgages may result in lower costs to consumers. Given a uniform set of disclosures with synchronized timing, consumers who shop are likely to have more complete and more easily comparable information than they would with heterogeneous informal estimates. As described above, the Bureau cannot estimate the magnitude of the benefits of improved shopping, but even relatively small improvements could have large dollar impacts due to the size of the market.

As noted above, the Bureau believes that increased borrower shopping, both in the mortgage and in the settlement services markets, will benefit not only borrowers who shop, but also the other borrowers as well. More borrowers engaging in shopping exerts a positive externality on the rest of the borrowers due to creditors and service providers becoming more competitive, leading to lower prices for everyone and a more efficient marketplace.

The Bureau also believes that the Loan Estimate is a better shopping tool for consumers than informal estimates provided to consumers prior to receipt of the consumers' application,[374]

[370] The Bureau acknowledges that there are differences in cost between voluntary and mandatory provision of information. To the extent that the practices need to be changed to adhere to the standards laid out in this rule, the loan originator (and/or settlement agents) will incur a one-time cost. However, the Bureau believes that it would be a relatively small software redesign cost at most.

[371] For the purposes of this 1022 analysis, the term ''settlement agent'' includes anyone who conducts the settlement.

[372] According to Bureau of Labor Statistics series EC075SSSZ4, there were 77,310 settlement agents in 2007.

[373] According to Bureau of Labor Statistics series EC075SSSZ4, there were 10,168 title abstract and settlement offices in the US in 2007.

[374] While the Bureau does not possess any evidence that the creditors are currently strategically delaying disclosures due to the seventh

Continued

because the Loan Estimate was developed through an extensive consumer testing and design process and will present information regarding loans provided by different creditors in a standardized format (unlike informal estimates) and because certain costs disclosed in the Loan Estimate are subject to limitations on increases, as described below. The Bureau believes that creditors will be able to provide reliable estimates based on the six items that together constitute an application under the final rule and that, by receiving cost estimates earlier in the mortgage lending process, consumers will have the opportunity to compare several different offers at the same time or more time to shop for a better deal.

The Bureau understands that industry may in response to the final rule sequence their application processes to receive additional information they deem necessary prior to receipt of the six items. However, even if the impact of deleting the seventh item from the definition of ''application'' does not move the delivery of the Loan Estimate to consumers significantly earlier in the origination process, the Bureau believes other significant benefits will accrue to consumers from this definition of ''application.'' The Bureau believes that providing a bright line standard for the definition of application, such that consumers will know the point in time when they are to receive the Loan Estimate, will aid consumers' understanding of the application stage of their mortgage loan transactions. Consumers will be able to understand when they are entitled under this regulation to obtain the Loan Estimate that contains reliable estimates that are subject to the good faith estimate and tolerance requirements of § 1026.19(e), which the Bureau believes will better enable consumers to shop effectively for mortgage loans.

b. Costs to Consumers

The Bureau does not believe that eliminating the seventh item in the definition of application will lead to costs to consumers. As noted above, the Bureau believes that no costs will be passed through to consumers by creditors or loan originators.

c. Costs to Covered Persons

The Bureau understands that eliminating creditors' and mortgage brokers' ability to wait to provide a good faith estimate until after they receive ''any other information deemed necessary'' could increase the burden on creditors and mortgage brokers to the extent that it causes them to issue more Loan Estimates than they would under the current definition of application. If a creditor or mortgage broker obtains additional information from the borrower after the Loan Estimate has been issued that affects the costs of the settlement service for the loan, the creditor or broker may need to issue a revised Loan Estimate. The Bureau is unaware of information that would allow it to estimate how often this would occur. The Bureau believes, however, if this were to impose substantial costs, creditors and mortgage brokers would mitigate this by adjusting their business practices surrounding the receipt of applications to gather other important information prior to, or at the same time as, they obtain the six items that together constitute an ''application.'' In this regard, the Bureau notes that, under the final rule, a creditor may request such other information prior to obtaining all six items that constitute an application without triggering the disclosure requirement. To the extent that creditors delay obtaining all six items, it would mitigate the benefit to consumers of receiving the form earlier. However, as described above, there are other benefits that will accrue to consumers from providing a bright line standard for the definition of application.

In developing the final rule, the Bureau also considered removing additional items from the regulatory definition of ''application.'' However, the Bureau does not believe the other items in the current definition of application raise similar concerns regarding creditors' ability to delay provision of the early disclosures. Furthermore, the Bureau believes that many or all of the six items may be necessary for a creditor to provide reliable estimates in many circumstances.

3. Permissible Changes in Settlement Costs/Redisclosures

The final rule revises current rules regarding the circumstances in which a consumer may be charged more at closing for settlement services than the creditor estimated in the disclosure provided to the consumer within three business days of receiving the application.

As discussed more fully in the section-by-section analysis of § 1026.19(e)(3), HUD's 2008 RESPA Final Rule limits the circumstances in which a creditor can charge the consumer more at consummation for settlement services than the creditor estimated in the RESPA GFE provided to the consumer within three business days of receiving the application. These rules generally place charges into three categories: the creditor's charges for its own services, which cannot exceed the creditor's estimates unless an exception applies (''zero tolerance''); charges for settlement services provided by third parties, which cannot exceed estimated amounts by more than ten percent unless an exception applies (''ten percent tolerance''); and other charges that are not subject to any limitation on increases (''no tolerance limit''). HUD's 2008 RESPA Final Rule permits certain limited exceptions in which higher charges are permitted, such as when the borrower requests a change, when the RESPA GFE expires, or when valid changes in circumstance occur. The Bureau is aware of concerns that HUD's 2008 RESPA Final Rule is both too lax and too restrictive, and also that the rule is difficult to understand. The final rule attempts to address these concerns by balancing the objective of improving the reliability of the estimates creditors give consumers shortly after application with the objective of preserving creditors' flexibility to respond to unanticipated changes that occur during the loan process. Specifically, the final rule applies the zero tolerance category to a larger range of charges, expanding it to include fees charged by an affiliate of the creditor and fees charged by service providers selected by the creditor and fees for services for which the consumer is not permitted to shop. A service provider is considered required by the creditor if consumers are required to use only that provider or to choose only from a list of service providers prepared by the creditor (*i.e.,* if consumers are not permitted to shop for their own provider off of the list).

Some alternatives the Bureau considered in developing the final rule included narrowing the exceptions permitting increases in settlement charges in order to restrict the ability of a creditor to charge more for its own services or for third-party settlement services than the creditor initially estimated. However, the Bureau was concerned that this approach could prevent creditors from increasing settlement charges to reflect justifiable increases in costs. The Bureau also considered preserving HUD's 2008 RESPA Final Rule in its entirety. However, as discussed above, the Bureau believes that the final rule is an improvement over HUD's 2008 RESPA Final Rule because it requires creditors to provide consumers with more accurate estimates of settlement charges.

element, taking this requirement out of the definition of application ensures that this does not happen, which the Bureau believes will make delivery times more uniform.

In addition, the final rule includes more guidance than the current rule regarding the circumstances in which creditors may revise cost estimates.

a. Benefits to Consumers

The Bureau believes that consumers may benefit when fewer charges are permitted to change from the Loan Estimate. Consumers that rely on the Loan Estimate to shop for a loan will be able to make decisions based on estimated costs that more closely reflect the actual costs they would bear, making shopping more effective. For some consumers, such as those considering a refinancing that they may or may not decide to take out, more reliable information may allow them to make a better-informed decision about whether to take out a loan at all. Firmer fees may also reduce ''gaming'' by unscrupulous creditors that intentionally underestimate on initial forms and then impose new or different charges near the time of consummation. Reducing uncertainty may also benefit consumers by relieving their need to plan for contingencies or other consequences that flow from the uncertainty.

The Bureau cannot quantify the magnitude of these benefits. As discussed above, the Bureau is unaware of any data that can provide reliable market-wide estimates of the prevalence of changes between early TILA disclosures and RESPA GFEs and final loan terms and closing costs or of the causes for those changes that occur.

Expanding the set of costs included in the zero tolerance category may also benefit consumers by giving creditors an incentive to control the costs imposed by third parties. Currently, creditors have limited incentives to control third-party costs. By applying the zero tolerance category to a larger range of charges, including charges by affiliates of the creditor and some services for which the consumers is not permitted to shop, the final rule will cause creditors to absorb more increases in costs, and may incent them to seek to minimize the chance that these increases will occur. Creditors are in a better position than consumers to control these costs, as they are much more familiar with these markets than are typical consumers, and they are likely to have ongoing relationships with affiliates and settlement service providers for services that consumers are not permitted to shop that gives them some ability to encourage these providers not to charge more than the initial estimate.

b. Costs to Consumers

The expansion of the set of costs that are subject to a zero tolerance may impose costs on some consumers. The restriction on changes to these costs may cause some creditors to provide higher initial estimates, making shopping less effective as borrowers rely on less accurate information. The Bureau believes, however, that these effects are likely to be mitigated by competitive pressures that encourage creditors not to inflate cost estimates. In addition, the final rule requires creditors to make good faith estimates, and thus, creditors may be concerned about liability under the rule from providing inflated estimates.

c. Benefits to Covered Persons

Covered persons may also benefit from the final rule because it reduces ongoing compliance burden by resolving prior regulatory ambiguities about how to comply with TILA and RESPA. For example, the final rule provides additional guidance on the current rule regarding the circumstances in which creditors may revise costs estimates and the use of average cost pricing. The final rule further streamlines and clarifies HUD's 2008 RESPA Final Rule by incorporating prior HUD guidance into Regulation Z and its commentary, as necessary and appropriate. The Bureau is unaware of reliable data showing how often creditors will provide additional disclosures once the final rule becomes effective. Some creditors, however, have reported that additional clarity regarding redisclosure requirements for the RESPA GFE and average cost pricing would reduce the cost of compliance, in part, by reducing confusion over when redisclosure is permitted or required, and thereby reducing the need for legal advice.

To the extent that the final rule's restriction on certain changes in fees reduces bait-and-switch tactics by some creditors, this may benefit honest creditors that do not use these tactics.

d. Costs to Covered Persons

The Bureau understands that covered persons may experience increased costs as a result of the final rule, which applies the zero tolerance category to a larger range of charges. Since the final rule expands the circumstances in which creditors cannot pass increased costs to consumers when the initial estimate is lower than the actual costs, creditors may be required to absorb more costs when no exception, such as a legitimate change in circumstances, is present. This impact should be mitigated to the extent creditors are in a position to know the typical charges of affiliated firms and firms they engage repeatedly and require consumers to use, and can therefore provide estimates that are accurate. As discussed above, the Bureau is unaware of any data that can provide reliable market-wide estimates of the prevalence of changes between early TILA disclosures and RESPA GFEs and final loan terms and closing costs, and the causes of those changes. Therefore, the Bureau cannot provide estimates of how often creditors would have to absorb higher than expected costs that cannot be attributed to a changed circumstance. The discussion of average cost pricing provided in the ''Consumer Benefits'' section above applies here, as well, suggesting that these costs to creditors would be quite modest. Creditors may also encounter increased costs in circumstances where costs in the newly defined zero-tolerance categories increase in ways permitted by an exception. The incidence of these scenarios is not known, but the Bureau believes that the resultant costs will be negligible.

The Bureau also anticipates that the final rule may result in increased use of affiliated service providers, including settlement agents or other providers of settlement services, so that creditors can more directly control changes in settlement costs, which could have a negative impact on independent providers. Alternatively, the final rule may encourage creditors to allow borrowers to choose settlement service providers that are not on a list provided to the borrower so that the zero percent tolerance requirement would not apply. In addition, the Bureau's 2013 ATR Final Rule may mitigate the incentives to utilize affiliates.

Arguably, it is easier for a creditor to ensure that costs do not change if the settlement agent is an affiliate. Some commenters have argued that the negative impact on independent providers could lead to reduced competition for settlement services and ultimately higher costs for consumers. The Bureau is unaware of any evidence that such increase in costs will occur even if creditors were to increase their use of affiliates. On the contrary, economic theory implies that prices to consumers might decrease due to an increased utilization of affiliates.[375] However, there have also been concerns about the use of affiliates in the real estate market, and whether they are in the best interest of consumers. *See* GAO

[375] See, for example, Cournot (1838) and Spengler (1950).

Report Title Insurance, Actions Needed to Improve Oversight of the Title Industry and Better Protect Consumers, at p. 33. The Bureau acknowledges that creditors may choose not to use affiliates for various reasons, including that affiliate fees are included in ''points and fees'' for purposes of the Bureau's ability to repay rules and for coverage under the Home Ownership and Equity Protection Act.''

Alternatively, the final rule may encourage creditors to allow borrowers to choose settlement service providers that are not on a list provided to the borrower so that the zero tolerance requirement would not apply.[376] This would appear to benefit independent service providers, or at least be neutral relative to current practices. For a broader discussion of costs related to the zero-tolerance category, please refer to the section-by-section analysis of § 1026.19(e).

Settlement agents may also be affected. As mentioned above, the final rule may result in increased use of affiliate service providers. Thus, it is conceivable that creditors will choose to perform settlement services internally and that more creditors will enter into more formal outsourcing/affiliate arrangements with settlement agents, which may result in a revenue decrease for independent settlement agents. These effects are likely to be mitigated by the points and fees thresholds for qualified mortgages in the 2013 ATR Final rule, which lessen the incentive to use affiliated service providers. The Bureau cannot estimate the magnitude of this revenue decrease and the proportion of firms providing settlement agent services that will experience this revenue decrease.

4. Provision of the Closing Disclosure

The final rule requires delivery of the integrated Closing Disclosure so that it is received by the consumer three business days before consummation in all cases. The final rule makes the creditor ultimately responsible for providing the Closing Disclosure, but permits creditors to use settlement agents to provide the Closing Disclosure, provided that settlement agents comply with all relevant requirements concerning the Closing Disclosure. The following discussion is limited to the most significant elements of the Closing Disclosure requirements. See the section-by-section analyses of §§ 1026.19(f) and 1026.38 for discussion of the other elements.

a. Timing of Closing Disclosure Provision

TILA and RESPA establish different timing requirements for disclosing final loan terms and costs to consumers. As discussed more fully in the section-by-section analyses of § 1026.19(f)(1)(i) and (f)(1)(ii)(A), TILA, as implemented by Regulation Z, generally provides that, if the early TILA disclosures contain an APR that becomes inaccurate, the creditor shall furnish corrected TILA disclosures so that they are received by the consumer not later than three business days before consummation. On the other hand, RESPA and Regulation X generally require that the RESPA settlement statement be provided to the borrower at or before settlement.[377] To meet the Dodd-Frank Act's mandate to integrate the disclosures required by TILA and RESPA, and to better facilitate consumer understanding of the costs, the final rule requires delivery of the integrated Closing Disclosure so that it is received by the consumer three business days before consummation. Because the Closing Disclosure may change before consummation without triggering a new three-business-day waiting period, except in the three circumstances discussed above, the Bureau believes it is appropriate to implement RESPA section 4, which gives borrowers the right to inspect the settlement statement one business day before settlement, by giving consumers the right to inspect the Closing Disclosure one day before consummation. The Bureau believes that implementing this statutory right will reduce the likelihood that consumers will be surprised by changes to the Closing Disclosure at the point of consummation. Moreover, the Bureau believes a one-day right to inspect will be less disruptive to the efficient operation of closings than a three-business-day redisclosure requirement.

To prevent unnecessary closing delays, the final rule clarifies that, consistent with other Regulation Z disclosure requirements under § 1026.17, where the creditor does not have the actual terms, the creditor may provide an estimate based on the best information reasonably available to the creditor on the originally provided Closing Disclosure. In addition, the final rule also permits a number of changes after provision of the Closing Disclosure to reflect common adjustments without causing closing delays while protecting consumers from major changes that could present significant, long-term financial risk. If, between the time the Closing Disclosure is first provided and consummation, the loan's APR becomes inaccurate (over and above the specified tolerance level), the loan product changes, or a prepayment penalty is added, a revised Closing Disclosure must be issued with an additional three-business-day period to review the transaction. All other changes to the Closing Disclosure may be made without an additional three-business-day waiting period, but a revised Closing Disclosure must be provided at or before consummation.

i. Benefits to Consumers. Consumers may benefit from the final rule because it will ensure that consumers receive the disclosures far enough in advance of consummation so that they can review the final details of the transaction. Together with the improved clarity of the Closing Disclosure and the comparability of the Loan Estimate and the Closing Disclosure, this should allow consumers to have a better understanding of the final terms of the transaction and whether and how those terms have changed since the consumer received the Loan Estimate. Indeed, respondents in the Bureau's Quantitative Study that used the integrated disclosures performed statistically significantly better than respondents using the current disclosures at answering questions comparing their estimated and final loan terms and costs, as well as at answering questions about their final loan terms and costs.[378] The mandatory three-business-day waiting period may encourage all creditors to take greater care to ensure that Loan Estimates are accurate and may discourage unscrupulous creditors from attempting to ''bait and switch'' consumers with an initial Loan Estimate that has better loan terms or lower settlement costs than the final transaction because consumers will have additional time to review the terms of their transaction.

The Bureau cannot quantify the magnitude of the benefits of the three-business-day period for consumers to review the integrated Closing Disclosure. As discussed above, the Bureau is unaware of any data that can provide reliable market-wide estimates of the prevalence of changes between early TILA disclosures and RESPA GFEs and final loan terms and closing costs.

[376] The final rule requires a statement on the list that the consumer can select a provider not on the list, as illustrated by form H–27 of appendix H to Regulation Z.

[377] RESPA also provides for one day advance disclosure upon borrower request but settlement agents only need to provide information known to them at time of the disclosure. 12 U.S.C. 2603(b).

[378] *See* Kleimann Quantitative Study Report at 46–48.

ii. Costs to Consumers. If the final rule's requirement for creditors (or settlement agents, to the extent creditors divide responsibility with them) to provide the Closing Disclosure so that it is received by the consumer three business days prior to consummation in all circumstances were to result in closing delays, such delays could come at a cost to consumers. For example, for a consumer who is buying and selling a primary residence, a delay in the sales transaction may result in a delay in his or her purchase transaction as well, and thus might be a significant cost if it were out of the consumer's control. However, the Bureau believes the incidence of such delays would be extremely rare for a number of reasons.

First, the final rule allows the consumer to waive the waiting period for bona fide personal financial emergencies—consumers currently have this waiver ability under Regulation Z with respect to certain TILA disclosures. Second, both settlement agents and creditors have incentives to complete closings as scheduled, and therefore the Bureau believes that they will adjust their business practices such that the Closing Disclosure can be provided in a timely manner and closing delays will be infrequent. Third, as described above the final rule permits creditors to provide estimates where actual terms are not available, and where changes happen subsequent to the issuance of the Closing Disclosure only require a further three-day waiting period if there are certain significant changes to the terms, such as a change in the APR by more than ⅛ of 1 percent or ¼ of 1 percent (based on the type of loan), the loan product changes, or there is an addition of a prepayment penalty. Accordingly, the Bureau believes the rule as finalized is unlikely to lead to frequent closing delays.

Many commenters suggested that consumers will be hurt by the closing delays arising from creditors not being able to provide the final Closing Disclosure in a timely fashion. The Bureau disagrees. Due to competition, creditors are unlikely to continue current processes as that would result in many transactions being delayed due to the three-business-day provision. Thus, creditors are likely to implement necessary process adjustments to avoid consummation delay. Since these processes involve fixed costs, consumers are unlikely to experience any price increases.[379] Moreover, the final rule's requirements for the three business day waiting period are less strict than those proposed, which should further alleviate any concerns about this issue.

iii. Costs to Covered Persons. If the requirement does lead to delayed or canceled closings, this may impose costs on covered persons as well. Such closing delays could result in loss of revenue for transactions that fall through due to a delay. However, as noted above, in response to public comments received, the Bureau has revised the final rule regarding redisclosure of the Closing Disclosure and additional three-business-day waiting periods to mitigate the risk of frequent closing delays. The final rule may also create legal and reputational risks for creditors or settlement agents that are unable to close loans as planned. Accordingly, the Bureau does not believe there is a high risk of closing delays from the final rule.

iv. Alternatives Considered. Under the proposal, most changes to the actual terms of the transaction after issuance of the Closing Disclosure three days before closing would have triggered an obligation to redisclose and to provide an additional three-business-day waiting period. The proposal would have permitted limited changes that would not have required an additional three-business-day period: Revisions due to consumer-seller negotiations; revisions that do not increase the cash to close amount by more than $100; and revisions that result in refunds due to the good faith requirements in proposed § 1026.19(e)(3). As discussed in the section-by-section analysis of § 1026.19(f)(2)(i) and (ii), to avoid the risk of costly closing delays, the final rule narrows the circumstances that would trigger additional three-business-day periods to changes that would affect consumers over the life of the loan: Where the loan's previously disclosed APR changes outside of the TILA tolerances, the loan product changes, or a prepayment penalty is added. Further, the Bureau received feedback indicating that the APR estimates included in the early TILA disclosures typically change by more than ⅛ of 1 percent before consummation occurs (the tolerance for many loans), such that most creditors already provide corrected disclosures three business days before consummation as a standard business practice, rather than analyzing the accuracy of the disclosed APR. Therefore, the Bureau believes that any additional burden associated with requiring the disclosure three business days before consummation in all cases would be minimal.

b. Responsibility for Providing the Closing Disclosure

TILA and RESPA require that different parties provide final disclosures to consumers. Specifically, TILA, as implemented by Regulation Z, requires the creditor to provide the TILA disclosures to consumers, while RESPA, as implemented by Regulation X, requires that the settlement agent provide the final statement of settlement costs to the consumer. However, section 1419 of the Dodd-Frank Act amended TILA to make creditors responsible for disclosing settlement cost information. *See* TILA section 128(a)(17). To reconcile these statutory differences and implement TILA section 128(a)(17), the Bureau proposed two alternative approaches for assigning responsibility for provision of the integrated Closing Disclosure to consumers: Sole responsibility for provision of the Closing Disclosure by the creditor, with the recognition that the settlement agent could be engaged by the creditor to provide the Closing Disclosure; or sole responsibility for provision of the Closing Disclosure by the creditor without recognition of any involvement of a settlement agent. In the final rule, the creditor is ultimately responsible for providing the consumer with an integrated Closing Disclosure three business days before consummation and the other delivery requirements in the final rule, but creditors may rearrange division of responsibility with settlement agents to provide the Closing Disclosure, so long as delivery is conducted by one of them.

i. Costs to Covered Persons. The costs to creditors and to settlement agents under the final rule will depend on how creditors and settlement agents arrange to share responsibility for complying with the requirements relating to provision of the Closing Disclosure. The final rule's assignment of responsibility for provision of the Closing Disclosure to the creditor will likely require coordination on the part of creditors and settlement agents similar to what is done today.

One additional one-time cost, however, may be re-working that coordination to adjust to the new forms and timing requirement. As discussed above, the Bureau believes creditors face a one-time cost of improving coordination with settlement agents, and that this task will be performed primarily by legal and management staff, at an industry wide cost of $2.8 million. Symmetrically, the Bureau estimates that settlement agents will spend 8 hours improving coordination with creditors, at a one-time cost of $1.2 million industry wide. Going forward, the Bureau believes that coordination costs will be similar to those currently experienced, so neither creditors nor

settlement agents should face increased ongoing costs.

Some commenters suggested that some of the duties associated with settlement are going to shift from settlement agents to creditors, due to creditors having additional incentives under the final rule to ensure timely provision of the Closing Disclosure. Commenters did not describe or provide evidence as to the extent to which this would occur or the extent to which such a shift would harm consumers. The Bureau is unable to estimate whether or to what extent this will occur; however, the Bureau believes that creditors' incentive to internalize the process is mitigated to the extent that creditors and settlement agents already coordinate between themselves. One of the main arguments that commenters provided is that creditors would monopolize the settlement market, resulting in integrated creditors-settlement agents, and thereby reducing competition in the settlement agent market. This argument is not supported by the law and economics literature.[380] While there are some situations where this argument might still apply,[381] none of these cases seem to be relevant in this context. Additionally, the points and fees thresholds for qualified mortgages under the 2013 ATR Final rule may mitigate these effects, to the extent that they discourage the use of affiliated service providers. To the extent that any such shift occurs, there could be a reduction in the rule implementation costs discussed above. Any settlement agents caused to exit the market by such a shift would of course incur no implementation costs whatsoever. Creditors, in turn, likely would not absorb all of these foregone settlement agent costs, but rather only some additional training costs.

ii. Alternatives Considered. In developing the final rule, the Bureau also considered an alternative under which the creditor would have been solely responsible for delivering the Closing Disclosure to the consumer, without acknowledging that a settlement agent can provide the Closing Disclosure on behalf of the creditor. This alternative would have likely placed increased costs on creditors, because, as discussed above, RESPA and current Regulation X require that the person conducting the settlement provide the RESPA-required disclosures to consumers. This provision could have resulted in ambiguity in the rule regarding the role of settlement agents in the transaction, and, as stated by small entity representatives on the Small Business Review Panel, increases in costs for small entities.

The Bureau also considered an alternative under which the settlement agent would have sole responsibility for providing the Closing Disclosure to the consumer. However, the Bureau is not adopting this alternative based on its concern that settlement agents do not have access to much of the information regarding loan terms that must be included in the Closing Disclosure relative to creditors, which could lead to inaccuracies or delays of Closing Disclosures, as well as non-negligible coordination costs.

In addition, in response to industry feedback, the Bureau considered an approach that would bifurcate the Closing Disclosure into TILA-required and RESPA-required disclosures, with the creditor being responsible for the former, and the settlement agent being responsible for the latter. Under this alternative, the settlement agent would incur additional logistical burden, relative to the pre-statutory baseline. Creditors and settlement agents may have incurred one-time legal fees under this alternative, since those entities may have needed to contractually stipulate their respective duties or amend existing contractual arrangements in light of the rule. Settlement agents may also have needed to hire additional staff to handle the increased workload associated with collecting the relevant information and coordinating with creditors and third party service providers and preparing the disclosures. The Bureau is also concerned that such an approach would be confusing for consumers, would be impracticable, would result in additional regulatory burden because of the amount of overlap between TILA and RESPA disclosures, and would be inconsistent with the Dodd-Frank Act requirement to integrate the disclosures. In addition, the Bureau believes that the final rule permits creditors and settlement agents to identify the most efficient methods of communicating and dividing responsibility for the disclosure, because it does not assign in the regulation responsibility for particular tasks or portions of the disclosure to particular parties.

5. Implementation of New Disclosures Mandated by the Dodd-Frank Act

As discussed more fully in the section-by-section analysis above, title XIV of the Dodd-Frank Act added new disclosure requirements to TILA and RESPA for mortgage transactions, including several disclosures to consumers who are applying for a mortgage loan and two post-consummation disclosures concerning cancellation of escrow accounts for certain mortgage transactions and the partial payment policy disclosure for certain mortgages. The Bureau has structured the final rule to require inclusion of the application-related disclosures into the Loan Estimate and Closing Disclosure and required implementation of the post-consummation disclosures at the same time as the other changes. The Bureau believes that this approach will benefit consumers by providing the new information while minimizing paperwork and information overload. The Bureau believes that the one-time implementation costs will be negligible since creditors will be updating software and compliance systems to produce the new disclosures at the same time that they are implementing the integrated Loan Estimate and Closing Disclosure. Covered persons may incur some insignificant additional recurring costs associated with providing the post-consummation disclosures on an ongoing basis.

6. Major Provisions Considered but Not Implemented

a. Electronic, Machine Readable Record Retention

The proposed rule would have required the retention of records of compliance with the disclosure requirements for the Loan Estimate and Closing Disclosure in an electronic, machine readable format. After careful consideration, the Bureau has decided not to impose new machine readable data retention requirements for the Loan Estimate and the Closing Disclosure, or to require creditors to maintain other evidence of compliance in an electronic, machine readable format.

The Bureau believes that requiring the collection of electronic, machine readable records may have improved the ability of the Bureau and other regulators to monitor compliance with applicable requirements and to evaluate whether the rules adequately protect consumers against impermissible changes in settlement costs and loan

[380] *See, e.g.,* Director, Aaron, and Edward H. Levi, ''Law and the Future: Trade regulation.'' *Nw. UL Rev.* 51 (1956) at 281. Suppose that the creditor is a monopolist in the mortgage market while the settlement agent market is perfectly competitive. Then the creditor charges a price (through a higher interest rate and fees) that also reflects the fact that consumers are not paying an extra markup in the settlement market. If the creditor now becomes a monopolist in the settlement market as well, that should not affect the overall amount that the consumer pays.

[381] Economides, Nicholas. ''Tying, Bundling, and Loyalty/Requirement Rebates.'' In *Research Handbook of the Economics of Antitrust Law.* Ed. Einer Elhauge, Northhampton, MA: Edward Elgar, 2012, at 121–143.

terms. The Bureau believes that this improved ability may have benefitted consumers through improved compliance.

The Bureau does not believe the proposed recordkeeping requirements would have led to costs to consumers, beyond any costs that are passed through to consumers by creditors or loan originators. The Bureau believes covered persons, after incurring the one-time implementation costs of such a new requirement, may have also benefitted because of efficiency gains from facilitating data transmission through the mortgage loan origination process due to standardization. However, the Bureau determined, for reasons discussed earlier not to finalize the requirement in this final rule.

b. Expanded Definition of Finance Charge

As discussed more fully in the section-by-section analysis of § 1026.4, TILA and current Regulation Z exclude many types of charges from the finance charge, particularly for mortgage transactions. Concerns have long been raised that these exclusions undermine the potential usefulness of the finance charge and corresponding APR as a tool consumers can use to compare the total cost of one loan to another. In addition, these exclusions create compliance burden and litigation risk for creditors and may encourage creditors to shift the cost of credit to excluded fees, a practice that is inefficient and may lead to greater consumer confusion.

In the proposed rule, the Bureau proposed to revise the definition of ''finance charge'' by eliminating many of the current exclusion and thus to potentially make it more useful as a shopping tool. However, while the Bureau acknowledges that there are benefits to such an expanded finance charge definition for disclosure purposes, the Bureau has decided not to proceed with modifying the finance charge. If the Bureau had included more elements in the finance charge, more loans may have surpassed APR thresholds for HPMLs and HOEPA loans, which may have required creditors to comply with additional regulations, such as the escrow requirement for higher-priced mortgage loans. Mechanically, a change in the definition of APR would potentially result in situations where loan A has a higher APR than loan B under the current definition, but has a lower APR than loan B under the new definition. Consequently, even if the thresholds for HPML and HOEPA loans were reset, the same set of loans likely would not be covered. Therefore, it is a substantial task to adjust the finance charge and preserve the intent of APR thresholds in other regulations, which would impose considerable compliance burden on creditors. The Bureau also recognizes that the proposed revised definition of ''finance charge'' could create upfront implementation costs for creditors required to update systems and train staff on the new calculations. For these reasons, the Bureau believes it is appropriate to postpone consideration of any changes to the finance charge definition until the Bureau's other mortgage-related Dodd-Frank Act rulemakings are fully implemented and the Bureau has the opportunity to evaluate the potential benefits and implementation burdens.

F. Potential Specific Impacts of the Final Rule

1. Depository Institutions and Credit Unions With $10 Billion or Less in Total Assets, as Described in Section 1026

The Bureau believes that the impacts of the rule on depository institutions and credit unions with $10 billion or less in total assets will be similar to impacts on creditors as a whole, *mutatis mutandis*.[382]

The Bureau analyzed the effect of the final rule on depository institutions with $10 billion or less in assets, using methods and assumptions analogous to those used for creditors of all sizes. For depository institutions with $10 billion or less in assets, the one-time costs of complying with the rule are $170 million, amortized over 5 years, which is approximately $73 per transaction. This can be partitioned into $11.3 million per year for updating software for creditors who perform the process in-house, $152.8 million per year for implementation (including learning about the rule, gap analysis, software testing, trouble shooting, and ensuring smooth system functioning across systems), $3.4 million per year for training, and $2.1 million per year for changing processes to ensure smooth delivery of all of the necessary information.

2. Impact of the Final Rule's Provisions on Consumers in Rural Areas

Consumers in rural areas may experience benefits and costs from the final rule that are different in certain respects to those experienced by consumers in general. The extent to which rural consumers shop for mortgages and the ways in which they shop may differ from the extent to which other consumers shop and the ways in which they shop, which may affect the benefits of the revised Loan Estimate. The Bureau is unaware of information on these differences, however.[383] To the extent that the impacts of the final rule on creditors differ by type of creditor, this may affect the costs and benefits of the final rule on consumers in rural areas.

3. Impact of the Final Rule on Consumer Access to Credit

The Bureau does not believe that the final rule will have a substantial effect on consumers' access to credit because the final rule does not directly affect the provision of particular types of mortgage products. While changes to the content and timing of disclosures and associated tolerance rules may incent creditors to offer one product type over another, the Bureau does not believe that the final rule will cause creditors to reduce their extension of credit.

The Bureau believes that access to credit may increase as a result of this rule. As discussed above, the Bureau believes that this rule may help consumers choose the loan that better fits their needs and may facilitate shopping, which would in turn decrease prices in the market. All of these factors might contribute to an increase in access to credit.

VIII. Final Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct an initial 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.[384]

[382] The only potential difference is the aforementioned theoretical possibility of creditors exiting the market. To the extent that this occurs, and the Bureau believes that it will not, it is more likely to occur for creditors with $10 billion or less in total assets.

[383] While the sample size was not sufficient to draw any definitive conclusions concerning any differences between rural and other consumers, the Quantitative Study did recruit study participants from rural areas. *See* Kleimann Quantitative Study Report at 70.

[384] For purposes of assessing the impacts of the final rule on small entities, ''small entity'' is defined in the RFA to include small businesses, small not-for-profit organizations, and small government jurisdictions. 5 U.S.C. 601(6). A ''small business'' is determined by application of Small Business Administration regulations and reference to the North American Industry Classification System (NAICS) classifications and size standards. 5 U.S.C. 601(3). A ''small organization'' is any ''not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' 5 U.S.C. 601(4). A ''small governmental jurisdiction'' is the government of a city, county, town, township,

Continued

The Bureau also is subject to certain additional procedures under the RFA involving the convening of panel to consult with small business representatives prior to proposing a rule for which an IFRA is required.[385]

As discussed further below, for banks and other depository institutions, an entity is considered ''small'' if it has $500 million or less in assets and, for other financial businesses, an entity is considered ''small'' if it has average annual receipts (i.e., annual revenues) that do not exceed $35.5 million or $7 million, depending on the function of the business.[386] The Bureau did not certify that the rule would not have a significant economic impact on a substantial number of small entities. Thus, the Bureau convened a Small Business Review Panel to obtain advice and recommendations of representatives of the regulated small entities. The TILA–RESPA Proposal preamble included detailed information on the Small Business Review Panel.[387] The Panel's advice and recommendations are found in the Small Business Review Panel Final Report;[388] several of these recommendations were incorporated into the proposed rule. The TILA–RESPA Proposal preamble also included a discussion of each of the panel's recommendations in the section-by-section analysis of the proposed rule.

The TILA–RESPA Proposal contained an IRFA,[389] pursuant to section 603 of the RFA. In this IRFA the Bureau solicited comment on any costs, recordkeeping requirements, compliance requirements, or changes in operating procedures arising from the application of the proposed rule to small businesses, comment regarding any Federal rules that would duplicate, overlap, or conflict with the proposed rule, and comment on alternative means of compliance for small entities. Comments addressing individual disclosure elements of the Loan Estimate and Closing Disclosure are addressed in the section-by-section analysis above. Comments addressing the impact on the cost of credit are discussed below.

Based on the comments received, and for the reasons stated below, the Bureau believes the final rule will have a significant economic impact on a substantial number of small entities. Accordingly, the Bureau has prepared the following final regulatory flexibility analysis pursuant to section 604 of the RFA.

1. A Statement of the Need for, and Objectives of, the Rule

For more than 30 years, TILA and RESPA have required creditors and settlement agents to give to consumers who take out a mortgage loan different but overlapping disclosure forms regarding the loan's terms and costs. This duplication has long been recognized as inefficient and confusing for consumers and industry. The following two paragraphs briefly summarize the statutory differences, which are described in more detail in part I and part II, above.

TILA/Regulation Z: In connection with any closed-end credit transaction secured by a consumer's dwelling and subject to RESPA, TILA and Regulation Z require creditors to provide good faith estimates of loan terms (such as the APR) within three business days after receiving the consumer's mortgage application (the early TILA disclosure). If the APR on the early TILA disclosure becomes inaccurate, TILA requires the creditor to provide a corrected disclosure at least three business days before consummation (the corrected TILA disclosure). TILA requires that the disclosures be provided in final form at the time of consummation (the final TILA disclosure).

RESPA/Regulation X: In connection with any federally related mortgage loan, RESPA and Regulation X require that creditors provide a good faith estimate of the amount or range of charges for certain settlement services the borrower is likely to incur in connection with the settlement (such as fees for an appraisal or a title search) and related loan information within three business days after receiving the consumer's application (the RESPA GFE). RESPA also requires that ''the person conducting the settlement'' (typically, the settlement or closing agent) provide the consumer with a completed, itemized statement of settlement charges at or before settlement (the RESPA settlement statement).

Furthermore, the recent mortgage crisis highlighted deficiencies in consumer understanding of mortgage transactions, which may be attributed in part to shortcomings in mortgage disclosures. Part II.A of the final rule discusses in greater detail the background of the mortgage market. Prior to the creation of the Bureau, other government agencies took steps to address these shortcomings. Specifically, HUD, which was previously responsible for implementing RESPA, finalized rules in 2008 that substantially revised the RESPA mortgage disclosures (HUD's 2008 RESPA Final Rule). In addition, the Board, which was previously responsible for TILA, proposed rules in 2009 that would have substantially revised the TILA mortgage disclosures (the Board's 2009 Closed-End Proposal). However, neither HUD nor the Board had the authority to combine the TILA and RESPA disclosures.

As noted above, RESPA and TILA historically have been implemented by regulations of HUD and the Board, respectively, and the Dodd-Frank Act consolidated this rulemaking authority in the Bureau. In addition, the Dodd-Frank Act amended both statutes to mandate specifically that the Bureau propose rules and forms combining the TILA and RESPA disclosures for mortgage loans subject to either law or both laws by July 21, 2012. Dodd-Frank Act sections 1032(f), 1098, 1100A. On July 9, 2012, the Bureau issued a notice of the proposed rule, which was published in the **Federal Register** on August 23, 2012 (77 FR 51116).

The Dodd-Frank Act establishes two goals for the consolidation: to improve consumer understanding of mortgage loan transactions, and to facilitate industry compliance with TILA and RESPA. The Dodd-Frank Act also made several amendments to the disclosure requirements in TILA and RESPA. In particular, the Dodd-Frank Act amended TILA to require the creditor to disclose in the early and final TILA disclosures the aggregate amount of settlement charges provided in connection with the loan, which was previously disclosed only by the settlement agent in the RESPA settlement statement.[390] The final rule, therefore, both follows on the prior efforts of HUD and the Board to address shortcomings in the mortgage market with regard to mortgage disclosures and effectuates Congress's specific mandate to the Bureau to integrate the mortgage disclosures under TILA and RESPA. For a further description of the reasons why agency action was considered necessary, see the

village, school district, or special district with a population of less than 50,000. 5 U.S.C. 601(5).

[385] 5 U.S.C. 609.

[386] *See* U.S. Small Bus. Admin., *Table of Small Business Size Standards Matched to North American Industry Classification System Codes* (July 22, 2013) available at *http://www.sba.gov/content/table-small-business-size-standards.* (''SBA Size Standards'').

[387] 77 FR 51116, 51128–51129 (Aug. 23, 2012).

[388] *See Final Report of the Small Business Review Panel on CFPB's Proposals Under Consideration for Integration of TILA and RESPA Mortgage Disclosure Requirements* (Apr. 23, 2012), at 17, available at *http://files.consumerfinance.gov/f/201207_cfpb_report_tila-respa-sbrefa-feedback.pdf.* (''Small Business Review Panel Report'').

[389] 76 FR 27479–27480.

[390] Section 1419 of the Dodd-Frank Act, adding section 128(a)(17) to TILA.

background discussion for the final rule in part II, above.

As described above, the final rule effectuates Congress's mandate to integrate the mortgage disclosures required under TILA and RESPA. In particular, sections 1098 and 1100A of the Dodd-Frank Act state that the purposes of the integrated disclosures are to facilitate compliance with TILA and RESPA and ''to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures.'' Dodd-Frank Act sections 1098(2)(A), 1100A(5). The integrated disclosures also effectuate the underlying statutory purposes of RESPA and TILA. One of the statutory purposes of RESPA is ''more effective advance disclosure to home buyers and sellers of settlement costs.'' 12 U.S.C. 2601(b)(1). And the statutory purpose of TILA is to ''to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit.'' 15 U.S.C. 1601(a).

Furthermore, this rulemaking promotes consumer comprehension of financial disclosures. Section 1021(b) of the Dodd-Frank Act authorizes the Bureau to exercise its authorities to ensure that, with respect to consumer financial products and services, ''consumers are provided with timely and understandable information to make responsible decisions about financial transactions.'' 12 U.S.C. 5511(b)(1). Section 1032(a) of the Dodd-Frank Act provides the Bureau with the authority to ''prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.'' 12 U.S.C. 5532(a).

The final rule also is intended to provide other benefits for consumers. First, the new disclosure forms are simpler and more comprehensible, and their design has been refined to incorporate extensive consumer and industry feedback gathered through online tools and one-on-one testing across the country. *See* part III, above. By conveying information on key loan terms clearly, the redesigned disclosure forms may improve the ability of consumers to shop for and compare mortgage terms across loan offers and improve their understanding of mortgage loan transactions. Second, the final rule seeks to improve borrowers' ability to shop by more clearly delineating between estimates regulated by TILA and RESPA and non-binding preapplication estimates. Third, the final rule may reduce the magnitude and frequency of changes in costs between application and consummation and may decrease the likelihood that consumers will face unexpected changes in costs due to ''bait and switch'' tactics.[391]

Lastly, the Bureau is seeking to reconcile differences in the scope, terminology, and requirements of TILA, RESPA, and their current implementing regulations. As discussed above, the Dodd-Frank Act did not reconcile a number of statutory differences between TILA and RESPA (*e.g.,* the different requirements on the timing of disclosures and which party is responsible for providing the disclosures), which the Bureau needs to do in order to satisfy the mandate to integrate the disclosures. Moreover, the final rule clarifies and streamlines aspects of the current rules that have been identified as confusing by creditors, mortgage brokers, mortgage companies, and settlement agents, as well as by consumers who receive the disclosures. The Bureau believes these clarifications will resolve ambiguities, eliminate redundant or unnecessary disclosures, and more effectively disclose mortgage loan terms and costs to consumers. The legal basis for the final rule is discussed in detail in the legal authority analysis in part IV and in the section-by-section analysis in part V, above.

2. Summary of Significant Issues Raised by Comments in Response to the Initial Regulatory Flexibility Analysis

In accordance with section 603(a) of the RFA, the Bureau prepared an IRFA. In the IRFA, the Bureau estimated the possible compliance costs for small entities with respect to each major component of the rule against a pre-statute baseline. The Bureau requested comment on the IRFA.

Various commenters stated that without further guidance they would not be able to implement the proposed electronic, machine readable record retention requirement. In light of these comments, the Bureau understands that more prescriptive specifications of electronic, machine readable requirements, such as a well-defined data dictionary and format, would reduce the burden of compliance. As discussed further in the section-by-section analysis of § 1026.25 above, the Bureau has decided not to finalize the electronic, machine readable record retention requirement at this time, in part because creating these elements would require additional outreach beyond the scope of the proposed rulemaking.

With respect to the proposal to modify the finance charge, commenters, including individual creditors and trade associations, stated that expanding the finance charge would affect criteria based on the APR, such as which loans pass the higher-priced mortgage loan or HOEPA thresholds, as well as various State-level criteria. As discussed in the Dodd-Frank Act section 1022(b)(2) analysis above, it is not straightforward to recalibrate these thresholds in order to cover the same loans. Other commenters raised the possibility of retaining the current finance charge definition for purposes of threshold computation but disclosing the APR calculated with the more expansive finance charge. Because of the challenges associated with changing the finance charge, and its effects on the APR, without the data resources to estimate the potential impact of the change on the different thresholds, the Bureau has decided not to finalize the more inclusive finance charge at this time.

Many of the comments received in response to the IRFA focused on implementation and compliance costs. For example, several credit unions commented that they anticipated per-firm implementation costs of approximately $40,000 in addition to training costs. As discussed below, the Bureau estimates non-training costs of implementation of the same order of magnitude for small entities. In light of comments such as this and further analysis, the Bureau has increased its estimate of implementation and compliance costs. A title company commenter stated that a software vendor that it had consulted with would incur implementation costs of $200,000. While the Bureau cannot assess the accuracy of this claim because the commenter did not provide support for it that could be corroborated, the Bureau believes that costs incurred by software vendors will likely not be passed through to client creditors. As discussed in part VI above, in response to various comments about implementation time required, the Bureau has decided to set an implementation period that will last until August 1, 2015. One independent mortgage loan originator commented that it does not have the back office

[391] This discussion of the final rule's benefits to consumers is intended to be illustrative, not exhaustive. Additional consumer benefits that may result from the final rule are discussed in other sections of the final rule.

functions the Bureau uses in its impact analyses, and therefore would incur substantial costs to implement the final rule. These costs are likely to be mitigated by information that is passed on by vendors, as well as small entity compliance guides and other guidance that the Bureau provides throughout the implementation period.

The Bureau also received several comments about who provides the Closing Disclosure from trade associations, settlement companies, and creditors. The concerns raised include the possibility of dual closings (separate closings of the real estate and mortgage transactions), the threat of industry consolidation, the disadvantaging of affiliated title companies, and a move to the use of larger title companies. Since consumers can shop for title services, who provides the Closing Disclosure is unlikely to affect the price of title services, or the size of title companies used. Furthermore, the comments did not provide specific evidence that affiliated title companies are likely to be disadvantaged by the final rule. Since the final rule does not preclude creditors from coordinating with settlement agents, and mortgage transactions and real estate transactions are often linked since the latter provides the collateral for the former, the frequency of dual closings is unlikely to change. Please consult the section-by-section analysis above for additional discussion of these comments.

3. Response to the Office of Advocacy of the Small Business Administration Comment

The Office of Advocacy at the Small Business Administration (SBA) provided two formal comment letters to the Bureau in response to the proposed rule on the integration of the TILA and RESPA disclosures. Among other things, these letters expressed concerns about the electronic, machine readable recordkeeping requirements, the proposed changes to § 1026.4 that would change the calculation of the finance charge, the integration of the initial and final closing disclosures, the provision of the Closing Disclosure, and the definition of application.

Since the Bureau is neither finalizing the proposed electronic, machine readable record keeping requirements nor finalizing the proposed change to an all-in finance charge, SBA's concerns about these issues are no longer directly relevant to the final rule. For example, because these changes will not be made, small businesses covered by the final rule will not have to revise their computer systems in light of these changes.

In its comment about the cost of the integration of the initial and final closing disclosures, one point that SBA raised was that not all of the costs associated with the final rule would be absorbed in annual updates. While the Bureau believes that the cost of vendor updates will not be passed on to creditors, the Bureau acknowledges, as it did in the proposal, that there will be one-time implementation costs. Based on comments received and further analysis, the Bureau has revised upwards its estimate of these one-time costs of implementation. SBA also stated that there would be increased cost of compliance reviews. The Bureau does not believe that there will be increased cost of compliance reviews as creditors are already examined for compliance with the RESPA GFE and the RESPA settlement statement.

SBA also identified possible issues with the three-business-day waiting requirement for the Closing Disclosure because some costs may change shortly before closing. The Bureau has considered the tradeoff between the amount of time a prospective borrower has to compare the Loan Estimate and the Closing Disclosure and the burden on industry of providing the disclosure one or more days prior to consummation, and believes that extending the waiting period is in the best interest of consumers. Some of SBA's roundtable participants stated that the requirement might conflict with State law. However, Federal law takes precedence over State law in this case.

SBA also raised issue with removing the seventh data element from the definition of application because it might create uncertainty about when the provision of the Loan Estimate is required as well as require the Loan Estimate to be provided earlier in the process. SBA asserted that loan estimates may also be less accurate, and therefore be more likely to have to be redisclosed. To the extent that creditors may request other information prior to, or simultaneously with, their request of the other six data elements, the Bureau believes that this will mitigate the timing and completeness effects of removing the seventh element. While it is true that eliminating the seventh element might render estimates of costs provided by creditors less accurate, this must be weighed against the consumer's certainty about the timing of the Loan Estimate, as well as being simultaneously and well informed about all of his or her potential options. In relation to the components of an application, a trade association representing community banks suggested that ''property address'' should be an optional element. It is important to note that the Loan Estimate is not analogous to a preapproval letter, which is based on borrower credit quality alone, and that underwriting a loan property address, which is a necessary element in estimating value, is fundamental.

SBA reiterated a claim made by several SERs about permissible changes to settlement costs and redisclosure of the initial disclosure: there may be unintended consequences of reducing certain charges from the 10 percent tolerance category to the zero percent category. This, they claimed, would lead to a reduction in competition. The Bureau believes that to the extent there are long run effects, it is not obvious that the consequence of the new tolerances is firms exiting the market. For example, firms might be able to absorb the costs of overestimates, or the new tolerances might lead to more transparent and consistent pricing of services by both affiliates and independent service providers. Even if there are exits from the market by some firms, the Bureau believes that the markets will remain competitive and that there also may be new entrants (but this is likely to result from regular turnover).

SBA questioned the appropriateness of applying the rule under which Loan Estimates not delivered in person are considered to be received three days after they are sent in the context of instantaneous delivery, such as through secure electronic transmission. The Bureau is not persuaded by the argument that the Bureau should adjust the final rule to reflect that disclosures provided by electronic delivery should be subject to a different standard. The Bureau believes that it would require more information regarding the many different forms of delivery methods available to creditors, including technical information regarding different forms of electronic delivery, before it issues a rule applying such different standards. Similarly, the SBA questioned the proposal to treat Saturday as a business day for purposes of the three-business-day rule. As discussed above, the Bureau has decided not to adopt this aspect of the proposal.

4. A Description of and an Estimate of the Number of Small Entities to Which the Rule Will Apply

As discussed in the Small Business Review Panel Report, for purposes of assessing the impacts of the final rule on small entities, ''small entities'' is defined in the RFA to include small businesses, small nonprofit

organizations, and small governmental jurisdictions. 5 U.S.C. 601(6). A ''small business'' is determined by application of SBA regulations and reference to the North American Industry Classification System (NAICS) classifications and size standards.[392] 5 U.S.C. 601(3). Under the 2012 revision of such standards, banks and other depository institutions are considered ''small'' if they have $500 million or less in assets, and for other financial businesses, the threshold is average annual receipts (*i.e.,* annual revenues) that do not exceed $35.5 million or $7 million, depending on the function of the business.[393]

During the Small Business Review Panel process, the Bureau identified six categories of small entities that may be subject to the final rule for purposes of the RFA. These are the categories of entities that may be required to provide, and maintain related records on, the integrated disclosures, either because they may make residential mortgage loans or because they may be responsible for completing or providing required disclosures. The categories and the current SBA small entity thresholds for those categories are: (1) Commercial banks [394] with up to $500,000,000 in assets, (2) credit unions with up to $500,000,000 in assets, (3) mortgage brokers with up to $7,000,000 in annual revenue, (4) mortgage companies (non-bank creditors) with up to $35,500,000 in annual revenue, (5) settlement (closing) agents with up to $10,000,000 in annual revenue, and (6) nonprofit organizations that are not for profit, independently owned and operated, and not dominant in the field.[395]

The following table provides the Bureau's estimate of the number and types of entities that may be affected by the final rule: [396]

[392] The current SBA size standards are found on SBA's Web site at *http://www.sba.gov/content/table-small-business-size-standards.*

[393] *See id.*

[394] 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.

[395] Comprehensive information about non-profit activity in the mortgage market is not available, so nonprofits are not included as a separate category in the table that describes the estimated number of affected entities and small entities by NAICS code. To the extent that non-profits fall into any of the NAICS codes included in the table, they are included.

[396] In the Small Business Review Panel Report, chapter 9.1, a preliminary estimate of affected entities and small entities was included in a similar format (a chart with clarifying notes). *See* Small Business Review Panel Report at 26–27.

TILA-RESPA Integrated Disclosures: Estimated number of affected entities and small entities by NAICS code and engagement in closed-end mortgage transactions

Category	NAICS	Small entity Threshold	Total entities	Small entities	Entities engaged in closed-end mortgage transactions	Small entities engaged in closed-end mortgage transactions
Commercial banks & savings institutions[a]	522110, 522120	$500,000,000 assets	7435	6080	7230	5913
Credit unions[b]	522130	$500,000,000 assets	7240	6845	4178	3784
Mortgage companies (Non-bank creditors)[c]	522292	$35,500,000 revenues	2787	2672	2787	2672
Mortgage brokers[d]	522310	$7,000,000 revenues	24,792	19,267	24,792	19,267
Settlement agents[e]	541191	$10,000,000 revenues	8261	8131	8261	8131

a. Asset size obtained from December 2011 Call Report data as compiled by SNL Financial. Savings institutions include thrifts, savings banks, mutual banks, and similar institutions. Estimated number of creditors originating any closed-end mortgages is based on 2011 HMDA data and, for entities that do not report to HMDA, loan counts are projected based on Call Report data and counts for HMDA filers.

b. Asset size and engagement in closed-end mortgage loans was obtained from December 2011 National Credit Union Administration Call Report. Count of credit unions engaged in closed-end mortgage transactions may include some institutions that make only first-lien, open-end loans.

c. Total number of entities and small entities was estimated based on the NMLS Mortgage Call Report (MCR) data for 2011. Entities that report to MCR are considered to be engaged in closed-end mortgage transactions if they report either: (1) originating or brokering at least one closed-end mortgage; or (2) a positive dollar value of originated or brokered loans. The estimated number of small entities is based on predicting the likelihood that an entity's revenue is less than the $35.5 million threshold based on the dollar value and number of loans originated and the dollar value and number of loans brokered.

d. Total number of entities and small entities estimated based on 2007 Economic Census data. Number of entities under SBA threshold includes all entities under $7,000,000 in revenue, due to the level of aggregation of public use data from the Economic Census. All entities are assumed to engage in closed-end mortgage transactions.

e. Total number of entities and small entities estimated based on 2007 Economic Census data. All entities are assumed to engage in closed-end mortgage transactions.

5. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The final rule imposes new disclosure requirements on covered persons, and therefore recordkeeping requirements are modified appropriately (as discussed below). Even so, this does not result in a net increase in recordkeeping requirements. The final rule does, however, impose new compliance requirements on certain small entities. The requirements to integrate the TILA and RESPA disclosures and the imposition of new disclosure requirements under the Dodd-Frank Act, Title XIV, appear specifically in the Dodd-Frank Act. Thus, to a large extent, the impacts discussed below are impacts of the statute, not of the regulation *per se,* that is, the Bureau discusses impacts against a pre-statute baseline.

a. Reporting Requirements

The final rule does not impose new reporting requirements.

b. Recordkeeping Requirements

The current record retention period is two years under Regulation Z, which supports private actions and regulatory enforcement actions. However, the CFPB has decided to require creditors to retain evidence of compliance with the integrated disclosure provisions of Regulation Z for three years after consummation of the transaction, except that creditors must retain the Closing Disclosure and all documents related to the Closing Disclosure for five years after consummation, consistent with the requirements of existing Regulation X. The final rule also requires that if a creditor sells, transfers, or otherwise disposes of its interest in a mortgage and does not service the mortgage, the creditor shall provide a copy of the Closing Disclosure to the owner or servicer of the mortgage as a part of the transfer of the loan file. Such owner or servicer shall retain such disclosures for the remainder of the five-year period. The CFPB recognizes that this requirement is different from the current requirements under Regulation X, which does not require a creditor to maintain these documents if the creditor disposes of its interest in the mortgage loan and does not service the mortgage loan. In addition, the final rule requires creditors and mortgage brokers to retain documentation sufficient to show their supervisory agencies that one of the exceptions applies whenever a cost for a service provided by a company that is owned by or affiliated with the creditor proves to be higher than estimated in the Loan Estimate in excess of the tolerances under § 1026.19(e)(3) and a revised Loan Estimate is provided, similar to the current document retention requirements under Regulation X for when the RESPA GFE is reissued. These retention requirements may result in additional cost to respondents that are creditors and mortgage brokers. However, the Bureau believes that any burden associated with the final rule's record keeping requirement will be minimal or *de minimis,* since only information sufficient to reconstruct the required record is required to be retained.

The final rule does not finalize the electronic, machine readable recordkeeping requirements proposed in the TILA–RESPA Proposal.

c. Compliance Requirements

The final rule contains specific provisions with regulatory or commentary language. The analysis below considers the benefits, costs, and impacts of the following major provisions on small entities:

1. The integration of the initial and closing disclosures (the Loan Estimate and Closing Disclosure, respectively),
2. The definition of ''application'',
3. Permissible changes to settlement costs and redisclosure of initial disclosures,
4. Provision of the Closing Disclosure, and
5. Implementation of new disclosures mandated by the Dodd-Frank Act.

Baseline for Analysis

The analysis examines the benefits, costs, and impacts of the major provisions of the final rule against a pre-statutory baseline. This means that to the extent there are benefits, costs, or other relevant impacts emanating from the relevant provisions of the Dodd-Frank Act, the Bureau combines those with the benefits, costs, and impacts of the regulation itself in conducting this analysis. The Bureau has discretion in future rulemakings to choose the most appropriate baseline for that particular rulemaking.

1. Integrated Initial and Closing Disclosures

The final rule requires that the Loan Estimate be provided to consumers within three business days after receipt of the consumer's application, to replace the early TILA disclosure and RESPA GFE, and that the Closing Disclosure be provided to consumers at least three business days prior to consummation, to replace the final TILA disclosure and RESPA settlement statement. As discussed above, TILA authorizes the Bureau to publish model forms for the TILA disclosures, while RESPA authorizes the Bureau to require the use of standard forms (*e.g.,* the current RESPA GFE and RESPA settlement statement forms). Accordingly, the Bureau is requiring the use of standard Loan Estimate and Closing Disclosure forms for mortgage loan transactions that are subject to RESPA. For transactions that are subject only to TILA, however, the forms are not being required. Rather, consistent with the provisions of that statute, the forms are model forms. The final rule also incorporates prior informal guidance regarding compliance with HUD's 2008 Final RESPA Rule into Regulation Z and official commentary, as necessary and appropriate.

Benefits to Small Entities

The integration of the early TILA disclosure and the RESPA GFE, and the final TILA disclosure and the RESPA settlement statement, may benefit small entities, including small creditors, mortgage brokers, and settlement agents that provide the disclosures. It will reduce the number of disclosures that covered persons need to prepare and provide and the number of disclosure-provision systems and processes that covered persons need to maintain. In addition, the three-page Loan Estimate will replace a three-page RESPA GFE and two-page early TILA disclosure, as well as address other new disclosure requirements in the Dodd-Frank Act.

Most small entities that participated in the Small Business Review Panel process stated that the integrated forms would make it easier to explain transactions to consumers, although one letter from several small entity settlement agents indicated that the new forms could actually lead to more questions during a closing. Information submitted by several settlement agents indicates that requiring the use of standard forms and clearer regulatory guidance could save as much as 30 minutes per closing by standardizing practices across creditors and reducing confusion. Based on information from the Bureau of Labor Statistics, the typical hourly wage of a settlement agent employee is $34 and the typical hourly wage of a loan officer is $48, giving a dollar savings in labor cost from the simplified closing forms of $17 to $24 per closing. Most of these savings will likely be passed on to consumers.

The integrated disclosures also permit creditors to consolidate certain numerical calculations. For example, Regulations Z and X currently require two different calculations for the disclosure of monthly payment information on the early TILA

disclosure and the RESPA GFE. The integrated Loan Estimate consolidates these calculations into one monthly payment disclosure, which may facilitate compliance and ease burden on small entities. Other examples of overlapping but potentially different numerical disclosures required under Regulations Z and X include information about balloon payments and prepayment penalties.

Costs to Small Entities

The integrated Loan Estimate and the Closing Disclosure will result in certain compliance costs to small entities. The Bureau believes many of the costs of complying with these requirements would be common across the two disclosures, and therefore discusses them together here. In addition, the Bureau believes these costs would consist primarily of one-time costs to revise software and compliance systems, as other costs of compliance should not vary significantly from the costs of complying with existing regulations.

Small entities would need to adapt their software and compliance systems to provide the new forms. In addition to changing the format of the required forms, the new forms include several new disclosures that are required by the Dodd-Frank Act. Accordingly, the cost of adapting software and compliance systems in connection with these new disclosures will be included in the cost of adapting software and compliance systems to provide the new forms. Therefore, the Bureau does not provide separate estimates for the costs of adding this additional information.

Based on information provided by creditors and by software vendors, the Bureau believes that, in general, small creditors primarily rely on software and compliance systems provided by outside vendors. One of the SERs estimated that 95 percent of creditors that originate less than $5 billion in mortgages per year, which would include all small creditors, rely on vendors. The use of vendors by small creditors will substantially mitigate the costs of revising software and compliance systems, as the efforts of a single vendor would address the needs of a large number of creditors. Based on discussions with vendors that provide software and compliance systems to mortgage creditors, the costs of these updates would not be directly passed on to the small creditors.

Based on feedback provided by small entities that participated in the Small Business Review Panel process, the Bureau estimates that smaller creditors that maintain their own compliance software and systems would incur costs of roughly $100,000 to determine what changes need to be made and to update their systems to comply with the final rule. The total cost for these smaller creditors that maintain their own compliance software and systems is therefore $100,000*12,369 *5%=61,845,000.

Small creditors that are covered persons would incur one-time costs associated with training employees to use new forms and any new compliance software and systems. The Bureau estimates that each loan officer or other loan originator will need to receive eight hours of training. For every 10 hours of loan officer training, it is assumed that there is 1 hour of dedicated trainer time. For each hour of loan officer training time, it is assumed that back-office staff is trained for 0.67 hours. The Bureau estimates that there are 27,771 loan officers or other originators at small creditors, who earn on average $48 per hour, for a total training cost of $15,500,000. Small creditors will also need to develop training and compliance materials, at a cost of $35,271,000. As was assumed with all creditors, legal or management staff at each creditor spends 8 hours coordinating with entities that conduct settlements, at a total cost of $11,500,000.

The Bureau estimates that total costs to small creditor covered persons of revising software and compliance systems, including three months of software vendor training, installation, troubleshooting, and in-house testing time, would be $480,741,000. It is important to note that this is a one-time cost, and not a recurring cost. For additional perspective, the Bureau estimates that there were 880,286 covered mortgage originations in 2011, the most recent year for which data are available, for a total cost of implementing the new disclosure requirements of $123 per origination, amortized over 5 years.

The total costs for small settlement agents are computed using similar categories. The one-time costs for small settlement agents is $264,900,000, which can be broken down into $30,500,0000 for training settlement agents, $2,200,000 for coordination between settlement agents and creditors, $199,000,000 for software vendor training and installation, troubleshooting, and training on software, and $33,200,000 for developing settlement agent training materials.

2. Definition of Loan Application

The final rule revises the regulatory definition of the term ''application'' to provide clarity to consumers regarding when a Loan Estimate must be provided by a creditor or mortgage broker. Under TILA and RESPA, a creditor or mortgage broker is not required to provide the good faith estimates of loan terms and settlement costs in the early TILA disclosure and RESPA GFE until it has received an ''application.'' As discussed more fully in the section-by-section analysis of § 1026.2(a)(3) above, under current regulations, the receipt of the following information by the creditor or mortgage broker constitutes receipt of an ''application'': (1) Borrower's name; (2) borrower's monthly income; (3) borrower's social security number to obtain a credit report; (4) the property address; (5) an estimate of the value of the property; (6) mortgage loan amount sought; and (7) any other information deemed necessary by the creditor. The seventh item could allow creditors and mortgage brokers to delay providing the integrated Loan Estimate until after collection of the six specific items, to collect any information they deem ''necessary.'' By providing a bright line standard governing when the Loan Estimate must be provided, the final rule will enable consumers to understand the application stage of their mortgage loan transactions, specifically, when they can obtain the Loan Estimate that contains reliable estimates that are subject to the good faith estimate and tolerance requirements of § 1026.19(e). This bright line standard will better enable consumers to plan their shopping for mortgage loans. In addition, this bright line standard will facilitate compliance for industry and supervisory agencies that examine for compliance with the integrated disclosure requirements. The final rule removes the seventh item (''any other information deemed necessary by the creditor'') from the definition of ''application.''

Costs to Small Entities

The Bureau understands that eliminating creditors' and mortgage brokers' ability to wait to provide a good faith estimate until after they receive ''any other information deemed necessary'' could increase the burden on small creditors and mortgage brokers to the extent that it causes them to issue more Loan Estimates than they would under the current definition of application. If a creditor or mortgage broker obtains additional information from the borrower after the Loan Estimate has been issued that affects the costs of the settlement service for the loan, the creditor may need to issue a revised Loan Estimate. The Bureau is unaware of information that would

allow it to estimate how often this would occur. The Bureau believes, however, that many creditors and mortgage brokers will mitigate this potential cost by adjusting their business practices surrounding the receipt of applications to gather other important information prior to, or at the same time as, they obtain the six items that together constitute an ''application.''

3. Changes in Settlement Costs/ Redisclosures

The final rule revises current rules regarding the circumstances in which a consumer may be charged more at closing for settlement services than the creditor estimated in the disclosure provided to the consumer three business days after application. As discussed more fully in the section-by-section analysis of § 1026.19(e)(3) above, HUD's 2008 RESPA Final Rule limits the circumstances in which a creditor can charge the consumer more at consummation for settlement services than the creditor estimated in the RESPA GFE provided to the consumer three business days after application. These rules generally place charges into three categories: The creditor's charges for its own services, which cannot exceed the creditor's estimates unless an exception applies (''zero tolerance''); charges for settlement services provided by third parties, which cannot exceed estimated amounts by more than 10 percent unless an exception applies (''10 percent tolerance''); and other charges that are not subject to any limitation on increases (''no tolerance''). The rules permit certain limited exceptions in which higher charges are permitted, such as when the borrower requests a change, when the RESPA GFE expires, or when valid changes in circumstance occur. The Bureau is aware of concerns that HUD's 2008 RESPA Final Rule is both too lax and too restrictive, and also that the rule is difficult to understand. The final rule attempts to address these concerns by balancing the objective of improving the reliability of the estimates creditors give consumers shortly after application with the objective of preserving creditors' flexibility to respond to unanticipated changes that occur during the loan process. Specifically, the final rule applies the zero tolerance category to a larger range of charges, including fees charged by an affiliate of the creditor and charges for services for which the creditor does not permit the consumer to shop. A service provider is considered to be selected by the creditor if consumers are required to choose only from a list of service providers prepared by the creditor (*i.e.,* if consumers are not permitted to shop for their own provider).

Benefits to Small Entities

Small entities may benefit from the final rule because it reduces compliance burden by resolving current regulatory ambiguities. For example, the final rule revises the current rule on and provides additional guidance regarding use of average cost pricing. The final rule further streamlines and clarifies HUD's 2008 RESPA Final Rule by incorporating prior HUD guidance into Regulation Z and its commentary, as necessary and appropriate. Further, to the extent the final rule reduces unnecessary redisclosure of the RESPA content currently provided on the GFE, the rule decreases costs to creditors, although the extent to which the final rule would have such an effect is unknown. Reducing unnecessary redisclosure may also benefit consumers, to the extent that redisclosures lead to consumer confusion.

The Bureau is unaware of reliable data showing how often creditors are providing additional disclosures that are not required by the current rule and that they would no longer send under the final rule. Some creditors, however, have reported that additional clarity regarding redisclosure requirements for the RESPA GFE and average cost pricing would reduce the cost of compliance, in part, by reducing confusion over when redisclosure is permitted or required, and thereby reducing the need for the involvement of the compliance department in everyday business activities and any legal advice that a creditor might seek.

Costs to Small Entities

The Bureau understands that small entities may experience increased costs as a result of applying the zero tolerance category to a larger range of charges. Since the final rule expands the circumstances in which creditors cannot pass on increased costs to consumers when the initial estimate is lower than the actual costs, creditors may be required to absorb more costs when no exception, such as a legitimate change in circumstances, is present. This impact should be mitigated to the extent creditors are in a position to know the typical charges of affiliated firms and firms they engage repeatedly and require consumers to use, and can therefore provide estimates that are accurate when there is no changed circumstance. As discussed above, the Bureau is unaware of any data that can provide reliable market-wide estimates of the prevalence of changes between early TILA disclosures and RESPA GFEs and final loan terms and closing costs, and the causes of those changes. Therefore, the Bureau cannot provide estimates of how often creditors would have to absorb higher than expected costs that cannot be attributed to a changed circumstance. The Bureau also understands that the final rule may result in increased use of affiliated service providers, so that creditors can more directly control changes in settlement costs, which could have a negative impact on independent providers who are typically small entities. Some commenters argued that the negative impact on independent providers could lead to reduced competition for settlement services and ultimately higher costs for consumers. The Bureau is unaware of any evidence that such an increase in costs is likely to occur. Alternatively, the final rule may encourage creditors to allow borrowers to choose settlement service providers that are not on a list provided to the borrower, so that the zero tolerance requirement would not apply. This would appear to benefit independent service providers, or at least be neutral relative to current practices.

4. Provision of Closing Disclosure

The final rule requires delivery of the integrated Closing Disclosure three business days before consummation in all cases. The final rule makes the creditor responsible for providing the Closing Disclosure, but allows for either the creditor or the settlement agent to provide it.

Timing of Closing Disclosure Provision

TILA and RESPA establish different timing requirements for disclosing final loan terms and costs to consumers. As discussed more fully in the section-by-section analysis of § 1026.19(f)(1)(i) above, TILA generally provides that, if the early disclosures contain an APR that is no longer accurate, the creditor shall furnish an additional, corrected disclosure to the consumer not later than three business days before consummation. RESPA, on the other hand, requires that the final statement of loan costs and terms be provided to the consumer at or before settlement, with the borrower permitted to request an inspection of the RESPA settlement statement one day prior to closing. To meet the Dodd-Frank Act's mandate to integrate the disclosures required by TILA and RESPA, and to better facilitate consumer understanding of final loan terms and closing costs, the final rule requires delivery of the integrated

Closing Disclosure three business days before closing in all circumstances. However, to prevent unnecessary closing delays, the final rule permits limited changes after provision of the Closing Disclosure to reflect common adjustments, such as changes to recording fees. A new Closing Disclosure must be provided with a new three-day-waiting period if and only if one of the following triggers is met: The APR becomes inaccurate, as defined in § 1026.22, the product type changes, or a prepayment penalty is added.

Costs to Small Entities

The required provision of the Closing Disclosure three business days prior to consummation in all circumstances may result in closing delays. In extreme cases, such delays could cause a transaction to fall through if a consumer is under a contractual obligation to close by a certain date. Creditors and closing agents, however, currently coordinate to provide RESPA closing documents at closing. Both closing agents and creditors have incentives to complete closings as scheduled, and therefore the Bureau believes that they will adjust their business practices such that the Closing Disclosure will be provided in a timely manner and closing problems will be infrequent. If the requirement does lead to delayed or canceled closings, this would impose costs on small entities. Such closing delays could result in loss of revenue for transactions that fall through due to a delay. The final rule may also create legal and reputational risks for creditors or settlement agents that are unable to close loans as planned.

As discussed above, to prevent unnecessary closing delays, the final rule permits limited changes after provision of the Closing Disclosure to reflect common adjustments, such as changes to recording fees. A new Closing Disclosure must be provided with a new three-day-waiting period if and only if one of the following triggers is met: The APR becomes inaccurate, as defined in § 1026.22, the product type changes, or a prepayment penalty is added. The Bureau believes these changes will help reduce or minimize costs imposed on small entities.

Responsibility for Providing the Closing Disclosure

TILA and RESPA require that different parties provide the final disclosures to consumers. Specifically, TILA requires the creditor to provide the final TILA disclosure to consumers, while RESPA requires that the person conducting the settlement provide the final statement of settlement costs to the consumer. However, section 1419 of the Dodd-Frank Act amended TILA to make creditors responsible for disclosing settlement cost information. *See* TILA section 128(a)(17). To reconcile these statutory differences and implement TILA section 128(a)(17), the final rule makes the creditor ultimately responsible for provision of the Closing Disclosure three business days before closing, but creditors may use settlement agents to provide the Closing Disclosure, provided that they comply with the final rule's requirements for the Closing Disclosure.

Costs to Small Entities

The costs to creditors and to settlement agents of potential joint responsibility for provision of the Closing Disclosure depend on how creditors and settlement agents go about fulfilling such responsibility. Joint provision would likely require coordination on the part of creditors and settlement agents similar to what is done today, which could indicate that any additional costs to creditors or settlement agents would be minimal. One additional cost, however, may be re-working that coordination to adjust to the new forms and timing requirement (discussed above).

5. Implementation of New Disclosures Mandated by the Dodd-Frank Act

As discussed more fully in the section-by-section analysis above, title XIV of the Dodd-Frank Act added new disclosure requirements to TILA and RESPA for mortgage transactions. With respect to the disclosures included in the Loan Estimate and Closing Disclosure, although the Dodd-Frank Act does not specifically require inclusion of all of these new disclosures, the Bureau believes these disclosures should be included in the integrated forms because doing so will improve the overall effectiveness of the integrated disclosure, which may benefit consumers and covered persons, and also reduce burden on covered persons. Finalizing the rules implementing these title XIV disclosures simultaneously with the final TILA–RESPA rule will avoid unnecessary regulatory burden by preventing creditors from having to implement multiple rounds of disclosure rules. The Bureau does not anticipate additional costs to covered persons as a result of the new disclosure requirements included in the Loan Estimate and Closing Disclosure.

Beyond introducing the Loan Estimate and Closing Disclosure, the final rule also includes distinct escrow [397] and partial payment [398] disclosures, as discussed more fully in the section-by-section analysis above. With respect to the Post-Consummation Escrow Cancellation Notice and Partial Payment Policy disclosure, which are not and cannot be included in the Loan Estimate and Closing Disclosure because they are delivered post-consummation, the additional costs are likely to be minimal and the disclosures should be relatively easy to implement because creditors already have to revamp their origination process due to the newly integrated TILA and RESPA disclosures.

d. Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary for the Preparation of the Report or Record

Section 603(b)(4) of the RFA requires an estimate of the classes of small entities which will be subject to the requirement. The classes of small entities which will be subject to the reporting, recordkeeping, and compliance requirements of the final rule are the same classes of small entities that are identified above in part VIII.B.3.

Section 603(b)(4) of the RFA also requires an estimate of the type of professional skills necessary for the preparation of the reports or records. The Bureau does not anticipate that, except in certain rare circumstances, any professional skills required for reporting, recordkeeping, and other compliance requirements of this final rule will be required that are not otherwise required in the ordinary course of business of the small entities affected by the final rule. Part VIII.B.4.b and 4.c summarizes the recordkeeping

[397] Section 129D(j)(1)(B) establishes that a creditor or servicer must provide disclosures after consummation with the information set forth under TILA section 129D(j)(2) when a consumer chooses, and provides written notice of the choice, to close the consumer's escrow account established in connection with a consumer credit transaction secured by real property and in accordance with any statute, regulation, or contractual agreement (the Post-Consummation Escrow Cancellation Disclosure). 15 U.S.C. 1639d(h). See the section-by-section analysis of § 1026.20(e).

[398] Specifically, section 129C(h) requires a person who becomes a creditor of an existing ''residential mortgage loan'' to disclose the following regarding partial payments: (i) The creditor's policy regarding the acceptance of partial payments; and (ii) if they are accepted, how such payments will be applied to the mortgage loan, and if such payments will be placed in escrow. 15 U.S.C. 1639c(h). This requirement is in addition to the identical disclosure required before settlement that was added to TILA by section 1414(d) of the Dodd-Frank Act, which the Bureau is implementing in § 1026.38(l)(5), as described above. See the section-by-section analysis of § 1026.39.

and compliance requirements of the final rule that will affect small entities.

With regard to the compliance requirements, as discussed above, the Bureau understands that, based on feedback from the SERs, the small entities that will be affected by the final rule will continue to perform the basic functions that they perform today: generating disclosure forms (and answering consumers' questions about them), taking loan applications, redisclosing estimates of settlement costs, providing final disclosures, and maintaining systems to calculate the APR. The major elements of the final rule, described earlier in this part VIII, relate to these continuing functions. Therefore, the Bureau believes that small entities will have the professional skills necessary to comply with the final rule.

Specifically with regard to the requirement to use the integrated disclosure forms, the SERs identified potentially significant one-time costs associated with changing software systems to produce the forms and provided a wide range of estimates of one-time costs of training staff and related parties to use the new integrated forms and update systems and processes.[399] The SERs also reported that they typically contract out to third party software vendors the design of the disclosure forms provided to consumers, and pay annual fees to such vendors for upgrades. The SERs did not express any concerns that the design and implementation of the forms or the use of the integrated disclosure forms on an ongoing basis would require their staff to possess a different set of professional skills than that required in the ordinary course of business currently. Furthermore, while the SERs identified potential upfront and ongoing training costs as a result of the proposals under consideration at the time, the Bureau believes efforts to train small entity staff on the updated software and compliance systems will reinforce existing professional skills, rather than require staff to acquire skill sets above those needed in the ordinary course of business, and to comply with HUD's 2008 Final RESPA Rule (which, as discussed above, significantly overhauled the design and content of the RESPA GFE and settlement statement disclosures given to consumers).

In addition, although the Bureau acknowledges the possibility that certain small entities may have to hire additional staff as a result of certain aspects of the final rule,[400] the Bureau has no evidence that such additional staff will have to possess a qualitatively different set of professional skills than small entity staff employed currently. The Bureau presumes that any additional staff that small entities may need to hire would be of the same professional skill set as current staff, since this final rule will be reallocating existing responsibilities among creditors and settlement agents. As a more general matter, to the extent the final rule adds new disclosures that will need to be generated and explained to consumers, the Bureau anticipates that any incremental increase in the complexity of such tasks for small entity staff may be counterbalanced by the regulatory streamlining and clearer guidance provided by the final rule.

6–1. Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities

The Bureau understands the new provisions will impose certain costs on small entities, and has attempted to mitigate the burden where it can be done without unduly diminishing consumer protection. The section-by-section analysis of each provision contains a complete discussion of the steps taken to minimize burden for small entities.

Since the disclosures are mandatory for all transactions covered by RESPA, the Bureau believes that once the new disclosures are implemented, the ongoing cost of providing the disclosures will not have a major impact on small entities covered by the rule versus larger entities covered by the rule. Similarly, the tolerance rules and timing requirements align for small and large entities, and are calculated similarly on a per-loan basis. To the extent that small entities may have less sophisticated information technology systems, the Bureau's decision not to finalize the proposed electronic, machine readable record retention requirement or the proposed expansion of the finance charge reduces burden on small entities relative to what would have been required if these proposals had been finalized, since they will not have to upgrade their information technology systems in these ways to comply with the final rule.

6–2. Description of the Steps the Agency Has Taken To Minimize Any Additional Cost of Credit for Small Entities

Section 603(d) of the RFA requires the Bureau to consult with small entities regarding the potential impact of the proposed rule on the cost of credit for small entities and related matters. 5 U.S.C. 603(d). To satisfy these statutory requirements, the Bureau provided notification to the Chief Counsel on February 7, 2012, that the Bureau would collect the advice and recommendations of the same small entity representatives identified in consultation with the Chief Counsel through the Small Business Review Panel process concerning any projected impact of the proposed rule on the cost of credit for small entities.[401] 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.[402]

At the time the Bureau circulated the Small Business Review Panel Outline to the SERs in advance of the Small Business Review Panel Outreach Meeting, it had no evidence that the proposals then under consideration would result in an increase in the cost of business credit for small entities. Instead, the summary of the proposals stated that the proposals would apply only to mortgage loans obtained by consumers primarily for personal, family, or household purposes, and the proposals would not apply to loans obtained primarily for business purposes.[403] The Bureau has no evidence that the final rule will result in an increase in the cost of business credit for small entities. Instead, the final rule will apply only to mortgage loans obtained by consumers primarily for personal, family, or household purposes and the final rule will not apply to loans obtained primarily for business purposes. At the Small Business Review Panel Outreach Meeting, the Bureau asked the SERs a series of questions regarding cost of business credit issues.[404] The questions

[399] *See* Small Business Review Panel Report at 18.

[400] For example, as discussed in part VIII.B.4.c.(4), small entity creditors may need to hire additional temporary or permanent staff to handle the increased workload associated with collecting the settlement costs and coordinating with the settlement agents and third party service providers.

[401] *See* 5 U.S.C. 603(d)(2)(A). The Bureau provided this notification and other information provided to the Chief Counsel with respect to the Small Business Review Panel process pursuant to section 609(b)(1) of the RFA.

[402] *See* 5 U.S.C. 603(d)(2)(B).

[403] *See* 15 U.S.C. 1603(1); 12 U.S.C. 2606(a)(1).

[404] *See* the Small Business Review Panel Report, appendix D, at 154–155 (PowerPoint slides from the

Continued

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 take out closed-end, home-secured loans to be used primarily for personal, family, or household purposes and use them secondarily to finance their small businesses, and whether the proposals under consideration would increase the SERs' cost of credit.

In general, the creditor SERs reported making few mortgage loans that are used primarily for personal, family, or household purposes (and therefore are covered by TILA and RESPA) but that are used, secondarily, to finance a small business. In addition, the few loans they described making would appear to fall within the TILA and RESPA exceptions for loans made primarily for business purposes,[405] and therefore would not be subject to the proposed rule. Based on the feedback obtained from the SERs at the Panel Outreach Meeting, the Bureau currently has no evidence that the final rule will result in an increase in the cost of credit for small business entities.

IX. Paperwork Reduction Act

A. Overview

Certain provisions of this final rule contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (Paperwork Reduction Act or PRA). As previously discussed, the Dodd-Frank Act amended TILA and RESPA to mandate specifically that the Bureau publish an integrated disclosure combining the TILA and RESPA disclosures for mortgage loans subject to either law or both laws. Dodd-Frank Act sections 1098, 1100A. The Dodd-Frank Act required the Bureau to publish proposed rules and forms combining the disclosures by July 21, 2012. Dodd-Frank Act section 1032(f). On July 9, 2012, the Bureau issued a notice of the proposed rule, which was published in the **Federal Register** on August 23, 2012 (77 FR 51116). The Bureau did not receive any comments relating to the PRA analysis contained in the proposed rule or comments containing specific cost estimates addressing the Bureau's PRA analysis. This final rule finalizes that proposal.

This rule contains information collection requirements that have not been approved by the OMB and, therefore, are not effective until OMB approval is obtained. The unapproved information collection requirements contained in this rule are described below. The Bureau will publish a separate notice in the **Federal Register** announcing OMB's action on these requirements, including the OMB control number and expiration date.

This final rule amends 12 CFR part 1024 (Regulation X) and 12 CFR part 1026 (Regulation Z). Both Regulations X and Z currently contain collections of information approved by OMB. The Bureau's OMB control number for Regulation X is 3170–0016 and for Regulation Z is 3170–0015. The PRA (44 U.S.C. 3507(a), (a)(2) and (a)(3)) requires that a Federal agency may not conduct or sponsor a collection of information unless OMB has approved the collection under the PRA and the OMB control number obtained is displayed. Further, notwithstanding any other provisions of law, no person is required to comply with, or is subject to any penalty for failure to comply with, a collection of information that does not display a currently valid OMB control number (44 U.S.C. 3512).

Based on the specific statutory mandate to combine the disclosures under TILA and RESPA, the Bureau is amending Regulation X and Regulation Z to establish new disclosure requirements and forms in Regulation Z for closed-end consumer credit transactions secured by real property, other than reverse mortgages. Accordingly, the final rule requires, among other things, that an integrated Loan Estimate be provided to consumers within three business days after receipt of the consumer's application to replace the early TILA disclosure and RESPA GFE, and that an integrated Closing Disclosure be received by consumers at least three business days prior to consummation to replace the final TILA disclosure and RESPA settlement statement. The Dodd-Frank Act also made several amendments to the disclosure requirements in TILA and RESPA, a number of which are being finalized in this final rule.

The information collections in the final rule are required to provide benefits for consumers and are mandatory for all loans subject to the rule. *See* 15 U.S.C. 1601 *et seq.;* 12 U.S.C. 2601 *et seq.,* 5532(f). Because the Bureau does not collect any information under the final rule, no issue of confidentiality arises. The likely respondents are commercial banks/savings institutions, credit unions, mortgage companies (non-bank lenders), mortgage brokers, and settlement agents[406] that would be required to provide the mortgage disclosures required by the final rule, either because they make mortgage loans subject to the final rule or because they may be responsible for completing or providing required disclosures.[407]

Under the final rule, the Bureau accounts for the entire paperwork burden for respondents under Regulation X. The Bureau generally also accounts for the paperwork burden associated with Regulation Z for the following respondents pursuant to its administrative enforcement authority: insured depository institutions with more than $10 billion in total assets, their depository institution affiliates, and certain nondepository institutions. The Bureau and the FTC generally both have enforcement authority over nondepository institutions for Regulation Z. Accordingly, the Bureau has allocated to itself half of the estimated burden to nondepository institutions. Other Federal agencies are responsible for estimating and reporting to OMB the total paperwork burden for the institutions for which they have administrative enforcement authority. They may, but are not required to, use the Bureau's burden estimation methodology.

For purposes of this analysis, the Bureau assumes that any burden increase associated with the final rule is allocated to Regulation Z. As discussed in part IX.C.2, below, under the final rule there is no burden increase associated with Regulation X, and in fact there is a burden reduction attributed to Regulation X because the

Panel Outreach Meeting, ''Topic 7: Impact on the Cost of Business Credit'').'')

[405] *See* 15 U.S.C. 1603(1); 12 U.S.C. 2606(a)(1).

[406] The Bureau assumes that these are the categories of businesses that are directly engaged with consumers in residential mortgage transactions. Although respondents under PRA for Regulation Z also include mortgage brokers and settlement agents, for purposes of the PRA analysis, the Bureau assumes that the creditor takes on the obligation to deliver the Loan Estimate and Closing Disclosure. Accordingly, there is minimal burden attributed to mortgage brokers and settlement agents. Also, under the final rule, the creditor is solely responsible for delivering the Loan Estimate, but settlement agents are also expressly permitted to provide the Closing Disclosure.

[407] For purposes of this PRA analysis, references to ''creditors'' or ''lenders'' refer collectively to commercial banks, savings institutions, credit unions, and mortgage companies (*i.e.,* nondepository lenders), unless otherwise stated. Moreover, reference to ''respondents'' shall generally mean all categories of entities identified in the sentence to which this footnote is appended, except as otherwise stated or if the context indicates otherwise.

RESPA GFE and settlement statement disclosures are eliminated for all of the mortgage market, other than reverse mortgages, and replaced by the Loan Estimate and Closing Disclosure, under Regulation Z. Using the Bureau's burden estimation methodology, the total estimated burden for the approximately 14,195 banks, savings institutions, credit unions, and mortgage companies subject to the Regulation Z requirements in the final rule,[408] including Bureau respondents, is approximately 2.8 million hours for one-time changes and 0.8 million hours annually. The estimates presented in this part IX represent weighted averages across respondents. The Bureau expects that the amount of time required to implement each of the changes for a given institution may vary based on the size, complexity, and practices of the respondent.

B. Information Collection Requirements

The Bureau believes the following aspects of the final rule are information collection requirements under the PRA: the development, implementation, and continuing use of new, integrated Loan Estimate and Closing Disclosure forms required for closed-end mortgage transactions subject to the final rule, the generation and provision of additional Loan Estimates in particular transactions as a result of increases in the closing costs that were included in the initial Loan Estimate, and the provision of the Post-Consummation Escrow Cancellation Notice and post-consummation Partial Payment Policy disclosure for certain mortgage transactions.[409] In the proposed rule the Bureau also discussed potential record retention requirements in a standardized, electronic, machine-readable format. For the reasons discussed above in part V, the Bureau has decided not to finalize such proposal.

1. Initial and Final Disclosures

As discussed above in part VII, the integrated Loan Estimate and the Closing Disclosure would result in certain compliance costs to covered persons. The Bureau believes that many of the costs of complying with these requirements would be common across the two disclosures, and therefore discusses them together here. Under the final rule, responsibility for delivering the Loan Estimate lies with the creditor. The Bureau believes that in some circumstances the Loan Estimate may be delivered by a mortgage broker acting on behalf of the creditor. The Bureau believes the costs would be similar for Loan Estimates delivered by creditors and mortgage brokers, and the estimates presented here are based on the assumption that the creditor delivers the Loan Estimate. As mentioned above, the creditor is responsible for providing the Closing Disclosure, but the settlement agent may provide the Closing Disclosure on the creditor's behalf, provided that one of them does so. The Bureau believes that if settlement agents were to take on a substantial portion of the responsibility for delivering the Closing Disclosure the costs would be similar, although they may be borne by different parties.

a. One-Time costs

Covered persons will incur one-time costs associated with training and reviewing the regulation. In addition, covered persons who maintain their own software and compliance systems will incur one-time costs to adapt their software and compliance systems to produce the new forms.[410] Based on information provided by creditors and by software vendors, the Bureau believes that, in general, larger creditors develop and maintain their own compliance software and systems, while smaller creditors primarily rely on software and compliance systems provided by outside vendors. The Bureau estimates 95 percent of creditors rely on vendors.

The use of vendors will substantially mitigate the costs of revising software and compliance systems, as the efforts of a single vendor would address the needs of a large number of creditors. When a vendor is used, the Bureau assumes that each entity spends 3 months of software vendor training, installation, trouble, troubleshooting, and in-house testing time for 1 individual at small creditors and 8 individuals at larger firms. Based on feedback provided by small entities that participated in the Small Business Review Panel process, the Bureau estimates that creditors that maintain their own compliance software and systems would incur costs of roughly $100,000 to determine what changes need to be made and to update their systems to comply with the final rule.

Covered persons will incur one-time costs associated with training employees to use new forms and any new compliance software and systems. The Bureau estimates that each loan officer or other loan originator will need to receive eight hours of training. The Bureau further estimates that a trainer will spend an hour for every ten hours of trainee time.

The Bureau estimates that, for each covered person, two compliance officers would each spend 30 hours learning about the rule and developing training materials.

The Bureau estimates the total one-time costs of reading the relevant sections of the **Federal Register,** revising systems to provide the new disclosures, and training personnel for the Bureau respondents to be approximately $96.7 million, which corresponds to approximately 2,800,000 hours. Annualized over five years, this is an annual cost of $19.3 million. The Bureau estimates the one-time costs to the 134 depository institutions (including their depository affiliates) that are mortgage originator respondents of the Bureau under Regulation Z[411] would be $54.1 million, or 1,100,000 hours. For the estimated 2,787 nondepository institutions that are subject to the Bureau's administrative enforcement authority, the Bureau is assuming that it imposes half the burden imposed on nondepository institutions for purposes of this PRA analysis.[412] The Bureau estimates the one-time costs would be $42.6 million, or 1,700,000 hours.[413]

[408] For the reasons described above, this figure excludes mortgage brokers and settlement agents.

[409] The final rule also provides that, if the creditor permits a consumer to shop for a settlement service, the creditor shall provide the consumer with a written list identifying available providers of that service and stating that the consumer may choose a different provider for that service. Accordingly, creditors must comply with this additional requirement in certain transactions where consumers are permitted to shop for settlement services. This is an existing requirement under current Regulation X, 12 CFR 1024 app. C, but is not specifically itemized as a separate information collection under Regulation X. Because the timing of this requirement coincides with the provision of the initial Loan Estimate to consumers, the burden associated with the written list of providers requirement under the final rule is included in the burden calculation for the Loan Estimate.

[410] In addition to changing the format of the required forms, the new forms include numerous new disclosures that are required by the Dodd-Frank Act. The Bureau believes that this additional information will be added to the forms as part of the process of adapting software and compliance systems to produce the new forms, and therefore does not provide separate estimates for the costs of adding this additional information.

[411] 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.

[412] 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.

[413] For additional information, please see the amended Supporting Statement for OMB Control Number 3170–0016, available at *www.reginfo.gov*.

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 will be generated using data that may not otherwise be collected in the normal course of business, and has considered this in calculating the ongoing burden associated with the information collection. The Bureau's estimates also account for the time covered persons would spend to review the forms for accuracy.

In calculating the total burden of providing Loan Estimates and Closing Disclosures, the Bureau assumes that Loan Estimates will be provided in response to applications for mortgages and Closing Disclosures will be provided three business days before mortgages are consummated. The Bureau further estimates entities will reissue on average two Loan Estimates per loan originated.

Table 2 summarizes these ongoing costs, which total an estimated $49.6 million per year. This represents an average cost of approximately $9 per origination.[414]

Table 2: Ongoing Costs for Integrated Disclosures for CFPB Respondents

	Loan Estimate	Closing Disclosure	Total
CFPB share of responses	9,922,000	5,413,000	15,335,000
Annual Burden (hours):			
Time per response (minutes)	3	6	
Total (hours)	393,000	439,000	832,000
Annual Burden ($):			
Labor costs	18,772,000	25,902,000	44,674,000
Production and distribution costs	3,144,000	1,756,000	4,900,000
Total	**21,916,000**	**27,658,000**	**49,574,000**

2. Implementation of Certain New Disclosures Mandated by the Dodd-Frank Act

As discussed above in part VII, title XIV of the Dodd-Frank Act added new disclosure requirements to TILA and RESPA for mortgage transactions, including the Post-Consummation Escrow Cancellation Notice and the post-consummation Partial Payment Policy disclosure for certain mortgage transactions. Although the Dodd-Frank Act does not specifically require inclusion of all of these new disclosures in the Loan Estimate and the Closing Disclosure, the Bureau is including some of these disclosures in the integrated forms and also requiring the provision of the separate Post-Consummation Escrow Cancellation Notice and separate Partial Payment Policy disclosure because doing so will benefit consumers and reduce burden on covered persons for the reasons discussed below.

Because creditors will be updating software and compliance systems for these two disclosures at the same time as and in conjunction with the updating for the Loan Estimate and the Closing Disclosure, the disclosures should be relatively easy to implement and the additional costs are likely to be minimal. The Bureau does not anticipate additional costs to covered persons as a result of the Post-Consummation Escrow Cancellation Notice and separate Partial Payment Policy disclosure, although, as noted above, covered persons may incur some insignificant recurring costs associated with providing this additional information to consumers once the implementing rules take effect. Although presentation of the information will be ongoing, modifying systems to perform these calculations and training existing employees on the new concepts will be a one-time cost. Accordingly, the Bureau does not provide separate estimates for the one-time or ongoing costs of adding this additional information beyond the cost estimates for the integrated disclosures that are discussed above and below.

3. Documentation Retention

The current record retention period of two years under Regulation Z supports private actions and regulatory enforcement actions. However, the CFPB has decided to require creditors to retain evidence of compliance with the integrated disclosure provisions of Regulation Z for three years after consummation of the transaction, except that creditors must retain the Closing Disclosure and all documents related to the Closing Disclosure for five years after consummation, consistent with the requirements of existing Regulation X. Creditors must retain evidence of compliance with the Post-Consummation Escrow Cancellation Notice and the post-consummation Partial Payment Policy disclosure for two years in accordance with the general retention period under 1026.25(a). The final rule also requires that if a creditor sells, transfers, or otherwise disposes of its interest in a mortgage and does not service the mortgage, the creditor shall provide a copy of the Closing Disclosure to the owner or servicer of the mortgage as a

[414] Bureau respondents are estimated to originate approximately 4.8 million mortgages per year that would be subject to these information collections.

part of the transfer of the loan file. Such owner or servicer shall retain such disclosures for the remainder of the five-year period. The CFPB recognizes that this requirement is different from the current requirements under Regulation X, which does not require a creditor to maintain these documents if the creditor disposes of its interest in the mortgage loan and does not service the mortgage loan. In addition, the final rule requires creditors and mortgage brokers to retain documentation sufficient to show their supervisory agencies that one of the exceptions applies whenever a cost for a service provided by a company that is owned by or affiliated with the creditor proves to be higher than estimated in the Loan Estimate, similar to the current document retention requirements under Regulation X for when the RESPA GFE is reissued. These retention requirements may result in additional cost to respondents that are creditors and mortgage brokers. However, the Bureau believes that any burden associated with the final rule's recordkeeping requirement will be minimal or de minimis, since only information sufficient to reconstruct the required record is required to be retained.

The final rule does not finalize the proposal to require the retention of data relating to the integrated disclosures in electronic, machine-readable format.

C. Summary of Burden Hours

1. Regulation Z

The below table summarizes the one time and annual burdens under Regulation Z associated with information collections affected by the final rule for Bureau respondents under the PRA.

Table 3: Regulation Z One-Time and Annual Burdens Impacted by Final Rule for Bureau Respondents

	Loan Estimate	Closing Disclosure	Total
Number of Respondents	**2,922**	**2,922**	**2,922**
CFPB share of responses	9,922,000	5,413,000	15,335,000
One-Time Burden:			
Labor (hours)	1,378,000	1,378,000	
Labor Costs	41,068,000	41,068,000	82,137,000
Annual Burden:			
Labor (hrs)	393,000	439,000	832,000
Labor costs	18,772,000	25,902,000	44,674,000
Production and distribution costs	3,144,000	1,756,000	4,900,000
Total	**21,916,000**	**27,658,000**	**49,574,000**

2. Regulation X

The final rule does not increase PRA burden associated with Regulation X, and instead removes the majority of the burden associated with two information collections: (i) The RESPA GFE and (ii) the RESPA settlement statement. Currently, the RESPA GFE and settlement statement disclosures account for approximately 10.9 million annual burden hours.[415] Under the final rule, the majority of this burden would be eliminated, with only reverse mortgage transactions remaining subject to the RESPA GFE and RESPA settlement statement requirements. The remaining burden associated with these disclosures in Regulation X would total approximately 62,400 hours, assuming no change in the time required to respond. The below table summarizes the annual burdens under Regulation X associated with information collections affected by the final rule.[416]

[415] 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).

[416] All of the following estimates related to Regulation X are based on 2010 estimates.

Table 4: Regulation X Annual Burdens Impacted by Final Rule

	GFE	HUD-1	Total
Number of responses	122400	72000	194400
Annual Burden (hrs):			
Time per response (minutes):	10	35	
Total (hours)	**20400**	**42000**	**62400**
Annual Burden ($):			
Labor Costs	938400	1932000	2870400

3. Net Effect on PRA Estimates of Ongoing Burden

As discussed above, by integrating the TILA and RESPA disclosures, the final rule eliminates the majority of the ongoing PRA burden under Regulation X for the RESPA GFE and settlement statement disclosures, while simultaneously creating ongoing burden attributable to the integrated disclosures in Regulation Z. On a market-wide basis, annual PRA burden in Regulation X decreases by approximately 10.8 million hours. The Bureau cannot similarly quantify the change in ongoing burden under Regulation Z, because current burden estimates neither itemize the burden hours attributable to the early, revised, and final TILA disclosures nor limit burden hours to mortgage transactions (but, instead, estimate for closed-end credit, generally). However, the total PRA burden associated with the new integrated disclosures for all institutions subject to Regulation Z is estimated to be 2.35 million hours annually. These changes reflect the decrease in the number of mortgages originated, increased systems automation, changes in methodology for calculating burden under the PRA, and the effects of the final rule.

D. Comments

The Consumer Financial Protection Bureau has a continuing interest in the public's opinions of our collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to:

The Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, or by the Internet to *PRA@cfpb.gov.*

List of Subjects

12 CFR part 1024

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

12 CFR part 1026

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

Authority and Issuance

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

PART 1024—REAL ESTATE SETTLEMENT PROCEDURES ACT (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, 5532, 5581.

Subpart A—General

■ 2. Section 1024.5 is amended by revising paragraph (a), removing and reserving paragraph (b)(1), and adding paragraph (d).

The revision and addition read as follows:

§ 1024.5 Coverage of RESPA.

(a) *Applicability.* RESPA and this part apply to federally related mortgage loans, except as provided in paragraphs (b) and (d) of this section.

* * * * *

(d) *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), (f), and (g); or

(2) That satisfies the criteria in Regulation Z, 12 CFR 1026.3(h).

* * * * *

Subpart C—Mortgage Servicing

■ 3. Section 1024.30 is amended by revising paragraph (c)(1) to read as follows:

§ 1024.30 Scope.

* * * * *

(c) *Scope of certain sections.* (1) Section 1024.33(a) only applies to reverse mortgage transactions.

* * * * *

■ 4. Section 1024.33 is amended by revising paragraph (a) to read as follows:

§ 1024.33 Mortgage servicing transfers.

(a) *Servicing disclosure statement.* Within three days (excluding legal public holidays, Saturdays, and Sundays) after a person applies for a reverse mortgage transaction, the lender, mortgage broker who anticipates using table funding, or dealer in a first-lien dealer loan shall provide to the person a servicing disclosure statement that states whether the servicing of the mortgage loan may be assigned, sold, or transferred to any other person at any time. Appendix MS–1 of this part contains a model form for the disclosures required under this paragraph (a). If a person who applies for a reverse mortgage transaction is denied credit within the three-day period, a servicing disclosure statement is not required to be delivered.

* * * * *

■ 5. In Appendix A to part 1024:

■ A. Under the heading Line Item Instructions, *Section J. Summary of Borrower's Transaction,* Line 102, the third sentence is amended by capitalizing ''State'' wherever it appears.

■ B. Under the heading Line Item Instructions, *Section J. Summary of*

Borrower's Transaction, paragraph 6 containing instructions for Line 202 is amended by adding at the end of the paragraph ''For reverse mortgage transactions, the amount disclosed on Line 202 is the initial principal limit.''

■ C. Under the heading Line Item Instructions, *Section J. Summary of Borrower's Transaction,* paragraph 7 containing instructions for Lines 204–209, is amended by adding at the end of the paragraph ''For reverse mortgages, the amount of any initial draw at settlement is disclosed on Line 204.''

■ D. Under the heading Line Item Instructions, the heading *Section L. Settlement Charges* is amended by adding a period after ''*Charges.*''

■ E. Under the heading Line Item Instructions, *Section L. Settlement Charges,* sentence three of paragraph 22 containing instructions for Line 1000–1007 is amended by removing "'escrow', and impound','' and adding in its place '' 'escrow,' and 'impound,' ''.

■ F. Under the heading Line Item Instructions, *Comparison of Good Faith Estimate (GFE) and HUD–1/1A Charges,* the last sentence of paragraph 1 is amended by removing '' 'Charges that Cannot Increase', 'Charges that Cannot Increase More Than 10%', and 'Charges that Can Change','' and adding in its place '' 'Charges that Cannot Increase,' 'Charges that Cannot Increase More Than 10%,' and 'Charges that Can Change,' ''.

■ G. Under the heading Line Item Instructions, *Comparison of Good Faith Estimate (GFE) and HUD–1/1A Charges,* the first sentence of paragraph 2 is amended by removing '' 'Charges that Cannot Increase'.'' and adding in its place '' 'Charges that Cannot Increase.' ''.

■ H. Under the heading, *Comparison of Good Faith Estimate (GFE) and HUD–1/1A Charges,* the first sentence of paragraph 3 is amended by removing '' 'Charges That Cannot Increase More Than 10%'.'' and adding in its place '' 'Charges That Cannot Increase More Than 10%.' ''.

■ I. Under the heading, *Comparison of Good Faith Estimate (GFE) and HUD–1/1A Charges,* the first sentence of paragraph 5 is amended by removing '' 'Charges That Can Change'.'' adding in its place '' 'Charges That Can Change.' ''.

■ J. Remove the paragraph under the heading Loan terms and add two new paragraphs in its place.

The revision reads as follow:

Appendix A to Part 1024—Instructions for Completing HUD–1 And HUD–1A Settlement Statements; Sample HUD–1 And HUD–1A Statements

* * * * *

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.

* * * * *

■ 6. 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 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.

* * * * *

■ 7. In Appendix C to part 1024:

■ A. The second sentence of the first paragraph following the Appendix heading is amended by capitalizing ''Appendix'' where it appears.

■ B. Revise the paragraphs under Specific Instructions, *Summary of your loan.*

■ C. Under the heading Specific Instructions, *Escrow account information,* the paragraph is amended by adding at the end of the paragraph ''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.' ''.

■ D. Under the heading Specific Instructions, *Your Adjusted Origination Charges,* Block 2, *Your credit or charge (points) for the specific interest rate chosen,* paragraph 3 is amended by removing the last sentence ''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'.'' and replacing it with ''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.' ''.

■ E. Under the heading Specific Instructions *Your Adjusted Origination Charges,* Block 7, *Government recording charge,* the first sentence is amended by capitalizing ''State'' where it appears.

■ F. Under the heading Specific Instructions, *Your Adjusted Origination Charges,* Block 8, *Transfer taxes,* the first sentence is amended by capitalizing ''State'' where it appears.

The revisions read as follows:

Appendix C to Part 1024—Instructions for Completing Good Faith Estimate (GFE) Form

* * * * *

''*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.

* * * * *

PART 1026—TRUTH IN LENDING (REGULATION Z)

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

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

Subpart A—General

■ 9. Section 1026.1 is amended by revising paragraphs (b), (c)(5), (d)(5), and (e) to read as follows:

§ 1026.1 Authority, purpose, coverage, organization, enforcement, and liability.

* * * * *

(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 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. 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) * * *

(5) Except in transactions subject to § 1026.19(e) and (f), no person is required to provide the disclosures required by sections 128(a)(16) through (19), 128(b)(4), 129C(f)(1), 129C(g)(2) and (3), 129D(h), or 129D(j)(1)(A) of the Truth in Lending Act, section 4(c) of the Real Estate Settlement Procedures Act, or the disclosure required prior to settlement by section 129C(h) of the Truth in Lending Act. Except in transactions subject to § 1026.20(e), no person is required to provide the disclosure required by section 129D(j)(1)(B) of the Truth in Lending Act. Except in transactions subject to § 1026.39(d)(5), no person becoming a creditor with respect to an existing residential mortgage loan is required to provide the disclosure required by section 129C(h) of the Truth in Lending Act.

(d) * * *

(5) Subpart E contains special rules for mortgage transactions. Section 1026.32 requires certain disclosures and provides limitations for closed-end credit transactions and open-end credit plans that have rates or fees above specified amounts or certain prepayment penalties. 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 high-cost mortgages, as defined in § 1026.32(a). 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 special disclosure requirements for certain closed-end transactions secured by real property, as required by § 1026.19(e) and (f).

* * * * *

(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, Public Law 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.

■ 10. 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) * * *

(3)(i) *Application* means the submission of a consumer's financial information for the purposes of obtaining an extension of credit.

(ii) For transactions subject to § 1026.19(e), (f), or (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)(B), 1026.19(e)(1)(iv), 1026.19(e)(2)(i)(A), 1026.19(e)(4)(ii), 1026.19(f)(1)(ii), 1026.19(f)(1)(iii), 1026.20(e)(5), 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, 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.

* * * * *

■ 11. Section 1026.3 is amended by revising the introductory text and adding 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:

* * * * *

(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 home buyer 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 after consummation of the transaction;

(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 costs payable by the consumer in connection with the transaction at consummation 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.

Subpart C—Closed End Credit

■ 12. 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) and (d). 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) and 1026.20(e).

* * * * *

(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)):

* * * * *

(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) or (e), (f), and (g), 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) or (e), (f), and (g), 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:

* * * * *

■ 13. Section 1026.18 is amended by revising the introductory text and paragraphs (k)(1) and (2), (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 may be imposed for paying all or part of a loan's principal balance before the date on which the principal is due.

(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), the creditor shall disclose the following information about the interest rate and payments:

* * * * *

(3) * * *

(i) * * *

(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), 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.

* * * * *

■ 14. 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 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, the creditor shall provide the consumer with 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.

* * * * *

(e) *Mortgage loans secured by real property—early disclosures.* (1) *Provision of disclosures.* (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 provide the consumer with good faith estimates of the disclosures in § 1026.37.

(ii) *Mortgage broker.* (A) If a mortgage broker receives a consumer's application, either the creditor or the mortgage broker shall provide a consumer with the disclosures required under paragraph (e)(1)(i) of this section in accordance with paragraph (e)(1)(iii) of this section. If the mortgage broker provides the required disclosures, the mortgage broker shall comply with all relevant requirements of this paragraph (e). The creditor shall ensure that such disclosures are provided in accordance with all requirements of this paragraph (e). Disclosures provided by a mortgage broker in accordance with the requirements of this paragraph (e) satisfy the creditor's obligation under this paragraph (e).

(B) If a mortgage broker provides any disclosure under § 1026.19(e), the mortgage broker shall also comply with the requirements of § 1026.25(c).

(iii) *Timing.* (A) The creditor shall deliver or place in the mail 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).

(B) Except as set forth in paragraph (e)(1)(iii)(C) of this section, the creditor shall deliver or place in the mail the disclosures required under paragraph (e)(1)(i) of this section not later than the seventh business day before consummation of the transaction.

(C) For a transaction secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D), paragraph (e)(1)(iii)(B) of this section does not apply.

(iv) *Receipt of early disclosures.* If any disclosures required under paragraph (e)(1)(i) of this section are not provided to the consumer in person, the consumer is considered to have received the disclosures three business days after they are delivered or placed in the mail.

(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)(B) of this section, after receiving the disclosures required under paragraph (e)(1)(i) of this section. To modify or waive the 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 settlement services for which the consumer is permitted to shop in the disclosures required under paragraph (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 must identify at least one available provider for each settlement service for which the consumer is permitted to shop. 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) *Predisclosure 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. A consumer may indicate an intent to proceed with a transaction in any manner the consumer chooses, unless a particular manner of communication is required by the creditor. The creditor must document this communication to satisfy the requirements of § 1026.25.

(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 or other person provides a consumer with a written estimate of terms or costs specific to that consumer before the consumer receives the disclosures required under paragraph (e)(1)(i) of this section, the creditor or such person shall clearly and conspicuously state at the top of the front of the first page of the estimate in a font size that is no smaller than 12-point font: ''Your actual rate, payment, and costs could be higher. Get an official Loan Estimate before choosing a loan.'' The written estimate of terms or costs may not be made with headings, content, and format substantially similar to form H–24 or H–25 of appendix H to this part.

(iii) *Verification of information.* The creditor or other person shall not require a consumer to submit documents verifying information related to the consumer's application before providing the disclosures required by paragraph (e)(1)(i) of this section.

(3) *Good faith determination for estimates of closing costs.* (i) *General rule.* An estimated closing cost disclosed pursuant to paragraph (e) of this section is in good faith if the charge paid by or imposed on the consumer does not exceed the amount originally disclosed under paragraph (e)(1)(i) of this section, except as otherwise provided in paragraphs (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 for the third-party service is not paid to the creditor or an affiliate of the creditor; and

(C) The creditor permits the consumer to shop for the third-party service, consistent with paragraph (e)(1)(vi) 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 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;

(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; and

(E) Charges paid for third-party services not required by the creditor. These charges may be paid to affiliates of the creditor.

(iv) *Revised estimates.* For the purpose of determining good faith under paragraph (e)(3)(i) and (ii) of this section, a creditor may use a revised estimate of a charge instead of the estimate of the charge originally disclosed under paragraph (e)(1)(i) of this section if the revision is due to any 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 required under paragraph (e)(1)(i) of this section.

(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 locked when the disclosures required under paragraph (e)(1)(i) of this section were provided. On the date the interest rate is locked, the creditor shall provide a revised version of the disclosures required under paragraph (e)(1)(i) of this section to the consumer with the revised interest rate, the points disclosed pursuant to § 1026.37(f)(1), lender credits, and any other interest rate dependent charges and terms.

(E) *Expiration.* The consumer indicates 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 pursuant to paragraph (e)(1)(iii) of this section.

(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 provided pursuant to paragraph (e)(1)(iii) of this section, the creditor may provide revised disclosures to the consumer if the original disclosures required under paragraph (e)(1)(i) of this section 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 and receipt of revised disclosures.* (i) *General rule.* Subject to the requirements of paragraph (e)(4)(ii) of this section, if a creditor uses a revised estimate pursuant to paragraph (e)(3)(iv) of this section for the purpose of determining good faith under paragraphs (e)(3)(i) and (ii) of this

section, the creditor shall provide a revised version of the disclosures required under paragraph (e)(1)(i) of this section reflecting the revised estimate within three business days of receiving information sufficient to establish that one of the reasons for revision provided under paragraphs (e)(3)(iv)(A) through (C), (E) and (F) of this section applies.

(ii) *Relationship to disclosures required under § 1026.19(f)(1)(i).* The creditor shall not provide a revised version of the disclosures required under paragraph (e)(1)(i) of this section on or after the date on which the creditor provides the disclosures required under paragraph (f)(1)(i) of this section. The consumer must receive a revised version of the disclosures required under paragraph (e)(1)(i) of this section not later than four business days prior to consummation. If the revised version of the disclosures required under paragraph (e)(1)(i) of this section is not provided to the consumer in person, the consumer is considered to have received such version three business days after the creditor delivers or places such version in the mail.

(f) *Mortgage loans secured by real property—final disclosures.* (1) *Provision of disclosures.* (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 paragraphs (f)(1)(ii)(B), (f)(2)(i), (f)(2)(iii), (f)(2)(iv), and (f)(2)(v) 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) *Receipt of disclosures.* If any disclosures required under paragraph (f)(1)(i) of this section are not provided to the consumer in person, the consumer is considered to have received the disclosures three business days after they are delivered or placed in the mail.

(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 under paragraph (f)(1)(ii)(A) or (f)(2)(ii) of this section, after receiving the disclosures required under paragraph (f)(1)(i) of this section. To modify or waive the 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 relevant requirements of this paragraph (f). The creditor shall ensure that such disclosures are provided in accordance with all 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 this paragraph (f).

(2) *Subsequent changes.* (i) *Changes before consummation not requiring a new waiting period.* Except as provided in paragraph (f)(2)(ii), if the disclosures provided under paragraph (f)(1)(i) of this section become inaccurate before consummation, the creditor shall provide corrected disclosures reflecting any changed terms to the consumer so that the consumer receives the corrected disclosures at or before consummation. Notwithstanding the requirement to provide corrected disclosures at or before consummation, the creditor shall permit the consumer to inspect the disclosures provided under this paragraph, completed to set forth those items that are known to the creditor at the time of inspection, during the business day immediately preceding consummation, but the creditor may omit from inspection items related only to the seller's transaction.

(ii) *Changes before consummation requiring a new waiting period.* If one of the following disclosures provided under paragraph (f)(1)(i) of this section becomes inaccurate in the following manner before consummation, the creditor shall ensure that the consumer receives corrected disclosures containing all changed terms in accordance with the requirements of paragraph (f)(1)(ii)(A) of this section:

(A) The annual percentage rate disclosed under § 1026.38(o)(4) becomes inaccurate, as defined in § 1026.22.

(B) The loan product is changed, causing the information disclosed under § 1026.38(a)(5)(iii) to become inaccurate.

(C) A prepayment penalty is added, causing the statement regarding a prepayment penalty required under § 1026.38(b) to become inaccurate.

(iii) *Changes due to events occurring after consummation.* If during the 30-day period following consummation, an event in connection with the settlement of the transaction occurs that causes the disclosures required under paragraph (f)(1)(i) of this section to become inaccurate, and such inaccuracy results in a change to an amount actually paid by the consumer from that amount disclosed under paragraph (f)(1)(i) of this section, the creditor shall deliver or place in the mail corrected disclosures not later than 30 days after receiving information sufficient to establish that such event has occurred.

(iv) *Changes due to clerical errors.* A creditor does not violate paragraph (f)(1)(i) of this section if the disclosures provided under paragraph (f)(1)(i) contain non-numeric clerical errors, provided the creditor delivers or places in the mail corrected disclosures no later than 60 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 no later than 60 days after consummation, and the creditor complies with paragraph (f)(1)(i) of this section if the creditor delivers or places in the mail corrected disclosures that reflect such refund no later than 60 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 settlement 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 settlement agent shall provide the seller with the disclosures in § 1026.38 that relate to the seller's transaction reflecting the actual terms of the seller's transaction.

(ii) *Timing.* The settlement agent shall provide the disclosures required under paragraph (f)(4)(i) of this section no later than the day of consummation. If during the 30-day period following consummation, an event in connection with the settlement of the transaction occurs that causes disclosures required under paragraph (f)(4)(i) of this section to become inaccurate, and such inaccuracy results in a change to the amount actually paid by the seller from that amount disclosed under paragraph (f)(4)(i) of this section, the settlement agent shall deliver or place in the mail corrected disclosures not later than 30 days after receiving information sufficient to establish that such event has occurred.

(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.

(iv) *Creditor's copy.* When the consumer's and seller's disclosures under this paragraph (f) are provided on separate documents, as permitted under § 1026.38(t)(5), the settlement agent shall provide to the creditor (if the creditor is not the settlement agent) a copy of the disclosures provided to the seller under paragraph (f)(4)(i) 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.

(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 (required pursuant to section 5 of the Real Estate Settlement Procedures Act (12 U.S.C. 2604) to help consumers applying for federally related mortgage loans understand the nature and cost of real estate settlement services) to a consumer who applies for a consumer credit transaction secured by real property.

(i) The creditor shall deliver or place in the mail the special information booklet not later than three business days after the consumer's application is received. However, if the creditor denies the consumer's application before the end of the three-business-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 a consumer credit transaction secured by real property, the purpose of which is not the purchase of a one-to-four family residential property, including, but not limited to, the following:

(A) Refinancing transactions;

(B) Closed-end loans secured by a subordinate lien; and

(C) Reverse mortgages.

(2) *Permissible changes.* Creditors may not make changes to, deletions from, or additions to the special information booklet other than the changes specified in paragraphs (g)(2)(i) through (iv) of this section.

(i) In the ''Complaints'' section of the booklet, ''the Bureau of Consumer Financial Protection'' may be substituted for ''HUD's Office of RESPA'' and ''the RESPA office.''

(ii) In the ''Avoiding Foreclosure'' section of the booklet, it is permissible to inform homeowners that they may find information on and assistance in avoiding foreclosures at *http://www.consumerfinance.gov*. The reference to the HUD Web site, *http://www.hud.gov/foreclosure/*, in the ''Avoiding Foreclosure'' section of the booklet shall not be deleted.

(iii) In the ''No Discrimination'' section of the appendix to the booklet, ''the Bureau of Consumer Financial Protection'' may be substituted for the reference to the ''Board of Governors of the Federal Reserve System.'' In the Contact Information section of the appendix to the booklet, the following contact information for the Bureau may be added: ''Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552; *www.consumerfinance.gov/learnmore.*'' The contact information for HUD's Office of RESPA and Interstate Land Sales may be removed 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 title appearing on the cover shall not be changed. Names, addresses, and telephone numbers of the creditor 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.

■ 15. Section 1026.20 is amended by adding paragraph (e) to read as follows:

§ 1026.20 Disclosure requirements regarding post-consummation events.

* * * * *

(e) *Escrow account cancellation notice for certain mortgage transactions*—(1) *Scope.* In a closed-end consumer credit transaction secured by a first lien on real property or a dwelling, other than a reverse mortgage subject to § 1026.33, for which an escrow account was established in connection with the transaction and will be cancelled, the creditor or servicer shall disclose the information specified in paragraph (e)(2) of this section in accordance with the form requirements in paragraph (e)(4) of this section, and the timing requirements in paragraph (e)(5) of this section. For purposes of this paragraph (e), the term ''escrow account'' has the same meaning as under 12 CFR 1024.17(b), and the term ''servicer'' has the same meaning as under 12 CFR 1024.2(b).

(2) *Content requirements.* If an escrow account was established in connection with a transaction subject to this paragraph (e) and the escrow account will be cancelled, the creditor or servicer shall clearly and conspicuously disclose, under the heading ''Escrow Closing Notice,'' the following information:

(i) A statement informing the consumer of the date on which the consumer will no longer have an escrow account; a statement that an escrow account may also be called an impound or trust account; a statement of the reason why the escrow account will be closed; a statement that without an escrow account, the consumer must pay all property costs, such as taxes and homeowner's insurance, directly, possibly in one or two large payments a year; and a table, titled ''Cost to you,'' that contains an itemization of the amount of any fee the creditor or

servicer imposes on the consumer in connection with the closure of the consumer's escrow account, labeled ''Escrow Closing Fee,'' and a statement that the fee is for closing the escrow account.

(ii) Under the reference ''In the future'':

(A) A statement of the consequences if the consumer fails to pay property costs, including the actions that a State or local government may take if property taxes are not paid and the actions the creditor or servicer may take if the consumer does not pay some or all property costs, such as adding amounts to the loan balance, adding an escrow account to the loan, or purchasing a property insurance policy on the consumer's behalf that may be more expensive and provide fewer benefits than a policy that the consumer could obtain directly;

(B) A statement with a telephone number that the consumer can use to request additional information about the cancellation of the escrow account;

(C) A statement of whether the creditor or servicer offers the option of keeping the escrow account open and, as applicable, a telephone number the consumer can use to request that the account be kept open; and

(D) A statement of whether there is a cut-off date by which the consumer can request that the account be kept open.

(3) *Optional information.* The creditor or servicer may, at its option, include its name or logo, the consumer's name, phone number, mailing address and property address, the issue date of the notice, the loan number, or the consumer's account number on the notice required by this paragraph (e). Except for the name and logo of the creditor or servicer, the information described in this paragraph may be placed between the heading required by paragraph (e)(2) of this section and the disclosures required by paragraphs (e)(2)(i) and (ii) of this section. The name and logo may be placed above the heading required by paragraph (e)(2) of this section.

(4) *Form of disclosures.* The disclosures required by paragraph (e)(2) of this section shall be provided in a minimum 10-point font, grouped together on the front side of a one-page document, separate from all other materials, with the headings, content, order, and format substantially similar to model form H–29 in appendix H to this part. The disclosure of the heading required by paragraph (e)(2) of this section shall be more conspicuous than, and shall precede, the other disclosures required by paragraph (e)(2) of this section.

(5) *Timing*—(i) *Cancellation upon consumer's request.* If the creditor or servicer cancels the escrow account at the consumer's request, the creditor or servicer shall ensure that the consumer receives the disclosures required by paragraph (e)(2) of this section no later than three business days before the closure of the consumer's escrow account.

(ii) *Cancellations other than upon the consumer's request.* If the creditor or servicer cancels the escrow account and the cancellation is not at the consumer's request, the creditor or servicer shall ensure that the consumer receives the disclosures required by paragraph (e)(2) of this section no later than 30 business days before the closure of the consumer's escrow account.

(iii) *Receipt of disclosure.* If the disclosures required by paragraph (e)(2) of this section are not provided to the consumer in person, the consumer is considered to have received the disclosures three business days after they are delivered or placed in the mail.

■ 16. Section 1026.22 is amended by revising paragraphs (a)(4) and (5) to read as follows:

§ 1026.22 Determination of annual percentage rate.

(a) * * *

(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:

* * * * *

Subpart D—Miscellaneous

■ 17. Section 1026.25 is amended by revising paragraph (a) and adding paragraph (c)(1) 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 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, notwithstanding paragraph (c)(1)(ii)(B) of this section.

(B) If a creditor sells, transfers, or otherwise disposes of its interest in a mortgage loan subject to § 1026.19(f) and does not service the mortgage loan, 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).

* * * * *

■ 18. 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.

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Subpart E—Special Rules for Certain Home Mortgage Transactions

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■ 19. Section 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:

(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 disclosures.

(4) *Date issued.* The date the disclosures are mailed or delivered to the consumer by the creditor, labeled ''Date Issued.''

(5) *Applicants.* The name and mailing address of the consumer(s) applying for the credit, labeled ''Applicants.''

(6) *Property.* The address including the zip code of the property that secures or will secure the transaction, or if the address is unavailable, the location of such property including a zip code, labeled ''Property.''

(7) *Sale price.* (i) For 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 transactions that do not involve a seller, the estimated value of the property identified in paragraph (a)(6), labeled ''Prop. Value.''

(8) *Loan term.* The term to maturity of the credit transaction, stated in years or months, or both, as applicable, 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.* If the credit is not for the purpose described in paragraph (a)(9)(i) of this section, and if the credit will be used to refinance an existing obligation, as defined in § 1026.20(a) (but without regard to whether the creditor is the original creditor or a holder or servicer of the original obligation), that is secured by the property identified in paragraph (a)(6) of this section, the creditor shall disclose that the loan is for a ''Refinance.''

(iii) *Construction.* If the credit is not for one of the purposes described in paragraphs (a)(9)(i) or (ii) of this section and the credit will be used to finance the initial 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) through (iii) of this section, the creditor shall disclose that the loan is 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:

(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 the 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, subject to paragraph (a)(10)(iii) of this section, 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.* If the terms of the legal obligation include a ''balloon payment,'' as that term is defined in paragraph (b)(5) of this section, the creditor shall disclose that the loan has a ''Balloon Payment'' feature.

(E) *Seasonal payment.* If the terms of the legal obligation expressly provide that regular periodic payments are not scheduled 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)(A) and (B), and (a)(10)(ii)(A) through (D) of this section must each be preceded by the duration of any introductory rate or payment period, and the first adjustment 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 for 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 number that may be used by the creditor, consumer, and other parties to identify the transaction, labeled ''Loan ID #.''

(13) *Rate lock.* A statement of whether the interest rate disclosed pursuant to paragraph (b)(2) of this section is locked for a specific period of time, labeled ''Rate Lock.''

(i) For transactions in which the interest rate is locked 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 locked, and the date and time (including the applicable time zone) at which estimated closing costs expire.

(b) *Loan terms.* A separate table under the heading ''Loan Terms'' that contains 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 ''Loan Amount.''

(2) *Interest rate.* The interest rate that will be applicable to the transaction at consummation, labeled ''Interest Rate.'' For an adjustable rate transaction, if the interest rate at consummation is not known, the rate 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 interest rate at consummation is not known, 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, other than a waived, bona fide third-party charge that the creditor imposes if the consumer prepays all of the transaction's principal sooner than 36 months after consummation.

(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. ''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, and under such question disclosed as a subheading, ''Can this amount increase after closing?'' and, 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 further shall indicate whether the maximum principal balance is potential or is scheduled to occur under the terms of the legal obligation.

(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 interest rate adjustment, the disclosure required by this paragraph (b)(6)(ii) shall also state that fact and the maximum possible loan term determined in accordance with paragraph (a)(8) of this section.

(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 fact 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, and under such question disclosed as a subheading, ''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 shall be included, as applicable:

(i) The maximum amount of the prepayment penalty that may be imposed and the date when the period during which the penalty may be imposed terminates; and

(ii) The maximum amount of the balloon payment and the due date of such payment.

(8) *Timing.* (i) The dates required to be disclosed by paragraph (b)(6)(ii) of this section shall be disclosed as the year in which the event occurs, counting from the date that interest for the first scheduled periodic payment begins to accrue after consummation.

(ii) The dates required to be disclosed by paragraphs (b)(6)(i), (b)(6)(iii) and (b)(7)(ii) of this section shall be disclosed as the year in which the event occurs, counting from the due date of the initial periodic payment.

(iii) The date required to be disclosed by paragraph (b)(7)(i) of this section shall be disclosed as the year in which the event occurs, counting from the date of 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) and (iii) 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, as defined in paragraph (b)(5) of this section;

(C) The creditor must automatically terminate mortgage insurance or any functional equivalent under applicable law; and

(D) The anniversary of the due date of the initial periodic payment or range of payments that immediately follows the occurrence of multiple events described in paragraph (c)(1)(i)(A) of this section during a single year.

(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)(A) through (D) of this section occurring after the third separate periodic payment or range of payments disclosed, the separate periodic payments or ranges of payments shall be disclosed as a single range of payments, subject to the following exceptions:

(A) A balloon payment that is scheduled as a final payment under the terms of the legal obligation shall always be disclosed as a separate periodic payment or range of payments, in which case all events requiring disclosure of additional separate periodic payments or ranges of payments described in paragraph (c)(1)(i)(A) through (D) of this section occurring after the second separate periodic payment or range of payments disclosed, other than the balloon payment that is scheduled as a final payment, shall be disclosed as a single range of payments.

(B) The automatic termination of mortgage insurance or any functional equivalent under applicable law shall require disclosure of an additional separate periodic payment or range of payments only if the total number of separate periodic payments or ranges of payments otherwise disclosed pursuant to this paragraph (c)(1) does not exceed three.

(iii) When a range of payments is required to be disclosed under this paragraph (c)(1), 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. A range of payments is required to be disclosed under this paragraph (c)(1) when:

(A) Multiple events described in paragraph (c)(1)(i) of this section are combined in a single range of payments pursuant to paragraph (c)(1)(ii) of this section;

(B) Multiple events described in paragraph (c)(1)(i)(A) of this section occur during a single year or an event described in paragraph (c)(1)(i)(A) of this section occurs during the same year as the initial periodic payment or range of payments, in which case the creditor discloses the range of payments that would apply during the year in which the events occur; or

(C) The periodic principal and interest payment may adjust based on index rates at the time an interest rate adjustment may occur.

(2) *Itemization.* Each separate periodic payment or range of payments disclosed on 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:

(A) In the case of a loan that has an adjustable interest rate, the maximum principal and interest payment amounts are determined by assuming that the interest rate in effect throughout the loan term is the maximum possible interest rate, and the minimum amounts are determined by assuming that the interest rate in effect throughout the loan term is the minimum possible interest rate;

(B) In the case of a loan that has an adjustable interest rate and also contains a negative amortization feature, the maximum principal and interest payment amounts after the end of the period of the loan's term during which the loan's principal balance may increase due to the addition of accrued interest are determined by assuming the maximum principal amount permitted under the terms of the legal obligation at the end of such period, and the minimum amounts are determined pursuant to paragraph (c)(2)(i)(A) of this section;

(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 paragraph (c)(4)(ii), as applicable, labeled ''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) Except as provided in paragraph (c)(3)(iii) of this section, each separate periodic payment or range of payments to be disclosed under this paragraph (c) must be disclosed under a subheading that states the years of the loan during which that payment or range of payments will apply. The subheadings must be stated in a sequence of whole years from the due date of the initial periodic payment.

(iii) A balloon payment that is scheduled as a final payment under the terms of the legal obligation must be disclosed under the subheading ''Final Payment.''

(4) *Taxes, insurance, and assessments.* Under the information required by paragraphs (c)(1) through (3) of this section:

(i) The label ''Taxes, Insurance & Assessments'';

(ii) The sum of the charges identified in § 1026.43(b)(8), other than amounts identified in § 1026.4(b)(5), expressed as a monthly amount, even if no escrow account for the payment of some or any of such charges will be established;

(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, amounts identified in § 1026.4(b)(8), 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 (c)(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 amounts identified in § 1026.4(b)(8).

(d) *Costs at closing.* (1) *Costs at closing table.* In a separate table, under the heading ''Costs at Closing'':

(i) Labeled ''Closing Costs,'' the dollar amount disclosed pursuant to paragraph (g)(6) of this section, together with:

(A) A statement that the amount disclosed pursuant to paragraph (d)(1)(i) of this section includes the amounts disclosed pursuant to paragraphs (f)(4), (g)(5), and (g)(6)(ii);

(B) The dollar amount disclosed pursuant to paragraph (f)(4) of this section, labeled ''Loan Costs'';

(C) The dollar amount disclosed pursuant to paragraph (g)(5) of this section, labeled ''Other Costs'':

(D) The dollar amount disclosed pursuant to paragraph (g)(6)(ii) of this section, labeled ''Lender Credits''; and

(E) A statement referring the consumer to the tables disclosed pursuant to paragraphs (f) and (g) of this section for details.

(ii) Labeled ''Cash to Close,'' the dollar amount calculated in accordance with paragraph (h)(1)(viii) of this section, together with:

(A) A statement that the amount includes the amount disclosed pursuant to paragraph (d)(1)(i) of this section, and

(B) A statement referring the consumer to the location of the table required pursuant to paragraph (h) of this section for details.

(2) *Optional alternative table for transactions without a seller.* For transactions that do not involve a seller, instead of the amount and statements described in paragraph (d)(1)(ii) of this section, the creditor may alternatively disclose, using the label ''Cash to Close'':

(i) The amount calculated in accordance with (h)(2)(iv) of this section;

(ii) A statement of whether the disclosed estimated amount is due from or to the consumer; and

(iii) A statement referring the consumer to the alternative table disclosed pursuant to paragraph (h)(2) of this section for details.

(e) *Web site reference.* A statement that the consumer may obtain general information and tools at the Web site of the Bureau, and the link or uniform resource locator address to the Web site: *www.consumerfinance.gov/mortgage-estimate.*

(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 paid to the creditor to reduce the interest rate shall be itemized separately, as both a percentage of the amount of credit extended and a dollar amount, and using the label ''__% of Loan Amount (Points).'' If points to reduce the interest rate are not paid, the disclosure required by this paragraph (f)(1)(i) must be blank.

(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, the consumer will pay for settlement 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 the consumer will pay for settlement 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 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 this section may not be used for items described in paragraph (f)(1) or (2) of this section. If the creditor is not able to itemize every service and every corresponding charge required to be disclosed in the number of lines provided by paragraph (f)(1)(ii) or (f)(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 (f)(2)(ii), as applicable, labeled ''Additional Charges.''

(ii) An addendum to a form of disclosures prescribed by this section may be used for items described in 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), labeled ''Additional Charges.''

(g) *Closing cost details; other costs.* Under the master heading ''Closing Cost Details,'' in a table under the heading ''Other Costs,'' all costs associated with the transaction that are in addition to the costs disclosed under paragraph (f) of this section. The table shall contain 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, the sum of all recording fees and other government fees and taxes, except for transfer taxes paid by the consumer and disclosed pursuant to paragraph (g)(1)(ii) of this section, labeled ''Recording Fees and Other Taxes.''

(ii) On the second line, the sum of all transfer taxes paid by the consumer, labeled ''Transfer Taxes.''

(iii) If an amount required to be disclosed by this paragraph (g)(1) is not charged to the consumer, the amount disclosed on the applicable line required by this paragraph (g)(1) must be blank.

(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, the number of months for which homeowner's insurance premiums are to be paid by the consumer at consummation and the total dollar amount to be paid by the consumer at consummation for such premiums, labeled ''Homeowner's Insurance Premium (__ months).''

(ii) On the second line, 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 by the consumer at consummation for such premiums, labeled ''Mortgage Insurance Premium (__ months).''

(iii) On the third line, the amount of prepaid 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 by the consumer at consummation for such interest, labeled ''Prepaid Interest (___ per day for __ days @__ %).''

(iv) On the fourth line, the number of months for which property taxes are to be paid by the consumer at consummation and the total dollar amount to be paid by the consumer at consummation for such taxes, labeled ''Property Taxes (__ months).''

(v) If an amount is not charged to the consumer for any item for which this paragraph (g)(2) prescribes a label, each of the amounts required to be disclosed on that line must be blank.

(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, 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 at consummation for homeowner's insurance premiums, labeled ''Homeowner's Insurance __ per month for __ mo.''

(ii) On the second line, 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 at consummation for mortgage insurance premiums, labeled ''Mortgage Insurance __ per month for __ mo.''

(iii) On the third line, 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 at consummation for property taxes, labeled ''Property Taxes __ per month for __ mo.''

(iv) If an amount is not charged to the consumer for any item for which this paragraph (g)(3) prescribes a label, each of the amounts required to be disclosed on that line must be blank.

(v) A maximum of five items may be disclosed pursuant to this paragraph (g)(3) in addition to the items described in paragraph (g)(3)(i) through (iii) of this section, and each such additional item must be identified with a descriptive label 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 in connection with the transaction that 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, a descriptive label of each such amount, and the subtotal of all such amounts.

(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.

(5) *Total other costs.* Under the subheading ''Total Other Costs,'' the sum of the subtotals disclosed pursuant to paragraphs (g)(1) through (4) of this section.

(6) *Total closing costs.* Under the subheading ''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, labeled ''D + I''; and

(ii) The amount of any lender credits, disclosed as a negative number with the label ''Lender Credits'' provided that, if no such amount is disclosed, the amount must be blank.

(7) *Item descriptions and ordering.* The items listed as other costs pursuant to this paragraph (g) shall be labeled using terminology that describes each 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 this section 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 described in this paragraph (g) in the number of lines provided by paragraphs (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 paragraphs (g)(2)(vi), (g)(3)(v), or (g)(4)(iii), as applicable, using the label ''Additional Charges.''

(h) *Calculating cash to close*—(1) *For all transactions.* Under the master heading ''Closing Cost Details,'' under the heading ''Calculating Cash to Close,'' the total amount of cash or other funds that must be provided by the consumer at consummation, with an

itemization of that amount into the following component amounts:

(i) *Total closing costs.* The amount disclosed under paragraph (g)(6) of this section, disclosed as a positive number, labeled ''Total Closing Costs'';

(ii) *Closing costs to be financed.* The amount of any closing costs to be paid out of loan proceeds, disclosed as a negative number, labeled ''Closing Costs Financed (Paid from your Loan Amount)'';

(iii) *Downpayment and other funds from borrower.* Labeled ''Down Payment/Funds from Borrower'':

(A) In a purchase transaction as defined in paragraph (a)(9)(i) of this section, the amount of the difference between the purchase price of the property and the principal amount of the loan, disclosed as a positive number; or

(B) In all transactions other than purchase transactions as defined in paragraph (a)(9)(i) of this section, the estimated funds from the consumer as determined in accordance with paragraph (h)(1)(v) of this section;

(iv) *Deposit.* (A) In a purchase transaction as defined in paragraph (a)(9)(i) of this section, 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, labeled ''Deposit'';

(B) In all transactions other than purchase transactions as defined in paragraph (a)(9)(i) of this section, the amount of $0, labeled ''Deposit'';

(v) *Funds for borrower.* The amount of funds for the consumer, labeled ''Funds for Borrower.'' The amount of funds from the consumer disclosed under paragraph (h)(1)(iii)(B) of this section, and of funds for the consumer disclosed under this paragraph (h)(1)(v) of this section, are determined by subtracting the principal amount of the credit extended (excluding any amount disclosed pursuant to paragraph (h)(1)(ii) 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);

(A) If the calculation under this paragraph (h)(1)(v) yields an amount that is a positive number, such amount is disclosed under paragraph (h)(1)(iii)(B) of this section, and $0 is disclosed under this paragraph (h)(1)(v);

(B) If the calculation under this paragraph (h)(1)(v) yields an amount that is a negative number, such amount is disclosed under this paragraph (h)(1)(v) as a negative number, and $0 is disclosed under paragraph (h)(1)(iii)(B) of this section;

(C) If the calculation under this paragraph (h)(1)(v) of this section yields $0, then $0 is disclosed under paragraphs (h)(1)(iii)(B) and paragraph (h)(1)(v) of this section;

(vi) *Seller credits.* The total amount that the seller will 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, labeled ''Seller Credits'';

(vii) *Adjustments and other credits.* The amount of all loan costs determined pursuant to paragraph (f) and other costs determined pursuant to paragraph (g) that are paid by persons other than the loan originator, creditor, consumer, or seller, together with any other amounts that are required to be paid by the consumer at closing pursuant to a purchase and sale contract, disclosed as a negative number, labeled ''Adjustments and Other Credits''; and

(viii) *Estimated Cash to Close.* The sum of the amounts disclosed under paragraphs (h)(1)(i) through (vii) of this section labeled ''Cash to Close.''

(2) *Optional alternative calculating cash to close table for transactions without a seller.* For transactions that do not involve a seller, instead of the table described in paragraph (h)(1) above, the creditor may alternatively provide, in a separate table, under the master heading ''Closing Cost Details,'' under the heading ''Calculating Cash to Close,'' the total amount of cash or other funds that must be provided by the consumer at consummation with an itemization of that amount into the following component amounts:

(i) *Loan amount.* The amount disclosed under paragraph (b)(1) of this section, labeled ''Loan Amount'';

(ii) *Total closing costs.* The amount disclosed under paragraph (g)(6) of this section, disclosed as a negative number, labeled ''Total Closing Costs'';

(iii) *Payoffs and payments.* The total amount of payoffs and payments to be made to third parties not otherwise disclosed pursuant to paragraphs (f) and (g) of this section, disclosed as a negative number, labeled ''Total Payoffs and Payments'';

(iv) *Cash to or from consumer.* The amount of cash or other funds due from or to the consumer and a statement of whether the disclosed estimated amount is due from or to the consumer, calculated by the sum of the amounts disclosed under paragraphs (h)(2)(i) through (iii) of this section, labeled ''Cash to Close''; and

(v) *Closing costs financed.* The sum of the amounts disclosed under paragraphs (h)(2)(i) and (iii) of this section, but only to the extent that the sum is greater than zero and less than or equal to the sum disclosed under paragraph (g)(6) of this section, labeled ''Closing Costs Financed (Paid from your Loan Amount).''

(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 paragraph (a)(10)(ii)(E) of this section, 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 contains 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 in an amount 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, labeled ''Subsequent Changes''; and

(iii) The maximum periodic principal and interest 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, labeled ''Maximum Payment.''

(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 contains the following information and satisfies the following requirements:

(1) *Index and margin.* If the interest rate may adjust and the product type is not a ''Step Rate'' under paragraph (a)(10)(i)(B) of this section, 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)(i)(A) 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, labeled ''Initial Interest Rate.''

(4) *Minimum and maximum interest rate.* The minimum and maximum interest rates for the loan, after any introductory period expires, labeled ''Minimum/Maximum Interest Rate.''

(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 for the first scheduled periodic payment begins to accrue, 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 ID'') for the creditor (labeled ''Lender'') and the mortgage broker (labeled ''Mortgage Broker''), if any. 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, with the abbreviation for the State of the applicable jurisdiction or regulatory body stated before the word ''License'' in the label, if any;

(2) The name and NMLSR ID of the individual loan officer (labeled ''Loan Officer'' and ''NMLS ID/License ID,'' respectively) of the creditor and the mortgage broker, if any, who is the 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 loan officer is licensed and/or registered shall be disclosed with the abbreviation for the State of the applicable jurisdiction or regulatory body stated before the word ''License'' in the label, 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'' required by paragraph (k) of this section, 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 amount of interest that the consumer will pay over the life of the loan, expressed as a percentage of the amount of credit extended, using the term ''Total Interest Percentage,'' the abbreviation ''TIP,'' and the statement ''The total amount of interest that you will pay over the loan term as a percentage of your loan amount.''

(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 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 that homeowner's insurance is required on the property and that 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 creditor intends to service the loan or transfer the loan 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 above 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 and segregated from everything else.

(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) *Headings and labels.* If a master heading, heading, subheading, label, or similar designation contains the word ''estimated'' or a capital letter designation in form H–24, set forth in appendix H to this part, that heading, label, or similar designation shall contain the word ''estimated'' and the applicable capital letter designation.

(3) *Form.* Except as provided in paragraph (o)(5) of this section:

(i) For a transaction subject to § 1026.19(e) 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 (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, except that the per diem amount required to be disclosed by paragraph (g)(2)(iii) of this section and the monthly amounts required to be disclosed by paragraphs (g)(3)(i) through (iv) of this section shall not be rounded.

(B) The dollar amount required to be disclosed by paragraph (b)(1) of this section shall not be rounded, and if the amount is a whole number then the amount disclosed shall be truncated at the decimal point.

(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 not be rounded and shall be disclosed 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. If the amount is a whole number then the amount disclosed shall be truncated at the decimal point.

(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) *Translation.* The form may be translated into languages other than English, and creditors may modify form H–24 of appendix H to this part to the extent that translation prevents the headings, labels, designations, and required disclosure items under this section from fitting in the space provided on form H–24.

(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 of 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 at the bottom of each page under the disclosures required by this section as illustrated by form H–24 of appendix H to this part, 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 any of the information required by this section is not altered.

■ 20. Section 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:

(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 in a purchase transaction under § 1026.37(a)(9)(i) to the consumer and seller, respectively, as applicable, or the date the amounts disclosed pursuant to paragraphs (j)(2)(iii) or (t)(5)(vii)(B) of this section are expected to be paid to the consumer or a third party in a transaction that is not a purchase transaction under § 1026.37(a)(9)(i), labeled ''Disbursement Date.''

(iv) *Settlement agent.* The name of the settlement agent conducting the closing, labeled ''Settlement Agent.''

(v) *File number.* The number assigned to the transaction by the settlement agent for identification purposes, labeled ''File #.''

(vi) *Property.* The 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 (c)(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 paragraph (l)(7) of this section.

(d) *Costs at closing*—(1) *Costs at closing table.* In a separate table, under the heading ''Costs at Closing'':

(i) Labeled ''Closing Costs,'' the sum of the dollar amounts disclosed pursuant to paragraphs (f)(4), (g)(5), and (h)(3) of this section, together with:

(A) A statement that the amount disclosed pursuant to paragraph (d)(1)(i) of this section includes the amounts disclosed pursuant to paragraphs (f)(4), (g)(5), and (h)(3) of this section;

(B) The dollar amount disclosed pursuant to paragraph (f)(4) of this section, labeled ''Loan Costs'';

(C) The dollar amount disclosed pursuant to paragraph (g)(5) of this section, labeled ''Other Costs'';

(D) The dollar amount disclosed pursuant to paragraph (h)(3) of this section, labeled ''Lender Credits''; and

(E) A statement referring the consumer to the tables disclosed pursuant to paragraphs (f) and (g) of this section for details.

(ii) Labeled ''Cash to Close,'' the sum of the dollar amounts calculated in accordance with paragraph (i)(9)(ii) of this section, together with:

(A) A statement that the amount disclosed pursuant to paragraph (d)(1)(ii) of this section includes the amount disclosed pursuant to paragraph (d)(1)(i) of this section; and

(B) A statement referring the consumer to the table required pursuant to paragraph (i) of this section for details.

(2) *Alternative table for transactions without a seller.* For transactions that do not involve a seller and where the creditor disclosed the optional alternative table pursuant to § 1026.37(d)(2), the creditor shall disclose, with the label ''Cash to Close,'' instead of the sum of the dollar amounts described in paragraph (d)(1)(ii) of this section:

(i) The amount calculated in accordance with paragraph (e)(5)(ii) of this section;

(ii) A statement of whether the disclosed amount is due from or to the consumer; and

(iii) A statement referring the consumer to the table required pursuant to paragraph (e) of this section for details.

(e) *Alternative calculating cash to close table for transactions without a seller.* For transactions that do not involve a seller and where the creditor disclosed the optional alternative table pursuant to § 1026.37(h)(2), the creditor shall disclose, instead of the table described in paragraph (i) of this section, 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) *Loan amount.* Labeled ''Loan Amount:''

(i) Under the subheading ''Loan Estimate,'' the loan amount disclosed on the Loan Estimate under § 1026.37(b)(1);

(ii) Under the subheading ''Final,'' the loan amount disclosed under paragraph (b) of this section;

(iii) Disclosed more prominently than the other disclosures under paragraph (e)(1)(i) and (ii) of this section, under the subheading ''Did this change?'':

(A) If the amount disclosed under paragraph (e)(1)(ii) of this section is different than the amount disclosed under paragraph (e)(1)(i) of this section (unless the difference is due to rounding), a statement of that fact along with a statement of whether this amount increased or decreased; or

(B) If the amount disclosed under paragraph (e)(1)(i) of this section is equal to the amount disclosed under paragraph (e)(1)(ii) of this section a statement of that fact.

(2) *Total closing costs.* Labeled ''Total Closing Costs'':

(i) Under the subheading ''Loan Estimate,'' the amount disclosed on the Loan Estimate under § 1026.37(h)(2)(ii);

(ii) Under the subheading ''Final,'' the amount disclosed under paragraph (h)(1) of this section, disclosed as a negative number; and

(iii) Disclosed more prominently than the other disclosures under this paragraph (e)(2)(i) and (ii) of this

section, under the subheading ''Did this change?'':

(A) If the amount disclosed under paragraph (e)(2)(ii) of this section is different than the amount disclosed under paragraph (e)(2)(i) of this section (unless the difference is due to rounding):

(*1*) A statement of that fact;

(*2*) If the difference in the amounts disclosed under paragraphs (e)(2)(i) and (e)(2)(ii) 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 and if any refund is provided pursuant to § 1026.19(f)(2)(v), a statement directing the consumer to the disclosure required under paragraph (h)(3) of this section. 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)(i) and (ii).

(B) If the amount disclosed under paragraph (e)(2)(i) of this section is equal to the amount disclosed under paragraph (e)(2)(ii) of this section, a statement of that fact.

(3) *Closing costs paid before closing.* Labeled ''Closing Costs Paid Before Closing:''

(i) Under the subheading ''Loan Estimate,'' the amount of $0;

(ii) Under the subheading ''Final,'' any amount designated as borrower-paid before closing under paragraph (h)(2) of this section, disclosed as a positive number; and

(iii) Disclosed more prominently than the other disclosures under this paragraph (e)(3)(i) and (ii) of this section, under the subheading ''Did this change?'':

(A) If the amount disclosed under paragraph (e)(3)(ii) of this section is different than the amount disclosed under paragraph (e)(3)(i) of this section (unless the difference is due to rounding), a statement of that fact 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 (e)(3)(ii) of this section is equal to the amount disclosed under paragraph (e)(3)(i) of this section, a statement of that fact.

(4) *Payoffs and payments.* Labeled ''Total Payoffs and Payments,''

(i) Under the subheading ''Loan Estimate,'' the total payoffs and payments disclosed on the Loan Estimate under § 1026.37(h)(2)(iii);

(ii) Under the subheading ''Final,'' the total amount of payoffs and payments made to third parties not otherwise disclosed pursuant to paragraph (t)(5)(vii)(B) of this section, to the extent known, disclosed as a negative number;

(iii) Disclosed more prominently than the other disclosures under this paragraph (e)(4)(i) and (ii), under the subheading ''Did this change?'':

(A) If the amount disclosed under paragraph (e)(4)(ii) of this section is different than the amount disclosed under paragraph (e)(4)(i) of this section (unless the difference is due to rounding), a statement of that fact along with a reference to the table disclosed under paragraph (t)(5)(vii)(B) of this section; or

(B) If the amount disclosed under paragraph (e)(4)(ii) of this section is equal to the amount disclosed under paragraph (e)(4)(i) of this section, a statement of that fact.

(5) *Cash to or from consumer.* Labeled ''Cash to Close:''

(i) Under the subheading ''Loan Estimate,'' the estimated cash to close on the Loan Estimate together with the statement of whether the estimated amount is due from or to the consumer as disclosed under § 1026.37(h)(2)(iv);

(ii) Under the subheading ''Final,'' the amount due from or to the consumer, calculated by the sum of the amounts disclosed under paragraphs (e)(1)(ii), (e)(2)(ii), (e)(3)(ii), and (e)(4)(ii) of this section, disclosed as a positive number, together with a statement of whether the disclosed amount is due from or to the consumer.

(6) *Closing costs financed.* Labeled ''Closing Costs Financed (Paid from your Loan Amount),'' the sum of the amounts disclosed under paragraphs (e)(1)(ii) and (e)(4)(ii) of this section, but only to the extent that the sum is greater than zero and less than or equal to the sum disclosed under paragraph (h)(1) of this section minus the sum disclosed under paragraph (h)(2) of this section designated borrower-paid before closing.

(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 shall contain the items and amounts listed under four subheadings, described in paragraphs (f)(1) through (5) of this section.

(1) *Origination charges.* Under the subheading ''Origination Charges,'' and in the applicable columns as described in paragraph (f) of this section, an itemization of each amount paid for charges described in § 1026.37(f)(1), the amount of compensation paid by the creditor to a third-party loan originator along with the name of the loan originator ultimately receiving the payment, 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 subheading ''Services Borrower Did Not Shop For'' and in the applicable columns as described in paragraph (f) of this section, an itemization of the services and corresponding costs for each of the settlement services required by the creditor for which the consumer did not shop in accordance with § 1026.19(e)(1)(vi)(A) and that are provided by persons other than the creditor or mortgage broker, the name of the person ultimately receiving the payment for each such amount, 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) if the consumer was provided a written list of settlement service providers under § 1026.19(e)(1)(vi)(C) and the consumer selected a settlement service provider contained on that written list.

(3) *Services borrower did shop for.* Under the subheading ''Services Borrower Did Shop For'' and in the applicable column as described in paragraph (f) of this section, an itemization of the services and corresponding costs for each of the settlement services required by the creditor for which the consumer shopped in accordance with § 1026.19(e)(1)(vi)(A) and that are provided by persons other than the creditor or mortgage broker, the name of the person ultimately receiving the payment for each such amount, and the total of all such itemized costs 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)(3) if the consumer was provided a written list of settlement service providers under § 1026.19(e)(1)(vi)(C) and the consumer did not select a settlement service provider contained on that written list.

(4) *Total loan costs.* Under the subheading ''Total Loan Costs (Borrower-Paid),'' the sum of the amounts disclosed as borrower-paid pursuant to paragraph (f)(5) of this section.

(5) *Subtotal of loan costs.* The sum of loan costs, calculated by totaling the amounts described in paragraphs (f)(1) through (3) of this section for costs designated borrower-paid at or before closing, labeled ''Loan Costs Subtotals.''

(g) *Closing cost details; other costs.* Under the master heading ''Closing Cost Details'' disclosed pursuant to paragraph (f) of this section, with columns stating whether the charge was borrower-paid at or before closing, seller-paid at or before closing, or paid by others, all costs in connection with the transaction, other than those disclosed under paragraph (f) of this section, listed in a table with a heading disclosed as ''Other Costs.'' The table shall contain the items and amounts listed under five 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,'' and in the applicable column as described in paragraph (g) of this section, an itemization of 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, with the name of the government entity assessing the transfer tax.

(2) *Prepaids.* Under the subheading ''Prepaids'' and in the applicable column as described in paragraph (g) of this section, an itemization of each amount for charges described in § 1026.37(g)(2), the name of the person ultimately receiving the payment or government entity assessing the property tax, provided that the person ultimately receiving the payment need not be disclosed for the disclosure required by § 1026.37(g)(2)(iii) when disclosed pursuant to this paragraph, 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 subheading ''Initial escrow payment at closing'' and in the applicable column as described in paragraph (g) of this section, an itemization of each amount for charges described in § 1026.37(g)(3), the applicable aggregate adjustment pursuant to 12 CFR 1024.17(d)(2) along with the label ''aggregate adjustment,'' and the total of all such itemized amounts that are designated borrower-paid at or before closing.

(4) *Other.* Under the subheading ''Other'' and in the applicable column as described in paragraph (g) of this section, an itemization of each amount for charges in connection with the transaction that are in addition to the charges disclosed under paragraphs (f) and (g)(1) through (3) for services that are required or obtained in the real estate closing by the consumer, the seller, or other party, the name of the person ultimately receiving the payment, and the total of all such itemized amounts that are designated borrower-paid at or before closing.

(i) For any cost that is a component of title insurance services, 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 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.* Under the subheading ''Total Other Costs (Borrower-Paid),'' the sum of the amounts disclosed as borrower-paid pursuant to paragraph (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 Subtotals.''

(h) *Closing cost totals.* (1) The sum of the costs disclosed as borrower-paid pursuant to paragraph (h)(2) of this section and the amount disclosed in paragraph (h)(3) of this section, under the subheading ''Total Closing Costs (Borrower-Paid).''

(2) The sum of the amounts disclosed in paragraphs (f)(5) and (g)(6) of this section, designated borrower-paid at or before closing, and the sum of the costs designated seller-paid at or before closing or paid by others disclosed pursuant to paragraphs (f) and (g) of this section, labeled ''Closing Costs Subtotals.''

(3) The amount described in § 1026.37(g)(6)(ii) as a negative number, labeled ''Lender Credits'' and designated borrower-paid at closing, and if a refund is provided pursuant to § 1026.19(f)(2)(v), a statement that this amount includes a credit for an amount that exceeds the limitations on increases in closing costs under § 1026.19(e)(3), and the amount of such credit under § 1026.19(f)(2)(v).

(4) The services and costs disclosed pursuant to paragraphs (f) and (g) of this section on the Closing Disclosure shall be labeled using terminology that describes the item disclosed, in a manner that is consistent with the descriptions or prescribed labels, as applicable, used for such items on the Loan Estimate pursuant to § 1026.37. The creditor must also list the items 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 ''Loan Estimate,'' the ''Total Closing Costs'' disclosed on the Loan Estimate under § 1026.37(h)(1)(i), labeled using that term.

(ii) Under the subheading ''Final,'' the amount disclosed under paragraph (h)(1) of this section.

(iii) Under the subheading ''Did this change?,'' disclosed more prominently than the other disclosures under this paragraph (i)(1):

(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, and if any refund is provided pursuant to § 1026.19(f)(2)(v), a statement directing the consumer to the disclosure required under paragraph (h)(3) of this section. 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)(i) and (ii).

(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 paid before closing.* (i) Under the subheading ''Loan Estimate,'' the dollar amount ''$0,'' labeled ''Closing Costs 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) Under the subheading ''Did this change?,'' disclosed more prominently than the other disclosures under this paragraph (i)(2):

(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 ''Loan Estimate,'' the amount disclosed under § 1026.37(h)(1)(ii), labeled ''Closing Costs Financed (Paid from your Loan Amount).''

(ii) Under the subheading ''Final,'' the actual amount of the closing costs that are to be paid out of loan proceeds, if any, stated as a negative number.

(iii) Under the subheading ''Did this change?,'' disclosed more prominently than the other disclosures under this paragraph (i)(3):

(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 of that fact, 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) *Down payment/funds from borrower.* (i) Under the subheading ''Loan Estimate,'' the amount disclosed under § 1026.37(h)(1)(iii), labeled ''Down Payment/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 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 ''Down Payment/Funds from Borrower''; or

(B) In a transaction other than the type 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 ''Down Payment/Funds from Borrower.''

(iii) Under the subheading ''Did this change?,'' disclosed more prominently than the other disclosures under this paragraph (i)(4):

(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 ''Loan Estimate,'' the amount disclosed under § 1026.37(h)(1)(iv), labeled ''Deposit.''

(ii) Under the subheading ''Final,'' the amount disclosed under paragraph (j)(2)(ii) of this section, stated as a negative number.

(iii) Under the subheading ''Did this change?,'' disclosed more prominently than the other disclosures under this paragraph (i)(5):

(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 ''Loan Estimate,'' the amount disclosed under § 1026.37(h)(1)(v), 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) Under the subheading ''Did this change?,'' disclosed more prominently than the other disclosures under this paragraph (i)(6):

(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 paragraph (j)(1)(v) of this section (except to the extent the satisfaction of such existing debt is disclosed under paragraph (g) of this section).

(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 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 shall be disclosed under paragraph (i)(4)(ii)(B) of this section.

(C) If the calculation under this paragraph (i)(6)(iv) yields $0, $0 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 ''Loan Estimate,'' the amount disclosed under § 1026.37(h)(1)(vi), 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) Under the subheading ''Did this change?,'' disclosed more prominently than the other disclosures under this paragraph (i)(7):

(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 ''Loan Estimate,'' the amount disclosed on the Loan Estimate under § 1026.37(h)(1)(vii) 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) Under the subheading ''Did this change?,'' disclosed more prominently than the other disclosures under this paragraph (i)(8):

(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 ''Loan Estimate,'' the amount disclosed on the Loan Estimate under § 1026.37(h)(1)(viii), 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 under the subheading ''Final,'' 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 amounts 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)(2) of this section, labeled ''Closing Costs Paid at Closing'';

(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 prorated amount of any prepaid taxes due from the consumer to reimburse the seller at the real estate closing, and the time period corresponding to that amount, labeled ''City/Town Taxes'';

(viii) The prorated amount of any prepaid taxes due from the consumer to reimburse the seller at the real estate closing, and the time period corresponding to that amount, labeled ''County Taxes'';

(ix) The prorated amount of any prepaid assessments due from the consumer to reimburse the seller at the real estate closing, and the time period corresponding to that amount, 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 the property, labeled ''Deposit'';

(iii) The amount of the consumer's new loan amount or first user loan as disclosed pursuant to paragraph (b) of this section, labeled ''Loan Amount'';

(iv) The amount of any existing loans that the consumer is assuming, or any loans subject to which the consumer is talking title to the property, 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 not otherwise itemized 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 description ''Other Credits,'' together with a description and 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;

(vii) The description ''Adjustments for Items Unpaid by Seller'';

(viii) The prorated amount of any unpaid taxes due from the seller to reimburse the consumer at the real estate closing, and the time period corresponding to that amount, labeled ''City/Town Taxes'';

(ix) The prorated amount of any unpaid taxes due from the seller to reimburse the consumer at the real estate closing, and the time period corresponding to that amount, labeled ''County Taxes'';

(x) The prorated amount of any unpaid assessments due from the seller to reimburse the consumer at the real estate closing, and the time period corresponding to that amount, 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, if any, 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 (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 real estate closing.

(k) *Summary of seller's transaction.* Under the heading ''Summaries of Transactions'' required by paragraph (j) of this section, a separate 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 paragraphs (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 prorated amount of any prepaid taxes due from the consumer to reimburse the seller at the real estate closing, and the time period corresponding to that amount, labeled ''City/Town Taxes'';

(vii) The prorated amount of any prepaid taxes due from the consumer to reimburse the seller at the real estate closing, and the time period corresponding to that amount, labeled ''County Taxes'';

(viii) The prorated amount of any prepaid assessments due from the consumer to reimburse the seller at the real estate closing, and the time period corresponding to that amount, 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 paragraphs (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 disbursed to the seller prior to the real estate closing, labeled ''Excess Deposit'';

(iii) The amount of closing costs designated seller-paid at closing disclosed pursuant to paragraph (h)(2) of this section, labeled ''Closing Costs Paid at Closing'';

(iv) The amount of any existing loans that the consumer is assuming, or any loans subject to which the consumer is taking title to the property, labeled ''Existing Loan(s) Assumed or Taken Subject to'';

(v) The amount of any loan secured by a second lien on 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 loan secured by a first lien on 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 not otherwise itemized 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 prorated amount of any unpaid taxes due from the seller to reimburse the consumer at the real estate closing, and the time period corresponding to that amount, labeled ''City/Town Taxes'';

(xi) The prorated amount of any unpaid taxes due from the seller to the consumer at the real estate closing, and the time period corresponding to that amount, labeled ''County Taxes'';

(xii) The prorated amount of any unpaid assessments due from the seller to reimburse the consumer at the real estate closing, and the time period corresponding to that amount, 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 (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 real estate 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 Payments'':

(i) If periodic payments that are less than the full amount due are accepted, a statement that the creditor, using the term ''lender,'' may accept partial payments and apply such payments to the consumer's loan;

(ii) If periodic payments that are less than the full amount due are accepted but not applied to a consumer's loan until the consumer pays the remainder of the full amount due, a statement that the creditor, using the term ''lender,'' may hold partial payments in a separate account until the consumer pays the remainder of the payment and then apply the full periodic payment to the consumer's loan;

(iii) If periodic payments that are less than the full amount due are not accepted, a statement that the creditor, using the term ''lender,'' does not accept any partial payments; and

(iv) A statement that, if the loan is sold, the new creditor, using the term ''lender,'' may have a different policy.

(6) *Security interest.* Under the subheading ''Security Interest,'' a statement that the consumer is granting a security interest in the property securing the transaction, the property address including a zip code, 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 Escrow 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 Escrow 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 ''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 payment 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.''

(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 directing the consumer to use the contact information disclosed under paragraph (r) of this section if the consumer has 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 submit a complaint; and the link or uniform resource locator address to the Web site: *www.consumerfinance.gov/mortgage-closing*; 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 settlement agent (under the subheading ''Settlement Agent'') participating in the transaction:

(1) Name of the person, labeled ''Name'';

(2) Address, using that label;

(3) Nationwide Mortgage Licensing System & Registry (NMLSR ID) identification number, labeled ''NMLS ID,'' 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, labeled ''License ID,'' with the abbreviation for the State of the applicable jurisdiction or regulatory body stated before the word ''License'' in the label, for the persons identified in paragraph (r)(1) of this section;

(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) NMLSR ID, labeled ''Contact NMLS ID,'' 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, labeled ''Contact License ID,'' with the abbreviation for the State of the applicable jurisdiction or regulatory body stated before the word ''License'' in the label, for the natural person identified in paragraph (r)(4) of this section,

(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 above the signature line 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, the statement required to be disclosed under § 1026.37(n)(2) under the heading ''Other Disclosures'' required by paragraph (p) of this section.

(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 and segregated from everything else.

(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) *Headings and labels.* If a master heading, heading, subheading, label, or similar designation contains the word ''estimated'' or a capital letter designation in form H–25, set forth in appendix H to this part, that heading, label, or similar designation shall contain the word ''estimated'' and the applicable capital letter designation.

(3) *Form.* Except as provided in paragraph (t)(5) of this section:

(i) For a transaction subject to § 1026.19(f) 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 (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 paragraphs (e) and (i) of this section under the subheading ''Loan 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)(C) 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)(3), (n), and (o)(5) of this section shall not be rounded and shall be disclosed up to two or three decimal places. The percentage amount required to be disclosed under paragraph (o)(4) of this section shall not be rounded and shall be disclosed up to three decimal places. If the amount is a whole number then the amount disclosed shall be truncated at the decimal point.

(iii) *Loan amount.* The dollar amount required to be disclosed by paragraph (b) of this section as required by § 1026.37(b)(1) shall be disclosed as an unrounded number, except that if the amount is a whole number then the amount disclosed shall be truncated at the decimal point.

(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)(1)(i)(D) of this section may be omitted from the form if the amount is zero.

(iii) *Administrative information.* The creditor may insert at the bottom of each page under the disclosures required by this section as illustrated by form H–25 of appendix H to this part, 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–25 for any of the information required by this section is not altered.

(iv) *Closing cost details*—(A) *Additional line numbers.* Line numbers provided on form H–25 of appendix H to this part for the disclosure of the information required by paragraphs (f)(1) through (3) and (g)(1) through (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.

(B) *Two pages.* To the extent that adding or deleting line numbers provided on form H–25 of appendix H to this part, as permitted by paragraph (t)(5)(iv)(A) of this section, does not accommodate an itemization of all information required to be disclosed by paragraphs (f) through (h) on one page, the information required to be disclosed by paragraphs (f) through (h) of this section may be disclosed on two pages, 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).

(v) *Separation of consumer and seller information.* The creditor or settlement agent preparing the form may use form H–25 of 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.

(vi) *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), and (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) of appendix H to this part.

(vii) *Transaction without a seller.* The following modifications to form H–25 of appendix H to this part may be made for a transaction that does not involve a seller and for which the alternative tables are disclosed pursuant to paragraphs (d)(2) and (e) of this section, as illustrated by form H–25(J) of appendix H to this part:

(A) The information required by paragraph (a)(4)(ii), and paragraphs (f), (g), and (h) of this section with respect to costs paid by the seller, 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 ''Payoffs and Payments'' 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 and a description

of the purpose of such disbursements under the subheading ''To''; and the total amount of such payments labeled ''Total Payoffs and Payments.''

(C) The tables required to be disclosed by paragraphs (j) and (k) of this section may be deleted.

(viii) *Translation.* The form may be translated into languages other than English, and creditors may modify form H–25 of appendix H to this part to the extent that translation prevents the headings, labels, designations, and required disclosure items under this section from fitting in the space provided on form H–25.

(ix) *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.

■ 21. Section 1026.39 is amended by revising paragraphs (a)(2) and (d) introductory text and adding paragraph (d)(5) to read as follows:

§ 1026.39 Mortgage transfer disclosures.

(a) * * *

(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 mortgage 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 secured by a dwelling or real property other than a reverse mortgage transaction subject to § 1026.33 of this part:

* * * * *

(5) *Partial payment policy.* Under the subheading ''Partial Payment'':

(i) If periodic payments that are less than the full amount due are accepted, a statement that the covered person, using the term ''lender,'' may accept partial payments and apply such payments to the consumer's loan;

(ii) If periodic payments that are less than the full amount due are accepted but not applied to a consumer's loan until the consumer pays the remainder of the full amount due, a statement that the covered person, using the term ''lender,'' may hold partial payments in a separate account until the consumer pays the remainder of the payment and then apply the full periodic payment to the consumer's loan;

(iii) If periodic payments that are less than the full amount due are not accepted, a statement that the covered person, using the term ''lender,'' does not accept any partial payments; and

(iv) A statement that, if the loan is sold, the new covered person, using the term ''lender,'' may have a different policy.

* * * * *

■ 22. 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.

* * * * *

■ 23. Appendix H to part 1026 is amended by revising H–13 and H–15, adding H–24 through H–29, 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 Forms and Clauses

* * * * *

H–13 Closed-End Transaction With Demand Feature Sample

* * * * *

H–15 Closed-End Graduated-Payment Transaction Sample

* * * * *

H–24(A) Mortgage Loan Transaction Loan Estimate—Model Form

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–24(G) Mortgage Loan Transaction Loan Estimate—Modification to Loan Estimate for Transaction Not Involving Seller—Model Form

H–25(A) Mortgage Loan Transaction Closing Disclosure—Model Form

H–25(B) Mortgage Loan Transaction Closing Disclosure—Fixed Rate Loan Sample

H–25(C) Mortgage Loan Transaction Closing Disclosure—Borrower Funds From Second-Lien Loan in Summaries of Transactions Sample

H–25(D) Mortgage Loan Transaction Closing Disclosure—Borrower Satisfaction of Seller's Second-Lien Loan Outside of Closing in Summaries of Transactions Sample

H–25(E) Mortgage Loan Transaction Closing Disclosure—Refinance Transaction Sample

H–25(F) Mortgage Loan Transaction Closing Disclosure—Refinance Transaction Sample (amount in excess of § 1026.19(e)(3))

H–25(G) Mortgage Loan Transaction Closing Disclosure—Refinance Transaction With Cash From Consumer at Consummation Sample

H–25(H) Mortgage Loan Transaction Closing Disclosure—Modification to Closing Cost Details—Model Form

H–25(I) Mortgage Loan Transaction Closing Disclosure—Modification to Closing Disclosure for Disclosure Provided to Seller—Model Form

H–25(J) Mortgage Loan Transaction Closing Disclosure—Modification to Closing Disclosure for Transaction Not Involving Seller—Model Form

H–26 Mortgage Loan Transaction—Pre-Loan Estimate Statement—Model Form

H–27(A) Mortgage Loan Transaction —Written List of Providers—Model Form

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

H–28(A) Mortgage Loan Transaction Loan Estimate—Spanish Language Model Form

H–28(B) Mortgage Loan Transaction Loan Estimate—Spanish Language Purchase Sample

H–28(C) Mortgage Loan Transaction Loan Estimate—Spanish Language Refinance Sample

H–28(D) Mortgage Loan Transaction Loan Estimate—Spanish Language Balloon Payment Sample

H–28(E) Mortgage Loan Transaction Loan Estimate—Spanish Language Negative Amortization Sample

H–28(F) Mortgage Loan Transaction Closing Disclosure—Spanish Language Model Form

H–28(G) Mortgage Loan Transaction Closing Disclosure—Spanish Language Purchase Sample

H–28(H) Mortgage Loan Transaction Closing Disclosure—Spanish Language Refinance Sample

H–28(I) Mortgage Loan Transaction Loan Estimate—Modification to Loan Estimate for Transaction Not Involving Seller—Spanish Language Model Form

H–28(J) Mortgage Loan Transaction Closing Disclosure—Modification to Closing Disclosure for Transaction Not Involving Seller—Spanish Language Model Form

H–29 Escrow Cancellation Notice Model Form (§ 1026.20(e))

* * * * *

H–13—Closed-End Transaction With Demand Feature Sample

BILLING CODE 4810–AM–P

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 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—Model Form

Description: This is a blank model 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 four 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 Estimated 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.*

Costs at Closing	
Estimated Closing Costs	Includes in Loan Costs + in Other Costs – in Lender Credits. *See page 2 for details.*
Estimated Cash to Close	Includes Closing Costs. *See Calculating Cash to Close on page 2 for details.*

Visit **www.consumerfinance.gov/mortgage-estimate** 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 Estimated 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.*

Costs at Closing	
Estimated Closing Costs	Includes in Loan Costs + in Other Costs – in Lender Credits. *See page 2 for details.*
Estimated Cash to Close	Includes Closing Costs. *See Calculating Cash to Close on page 2 for details.*

Visit **www.consumerfinance.gov/mortgage-estimate** 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 (Paid from your 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 (Paid from your 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 (Paid from your 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 (Paid from your 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/___ LICENSE ID	NMLS/___ LICENSE 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 assumption of 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 ___ days late, we will charge a late fee of _____
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/___ LICENSE ID	NMLS/___ LICENSE 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 assumption of 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 ___ days late, we will charge a late fee of _____
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
NMLS/___ LICENSE ID
LOAN OFFICER
NMLS/___ LICENSE ID
EMAIL
PHONE

MORTGAGE BROKER
NMLS/___ LICENSE ID
LOAN OFFICER
NMLS/___ LICENSE ID
EMAIL
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 assumption of this loan on the original terms.

Late Payment
If your payment is more than ___ days late, we will charge a late fee of _____

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/___ LICENSE ID	NMLS/___ LICENSE 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 assumption of this loan on the original terms.
Late Payment	If your payment is more than ___ days late, we will charge a late fee of _____
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.

H–24(B) Mortgage Loan Transaction Loan Estimate—Fixed Rate Loan Sample

Description: This is a sample 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, a fixed interest rate of 3.875 percent, and a prepayment penalty equal to 2.00 percent of the outstanding principal balance of the loan for the first two years after consummation of the transaction. 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 2/15/2013
APPLICANTS Michael Jones and Mary Stone
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 4/16/2013 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 **3/4/2013** *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 Estimated Total Monthly Payment*	$761.78	NO
		Does the loan have these features?
Prepayment Penalty		YES • **As high as $3,240** if you pay off the loan during the first 2 years
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.	

Costs at Closing

Estimated Closing Costs	$8,054	Includes $5,672 in Loan Costs + $2,382 in Other Costs – $0 in Lender Credits. *See page 2 for details.*
Estimated Cash to Close	$16,054	Includes Closing Costs. *See Calculating Cash to Close on page 2 for details.*

Visit **www.consumerfinance.gov/mortgage-estimate** 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 – Settlement Agent Fee	$502
Title – Title Search	$1,261

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	

F. Prepaids	$867
Homeowner's Insurance Premium (6 months)	$605
Mortgage Insurance Premium (months)	
Prepaid Interest ($17.44 per day for 15 days @ 3.875%)	$262
Property Taxes (months)	

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	

Calculating Cash to Close

Total Closing Costs (J)	$8,054
Closing Costs Financed (Paid from your 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/__LICENSE ID	12345	NMLS/__LICENSE 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)	4.274%	Your costs over the loan term expressed as a rate. This is not your interest rate.
Total Interest Percentage (TIP)	69.45%	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 assumption of 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

H–24(C) Mortgage Loan Transaction Loan Estimate—Interest Only Adjustable Rate Loan Sample

Description: This is a sample 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 introductory interest rate that is fixed at 4.00 percent. After five years, the payments include principal and the interest rate adjusts every three years based on the value of the Monthly Treasury Average index plus a margin of 4.00 percent. The consumer has elected to lock the interest rate. The creditor does not require an escrow account with the loan. The creditor requires 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 2/15/2013
APPLICANTS Michael Jones and Mary Stone
123 Anywhere Street
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 4/16/2013 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 **3/4/2013** *at 5:00 p.m. EDT*

Loan Terms

		Can this amount increase after closing?
Loan Amount	$211,000	NO
Interest Rate	4%	YES • Adjusts **every 3 years** starting in year 6 • Can go **as high as 12%** in year 15 • See **AIR Table on page 2** for details
Monthly Principal & Interest *See Projected Payments below for your Estimated Total Monthly Payment*	$703.33	YES • Adjusts **every 3 years** starting in year 6 • Can go **as high as $2,068** in year 15 • 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	$703.33 *only interest*	$1,028 min $1,359 max	$1,028 min $1,604 max	$1,028 min $2,068 max
Mortgage Insurance	+ 109	+ 109	+ 109	+ —
Estimated Escrow *Amount can increase over time*	+ 0	+ 0	+ 0	+ 0
Estimated Total Monthly Payment	$812	$1,137–$1,468	$1,137–$1,713	$1,028–$2,068

		This estimate includes	In escrow?
Estimated Taxes, Insurance & Assessments *Amount can increase over time*	$533 a month	☒ Property Taxes ☒ Homeowner's Insurance ☐ Other:	NO NO

See Section G on page 2 for escrowed property costs. You must pay for other property costs separately.

Costs at Closing

Estimated Closing Costs	$8,791	Includes $5,851 in Loan Costs + $2,940 in Other Costs – $0 in Lender Credits. *See page 2 for details.*
Estimated Cash to Close	$27,791	Includes Closing Costs. *See Calculating Cash to Close on page 2 for details.*

Visit **www.consumerfinance.gov/mortgage-estimate** for general information and tools.

Closing Cost Details

Loan Costs

A. Origination Charges	$3,110
1 % of Loan Amount (Points)	$2,110
Application Fee	$500
Processing Fee	$500

B. Services You Cannot Shop For	$820
Appraisal Fee	$305
Credit Report Fee	$30
Flood Determination Fee	$35
Lender's Attorney Fee	$400
Tax Status Research Fee	$50

C. Services You Can Shop For	$1,921
Pest Inspection Fee	$125
Survey Fee	$150
Title – Courier Fee	$32
Title – Lender's Title Policy	$665
Title – Settlement Agent Fee	$325
Title – Title Search	$624

D. TOTAL LOAN COSTS (A + B + C)	$5,851

Other Costs

E. Taxes and Other Government Fees	$152
Recording Fees and Other Taxes	$152
Transfer Taxes	

F. Prepaids	$1,352
Homeowner's Insurance Premium (12 months)	$1,000
Mortgage Insurance Premium (months)	
Prepaid Interest ($23.44 per day for 15 days @ 4.00%)	$352
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	$1,436
Title – Owner's Title Policy (optional)	$1,436

I. TOTAL OTHER COSTS (E + F + G + H)	$2,940

J. TOTAL CLOSING COSTS	$8,791
D + I	$8,791
Lender Credits	

Calculating Cash to Close

Total Closing Costs (J)	$8,791
Closing Costs Financed (Paid from your Loan Amount)	$0
Down Payment/Funds from Borrower	$29,000
Deposit	– $10,000
Funds for Borrower	$0
Seller Credits	$0
Adjustments and Other Credits	$0
Estimated Cash to Close	$27,791

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	$1,028 – $1,359 at 61st payment
Subsequent Changes	Every three years
Maximum Payment	$2,068 starting at 169th payment

Adjustable Interest Rate (AIR) Table

Index + Margin	MTA + 4%
Initial Interest Rate	4%
Minimum/Maximum Interest Rate	3.25%/12%
Change Frequency	
First Change	Beginning of 61st month
Subsequent Changes	Every 36th month after first change
Limits on Interest Rate Changes	
First Change	2%
Subsequent Changes	2%

Additional Information About This Loan

LENDER	Ficus Bank	MORTGAGE BROKER	
NMLS/__LICENSE ID		NMLS/__LICENSE ID	
LOAN OFFICER	Joe Smith	LOAN OFFICER	
NMLS/__LICENSE ID	12345	NMLS/__LICENSE 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	$54,944	Total you will have paid in principal, interest, mortgage insurance, and loan costs.
	$0	Principal you will have paid off.
Annual Percentage Rate (APR)	4.617%	Your costs over the loan term expressed as a rate. This is not your interest rate.
Total Interest Percentage (TIP)	81.18%	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 assumption of 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

H–24(D) Mortgage Loan Transaction Loan Estimate—Refinance Sample

Description: This is a sample of a completed Loan Estimate for a transaction that is for a refinance of an existing mortgage loan that secures the property, for which the consumer is estimated to receive funds from the transaction. The estimated property value is $180,000, the loan amount is $150,000, the estimated outstanding balance of the existing mortgage loan is $120,000, and the interest rate is 4.25 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	2/15/2013
APPLICANTS	Michael Jones and Mary Stone 123 Anywhere Street Anytown, ST 12345
PROPERTY	123 Anywhere Street Anytown, ST 12345
EST. PROP. VALUE	$180,000

LOAN TERM	30 years
PURPOSE	Refinance
PRODUCT	Fixed Rate
LOAN TYPE	☒ Conventional ☐ FHA ☐ VA ☐ _____
LOAN ID #	123456789
RATE LOCK	☐ NO ☐ ☒ YES, until 4/16/2013 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* **3/4/2013** *at 5:00 p.m. EDT*

Loan Terms		Can this amount increase after closing?
Loan Amount	$150,000	NO
Interest Rate	4.25%	NO
Monthly Principal & Interest *See Projected Payments below for your Estimated Total Monthly Payment*	$737.91	NO
		Does the loan have these features?
Prepayment Penalty		NO
Balloon Payment		NO

Projected Payments

Payment Calculation	Years 1-4	Years 5-30
Principal & Interest	$737.91	$737.91
Mortgage Insurance	+ 82	+ —
Estimated Escrow *Amount can increase over time*	+ 206	+ 206
Estimated Total Monthly Payment	$1,026	$944

Estimated Taxes, Insurance & Assessments *Amount can increase over time*	$206 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.

Costs at Closing

Estimated Closing Costs	$5,099	Includes $3,521 in Loan Costs + $2,078 in Other Costs – $500 in Lender Credits. *See page 2 for details.*
Estimated Cash to Close	$24,901	Includes Closing Costs. *See Calculating Cash to Close on page 2 for details.* ☐ From ☒ To Borrower

Visit **www.consumerfinance.gov/mortgage-estimate** for general information and tools.

Closing Cost Details

Loan Costs

A. Origination Charges	$1,950
.5 % of Loan Amount (Points)	$750
Application Fee	$250
Origination Fee	$450
Underwriting Fee	$500

B. Services You Cannot Shop For	$635
Appraisal Fee	$425
Credit Report Fee	$30
Flood Determination Fee	$25
Flood Monitoring Fee	$45
Tax Monitoring Fee	$65
Tax Status Research Fee	$45

C. Services You Can Shop For	$936
Pest Inspection Fee	$85
Title – Insurance Binder	$50
Title – Lender's Title Policy	$251
Title – Settlement Agent Fee	$350
Title – Title Search	$200

D. TOTAL LOAN COSTS (A + B + C)	$3,521

Other Costs

E. Taxes and Other Government Fees	$80
Recording Fees and Other Taxes	$80
Transfer Taxes	

F. Prepaids	$1,585
Homeowner's Insurance Premium (6 months)	$605
Mortgage Insurance Premium (1 months)	$82
Prepaid Interest ($17.71 per day for 15 days @ 4.25%)	$266
Property Taxes (6 months)	$632

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	$0

I. TOTAL OTHER COSTS (E + F + G + H)	$2,078

J. TOTAL CLOSING COSTS	$5,099
D + I	$5,599
Lender Credits	– $500

Calculating Cash to Close

Loan Amount	$150,000
Total Closing Costs (J)	– $5,099
Estimated Total Payoffs and Payments	– $120,000
Estimated Cash to Close ☐ From ☒ To Borrower	$24,901

Estimated Closing Costs Financed (Paid from your Loan Amount)	$5,099

Additional Information About This Loan

LENDER	Ficus Bank	MORTGAGE BROKER	
NMLS/__LICENSE ID		NMLS/__LICENSE ID	
LOAN OFFICER	Joe Smith	LOAN OFFICER	
NMLS/__LICENSE ID	12345	NMLS/__LICENSE 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	$51,932	Total you will have paid in principal, interest, mortgage insurance, and loan costs.
	$13,788	Principal you will have paid off.
Annual Percentage Rate (APR)	4.537%	Your costs over the loan term expressed as a rate. This is not your interest rate.
Total Interest Percentage (TIP)	77.28%	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 assumption of 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 have to pay any debt remaining even 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 a sample of the information required by § 1026.37(a) through (c) for a transaction with a loan term of seven 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	Michael Jones and Mary Stone 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 Estimated Total Monthly Payment*	$853.78	NO
		Does the loan have these features?
Prepayment Penalty		NO
Balloon Payment		YES • You will have to pay **$149,263** at the end of year 7

Projected Payments

Payment Calculation	Years 1-7	Final Payment
Principal & Interest	$853.78	$149,262.95
Mortgage Insurance	+ 87	+ —
Estimated Escrow *Amount can increase over time*	+ 309	+ —
Estimated Total Monthly Payment	$1,250	$149,262.95

		This estimate includes	In escrow?
Estimated Taxes, Insurance & Assessments *Amount can increase over time*	$309 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.	

H–24(F) Mortgage Loan Transaction Loan Estimate—Negative Amortization Sample

Description: This is a sample 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	Michael Jones and Mary Stone 123 Anywhere Street Anytown, ST 12345
PROPERTY	456 Somewhere Avenue Anytown, ST 12345
SALE PRICE	$180,000

LOAN TERM	30 years
PURPOSE	Purchase
PRODUCT	Year 5 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 Estimated Total Monthly Payment*	$632.05	YES	• Adjusts **every year** starting in year 6 • Can go **as high as $1,227** in year 10 • 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	

H–24(G) Mortgage Loan Transaction Loan Estimate—Modification to Loan Estimate for Transaction Not Involving Seller—Model Form

Description: This is a blank model Loan Estimate that illustrates the application of the content requirements in § 1026.37, with the optional alternative tables permitted by § 1026.37(d)(2) and (h)(2) for transactions without a seller. This form provides two variations of page one, four variations of page two, and four 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
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 Estimated 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.*

Costs at Closing	
Estimated Closing Costs	Includes in Loan Costs + in Other Costs – in Lender Credits. *See page 2 for details.*
Estimated Cash to Close	Includes Closing Costs. *See Calculating Cash to Close on page 2 for details.* ☐ From ☐ To Borrower

Visit **www.consumerfinance.gov/mortgage-estimate** 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

Loan Amount
Total Closing Costs (J)
Estimated Total Payoffs and Payments
Estimated Cash to Close ☐ From ☐ To Borrower

Estimated Closing Costs Financed
(Paid from your Loan Amount)

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

Loan Amount
Total Closing Costs (J)
Estimated Total Payoffs and Payments
Estimated Cash to Close ☐ **From** ☐ **To Borrower**

Estimated Closing Costs Financed
(Paid from your Loan Amount)

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

Loan Amount
Total Closing Costs (J)
Estimated Total Payoffs and Payments
Estimated Cash to Close ☐ From ☐ To Borrower

Estimated Closing Costs Financed
(Paid from your Loan Amount)

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

Loan Amount
Total Closing Costs (J)
Estimated Total Payoffs and Payments
Estimated Cash to Close ☐ From ☐ To Borrower

Estimated Closing Costs Financed
(Paid from your Loan Amount)

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
NMLS/___ LICENSE ID
LOAN OFFICER
NMLS/___ LICENSE ID
EMAIL
PHONE

MORTGAGE BROKER
NMLS/___ LICENSE ID
LOAN OFFICER
NMLS/___ LICENSE ID
EMAIL
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 assumption of 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 ___ days late, we will charge a late fee of _____

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 have to pay any debt remaining even 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
NMLS/___ LICENSE ID
LOAN OFFICER
NMLS/___ LICENSE ID
EMAIL
PHONE

MORTGAGE BROKER
NMLS/___ LICENSE ID
LOAN OFFICER
NMLS/___ LICENSE ID
EMAIL
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 assumption of 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 ___ days late, we will charge a late fee of _____
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 have to pay any debt remaining even 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
NMLS/___ LICENSE ID
LOAN OFFICER
NMLS/___ LICENSE ID
EMAIL
PHONE

MORTGAGE BROKER
NMLS/___ LICENSE ID
LOAN OFFICER
NMLS/___ LICENSE ID
EMAIL
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 assumption of this loan on the original terms.

Late Payment
If your payment is more than ___ days late, we will charge a late fee of _____

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 have to pay any debt remaining even 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
NMLS/___ LICENSE ID
LOAN OFFICER
NMLS/___ LICENSE ID
EMAIL
PHONE

MORTGAGE BROKER
NMLS/___ LICENSE ID
LOAN OFFICER
NMLS/___ LICENSE ID
EMAIL
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 assumption of this loan on the original terms.

Late Payment
If your payment is more than ___ days late, we will charge a late fee of _____

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 have to pay any debt remaining even 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–25(A) Mortgage Loan Transaction Closing Disclosure—Model Form

Description: This is a blank model Closing Disclosure that illustrates the content requirements in § 1026.38. This form provides three variations of page one, one page two, one page three, four variations of page four, and four 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**
Settlement 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 Estimated 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 page 4 for details*	**This estimate includes** — **In escrow?** ☐ Property Taxes ☐ Homeowner's Insurance ☐ Other: *See Escrow Account on page 4 for details. You must pay for other property costs separately.*

Costs at Closing	
Closing Costs	Includes in Loan Costs + in Other Costs – in Lender Credits. *See page 2 for details.*
Cash to Close	Includes Closing Costs. *See Calculating Cash to Close on page 3 for details.*

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**
Settlement Agent	**Seller**	
File #		**Loan Type** ☐ Conventional ☐ FHA ☐ VA ☐ _____
Property		
	Lender	**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 Estimated 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 page 4 for details*	**This estimate includes** — **In escrow?** ☐ Property Taxes ☐ Homeowner's Insurance ☐ Other: *See Escrow Account on page 4 for details. You must pay for other property costs separately.*

Costs at Closing	
Closing Costs	Includes in Loan Costs + in Other Costs – in Lender Credits. *See page 2 for details.*
Cash to Close	Includes Closing Costs. *See Calculating Cash to Close on page 3 for details.*

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**
Settlement Agent	**Seller**	
File #		**Loan Type** ☐ Conventional ☐ FHA ☐ VA ☐ _____
Property		
	Lender	**Loan ID #**
Estimated Prop. Value		**MIC #**

Loan Terms	**Can this amount increase after closing?**
Loan Amount	
Interest Rate	
Monthly Principal & Interest *See Projected Payments below for your Estimated 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 page 4 for details*	**This estimate includes** **In escrow?** ☐ Property Taxes ☐ Homeowner's Insurance ☐ Other: *See Escrow Account on page 4 for details. You must pay for other property costs separately.*

Costs at Closing	
Closing Costs	Includes in Loan Costs + in Other Costs – in Lender Credits. *See page 2 for details.*
Cash to Close	Includes Closing Costs. *See Calculating Cash to Close on page 3 for details.*

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.

	Loan Estimate	Final	Did this change?
Total Closing Costs (J)			
Closing Costs Paid Before Closing			
Closing Costs Financed (Paid from your 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		
12		
13		
14		
15		

L. Paid Already by or on Behalf of Borrower at Closing		
01	Deposit	
02	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		
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 on the original terms.

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 ___ days late, your lender will charge a late fee of _____

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 Payments
Your lender
☐ may accept payments that are less than the full amount due (partial payments) and apply them to your loan.
☐ may hold them in a separate account until you pay the rest of the payment, and then apply the full payment to your loan.
☐ does not accept any 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 Escrow Payment		A cushion for the escrow account you pay at closing. See Section G on page 2.
Monthly Escrow Payment		The amount included in your total monthly payment.

☐ will not have an escrow account because ☐ you declined it ☐ your lender does not 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 on the original terms.

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 ___ days late, your lender will charge a late fee of _____

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 Payments
Your lender
☐ may accept payments that are less than the full amount due (partial payments) and apply them to your loan.
☐ may hold them in a separate account until you pay the rest of the payment, and then apply the full payment to your loan.
☐ does not accept any 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 Escrow Payment		A cushion for the escrow account you pay at closing. See Section G on page 2.
Monthly Escrow Payment		The amount included in your total monthly payment.

☐ will not have an escrow account because ☐ you declined it ☐ your lender does not 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 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 on the original terms.

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 ___ days late, your lender will charge a late fee of _____

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 Payments
Your lender
☐ may accept payments that are less than the full amount due (partial payments) and apply them to your loan.
☐ may hold them in a separate account until you pay the rest of the payment, and then apply the full payment to your loan.
☐ does not accept any partial payments.
If this loan is sold, your new lender may have a different policy.

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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.	

Questions? If you have questions about the loan terms or costs on this form, use the contact information below. To get more information or make a complaint, contact the Consumer Financial Protection Bureau at **www.consumerfinance.gov/mortgage-closing**

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 have to pay any debt remaining even after 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 ID					
___ License ID					
Contact					
Contact NMLS ID					
Contact ___ 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.	
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Loan Acceptance
You do not have to accept this loan because you have received this form or signed a loan application.

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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.

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Contact Information

	Lender	Mortgage Broker	Real Estate Broker (B)	Real Estate Broker (S)	Settlement Agent
Name					
Address					
NMLS ID					
___ License ID					
Contact					
Contact NMLS ID					
Contact ___ License ID					
Email					
Phone					

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.	
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Contact Information

	Lender	Mortgage Broker	Real Estate Broker (B)	Real Estate Broker (S)	Settlement Agent
Name					
Address					
NMLS ID					
___ License ID					
Contact					
Contact NMLS ID					
Contact ___ 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.	
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	Lender	Mortgage Broker	Real Estate Broker (B)	Real Estate Broker (S)	Settlement Agent
Name					
Address					
NMLS ID					
___ License ID					
Contact					
Contact NMLS ID					
Contact ___ License ID					
Email					
Phone					

H–25(B) Mortgage Loan Transaction Closing Disclosure—Fixed Rate Loan Sample

Description: This is a sample of a completed Closing Disclosure for the fixed rate loan illustrated by form H–24(B). The purpose, product, 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.

BILLING CODE 4810–AM–P

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	4/15/2013	**Borrower**	Michael Jones and Mary Stone 123 Anywhere Street Anytown, ST 12345	**Loan Term**	30 years
Closing Date	4/15/2013			**Purpose**	Purchase
Disbursement Date	4/15/2013			**Product**	Fixed Rate
Settlement Agent	Epsilon Title Co.	**Seller**	Steve Cole and Amy Doe 321 Somewhere Drive Anytown, ST 12345	**Loan Type**	☒ Conventional ☐ FHA ☐ VA ☐ _____
File #	12-3456				
Property	456 Somewhere Ave Anytown, ST 12345	**Lender**	Ficus Bank	**Loan ID #**	123456789
				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 Estimated Total Monthly Payment*	$761.78	NO
		Does the loan have these features?
Prepayment Penalty		YES • **As high as $3,240** if you pay off the loan during the first 2 years
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 page 4 for details*	$356.13 a month	☒ Property Taxes	YES
		☒ Homeowner's Insurance	YES
		☒ Other: Homeowner's Association Dues	NO
		See Escrow Account on page 4 for details. You must pay for other property costs separately.	

Costs at Closing		
Closing Costs	$9,712.10	Includes $4,694.05 in Loan Costs + $5,018.05 in Other Costs – $0 in Lender Credits. *See page 2 for details.*
Cash to Close	$14,147.26	Includes Closing Costs. *See Calculating Cash to Close on page 3 for details.*

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 – Settlement Agent Fee	to Epsilon Title Co.	$500.00				
06 Title – Title Search	to Epsilon Title Co.	$800.00				
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 Transfer Tax	to Any State			$950.00		
F. Prepaids		**$2,120.80**				
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 4/15/13 to 5/1/13)		$279.04				
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		**$2,400.00**				
01 HOA Capital Contribution	to HOA Acre Inc.	$500.00				
02 HOA Processing Fee	to HOA Acre Inc.	$150.00				
03 Home Inspection Fee	to Engineers Inc.	$750.00			$750.00	
04 Home Warranty Fee	to XYZ Warranty Inc.			$450.00		
05 Real Estate Commission	to Alpha Real Estate Broker			$5,700.00		
06 Real Estate Commission	to Omega Real Estate Broker			$5,700.00		
07 Title – Owner's Title Insurance (optional)	to Epsilon Title Co.	$1,000.00				
08						
I. TOTAL OTHER COSTS (Borrower-Paid)		**$5,018.05**				
Other Costs Subtotals (E + F + G + H)		$5,018.05				
J. TOTAL CLOSING COSTS (Borrower-Paid)		**$9,712.10**				
Closing Costs Subtotals (D + I)		$9,682.30	$29.80	$12,800.00	$750.00	$405.00
Lender Credits						

Calculating Cash to Close

Use this table to see what has changed from your Loan Estimate.

	Loan Estimate	Final	Did this change?
Total Closing Costs (J)	$8,054.00	$9,712.10	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 (Paid from your 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	$0	$0	NO
Seller Credits	$0	− $2,500.00	YES • See Seller Credits in **Section L**
Adjustments and Other Credits	$0	− $1,035.04	YES • See details in **Sections K and L**
Cash to Close	$16,054.00	$14,147.26	

Summaries of Transactions

Use this table to see a summary of your transaction.

BORROWER'S TRANSACTION

K. Due from Borrower at Closing				**$189,762.30**
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)			$9,682.30
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	4/15/13	to 4/30/13	$80.00
12				
13				
14				
15				
L. Paid Already by or on Behalf of Borrower at Closing				**$175,615.04**
01	Deposit			$10,000.00
02	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	1/1/13	to 4/14/13	$365.04
13	County Taxes		to	
14	Assessments		to	
15				
16				
17				
CALCULATION				
Total Due from Borrower at Closing (K)				$189,762.30
Total Paid Already by or on Behalf of Borrower at Closing (L)				− $175,615.04
Cash to Close ☒ From ☐ To Borrower				**$14,147.26**

SELLER'S TRANSACTION

M. Due to Seller at Closing				**$180,080.00**
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	4/15/13	to 4/30/13	$80.00
13				
14				
15				
16				
N. Due from Seller at Closing				**$115,665.04**
01	Excess Deposit			
02	Closing Costs Paid at Closing (J)			$12,800.00
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	1/1/13	to 4/14/13	$365.04
15	County Taxes		to	
16	Assessments		to	
17				
18				
19				
CALCULATION				
Total Due to Seller at Closing (M)				$180,080.00
Total Due from Seller at Closing (N)				− $115,665.04
Cash ☐ From ☒ To Seller				**$64,414.96**

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 on the original terms.

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 Payments
Your lender
☒ may accept payments that are less than the full amount due (partial payments) and apply them to your loan.
☐ may hold them in a separate account until you pay the rest of the payment, and then apply the full payment to your loan.
☐ does not accept any 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 Escrow Payment	$412.25	A cushion for the escrow account you pay at closing. See Section G on page 2.
Monthly Escrow 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 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.	$285,803.36
Finance Charge. The dollar amount the loan will cost you.	$118,830.27
Amount Financed. The loan amount available after paying your upfront finance charge.	$162,000.00
Annual Percentage Rate (APR). Your costs over the loan term expressed as a rate. This is not your interest rate.	4.174%
Total Interest Percentage (TIP). The total amount of interest that you will pay over the loan term as a percentage of your loan amount.	69.46%

Questions? If you have questions about the loan terms or costs on this form, use the contact information below. To get more information or make a complaint, contact the Consumer Financial Protection Bureau at **www.consumerfinance.gov/mortgage-closing**

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 have to pay any debt remaining even after 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 ID					
ST License ID			Z765416	Z61456	Z61616
Contact	Joe Smith		Samuel Green	Joseph Cain	Sarah Arnold
Contact NMLS ID	12345				
Contact ST License ID			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

H–25(C) Mortgage Loan Transaction Closing Disclosure—Borrower Funds From Second-Lien Loan in Summaries of Transactions Sample

Description: This is a sample 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			
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			
12			
13			
14			
15			
L. Paid Already by or on Behalf of Borrower at Closing			
01	Deposit		
02	Loan Amount		
03	Existing Loan(s) Assumed or Taken Subject to		
04	Second Loan (Principal Balance $100,000)		$96,500.00
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		
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		

CLOSING DISCLOSURE PAGE 3 OF 5 • LOAN ID #

H–25(D) Mortgage Loan Transaction Closing Disclosure—Borrower Satisfaction of Seller's Second-Lien Loan Outside of Closing in Summaries of Transactions Sample

Description: This is a sample 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		
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		
12		
13		
14		
15		
L. Paid Already by or on Behalf of Borrower at Closing		
01	Deposit	
02	Loan Amount	
03	Existing Loan(s) Assumed or Taken Subject to	
04	Satisfaction of Junior Lien $5,000 P.O.C. Borrower	
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		
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	Satisfaction of Junior Lien $5,000 P.O.C. Borrower	
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		

CLOSING DISCLOSURE PAGE 3 OF 5 • LOAN ID #

H–25(E) Mortgage Loan Transaction Closing Disclosure—Refinance Transaction Sample

Description: This is a sample of a completed Closing Disclosure for the refinance transaction illustrated by form H–24(D). The purpose, loan amount, loan term, and interest rate have not changed from the estimates provided on the Loan Estimate. The outstanding balance of the existing mortgage loan securing the property was less than estimated 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

Date Issued	4/15/2013
Closing Date	4/15/2013
Disbursement Date	4/15/2013
Settlement Agent	Zeta Title
File #	12-3456
Property	123 Anywhere Street Anytown, ST 12345
Appraised Prop. Value	$180,000

Transaction Information

Borrower	Michael Jones and Mary Stone 123 Anywhere Street Anytown, ST 12345
Lender	Ficus Bank

Loan Information

Loan Term	30 years
Purpose	Refinance
Product	Fixed Rate
Loan Type	☒ Conventional ☐ FHA ☐ VA ☐ _____
Loan ID #	123456789
MIC #	009874513

Loan Terms		**Can this amount increase after closing?**
Loan Amount	$150,000	NO
Interest Rate	4.25%	NO
Monthly Principal & Interest *See Projected Payments below for your Estimated Total Monthly Payment*	$737.91	NO
		Does the loan have these features?
Prepayment Penalty		NO
Balloon Payment		NO

Projected Payments

Payment Calculation	**Years 1-4**	**Years 5-30**
Principal & Interest	$737.91	$737.91
Mortgage Insurance	+ 82.35	+ —
Estimated Escrow *Amount can increase over time*	+ 206.13	+ 206.13
Estimated Total Monthly Payment	$1,026.39	$944.04

		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: HOA Dues	NO
		See page 4 for escrowed property costs. You must pay for other property costs separately.	

Costs at Closing

Closing Costs	$5,757.57	Includes $3,495.50 in Loan Costs + $2,762.07 in Other Costs – $500 in Lender Credits. *See page 2 for details.*
Cash to Close	$29,677.43	Includes Closing Costs. *See Calculating Cash to Close on page 3 for details.* ☐ From ☒ To Borrower

Closing Cost Details

Loan Costs		Borrower-Paid At Closing	Borrower-Paid Before Closing	Paid by Others
A. Origination Charges		**$1,950.00**		
01 .5 % of Loan Amount (Points)		$750.00		
02 Application Fee		$250.00		
03 Origination Fee		$450.00		
04 Underwriting Fee		$500.00		
05				
06				
07				
08				
B. Services Borrower Did Not Shop For		**$610.00**		
01 Appraisal Fee	to John Smith Appraisers Inc.		$405.00	
02 Credit Report Fee	to Information Inc.		$30.00	
03 Flood Determination Fee	to Info Co.	$20.00		
04 Flood Monitoring Fee	to Info Co.	$45.00		
05 Tax Monitoring Fee	to Info Co.	$65.00		
06 Tax Status Research Fee	to Info Co.	$45.00		
07				
08				
09				
10				
C. Services Borrower Did Shop For		**$935.50**		
01 Pest Inspection Fee	to Pests Co.	$85.00		
02 Title – Insurance Binder	to Epsilon Title Co.	$50.00		
03 Title – Lender's Title Policy	to Epsilon Title Co.	$250.50		
04 Title – Settlement Agent Fee	to Epsilon Title Co.	$350.00		
05 Title – Title Search	to Epsilon Title Co.	$200.00		
06				
07				
08				
D. TOTAL LOAN COSTS (Borrower-Paid)		**$3,495.50**		
Loan Costs Subtotals (A + B + C)		$3,060.50	$435.00	

Other Costs				
E. Taxes and Other Government Fees		**$60.00**		
01 Recording Fees	Deed: Mortgage: $60.00	$60.00		
02				
F. Prepaids		**$2,125.12**		
01 Homeowner's Insurance Premium (12 mo.) to Insurance Co.		$1,209.96		
02 Mortgage Insurance Premium (mo.)				
03 Prepaid Interest ($17.71 per day from 4/15/2013 to 5/1/2013)		$283.36		
04 Property Taxes (6 mo.) to Any County USA		$631.80		
05				
G. Initial Escrow Payment at Closing		**$576.95**		
01 Homeowner's Insurance $100.83 per month for 2 mo.		$201.66		
02 Mortgage Insurance $82.35 per month for 2 mo.		$164.70		
03 Property Taxes $105.30 per month for 2 mo.		$210.60		
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)		**$2,762.07**		
Other Costs Subtotals (E + F + G + H)		$2,762.07		

J. TOTAL CLOSING COSTS (Borrower-Paid)	**$5,757.57**		
Closing Costs Subtotals (D + I)	$5,822.57	$435.00	
Lender Credits	– $500.00		

Payoffs and Payments Use this table to see a summary of your payoffs and payments to others from your loan amount.

TO	AMOUNT
01 Rho Servicing to pay off existing loan	$115,000.00
02	
03	
04	
05	
06	
07	
08	
09	
10	
11	
12	
13	
14	
15	
K. TOTAL PAYOFFS AND PAYMENTS	$115,000.00

Calculating Cash to Close Use this table to see what has changed from your Loan Estimate.

	Loan Estimate	Final	Did this change?
Loan Amount	$150,000.00	$150,000.00	NO
Total Closing Costs (J)	– $5,099.00	– $5,757.57	YES • See **Total Loan Costs (D)** and **Total Other Costs (I)**
Closing Costs Paid Before Closing	$0	$435.00	YES • You paid these Closing Costs **before closing**
Total Payoffs and Payments (K)	– $120,000.00	– $115,000.00	YES • See **Payoffs and Payments (K)**
Cash to Close	$24,901.00 ☐ From ☒ To Borrower	$29,677.43 ☐ From ☒ To Borrower	Closing Costs Financed (Paid from your Loan Amount) $5,322.57

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 on the original terms.

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 Payments
Your lender
☒ may accept payments that are less than the full amount due (partial payments) and apply them to your loan.
☐ may hold them in a separate account until you pay the rest of the payment, and then apply the full payment to your loan.
☐ does not accept any 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	$2,473.56	Estimated total amount over year 1 for your escrowed property costs: *Property Taxes, Homeowner's Insurance*
Non-Escrowed Property Costs over Year 1	$1,800.00	Estimated total amount over year 1 for your non-escrowed property costs: *HOA Dues* You may have other property costs.
Initial Escrow Payment	$576.95	A cushion for the escrow account you pay at closing. See Section G on page 2.
Monthly Escrow 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 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.	$273,214.50
Finance Charge. The dollar amount the loan will cost you.	$121,029.00
Amount Financed. The loan amount available after paying your upfront finance charge.	$148,241.94
Annual Percentage Rate (APR). Your costs over the loan term expressed as a rate. This is not your interest rate.	4.543%
Total Interest Percentage (TIP). The total amount of interest that you will pay over the loan term as a percentage of your loan amount.	77.29%

Questions? If you have questions about the loan terms or costs on this form, use the contact information below. To get more information or make a complaint, contact the Consumer Financial Protection Bureau at **www.consumerfinance.gov/mortgage-closing**

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 have to pay any debt remaining even after 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		Zeta Title
Address	4321 Random Blvd. Somecity, ST 12340		321 Uptown Dr. Anytown, ST 12345
NMLS ID			
ST License ID			P76821
Contact	Joe Smith		Joan Taylor
Contact NMLS ID	12345		
Contact __ License ID			
Email	joesmith@ficusbank.com		joan@zt.biz
Phone	123-456-7890		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(F) Mortgage Loan Transaction Closing Disclosure—Refinance Transaction Sample (Amount in Excess of § 1026.19(e)(3))

Description: This is a sample of the completed disclosures required by § 1026.38(e) and (h) for a completed Closing Disclosure for the refinance transaction illustrated by form H–24(D). The Closing Costs have increased in excess of the good faith requirements of § 1026.19(e)(3) by $200, for which the creditor has provided a refund under § 1026.19(f)(2)(v).

J. TOTAL CLOSING COSTS (Borrower-Paid)	$5,977.57	
Closing Costs Subtotals (D + I)	$5,822.57	$655.00
Lender Credits (Includes $200 credit for increase in Closing Costs above legal limit)	– $500.00	

Calculating Cash to Close	Use this table to see what has changed from your Loan Estimate.		
	Loan Estimate	Final	Did this change?
Loan Amount	$150,000.00	$150,000.00	NO
Total Closing Costs (J)	– $5,099.00	– $5,977.57	YES • See **Total Loan Costs (D)** and **Total Other Costs (I)** • Increase **exceeds legal limits** by $200. See **Lender Credits** on page 2 for credit of excess amount.
Closing Costs Paid Before Closing	$0	$655.00	YES • You paid these Closing Costs **before closing**
Total Payoffs and Payments (K)	– $120,000.00	– $115,000.00	YES • See **Payoffs and Payments (K)**
Cash to Close	$24,901.00 ☐ From ☒ To Borrower	$29,677.43 ☐ From ☒ To Borrower	Closing Costs Financed (Paid from your Loan Amount) $5,322.57

H–25(G) Mortgage Loan Transaction Closing Disclosure—Refinance Transaction With Cash From Consumer at Consummation

Description: This is a sample of a completed Closing Disclosure for a refinance transaction in which the consumer must pay additional funds to satisfy the existing mortgage loan securing the property and other existing debt to consummate 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

Date Issued	4/15/2013
Closing Date	4/15/2013
Disbursement Date	4/15/2013
Settlement Agent	Zeta Title
File #	12-3456
Property	123 Anywhere Street Anytown, ST 12345
Appraised Prop. Value	$180,000

Transaction Information

Borrower	Michael Jones and Mary Stone 123 Anywhere Street Anytown, ST 12345
Lender	Fir Bank

Loan Information

Loan Term	30 years
Purpose	Refinance
Product	Fixed Rate
Loan Type	☒ Conventional ☐ FHA ☐ VA ☐ _____
Loan ID #	123456789
MIC #	009874513

Loan Terms		**Can this amount increase after closing?**
Loan Amount	$150,000	NO
Interest Rate	4.125%	NO
Monthly Principal & Interest *See Projected Payments below for your Estimated Total Monthly Payment*	$726.97	NO
		Does the loan have these features?
Prepayment Penalty		NO
Balloon Payment		NO

Projected Payments

Payment Calculation	**Years 1-4**	**Years 5-30**
Principal & Interest	$726.97	$726.97
Mortgage Insurance	+ 82.35	+ —
Estimated Escrow *Amount can increase over time*	+ 206.13	+ 206.13
Estimated Total Monthly Payment	$1,015.45	$933.10

		This estimate includes	**In escrow?**
Estimated Taxes, Insurance & Assessments *Amount can increase over time* *See page 4 for details*	$206.13 a month	☒ Property Taxes	YES
		☒ Homeowner's Insurance	YES
		☐ Other:	
		See Escrow Account on page 4 for details. You must pay for other property costs separately.	

Costs at Closing

Closing Costs	$6,156.60	Includes $3,800.50 in Loan Costs + $2,856.10 in Other Costs – $500 in Lender Credits. *See page 2 for details.*
Cash to Close	$6,716.60	Includes Closing Costs. *See Calculating Cash to Close on page 3 for details.* ☒ From ☐ To Borrower

Closing Cost Details

Loan Costs		Borrower-Paid At Closing	Borrower-Paid Before Closing	Paid by Others
A. Origination Charges		**$2,250.00**		
01 1 % of Loan Amount (Points)		$1,500.00		
02 Application Fee		$750.00		
03				
04				
05				
06				
07				
08				
B. Services Borrower Did Not Shop For		**$620.00**		
01 Appraisal Fee	to John Smith Appraisers Inc.		$405.00	
02 Credit Report Fee	to Information Inc.		$35.00	
03 Flood Determination Fee	to Info Co.	$25.00		
04 Flood Monitoring Fee	to Info Co.	$45.00		
05 Tax Monitoring Fee	to Info Co.	$65.00		
06 Tax Status Research Fee	to Info Co.	$45.00		
07				
08				
09				
10				
C. Services Borrower Did Shop For		**$930.50**		
01 Pest Inspection Fee	to Pests Co.	$80.00		
02 Title – Insurance Binder	to Epsilon Title Co.	$50.00		
03 Title – Lender's Title Policy	to Epsilon Title Co.	$250.50		
04 Title – Settlement Agent Fee	to Epsilon Title Co.	$350.00		
05 Title – Title Search	to Epsilon Title Co.	$200.00		
06				
07				
08				
D. TOTAL LOAN COSTS (Borrower-Paid)		**$3,800.50**		
Loan Costs Subtotals (A + B + C)		$3,360.50	$440.00	

Other Costs				
E. Taxes and Other Government Fees		**$80.00**		
01 Recording Fees	Deed: Mortgage: $80.00	$80.00		
02				
F. Prepaids		**$2,199.15**		
01 Homeowner's Insurance Premium (12 mo.) to Insurance Co.		$1,209.96		
02 Mortgage Insurance Premium (1 mo.) to MI Co.		$82.35		
03 Prepaid Interest ($17.19 per day from 4/15/2013 to 5/1/2013)		$275.04		
04 Property Taxes (6 mo.) to Any County USA		$631.80		
05				
G. Initial Escrow Payment at Closing		**$576.95**		
01 Homeowner's Insurance $100.83 per month for 2 mo.		$201.66		
02 Mortgage Insurance $82.35 per month for 2 mo.		$164.70		
03 Property Taxes $105.30 per month for 2 mo.		$210.60		
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)		**$2,856.10**		
Other Costs Subtotals (E + F + G + H)		$2,856.10		

J. TOTAL CLOSING COSTS (Borrower-Paid)	**$6,156.60**		
Closing Costs Subtotals (D + I)	$6,216.60	$440.00	
Lender Credits	– $500.00		

Payoffs and Payments Use this table to see a summary of your payoffs and payments to others from your loan amount.

TO	AMOUNT
01 Rho Servicing to pay off existing loan	$124,000.00
02 Beta Card Inc. to pay down credit card balance	$5,000.00
03 Bob's Home Improvement to pay off mechanic's lien	$12,000.00
04 State of Anywhere to pay off tax lien	$10,000.00
05	
06	
07	
08	
09	
10	
11	
12	
13	
14	
15	
K. TOTAL PAYOFFS AND PAYMENTS	$151,000.00

Calculating Cash to Close Use this table to see what has changed from your Loan Estimate.

	Loan Estimate	Final	Did this change?
Loan Amount	$150,000.00	$150,000.00	**NO**
Total Closing Costs (J)	– $5,691.00	– $6,156.60	**YES** • See **Total Loan Costs (D)** and **Total Other Costs (I)**
Closing Costs Paid Before Closing	$0	$440.00	**YES** • You paid these Closing Costs **before closing**
Total Payoffs and Payments (K)	– $120,000.00	– $151,000.00	**YES** • See **Payoffs and Payments (K)**
Cash to Close	$24,309.00 ☐ From ☒ To Borrower	$6,716.60 ☒ From ☐ To Borrower	Closing Costs Financed (Paid from your Loan Amount) $5,691.00

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 on the original terms.

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 Payments
Your lender
☒ may accept payments that are less than the full amount due (partial payments) and apply them to your loan.
☐ may hold them in a separate account until you pay the rest of the payment, and then apply the full payment to your loan.
☐ does not accept any 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	$2,473.56	Estimated total amount over year 1 for your escrowed property costs: *Property Taxes, Homeowner's Insurance*
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 Escrow Payment	$576.95	A cushion for the escrow account you pay at closing. See Section G on page 2.
Monthly Escrow 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 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.	$269,574.50
Finance Charge. The dollar amount the loan will cost you.	$116,884.00
Amount Financed. The loan amount available after paying your upfront finance charge.	$148,367.91
Annual Percentage Rate (APR). Your costs over the loan term expressed as a rate. This is not your interest rate.	4.404%
Total Interest Percentage (TIP). The total amount of interest that you will pay over the loan term as a percentage of your loan amount.	74.66%

Questions? If you have questions about the loan terms or costs on this form, use the contact information below. To get more information or make a complaint, contact the Consumer Financial Protection Bureau at **www.consumerfinance.gov/mortgage-closing**

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 have to pay any debt remaining even after 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	Fir Bank		Zeta Title
Address	4321 Random Blvd. Somecity, ST 12340		321 Uptown Dr. Anytown, ST 12345
NMLS ID			
ST License ID			P76821
Contact	Joe Smith		Joan Taylor
Contact NMLS ID	12345		
Contact __ License ID			
Email	joesmith@firbank.com		joan@zt.biz
Phone	123-456-7890		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—Model Form

Description: This is a blank model form of the modification to Closing Cost Details permitted by § 1026.38(t)(5)(iv)(B).

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					
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					

H–25(I) Mortgage Loan Transaction Closing Disclosure—Modification to Closing Disclosure for Disclosure Provided to Seller—Model Form

Description: This is a blank model form of the modification permitted by § 1026.38(t)(5)(vi).

Closing Disclosure

Closing Information

Date Issued
Closing Date
Disbursement Date
Settlement 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		
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	
__ License ID	
Contact	
Contact __ License ID	
Email	
Phone	

REAL ESTATE BROKER (S)	
Name	
Address	
__ License ID	
Contact	
Contact __ License ID	
Email	
Phone	

SETTLEMENT AGENT	
Name	
Address	
__ License ID	
Contact	
Contact __ License ID	
Email	
Phone	

Questions? If you have questions about the loan terms or costs on this form, use the contact information above. To get more information or make a complaint, contact the Consumer Financial Protection Bureau at **www.consumerfinance.gov/mortgage-closing**

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		

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		
09		
10		
11		
12		
13		

J. TOTAL CLOSING COSTS		

H–25(J) Mortgage Loan Transaction Closing Disclosure—Modification to Closing Disclosure for Transaction Not Involving Seller—Model Form

Description: This is a blank model form of the alternative disclosures and modifications permitted by § 1026.38(d)(2), (e), and (t)(5)(vii) for transactions without a seller.

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**
Settlement 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 Estimated 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 page 4 for details*	**This estimate includes** — **In escrow?** ☐ Property Taxes ☐ Homeowner's Insurance ☐ Other: *See Escrow Account on page 4 for details. You must pay for other property costs separately.*

Costs at Closing	
Closing Costs	Includes in Loan Costs + in Other Costs – in Lender Credits. *See page 2 for details.*
Cash to Close	Includes Closing Costs. *See Calculating Cash to Close on page 3 for details.* ☐ From ☐ To Borrower

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**
Settlement Agent	**Lender**	
File #		**Loan Type** ☐ Conventional ☐ FHA ☐ VA ☐ _____
Property		**Loan ID #**
Estimated Prop. Value		**MIC #**

Loan Terms	**Can this amount increase after closing?**
Loan Amount	
Interest Rate	
Monthly Principal & Interest *See Projected Payments below for your Estimated 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 page 4 for details*	**This estimate includes** — **In escrow?** ☐ Property Taxes ☐ Homeowner's Insurance ☐ Other: *See Escrow Account on page 4 for details. You must pay for other property costs separately.*

Costs at Closing	
Closing Costs	Includes in Loan Costs + in Other Costs – in Lender Credits. *See page 2 for details.*
Cash to Close	Includes Closing Costs. *See Calculating Cash to Close on page 3 for details.* ☐ From ☐ To Borrower

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			

Payoffs and Payments Use this table to see a summary of your payoffs and payments to others from your loan amount.

TO	AMOUNT
01	
02	
03	
04	
05	
06	
07	
08	
09	
10	
11	
12	
13	
14	
15	
K. TOTAL PAYOFFS AND PAYMENTS	

Calculating Cash to Close Use this table to see what has changed from your Loan Estimate.

	Loan Estimate	Final	Did this change?
Loan Amount			
Total Closing Costs (J)			
Closing Costs Paid Before Closing			
Total Payoffs and Payments (K)			
Cash to Close	☐ From ☐ To Borrower	☐ From ☐ To Borrower	Closing Costs Financed (Paid from your Loan Amount)

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 on the original terms.

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 ___ days late, your lender will charge a late fee of _____

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 Payments
Your lender
☐ may accept payments that are less than the full amount due (partial payments) and apply them to your loan.
☐ may hold them in a separate account until you pay the rest of the payment, and then apply the full payment to your loan.
☐ does not accept any 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 Escrow Payment		A cushion for the escrow account you pay at closing. See Section G on page 2.
Monthly Escrow Payment		The amount included in your total monthly payment.

☐ will not have an escrow account because ☐ you declined it ☐ your lender does not 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 on the original terms.

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 ___ days late, your lender will charge a late fee of _____

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 Payments
Your lender
☐ may accept payments that are less than the full amount due (partial payments) and apply them to your loan.
☐ may hold them in a separate account until you pay the rest of the payment, and then apply the full payment to your loan.
☐ does not accept any 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 Escrow Payment		A cushion for the escrow account you pay at closing. See Section G on page 2.
Monthly Escrow Payment		The amount included in your total monthly payment.

☐ will not have an escrow account because ☐ you declined it ☐ your lender does not 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 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 on the original terms.

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 ___ days late, your lender will charge a late fee of _____

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.
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☐ do not have a negative amortization feature.

Partial Payments
Your lender
☐ may accept payments that are less than the full amount due (partial payments) and apply them to your loan.
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Adjustable Payment (AP) Table

Interest Only Payments?	
Optional Payments?	
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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.	

Questions? If you have questions about the loan terms or costs on this form, use the contact information below. To get more information or make a complaint, contact the Consumer Financial Protection Bureau at **www.consumerfinance.gov/mortgage-closing**

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 have to pay any debt remaining even after 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 ID			
___ License ID			
Contact			
Contact NMLS ID			
Contact ___ 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.	
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☐ state law does not protect you from liability for the unpaid balance.

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.

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 ID			
___ License ID			
Contact			
Contact NMLS ID			
Contact ___ License ID			
Email			
Phone			

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.	
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☐ 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 ID			
___ License ID			
Contact			
Contact NMLS ID			
Contact ___ 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.	

Questions? If you have questions about the loan terms or costs on this form, use the contact information below. To get more information or make a complaint, contact the Consumer Financial Protection Bureau at **www.consumerfinance.gov/mortgage-closing**

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,

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☐ state law does not protect you from liability for the unpaid balance.

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.

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 ID			
___ License ID			
Contact			
Contact NMLS ID			
Contact ___ License ID			
Email			
Phone			

H–26 Mortgage Loan Transaction—Pre-Loan Estimate Statement—Model Form

Description: This is a model of the statement required by § 1026.19(e)(2)(ii) to be stated at the top of the front of the first page of a written estimate of terms or costs specific to a consumer that is provided to a consumer before the consumer receives the disclosures required under § 1026.19(e)(1)(i).

Your actual rate, payment, and costs could be higher. Get an official Loan Estimate before choosing a loan.

H–27(A) Mortgage Loan Transaction—Written List of Providers—Model Form

Description: This is a blank model form 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 of your Loan Estimate).

Service Provider List You can select these providers or shop for your own providers.

Service	Estimate	Provider We Identified	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).

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 of your Loan Estimate).

Service Provider List You can select these providers or shop for your own providers.

Service	Estimate	Provider We Identified	Contact Information
Pest Inspection Fee	$135	Pest Co.	Jane Polk 123 Avenue A Anytown, ST 12345 janep@pestco.com 111-222-3333
Survey Fee	$65	Surveyor LLC	Bill Barnes 456 Avenue B Anytown, ST 12341 billb@surveyorllc.com 111-333-4444
Title – Insurance Binder	$700	Gamma Title Co.	Joanna Campbell 789 Avenue C Anytown, ST 12333 joannac@gammatitle.com 222-444-5555
Title – Lender's Title Policy	$535		
Title – Settlement Agent Fee	$502		
Title – Title Search	$1,261		
Title – Lender's Title Insurance	$1,100	Delta Title Inc.	Frank Fields 321 Avenue D Anytown, ST 12321 frankf@deltatitle.com 222-444-6666
Title – Other Title Services	$1,000		
Title – Settlement Agent Fee	$350		

APPLICANTS: Michael Jones and Mary Stone DATE ISSUED: 2/15/2013 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 of your Loan Estimate).

Service Provider List You can select these providers or shop for your own providers.

Service	Estimate	Provider We Identified	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 Identified	Contact Information

APPLICANTS: DATE ISSUED: LOAN ID #

FEDERAL REGISTER

Vol. 78 Tuesday,

No. 251 December 31, 2013

Book 2 of 2 Books

Pages 80225–80462

Part II—Continued

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); Final Rule

H–28(A) Mortgage Loan Transaction Loan Estimate—Spanish Language Model Form

Description: This is a blank model Loan Estimate that illustrates the application of the content requirements in § 1026.37, and is translated into the Spanish language as permitted by § 1026.37(o)(5)(ii). This form provides two variations of page one, four variations of page two, and four variations of page three, reflecting the variable content requirements in § 1026.37.

Guarde esta Estimación de Préstamo para compararla con su Declaración de Cierre.

Estimación de Préstamo

FECHA DE EMISIÓN

SOLICITANTES

INMUEBLE

PRECIO DE VENTA

PLAZO DEL PRÉSTAMO

FINALIDAD

PRODUCTO

TIPO DE PRÉSTAMO ☐ Convencional ☐ FHA ☐ VA ☐ _____

N.º DEL PRÉSTAMO

BLOQUEO DE TASA ☐ NO ☐ Sí, hasta el a las

Antes del cierre, la tasa de interés, los puntos y los créditos del prestamista podrían cambiar, a menos que usted bloquee la tasa de interés. Todos los demás costos de cierre estimados estarán vigentes hasta el

Términos del préstamo	¿Puede aumentar este monto después del cierre?
Monto del préstamo	
Tasa de interés	
Pago mensual de intereses y capital *Consulte la sección de pagos proyectados para saber el total estimado de su pago mensual*	
	¿Tiene el préstamo estas características?
Multa por pago anticipado	
Cuota extraordinaria	

Pagos proyectados	
Cálculo de los pagos	
Capital e intereses Seguro hipotecario Depósito estimado para impuestos y seguros de la vivienda *El monto puede aumentar con el paso del tiempo*	
Pago total mensual estimado	
Impuestos, seguro y evaluaciones estimados *El monto puede aumentar con el paso del tiempo*	**Esta estimación incluye** **¿En depósito?** ☐ Impuestos sobre la propiedad ☐ Seguro de la vivienda ☐ Otro: *Consulte la Sección G en la página 2 los detalles de la cuenta de depósito para impuestos y seguros. Deberá pagar por separado los demás costos.*

Costos al momento del cierre	
Costos de cierre estimados	Incluye por costos del préstamo + por otros costos – por créditos del prestamista. *Consulte los detalles en la página 2.*
Dinero en efectivo estimado para el cierre	Incluye costos de cierre. *Consulte los detalles en Cálculo del dinero en efectivo para el cierre en la página 2.*

Visite **www.consumerfinance.gov/mortgage-estimate** para información general y ayuda.

Guarde esta Estimación de Préstamo para compararla con su Declaración de Cierre.

Estimación de Préstamo

FECHA DE EMISIÓN

SOLICITANTES

INMUEBLE

VALOR ESTIMADO DE LA VIVIENDA

PLAZO DEL PRÉSTAMO

FINALIDAD

PRODUCTO

TIPO DE PRÉSTAMO ☐ Convencional ☐ FHA ☐ VA ☐ _____

N.º DEL PRÉSTAMO

BLOQUEO DE TASA ☐ NO ☐ SÍ, hasta el a las

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Términos del préstamo	¿Puede aumentar este monto después del cierre?
Monto del préstamo	
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Pago mensual de intereses y capital *Consulte la sección de pagos proyectados para saber el total estimado de su pago mensual*	
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Multa por pago anticipado	
Cuota extraordinaria	

Pagos proyectados	
Cálculo de los pagos	
Capital e intereses Seguro hipotecario Depósito estimado para impuestos y seguros de la vivienda *El monto puede aumentar con el paso del tiempo*	
Pago total mensual estimado	
Impuestos, seguro y evaluaciones estimados *El monto puede aumentar con el paso del tiempo*	**Esta estimación incluye** **¿En depósito?** ☐ Impuestos sobre la propiedad ☐ Seguro de la vivienda ☐ Otro: *Consulte la Sección G en la página 2 los detalles de la cuenta de depósito para impuestos y seguros. Deberá pagar por separado los demás costos.*

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Costos de cierre estimados	Incluye por costos del préstamo + por otros costos – por créditos del prestamista. *Consulte los detalles en la página 2.*
Dinero en efectivo estimado para el cierre	Incluye costos de cierre. *Consulte los detalles en Cálculo del dinero en efectivo para el cierre en la página 2.*

Visite **www.consumerfinance.gov/mortgage-estimate** para información general y ayuda.

Detalles de los costos del cierre

Costos del préstamo

A. Gastos por tramitación

% del monto del préstamo (Puntos)

B. Servicios que usted no puede contratar

C. Servicios que usted puede contratar

D. COSTOS TOTALES DEL PRESTAMO (A + B + C)

Otros costos

E. Impuestos y otros cargos gubernamentales

Costos de registro y otros impuestos
Impuestos por transferencia de título

F. Pagos anticipados

Impuestos sobre la propiedad (meses)
Pago anticipado de intereses
(diarios durante días a la tasa de)
Prima del seguro de hipoteca (meses)
Prima del seguro de la vivienda (meses)

G. Pago inicial de la cuenta en depósito al cierre

Impuestos sobre la propiedad
de por mes durante meses
Seguro de hipoteca de por mes durante meses
Seguro de la vivienda de por mes durante meses

H. Otros

I. TOTAL DE OTROS COSTOS (E + F + G + H)

J. TOTAL DE COSTOS DE CIERRE

D + I
Créditos del prestamista

Cálculo del dinero en efectivo para el cierre

Total de costos de cierre (J)
Costos de cierre financiados (pagados del monto del préstamo)
Pago inicial/Fondos del deudor
Depósito
Fondos para el deudor
Créditos del vendedor
Ajustes y otros créditos

Dinero en efectivo estimado para el cierre

Detalles de los costos del cierre

Costos del préstamo

A. Gastos por tramitación

% del monto del préstamo (Puntos)

B. Servicios que usted no puede contratar

C. Servicios que usted puede contratar

D. COSTOS TOTALES DEL PRESTAMO (A + B + C)

Otros costos

E. Impuestos y otros cargos gubernamentales

Costos de registro y otros impuestos
Impuestos por transferencia de título

F. Pagos anticipados

Impuestos sobre la propiedad (meses)
Pago anticipado de intereses
(diarios durante días a la tasa de)
Prima del seguro de hipoteca (meses)
Prima del seguro de la vivienda (meses)

G. Pago inicial de la cuenta en depósito al cierre

Impuestos sobre la propiedad
de por mes durante meses
Seguro de hipoteca de por mes durante meses
Seguro de la vivienda de por mes durante meses

H. Otros

I. TOTAL DE OTROS COSTOS (E + F + G + H)

J. TOTAL DE COSTOS DE CIERRE

D + I
Créditos del prestamista

Cálculo del dinero en efectivo para el cierre

Total de costos de cierre (J)
Costos de cierre financiados (pagados del monto del préstamo)
Pago inicial/Fondos del deudor
Depósito
Fondos para el deudor
Créditos del vendedor
Ajustes y otros créditos

Dinero en efectivo estimado para el cierre

Tabla de pagos ajustables (PA)

¿Pago de interés solamente?	
¿Pagos opcionales?	
¿Pagos escalonados?	
¿Pagos estacionales?	
Pagos mensuales de capital e intereses	
Primer cambio/Monto	
Cambios subsiguientes	
Pago máximo	

Tabla de tasa de interés ajustable (TIA)

Índice + Margen	
Tasa de interés inicial	
Tasa de interés mínima/máxima	
Frecuencia de los cambios	
Primer cambio	
Cambios subsiguientes	
Límites de cambios en la tasa de interés	
Primer cambio	
Cambios subsiguientes	

Detalles de los costos del cierre

Costos del préstamo

A. Gastos por tramitación

% del monto del préstamo (Puntos)

B. Servicios que usted no puede contratar

C. Servicios que usted puede contratar

D. COSTOS TOTALES DEL PRESTAMO (A + B + C)

Otros costos

E. Impuestos y otros cargos gubernamentales

Costos de registro y otros impuestos
Impuestos por transferencia de título

F. Pagos anticipados

Impuestos sobre la propiedad (meses)
Pago anticipado de intereses
(diarios durante días a la tasa de)
Prima del seguro de hipoteca (meses)
Prima del seguro de la vivienda (meses)

G. Pago inicial de la cuenta en depósito al cierre

Impuestos sobre la propiedad
de por mes durante meses
Seguro de hipoteca de por mes durante meses
Seguro de la vivienda de por mes durante meses

H. Otros

I. TOTAL DE OTROS COSTOS (E + F + G + H)

J. TOTAL DE COSTOS DE CIERRE

D + I
Créditos del prestamista

Cálculo del dinero en efectivo para el cierre

Total de costos de cierre (J)
Costos de cierre financiados (pagados del monto del préstamo)
Pago inicial/Fondos del deudor
Depósito
Fondos para el deudor
Créditos del vendedor
Ajustes y otros créditos

Dinero en efectivo estimado para el cierre

Tabla de pagos ajustables (PA)

¿Pago de interés solamente?	
¿Pagos opcionales?	
¿Pagos escalonados?	
¿Pagos estacionales?	
Pagos mensuales de capital e intereses	
Primer cambio/Monto	
Cambios subsiguientes	
Pago máximo	

Detalles de los costos del cierre

Costos del préstamo

A. Gastos por tramitación

% del monto del préstamo (Puntos)

B. Servicios que usted no puede contratar

C. Servicios que usted puede contratar

D. COSTOS TOTALES DEL PRESTAMO (A + B + C)

Otros costos

E. Impuestos y otros cargos gubernamentales

Costos de registro y otros impuestos
Impuestos por transferencia de título

F. Pagos anticipados

Impuestos sobre la propiedad (meses)
Pago anticipado de intereses
(diarios durante días a la tasa de)
Prima del seguro de hipoteca (meses)
Prima del seguro de la vivienda (meses)

G. Pago inicial de la cuenta en depósito al cierre

Impuestos sobre la propiedad
de por mes durante meses
Seguro de hipoteca de por mes durante meses
Seguro de la vivienda de por mes durante meses

H. Otros

I. TOTAL DE OTROS COSTOS (E + F + G + H)

J. TOTAL DE COSTOS DE CIERRE

D + I
Créditos del prestamista

Cálculo del dinero en efectivo para el cierre

Total de costos de cierre (J)
Costos de cierre financiados (pagados del monto del préstamo)
Pago inicial/Fondos del deudor
Depósito
Fondos para el deudor
Créditos del vendedor
Ajustes y otros créditos

Dinero en efectivo estimado para el cierre

Tabla de tasa de interés ajustable (TIA)

Índice + Margen
Tasa de interés inicial
Tasa de interés mínima/máxima
Frecuencia de los cambios
Primer cambio
Cambios subsiguientes
Límites de cambios en la tasa de interés
Primer cambio
Cambios subsiguientes

Información adicional sobre este préstamo

PRESTAMISTA
N.º DE NMLS/ LICENCIA DE ___
AGENTE DE PRÉSTAMO
N.º DE NMLS/ LICENCIA DE ___
CORREO ELECTRÓNICO
TELÉFONO

CORREDOR HIPOTECARIO
N.º DE NMLS/ LICENCIA DE ___
AGENTE DE PRÉSTAMO
N.º DE NMLS/ LICENCIA DE ___
CORREO ELECTRÓNICO
TELÉFONO

Comparaciones	Utilice estas medidas para comparar este préstamo con otros.
En 5 años	Total que habrá pagado en capital, intereses, seguro hipotecario y costos del préstamo. Capital que habrá pagado.
Tasa porcentual anual (APR)	Sus costos durante el plazo del préstamo expresados como una tasa. Esta no es su tasa de interés.
Total de intereses pagados a lo largo del plazo del préstamo (TIP)	El monto total de intereses que pagará durante el plazo del préstamo como porcentaje del monto del préstamo.

Otras consideraciones

Administración del préstamo
Nuestra intención es
☐ brindarle servicios de administración de su préstamo. De ser así, usted emitirá los pagos a nuestro nombre.
☐ transferir los servicios de administración de su préstamo.

Pago atrasado
Si su pago presenta un retraso de más de ____ días, le cobraremos un recargo de _____

Refinanciamiento
El refinanciamiento de este préstamo dependerá de su situación financiera futura, del valor de la propiedad y de las condiciones del mercado. Es posible que no se le pueda refinanciar este préstamo.

Seguro de la vivienda
Este préstamo exige un seguro de la vivienda, que puede obtenerse de una empresa que usted seleccione y que nosotros consideremos aceptable.

Supuestos
Si usted vende o transfiere esta propiedad a otra persona,
☐ permitiremos, en determinadas condiciones, que esta persona asuma este préstamo con sus términos y condiciones originales.
☐ no permitiremos que se asuma este préstamo con sus términos y condiciones originales.

Valoración de la vivienda
Es posible que pidamos una valoración de la vivienda para determinar el valor de la propiedad y que le cobremos por esta valoración de la vivienda. Inmediatamente, le daremos una copia de la valoración aunque su préstamo no se cierre. Puede pagar para que se haga otra valoración de la vivienda más para su uso personal y esta correrá por su cuenta.

Confirmación de recepción

Al firmar, usted solo confirma que ha recibido este formulario. No es necesario que acepte este préstamo por el hecho de haber firmado o recibido este formulario.

Firma del solicitante _____ Fecha _____

Firma del cosolicitante _____ Fecha _____

Información adicional sobre este préstamo

PRESTAMISTA
N.º DE NMLS/ LICENCIA DE ___
AGENTE DE PRÉSTAMO
N.º DE NMLS/ LICENCIA DE ___
CORREO ELECTRÓNICO
TELÉFONO

CORREDOR HIPOTECARIO
N.º DE NMLS/ LICENCIA DE ___
AGENTE DE PRÉSTAMO
N.º DE NMLS/ LICENCIA DE ___
CORREO ELECTRÓNICO
TELÉFONO

Comparaciones	Utilice estas medidas para comparar este préstamo con otros.
En 5 años	Total que habrá pagado en capital, intereses, seguro hipotecario y costos del préstamo. Capital que habrá pagado.
Tasa porcentual anual (APR)	Sus costos durante el plazo del préstamo expresados como una tasa. Esta no es su tasa de interés.
Total de intereses pagados a lo largo del plazo del préstamo (TIP)	El monto total de intereses que pagará durante el plazo del préstamo como porcentaje del monto del préstamo.

Otras consideraciones

Aceptación del préstamo	No tiene que aceptar este préstamo por el hecho de haber recibido este formulario o firmado una aplicación para un préstamo.
Administración del préstamo	Nuestra intención es ☐ brindarle servicios de administración de su préstamo. De ser así, usted emitirá los pagos a nuestro nombre. ☐ transferir los servicios de administración de su préstamo.
Pago atrasado	Si su pago presenta un retraso de más de ____ días, le cobraremos un recargo de _____
Refinanciamiento	El refinanciamiento de este préstamo dependerá de su situación financiera futura, del valor de la propiedad y de las condiciones del mercado. Es posible que no se le pueda refinanciar este préstamo.
Seguro de la vivienda	Este préstamo exige un seguro de la vivienda, que puede obtenerse de una empresa que usted seleccione y que nosotros consideremos aceptable.
Supuestos	Si usted vende o transfiere esta propiedad a otra persona, ☐ permitiremos, en determinadas condiciones, que esta persona asuma este préstamo con sus términos y condiciones originales. ☐ no permitiremos que se asuma este préstamo con sus términos y condiciones originales.
Valoración de la vivienda	Es posible que pidamos una valoración de la vivienda para determinar el valor de la propiedad y que le cobremos por esta valoración de la vivienda. Inmediatamente, le daremos una copia de la valoración aunque su préstamo no se cierre. Puede pagar para que se haga otra valoración de la vivienda más para su uso personal y esta correrá por su cuenta.

Información adicional sobre este préstamo

PRESTAMISTA
N.º DE NMLS/ LICENCIA DE ___
AGENTE DE PRÉSTAMO
N.º DE NMLS/ LICENCIA DE ___
CORREO ELECTRÓNICO
TELÉFONO

CORREDOR HIPOTECARIO
N.º DE NMLS/ LICENCIA DE ___
AGENTE DE PRÉSTAMO
N.º DE NMLS/ LICENCIA DE ___
CORREO ELECTRÓNICO
TELÉFONO

Comparaciones	Utilice estas medidas para comparar este préstamo con otros.
En 5 años	Total que habrá pagado en capital, intereses, seguro hipotecario y costos del préstamo. Capital que habrá pagado.
Tasa porcentual anual (APR)	Sus costos durante el plazo del préstamo expresados como una tasa. Esta no es su tasa de interés.
Total de intereses pagados a lo largo del plazo del préstamo (TIP)	El monto total de intereses que pagará durante el plazo del préstamo como porcentaje del monto del préstamo.

Otras consideraciones

Administración del préstamo

Nuestra intención es
☐ brindarle servicios de administración de su préstamo. De ser así, usted emitirá los pagos a nuestro nombre.
☐ transferir los servicios de administración de su préstamo.

Pago atrasado

Si su pago presenta un retraso de más de ____ días, le cobraremos un recargo de _____

Refinanciamiento

El refinanciamiento de este préstamo dependerá de su situación financiera futura, del valor de la propiedad y de las condiciones del mercado. Es posible que no se le pueda refinanciar este préstamo.

Supuestos

Si usted vende o transfiere esta propiedad a otra persona,
☐ permitiremos, en determinadas condiciones, que esta persona asuma este préstamo con sus términos y condiciones originales.
☐ no permitiremos que se asuma este préstamo con sus términos y condiciones originales.

Confirmación de recepción

Al firmar, usted solo confirma que ha recibido este formulario. No es necesario que acepte este préstamo por el hecho de haber firmado o recibido este formulario.

Firma del solicitante _____ Fecha _____

Firma del cosolicitante _____ Fecha _____

Información adicional sobre este préstamo

PRESTAMISTA
N.º DE NMLS/ LICENCIA DE ___
AGENTE DE PRÉSTAMO
N.º DE NMLS/ LICENCIA DE ___
CORREO ELECTRÓNICO
TELÉFONO

CORREDOR HIPOTECARIO
N.º DE NMLS/ LICENCIA DE ___
AGENTE DE PRÉSTAMO
N.º DE NMLS/ LICENCIA DE ___
CORREO ELECTRÓNICO
TELÉFONO

Comparaciones	Utilice estas medidas para comparar este préstamo con otros.
En 5 años	Total que habrá pagado en capital, intereses, seguro hipotecario y costos del préstamo. Capital que habrá pagado.
Tasa porcentual anual (APR)	Sus costos durante el plazo del préstamo expresados como una tasa. Esta no es su tasa de interés.
Total de intereses pagados a lo largo del plazo del préstamo (TIP)	El monto total de intereses que pagará durante el plazo del préstamo como porcentaje del monto del préstamo.

Otras consideraciones

Aceptación del préstamo
No tiene que aceptar este préstamo por el hecho de haber recibido este formulario o firmado una aplicación para un préstamo.

Administración del préstamo
Nuestra intención es
☐ brindarle servicios de administración de su préstamo. De ser así, usted emitirá los pagos a nuestro nombre.
☐ transferir los servicios de administración de su préstamo.

Pago atrasado
Si su pago presenta un retraso de más de ____ días, le cobraremos un recargo de _____
_____

Refinanciamiento
El refinanciamiento de este préstamo dependerá de su situación financiera futura, del valor de la propiedad y de las condiciones del mercado. Es posible que no se le pueda refinanciar este préstamo.

Supuestos
Si usted vende o transfiere esta propiedad a otra persona,
☐ permitiremos, en determinadas condiciones, que esta persona asuma este préstamo con sus términos y condiciones originales.
☐ no permitiremos que se asuma este préstamo con sus términos y condiciones originales.

H–28(B) Mortgage Loan Transaction Loan Estimate—Spanish Language Purchase Sample

Description: This is a sample of the Loan Estimate illustrated by form H–24(C) for a 5 Year Interest Only, 5/3 Adjustable Rate loan, translated into the Spanish language as permitted by § 1026.37(o)(5)(ii).

FICUS BANK
4321 Random Boulevard • Somecity, ST 12340

Guarde esta Estimación de Préstamo para compararla con su Declaración de Cierre.

Estimación de Préstamo

FECHA DE EMISIÓN	2/15/2013
SOLICITANTES	Michael Jones and Mary Stone 123 Anywhere Street Anytown, ST 12345
INMUEBLE	456 Somewhere Avenue Anytown, ST 12345
PRECIO DE VENTA	$240,000

PLAZO DEL PRÉSTAMO	30 años
FINALIDAD	Adquisición por compra
PRODUCTO	Por 5 años pago de intereses solamente, 5/3 tasa ajustable
TIPO DE PRÉSTAMO	☒ Convencional ☐ FHA ☐ VA ☐ _____
N.º DEL PRÉSTAMO	123456789
BLOQUEO DE TASA	☐ NO ☒ SÍ, hasta el 4/16/2013 a las 5:00 p. m. EDT

Antes del cierre, la tasa de interés, los puntos y los créditos del prestamista podrían cambiar, a menos que usted bloquee la tasa de interés. Todos los demás costos de cierre estimados estarán vigentes hasta el **3/4/2013** *a las 5:00 p. m. EDT*

Términos del préstamo

		¿Puede aumentar este monto después del cierre?	
Monto del préstamo	$211,000	NO	
Tasa de interés	4%	SÍ	• Se ajusta **cada tres años** a partir del año 6 • Puede subir **hasta el 12 %** en el año 15 • Para obtener más información, consulte **la tabla de tasas de interés ajustable (TIA) en la página 2**
Pago mensual de intereses y capital *Consulte la sección de pagos proyectados para saber el total estimado de su pago mensual*	$703.33	SÍ	• Se ajusta **cada tres años** a partir del año 6 • Puede subir **hasta $2,068** en el año 15 • Incluye **solo el interés** y **no el capital** hasta el año 6 • Para obtener más información, consulte **la tabla de pagos ajustables (PA) en la página 2**
		¿Tiene el préstamo estas características?	
Multa por pago anticipado		NO	
Cuota extraordinaria		NO	

Pagos proyectados

Cálculo de los pagos	Años 1 a 5	Años 6 a 8	Años 9 a 11	Años 12 a 30
Capital e intereses	$703.33 *solo intereses*	$1,028 min $1,359 máx	$1,028 min $1,604 máx	$1,028 min $2,068 máx
Seguro hipotecario	+ 109	+ 109	+ 109	+ —
Depósito estimado para impuestos y seguros de la vivienda *El monto puede aumentar con el paso del tiempo*	+ 0	+ 0	+ 0	+ 0
Pago total mensual estimado	$812	$1,137 – $1,468	$1,137 – $1,713	$1,028 – $2,068

		Esta estimación incluye	¿En depósito?
Impuestos, seguro y evaluaciones estimados *El monto puede aumentar con el paso del tiempo*	$533 por mes	☒ Impuestos sobre la propiedad	NO
		☒ Seguro de la vivienda	NO
		☐ Otro:	

Consulte la Sección G en la página 2 los detalles de la cuenta de depósito para impuestos y seguros. Deberá pagar por separado los demás costos.

Costos al momento del cierre

Costos de cierre estimados	$8,791	Incluye $5,851 por costos del préstamo + $2,940 por otros costos – $0 por créditos del prestamista. *Consulte los detalles en la página 2.*
Dinero en efectivo estimado para el cierre	$27,791	Incluye costos de cierre. *Consulte los detalles en Cálculo del dinero en efectivo para el cierre en la página 2.*

Visite **www.consumerfinance.gov/mortgage-estimate** para información general y ayuda.

Detalles de los costos del cierre

Costos del préstamo

A. Gastos por tramitación	**$3,110**
1 % del monto del préstamo (Puntos)	$2,110
Cargo por procesamiento	$500
Cargo por la solicitud del préstamo	$500
B. Servicios que usted no puede contratar	**$820**
Cargo por determinación de zonas de inundación	$35
Cargo por informe de crédito	$30
Cargo por investigación sobre situación tributaria	$50
Cargo por valoración de la vivienda	$305
Honorarios del abogado del prestamista	$400
C. Servicios que usted puede contratar	**$1,921**
Cargo por inspección de plagas	$125
Cargo por peritaje (suelos)	$150
Título – Estudio de títulos de propiedad	$624
Título – Honorarios del agente a cargo de la operación de cierre	$325
Título – Póliza del título de propiedad del prestamista	$665
Título – Tarifa de envío	$32
D. COSTOS TOTALES DEL PRESTAMO (A + B + C)	**$5,851**

Otros costos

E. Impuestos y otros cargos gubernamentales	**$152**
Costos de registro y otros impuestos	$152
Impuestos por transferencia de título	
F. Pagos anticipados	**$1,352**
Impuestos sobre la propiedad (meses)	
Pago anticipado de intereses ($23.44 diarios durante 15 días a la tasa de 4.00%)	$352
Prima del seguro de hipoteca (meses)	
Prima del seguro de la vivienda (12 meses)	$1,000
G. Pago inicial de la cuenta en depósito al cierre	
Impuestos sobre la propiedad de por mes durante meses	
Seguro de hipoteca de por mes durante meses	
Seguro de la vivienda de por mes durante meses	
H. Otros	**$1,436**
Título – Póliza del título de propiedad del propietario (opcional)	$1,436
I. TOTAL DE OTROS COSTOS (E + F + G + H)	**$2,940**
J. TOTAL DE COSTOS DE CIERRE	**$8,791**
D + I	$8,791

Cálculo del dinero en efectivo para el cierre

Total de costos de cierre (J)	$8,791
Costos de cierre financiados (pagados del monto del préstamo)	$0
Pago inicial/Fondos del deudor	$29,000
Depósito	– $10,000
Fondos para el deudor	$0
Créditos del vendedor	$0
Ajustes y otros créditos	$0
Dinero en efectivo estimado para el cierre	$27,791

Tabla de pagos ajustables (PA)

¿Pago de interés solamente?	SÍ para los primeros 60 pagos
¿Pagos opcionales?	NO
¿Pagos escalonados?	NO
¿Pagos estacionales?	NO
Pagos mensuales de capital e intereses	
Primer cambio/Monto	$1,028 – $1,359 en el pago 61
Cambios subsiguientes	Cada tres años
Pago máximo	$2,068 a partir del pago 169

Tabla de tasa de interés ajustable (TIA)

Índice + Margen	MTA + 4%
Tasa de interés inicial	4%
Tasa de interés mínima/máxima	3.25%/12%
Frecuencia de los cambios	
Primer cambio	A partir del mes 61
Cambios subsiguientes	Cada 36 meses después del primer cambio
Límites de cambios en la tasa de interés	
Primer cambio	2%
Cambios subsiguientes	2%

Información adicional sobre este préstamo

PRESTAMISTA	Ficus Bank	CORREDOR HIPOTECARIO	
N.º DE NMLS/ LICENCIA DE __		N.º DE NMLS/ LICENCIA DE __	
AGENTE DE PRÉSTAMO	Joe Smith	AGENTE DE PRÉSTAMO	
N.º DE NMLS/ LICENCIA DE __	12345	N.º DE NMLS/ LICENCIA DE __	
CORREO ELECTRÓNICO	joesmith@ficusbank.com	CORREO ELECTRÓNICO	
TELÉFONO	123-456-7890	TELÉFONO	

Comparaciones	Utilice estas medidas para comparar este préstamo con otros.	
En 5 años	$54,944	Total que habrá pagado en capital, intereses, seguro hipotecario y costos del préstamo.
	$0	Capital que habrá pagado.
Tasa porcentual anual (APR)	4.617%	Sus costos durante el plazo del préstamo expresados como una tasa. Esta no es su tasa de interés.
Total de intereses pagados a lo largo del plazo del préstamo (TIP)	81.18%	El monto total de intereses que pagará durante el plazo del préstamo como porcentaje del monto del préstamo.

Otras consideraciones

Administración del préstamo

Nuestra intención es
- ☐ brindarle servicios de administración de su préstamo. De ser así, usted emitirá los pagos a nuestro nombre.
- ☒ transferir los servicios de administración de su préstamo.

Pago atrasado

Si su pago presenta un retraso de más de *15* días, le cobraremos un recargo de *5% sobre el monto total de los intereses y el capital que paga mensualmente.*

Refinanciamiento

El refinanciamiento de este préstamo dependerá de su situación financiera futura, del valor de la propiedad y de las condiciones del mercado. Es posible que no se le pueda refinanciar este préstamo.

Seguro de la vivienda

Este préstamo exige un seguro de la vivienda, que puede obtenerse de una empresa que usted seleccione y que nosotros consideremos aceptable.

Supuestos

Si usted vende o transfiere esta propiedad a otra persona,
- ☐ permitiremos, en determinadas condiciones, que esta persona asuma este préstamo con sus términos y condiciones originales.
- ☒ no permitiremos que se asuma este préstamo con sus términos y condiciones originales.

Valoración de la vivienda

Es posible que pidamos una valoración de la vivienda para determinar el valor de la propiedad y que le cobremos por esta valoración de la vivienda. Inmediatamente, le daremos una copia de la valoración aunque su préstamo no se cierre. Puede pagar para que se haga otra valoración de la vivienda más para su uso personal y esta correrá por su cuenta.

Confirmación de recepción

Al firmar, usted solo confirma que ha recibido este formulario. No es necesario que acepte este préstamo por el hecho de haber firmado o recibido este formulario.

Firma del solicitante	Fecha	Firma del cosolicitante	Fecha

H–28(C) Mortgage Loan Transaction Loan Estimate—Spanish Language Refinance Sample

Description: This is a sample of the Loan Estimate illustrated by form H–24(D) for a refinance transaction in which the consumer is estimated to receive funds from the transaction, translated into the Spanish language as permitted by § 1026.37(o)(5)(ii).

FICUS BANK
4321 Random Boulevard • Somecity, ST 12340

Guarde esta Estimación de Préstamo para compararla con su Declaración de Cierre.

Estimación de Préstamo

FECHA DE EMISIÓN	2/15/2013
SOLICITANTES	Michael Jones and Mary Stone 123 Anywhere Street Anytown, ST 12345
INMUEBLE	456 Somewhere Avenue Anytown, ST 12345
VALOR ESTIMADO DE LA PROPIEDAD	$180,000

PLAZO DEL PRÉSTAMO	30 años
FINALIDAD	Refinanciamiento
PRODUCTO	Tasa fija
TIPO DE PRÉSTAMO	☒ Convencional ☐ FHA ☐ VA ☐ _____
N.º DEL PRÉSTAMO	123456789
BLOQUEO DE TASA	☐ NO ☒ SÍ, hasta el 4/16/2013 a las 5:00 p. m. EDT

Antes del cierre, la tasa de interés, los puntos y los créditos del prestamista podrían cambiar, a menos que usted bloquee la tasa de interés. Todos los demás costos de cierre estimados estarán vigentes hasta el **3/4/2013** *a las 5:00 p. m. EDT*

Términos del préstamo		**¿Puede aumentar este monto después del cierre?**
Monto del préstamo	$150,000	**NO**
Tasa de interés	4.25%	**NO**
Pago mensual de intereses y capital *Consulte la sección de pagos proyectados para saber el total estimado de su pago mensual*	$737.91	**NO**
		¿Tiene el préstamo estas características?
Multa por pago anticipado		**NO**
Cuota extraordinaria		**NO**

Pagos proyectados

Cálculo de los pagos	**Años 1 a 4**	**Años 5 a 30**
Capital e intereses	$737.91	$737.91
Seguro hipotecario	+ 82	+ —
Depósito estimado para impuestos y seguros de la vivienda *El monto puede aumentar con el paso del tiempo*	+ 206	+ 206
Pago total mensual estimado	$1,026	$944

		Esta estimación incluye	**¿En depósito?**
Impuestos, seguro y evaluaciones estimados *El monto puede aumentar con el paso del tiempo*	$206 por mes	☒ Impuestos sobre la propiedad	**Sí**
		☒ Seguro de la vivienda	**Sí**
		☐ Otro:	
		Consulte la Sección G en la página 2 los detalles de la cuenta de depósito para impuestos y seguros. Deberá pagar por separado los demás costos.	

Costos al momento del cierre

Costos de cierre estimados	$5,099	Incluye $3,521 por costos del préstamo + $2,078 por otros costos − $500 por créditos del prestamista. *Consulte los detalles en la página 2.*
Dinero en efectivo estimado para el cierre	$24,901	Incluye costos de cierre. *Consulte los detalles en Cálculo del dinero en efectivo para el cierre en la página 2.* ☐ Del Deudor ☒ Para Deudor

Visite **www.consumerfinance.gov/mortgage-estimate** para información general y ayuda.

Detalles de los costos del cierre

Costos del préstamo

A. Gastos por tramitación	**$1,950**
.5 % del monto del préstamo (Puntos)	$750
Cargo por tramitacion	$450
Cargo por el estudio del crédito	$500
Cargo por la solicitud del préstamo	$250
B. Servicios que usted no puede contratar	**$635**
Cargo por control de zonas de inundación	$45
Cargo por determinación de zonas de inundación	$25
Cargo por fiscalización tributaria	$65
Cargo por informe de crédito	$30
Cargos por investigación sobre situación tributaria	$45
Cargo por valoración de vivienda	$425
C. Servicios que usted puede contratar	**$936**
Cargo por inspección de plagas	$85
Título – Estudio de títulos de propiedad	$200
Título – Honorarios del agente a cargo de la operación de cierre	$350
Título – Póliza del título de propiedad del prestamista	$251
Título – garantía provisional de seguro del título de propiedad	$50
D. COSTOS TOTALES DEL PRESTAMO (A + B + C)	**$3,521**

Otros costos

E. Impuestos y otros cargos gubernamentales	**$80**
Costos de registro y otros impuestos	$80
Impuestos por transferencia de título	
F. Pagos anticipados	**$1,585**
Impuestos sobre la propiedad (6 meses)	$632
Pago anticipado de intereses ($17.71 diarios durante 15 días a la tasa de 4.25 %)	$266
Prima del seguro de hipoteca (1 meses)	$82
Prima del seguro de la vivienda (6 meses)	$605
G. Pago inicial de la cuenta en depósito para impuestos y seguros de la vivienda al cierre	**$413**
Impuestos sobre la propiedad de $105.30 por mes durante 2 meses	$211
Seguro de hipoteca de por mes durante meses	
Seguro de la vivienda de $100.83 por mes durante 2 meses	$202
H. Otros	**$0**
I. TOTAL DE OTROS COSTOS (E + F + G + H)	**$2,078**
J. TOTAL DE COSTOS DE CIERRE	**$5,099**
D + I	$5,599
Créditos del prestamista	– $500

Cálculo del dinero en efectivo para el cierre

Monto del préstamo	$150,000
Total de costos de cierre (J)	– $5,099
Liquidaciones y pagos totales estimados	– $120,000
Dinero en efectivo estimado para el cierre ☐ **Del Deudor** ☒ **Para Deudor**	$24,901
Costos de cierre financiados estimados (pagados del monto del préstamo)	$5,099

Información adicional sobre este préstamo

PRESTAMISTA	Ficus Bank	CORREDOR HIPOTECARIO	
N.º DE NMLS/ LICENCIA DE __		N.º DE NMLS/ LICENCIA DE __	
AGENTE DE PRÉSTAMO	Joe Smith	AGENTE DE PRÉSTAMO	
N.º DE NMLS/ LICENCIA DE __	12345	N.º DE NMLS/ LICENCIA DE __	
CORREO ELECTRÓNICO	joesmith@ficusbank.com	CORREO ELECTRÓNICO	
TELÉFONO	123-456-7890	TELÉFONO	

Comparaciones	Utilice estas medidas para comparar este préstamo con otros.	
En 5 años	$51,932	Total que habrá pagado en capital, intereses, seguro hipotecario y costos del préstamo.
	$13,788	Capital que habrá pagado.
Tasa porcentual anual (APR)	4.537%	Sus costos durante el plazo del préstamo expresados como una tasa. Esta no es su tasa de interés.
Total de intereses pagados a lo largo del plazo del préstamo (TIP)	77.28%	El monto total de intereses que pagará durante el plazo del préstamo como porcentaje del monto del préstamo.

Otras consideraciones

Aceptación del préstamo	No tiene que aceptar este préstamo por el hecho de haber recibido este formulario o firmado una aplicación para un préstamo.
Administración del préstamo	Nuestra intención es ☐ brindarle servicios de administración de su préstamo. De ser así, usted emitirá los pagos a nuestro nombre. ☒ transferir los servicios de administración de su préstamo.
Pago atrasado	Si su pago presenta un retraso de más de *15* días, le cobraremos un recargo de *5% sobre el monto total de los intereses y el capital que paga mensualmente.*
Refinanciamiento	El refinanciamiento de este préstamo dependerá de su situación financiera futura, del valor de la propiedad y de las condiciones del mercado. Es posible que no se le pueda refinanciar este préstamo.
Responsabilidad luego de la ejecución de la hipoteca	Si usted acepta este préstamo, podría perder la protección de la ley estatal que quizás tenga en este momento contra la responsabilidad de pagar la deuda impaga si su prestamista ejecuta la hipoteca sobre su casa. Si pierde esta protección, puede que tenga que pagar la deuda restante incluso después de la ejecución de la hipoteca. Le recomendamos que consulte con un abogado para obtener más información.
Seguro de la vivienda	Este préstamo exige un seguro de la vivienda, que puede obtenerse de una empresa que usted seleccione y que nosotros consideremos aceptable.
Supuestos	Si usted vende o transfiere esta propiedad a otra persona, ☐ permitiremos, en determinadas condiciones, que esta persona asuma este préstamo con sus términos y condiciones originales. ☒ no permitiremos que se asuma este préstamo con sus términos y condiciones originales.
Valoración de la vivienda	Es posible que pidamos una valoración de la vivienda para determinar el valor de la propiedad y que le cobremos por esta valoración de la vivienda. Inmediatamente, le daremos una copia de la valoración aunque su préstamo no se cierre. Puede pagar para que se haga otra valoración de la vivienda más para su uso personal y esta correrá por su cuenta.

H–28(D) Mortgage Loan Transaction Loan Estimate—Spanish Language Balloon Payment Sample

Description: This is a sample of the information required by § 1026.37(a) through (c) for a transaction with a loan term of seven years that includes a final balloon payment illustrated by form H–24(E), translated into the Spanish language as permitted by § 1026.37(o)(5)(ii).

FICUS BANK
4321 Random Boulevard • Somecity, ST 12340

Guarde esta Estimación de Préstamo para compararla con su Declaración de Cierre.

Estimación de Préstamo

FECHA DE EMISIÓN	7/23/2012
SOLICITANTES	Michael Jones and Mary Stone 123 Anywhere Street Anytown, ST 12345
INMUEBLE	456 Somewhere Avenue Anytown, ST 12345
PRECIO DE VENTA	$190,000

PLAZO DEL PRÉSTAMO	7 años
FINALIDAD	Adquisición por compra
PRODUCTO	Año 7 cuota extraordinaria, tasa fija
TIPO DE PRÉSTAMO	☒ Convencional ☐ FHA ☐ VA ☐ _____
N.º DEL PRÉSTAMO	123456789
BLOQUEO DE TASA	☐ NO ☒ Sí, hasta el 9/21/2012 a las 5:00 p. m. EDT

Antes del cierre, la tasa de interés, los puntos y los créditos del prestamista podrían cambiar, a menos que usted bloquee la tasa de interés. Todos los demás costos de cierre estimados estarán vigentes hasta el **8/6/2012** *a las 5:00 p. m. EDT*

Términos del préstamo		¿Puede aumentar este monto después del cierre?
Monto del préstamo	$171,000	**NO**
Tasa de interés	4.375%	**NO**
Pago mensual de intereses y capital *Consulte la sección de pagos proyectados para saber el total estimado de su pago mensual*	$853.78	**NO**
		¿Tiene el préstamo estas características?
Multa por pago anticipado		**NO**
Cuota extraordinaria		**Sí** • Usted deberá pagar **$149,263** a finales del año 7.

Pagos proyectados

Cálculo de los pagos	Años 1 a 7	Pago final pactado
Capital e intereses	$853.78	$149,262.95
Seguro hipotecario	+ 87	+ —
Depósito estimado para impuestos y seguros de la vivienda *El monto puede aumentar con el paso del tiempo*	+ 309	+ —
Pago total mensual estimado	$1,250	$149,262.95

		Esta estimación incluye	¿En depósito?
Impuestos, seguro y evaluaciones estimados *El monto puede aumentar con el paso del tiempo*	$309 por mes	☒ Impuestos sobre la propiedad	**Sí**
		☒ Seguro de la vivienda	**Sí**
		☐ Otro:	

Consulte la Sección G en la página 2 los detalles de la cuenta de depósito para impuestos y seguros. Deberá pagar por separado los demás costos.

H–28(E) Mortgage Loan Transaction Loan Estimate—Spanish Language Negative Amortization Sample

Description: This is a sample of the information required by § 1026.37(a) and (b) for a transaction with negative amortization illustrated by form H–24(F), translated into the Spanish language as permitted by § 1026.37(o)(5)(ii).

FICUS BANK
4321 Random Boulevard • Somecity, ST 12340

Guarde esta Estimación de Préstamo para compararla con su Declaración de Cierre.

Estimación de Préstamo

FECHA DE EMISIÓN	7/23/2012
SOLICITANTES	Michael Jones and Mary Stone 123 Anywhere Street Anytown, ST 12345
INMUEBLE	456 Somewhere Avenue Anytown, ST 12345
PRECIO DE VENTA	$180,000

PLAZO DEL PRÉSTAMO	30 años
FINALIDAD	Adquisición por compra
PRODUCTO	Año 5 amortización negativa, 1/1 tasa ajustable
TIPO DE PRÉSTAMO	☒ Convencional ☐ FHA ☐ VA ☐ _____
N.º DEL PRÉSTAMO	123456789
BLOQUEO DE TASA	☐ NO ☒ SÍ, hasta el 9/21/2012 a las 5:00 p. m. EDT

Antes del cierre, la tasa de interés, los puntos y los créditos del prestamista podrían cambiar, a menos que usted bloquee la tasa de interés. Todos los demás costos de cierre estimados estarán vigentes hasta el **8/6/2012** *a las 5:00 p. m. EDT*

Términos del préstamo		**¿Puede aumentar este monto después del cierre?**	
Monto del préstamo	$171,000	**SÍ**	• Puede **subir hasta $176,032** • Puede **aumentar** hasta el año 6
Tasa de interés	2%	**SÍ**	• Se ajusta **cada año** a partir del año 2 • Puede **subir hasta el 7%** en el año 10 • Para obtener más información, consulte **la tabla de tasas de interés ajustable (TIA) en la página 2**
Pago mensual de intereses y capital *Consulte la sección de pagos proyectados para saber el total estimado de su pago mensual*	$632.05	**SÍ**	• Se ajusta **cada año** a partir del año 6 • Puede **subir hasta $1,227** en el año 10 • Incluye **solo el interés** y **no el capital** hasta el año 6 • Para obtener más información, consulte **la tabla de pagos ajustables (PA) en la página 2**
		¿Tiene el préstamo estas características?	
Multa por pago anticipado		**NO**	
Cuota extraordinaria		**NO**	

H–28(F) Mortgage Loan Transaction Closing Disclosure—Spanish Language Model Form

Description: This is a blank model Closing Disclosure that illustrates the content requirements in § 1026.38, and is translated into the Spanish language as permitted by § 1026.38(t)(5)(viii). This form provides three variations of page one, one page two, one page three, four variations of page four, four variations of page five, and two variations of page six reflecting the variable content requirements in § 1026.38. This form does not reflect any other modifications permitted under § 1026.38(t).

Declaración de Cierre

Este formulario es una declaración sobre los términos y condiciones finales del préstamo y los costos de cierre. Compare este documento con su Estimación de Préstamo.

Información sobre el cierre	Información sobre la transacción	Información sobre el préstamo
Fecha de emisión	**Deudor**	**Plazo del préstamo**
Fecha de cierre		**Finalidad**
Fecha de desembolso		**Producto**
Agente a cargo de la operación de cierre	**Vendedor**	
N.º de Archivo		**Tipo de préstamo** ☐ Convencional ☐ FHA ☐ VA ☐ _____
Inmueble	**Prestamista**	
		N.º del préstamo
Precio de venta		**N.º de MIC**

Términos del préstamo

		¿Puede aumentar este monto después del cierre?
Monto del préstamo		
Tasa de interés		
Pago mensual de intereses y capital *Consulte la sección de pagos proyectados para saber el total estimado de su pago mensual*		
		¿Tiene el préstamo estas características?
Multa por pago anticipado		
Cuota extraordinaria		

Pagos proyectados

Cálculo de los pagos	
Capital e intereses Seguro hipotecario Depósito estimado para impuestos y seguros de la vivienda *El monto puede aumentar con el paso del tiempo*	
Pago total mensual estimado	
Impuestos, seguro y evaluaciones estimados *El monto puede aumentar con el paso del tiempo. Consulte los detalles en la página 4.*	**Esta estimación incluye** **¿En depósito?** ☐ Impuestos sobre la propiedad ☐ Seguro de la vivienda ☐ Otro: *Consulte en la página 4 los detalles de la cuenta de depósito para impuestos y seguros. Deberá pagar por separado los demás costos.*

Costos al momento del cierre

Costos de cierre	Incluye por costos del préstamo + por otros costos – por créditos del prestamista. *Consulte los detalles en la página 2.*
Dinero en efectivo para el cierre	Incluye costos de cierre. *Consulte los detalles en Cálculo del dinero en efectivo para el cierre en la página 3.*

Declaración de Cierre

Este formulario es una declaración sobre los términos y condiciones finales del préstamo y los costos de cierre. Compare este documento con su Estimación de Préstamo.

Información sobre el cierre	Información sobre la transacción	Información sobre el préstamo
Fecha de emisión	**Deudor**	**Plazo del préstamo**
Fecha de cierre		**Finalidad**
Fecha de desembolso		**Producto**
Agente a cargo de la operación de cierre	**Vendedor**	
N.º de Archivo		**Tipo de préstamo** ☐ Convencional ☐ FHA ☐ VA ☐ _____
Inmueble	**Prestamista**	
		N.º del préstamo
Valoración de la vivienda		**N.º de MIC**

Términos del préstamo

		¿Puede aumentar este monto después del cierre?
Monto del préstamo		
Tasa de interés		
Pago mensual de intereses y capital *Consulte la sección de pagos proyectados para saber el total estimado de su pago mensual*		
		¿Tiene el préstamo estas características?
Multa por pago anticipado		
Cuota extraordinaria		

Pagos proyectados

Cálculo de los pagos	
Capital e intereses Seguro hipotecario Depósito estimado para impuestos y seguros de la vivienda *El monto puede aumentar con el paso del tiempo*	
Pago total mensual estimado	
Impuestos, seguro y evaluaciones estimados *El monto puede aumentar con el paso del tiempo. Consulte los detalles en la página 4.*	**Esta estimación incluye** **¿En depósito?** ☐ Impuestos sobre la propiedad ☐ Seguro de la vivienda ☐ Otro: *Consulte en la página 4 los detalles de la cuenta de depósito para impuestos y seguros. Deberá pagar por separado los demás costos.*

Costos al momento del cierre

Costos de cierre	Incluye por costos del préstamo + por otros costos – por créditos del prestamista. *Consulte los detalles en la página 2.*
Dinero en efectivo para el cierre	Incluye costos de cierre. *Consulte los detalles en Cálculo del dinero en efectivo para el cierre en la página 3.*

Declaración de Cierre

Este formulario es una declaración sobre los términos y condiciones finales del préstamo y los costos de cierre. Compare este documento con su Estimación de Préstamo.

Información sobre el cierre	Información sobre la transacción	Información sobre el préstamo
Fecha de emisión	**Deudor**	**Plazo del préstamo**
Fecha de cierre		**Finalidad**
Fecha de desembolso		**Producto**
Agente a cargo de la operación de cierre	**Vendedor**	
N.º de Archivo		**Tipo de préstamo** ☐ Convencional ☐ FHA ☐ VA ☐ _____
Inmueble	**Prestamista**	
		N.º del préstamo
Valor estimado de la vivienda		**N.º de MIC**

Términos del préstamo

	¿Puede aumentar este monto después del cierre?
Monto del préstamo	
Tasa de interés	
Pago mensual de intereses y capital *Consulte la sección de pagos proyectados para saber el total estimado de su pago mensual*	
	¿Tiene el préstamo estas características?
Multa por pago anticipado	
Cuota extraordinaria	

Pagos proyectados

Cálculo de los pagos	
Capital e intereses Seguro hipotecario Depósito estimado para impuestos y seguros de la vivienda *El monto puede aumentar con el paso del tiempo*	
Pago total mensual estimado	
Impuestos, seguro y evaluaciones estimados *El monto puede aumentar con el paso del tiempo. Consulte los detalles en la página 4.*	**Esta estimación incluye** — **¿En depósito?** ☐ Impuestos sobre la propiedad ☐ Seguro de la vivienda ☐ Otro: *Consulte en la página 4 los detalles de la cuenta de depósito para impuestos y seguros. Deberá pagar por separado los demás costos.*

Costos al momento del cierre

Costos de cierre	Incluye por costos del préstamo + por otros costos – por créditos del prestamista. *Consulte los detalles en la página 2.*
Dinero en efectivo para el cierre	Incluye costos de cierre. *Consulte los detalles en Cálculo del dinero en efectivo para el cierre en la página 3.*

Detalles de los costos de cierre

Costos del préstamo	Pagados por el deudor Al cierre	Pagados por el deudor Antes del cierre	Pagados por el vendedor Al cierre	Pagados por el vendedor Antes del cierre	Pagados por otros
A. Gastos por tramitación					
01 % del monto del préstamo (Puntos)					
02					
03					
04					
05					
06					
07					
08					
B. Servicios que el deudor no contrato					
01					
02					
03					
04					
05					
06					
07					
08					
09					
C. Servicios que el deudor contrato					
01					
02					
03					
04					
05					
06					
07					
D. COSTOS TOTALES DEL PRÉSTAMO (pagados por el deudor)					
Subtotales de los costos del préstamo (A + B + C)					

Otros costos					
E. Impuestos y otros cargos gubernamentales					
01 Costos de registro y otros impuestos por registro del título de Inmueble: Hipoteca:					
02					
F. Pagos anticipados					
01 Impuestos sobre la propiedad (meses)					
02 Pago anticipado de intereses (por día del al)					
03 Prima del seguro de hipoteca (meses)					
04 Prima del seguro de la vivienda (meses)					
05					
G. Pago inicial de la cuenta en depósito para impuestos y seguros de la vivienda					
01 Impuestos sobre la propiedad de por mes, durante meses					
02 Impuestos sobre la propiedad de por mes, durante meses					
03 Seguro de hipoteca de por mes, durante meses					
04 Seguro de la vivienda de por mes, durante meses					
05					
06					
07 Ajuste acumulado					
H. Otros					
01					
02					
03					
04					
05					
06					
07					
08					
I. TOTAL DE OTROS COSTOS (pagados por el deudor)					
Subtotales de otros costos (E + F + G + H)					

J. TOTAL DE COSTOS DE CIERRE (pagados por el deudor)					
Subtotales de costos de cierre (D + I)					
Créditos del prestamista					

Cálculo del dinero en efectivo para el cierre — Utilice esta tabla para saber lo que ha cambiado en su Estimación de Préstamo.

	Estimación del Préstamo	Final	¿Esto cambió?
Total de costos de cierre (J)			
Costos de cierre pagados antes del cierre			
Costos de cierre financiados (pagados del monto del préstamo)			
Pago inicial/Fondos del deudor			
Depósito			
Fondos para el deudor			
Créditos del vendedor			
Ajustes y otros créditos			
Dinero en efectivo para el cierre			

Resúmenes de transacciones — Utilice esta tabla para ver el resumen de su transacción.

TRANSACCIONES DEL DEUDOR

K. Pagaderos por el deudor al cierre		
01	Precio de venta de la propiedad	
02	Precio de venta de cualquier propiedad personal incluida en la venta	
03	Costos de cierre pagados al cierre (J)	
04		
Ajustes		
05		
06		
07		
Ajustes para los artículos pagados por el vendedor por anticipado		
08	Impuestos municipales	al
09	Impuestos del condado	al
10	Evaluaciones estimadas	al
11		
12		
13		
14		
15		
16		

L. Pagado por el deudor, o en su nombre, al cierre		
01	Depósito	
02	Monto del préstamo	
03	Préstamos existentes atribuidos o adquiridos sujetos a	
04		
05	Crédito del vendedor	
Otros créditos		
06		
07		
Ajustes		
08		
09		
10		
11		
Ajustes para los artículos no pagados por el vendedor		
12	Impuestos municipales del	al
13	Impuestos del condado	al
14	Evaluaciones estimadas	al
15		
16		
17		

CÁLCULO
Total pagado por el deudor al cierre (K)
Total pagado por el deudor, o en su nombre, al cierre (L)
Dinero en efectivo para el cierre ☐ **Del Deudor** ☐ **Para Deudor**

TRANSACCIONES DEL VENDEDOR

M. Pagaderos al vendedor al cierre		
01	Precio de venta de la propiedad	
02	Precio de venta de cualquier propiedad personal incluida en la venta	
03		
04		
05		
06		
07		
08		
Ajustes para los artículos pagados por el vendedor por anticipado		
09	Impuestos municipales	al
10	Impuestos del condado	al
11	Evaluaciones estimadas	al
12		
13		
14		
15		
16		
17		

N. Pagaderos por el vendedor al cierre		
01	Depósito excedente	
02	Costos de cierre pagados al cierre (J)	
03	Préstamos existentes atribuidos o adquiridos sujetos a	
04	Pago del primer préstamo hipotecario	
05	Pago del segundo préstamo hipotecario	
06		
07		
08	Crédito del vendedor	
09		
10		
11		
12		
13		
Ajustes para los artículos no pagados por el vendedor		
14	Impuestos municipales del	al
15	Impuestos del condado	al
16	Evaluaciones estimadas	al
17		
18		
19		

CÁLCULO
Total pagado al vendedor al cierre (M)
Total pagado por el vendedor al cierre (N)
Dinero en efectivo ☐ **Del Vendedor** ☐ **Para Vendedor**

Información adicional sobre este préstamo

Declaraciones del préstamo

Amortización negativa (aumento del monto del préstamo)
De acuerdo con los términos de su préstamo, usted

- ☐ debe realizar pagos mensuales programados que no incluyen todos los intereses adeudados para ese mes. Como consecuencia, el monto de su préstamo aumentará (amortización negativa) y posiblemente, será más alto que el monto original del préstamo. Los aumentos del monto de su préstamo disminuyen su participación en el patrimonio que usted tiene en este inmueble.
- ☐ puede tener pagos mensuales que no incluyan todos los intereses adeudados para ese mes. Si los tiene, el monto de su préstamo aumentará (amortización negativa) y, como consecuencia, puede ser más alto que el monto original del préstamo. Los aumentos del monto de su préstamo disminuyen su participación en el patrimonio que usted tiene en este inmueble.
- ☐ no incluye una característica de amortización negativa.

Característica de demanda
Su préstamo

- ☐ incluye una característica de demanda, que le permite a su prestamista exigir el pago anticipado del préstamo. Debe revisar su pagaré para obtener detalles.
- ☐ no incluye una característica de demanda.

Cuenta en depósito para impuestos y seguros de la vivienda
Por ahora, su préstamo

- ☐ tendrá una cuenta en depósito para impuestos y seguros de la vivienda (también llamada cuenta de "depósito en garantía" o cuenta de "fideicomiso") para pagar los costos de la propiedad que se detallan a continuación. Sin una cuenta en depósito para impuestos y seguros de la vivienda, usted pagaría estos costos directamente, tal vez en un pago grande o en dos pagos al año. Es posible que su prestamista sea responsable por las sanciones y los intereses que resulten de la falta de pago.

Con cuenta en depósito para impuestos y seguros de la vivienda		
Costos de la propiedad con una cuenta en depósito durante el primer año		Monto total estimado durante el primer año para sus costos de la propiedad con depósito:
Costos de la propiedad sin una cuenta en depósito durante el primer año		Monto total estimado durante el primer año para sus costos de la propiedad sin depósito: Es posible que tenga que pagar otros costos de la propiedad.
Pago inicial para la cuenta en depósito		Respaldo para la cuenta en depósito que usted paga al cierre. Consulte la Sección G en la página 2.
Pago mensual para la cuenta en depósito		El monto incluido en su pago mensual total.

☐ no tendrá una cuenta en depósito porque ☐ usted la rechazó
☐ su prestamista no la ofrece. Usted debe pagar directamente sus costos de la propiedad, como los impuestos y el seguro de la vivienda. Comuníquese con su prestamista para preguntarle si su préstamo puede contar con una cuenta de depósito para impuestos y seguros de la vivienda.

Sin cuenta en depósito para impuestos y seguros de la vivienda		
Costos de la propiedad estimados durante el primer año		Monto total estimado durante el primer año. Usted debe pagar estos costos directamente, posiblemente en un pago grande o en dos pagos al año.
Comisión por renuncia a la cuenta en depósito		

En el futuro,
Es posible que los costos de la propiedad cambien y como consecuencia, su pago a la cuenta en depósito para impuestos y seguros de la vivienda podrá variar. Puede cancelar su cuenta en depósito, pero si lo hace, debe pagar sus costos de la propiedad directamente. Si no paga los impuestos sobre la propiedad, el estado o gobierno local pueden 1) imponer multas o sanciones o 2) imponer un embargo fiscal a esta propiedad. Si no paga ninguno de estos costos de la propiedad, su prestamista puede 1) agregar los montos al saldo de su préstamo, 2) agregar una cuenta en depósito a su préstamo o 3) exigirle que pague un seguro para la propiedad, que el prestamista adquiere en su nombre, y que tal vez tendrá un costo más alto y le brindará menos beneficios que el que podría adquirir por su cuenta.

Información adicional sobre este préstamo

Declaraciones del préstamo

Amortización negativa (aumento del monto del préstamo)
De acuerdo con los términos de su préstamo, usted

- ☐ debe realizar pagos mensuales programados que no incluyen todos los intereses adeudados para ese mes. Como consecuencia, el monto de su préstamo aumentará (amortización negativa) y posiblemente, será más alto que el monto original del préstamo. Los aumentos del monto de su préstamo disminuyen su participación en el patrimonio que usted tiene en este inmueble.
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Su préstamo

- ☐ incluye una característica de demanda, que le permite a su prestamista exigir el pago anticipado del préstamo. Debe revisar su pagaré para obtener detalles.
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Cuenta en depósito para impuestos y seguros de la vivienda
Por ahora, su préstamo

- ☐ tendrá una cuenta en depósito para impuestos y seguros de la vivienda (también llamada cuenta de "depósito en garantía" o cuenta de "fideicomiso") para pagar los costos de la propiedad que se detallan a continuación. Sin una cuenta en depósito para impuestos y seguros de la vivienda, usted pagaría estos costos directamente, tal vez en un pago grande o en dos pagos al año. Es posible que su prestamista sea responsable por las sanciones y los intereses que resulten de la falta de pago.

Con cuenta en depósito para impuestos y seguros de la vivienda		
Costos de la propiedad con una cuenta en depósito durante el primer año		Monto total estimado durante el primer año para sus costos de la propiedad con depósito:
Costos de la propiedad sin una cuenta en depósito durante el primer año		Monto total estimado durante el primer año para sus costos de la propiedad sin depósito: Es posible que tenga que pagar otros costos de la propiedad.
Pago inicial para la cuenta en depósito		Respaldo para la cuenta en depósito que usted paga al cierre. Consulte la Sección G en la página 2.
Pago mensual para la cuenta en depósito		El monto incluido en su pago mensual total.

☐ no tendrá una cuenta en depósito porque ☐ usted la rechazó
☐ su prestamista no la ofrece. Usted debe pagar directamente sus costos de la propiedad, como los impuestos y el seguro de la vivienda. Comuníquese con su prestamista para preguntarle si su préstamo puede contar con una cuenta de depósito para impuestos y seguros de la vivienda.

Sin cuenta en depósito para impuestos y seguros de la vivienda		
Costos de la propiedad estimados durante el primer año		Monto total estimado durante el primer año. Usted debe pagar estos costos directamente, posiblemente en un pago grande o en dos pagos al año.
Comisión por renuncia a la cuenta en depósito		

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Tabla de pagos ajustables (PA)

¿Pago de interés solamente?	
¿Pagos opcionales?	
¿Pagos escalonados?	
¿Pagos estacionales?	
Pagos mensuales de capital e intereses	
Primer cambio/Monto	
Cambios subsiguientes	
Pago máximo	

Tabla de tasa de interés ajustable (TIA)

Índice + Margen
Tasa de interés inicial
Tasa de interés mínima/máxima
Frecuencia de los cambios
Primer cambio
Cambios subsiguientes
Límites de cambios en la tasa de interés
Primer cambio
Cambios subsiguientes

Información adicional sobre este préstamo

Declaraciones del préstamo

Amortización negativa (aumento del monto del préstamo)
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- ☐ no incluye una característica de amortización negativa.

Característica de demanda
Su préstamo

- ☐ incluye una característica de demanda, que le permite a su prestamista exigir el pago anticipado del préstamo. Debe revisar su pagaré para obtener detalles.
- ☐ no incluye una característica de demanda.

Cuenta en depósito para impuestos y seguros de la vivienda
Por ahora, su préstamo

- ☐ tendrá una cuenta en depósito para impuestos y seguros de la vivienda (también llamada cuenta de "depósito en garantía" o cuenta de "fideicomiso") para pagar los costos de la propiedad que se detallan a continuación. Sin una cuenta en depósito para impuestos y seguros de la vivienda, usted pagaría estos costos directamente, tal vez en un pago grande o en dos pagos al año. Es posible que su prestamista sea responsable por las sanciones y los intereses que resulten de la falta de pago.

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Costos de la propiedad con una cuenta en depósito durante el primer año		Monto total estimado durante el primer año para sus costos de la propiedad con depósito:
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Pago inicial para la cuenta en depósito		Respaldo para la cuenta en depósito que usted paga al cierre. Consulte la Sección G en la página 2.
Pago mensual para la cuenta en depósito		El monto incluido en su pago mensual total.

☐ no tendrá una cuenta en depósito porque ☐ usted la rechazó
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Sin cuenta en depósito para impuestos y seguros de la vivienda		
Costos de la propiedad estimados durante el primer año		Monto total estimado durante el primer año. Usted debe pagar estos costos directamente, posiblemente en un pago grande o en dos pagos al año.
Comisión por renuncia a la cuenta en depósito		

En el futuro,
Es posible que los costos de la propiedad cambien y como consecuencia, su pago a la cuenta en depósito para impuestos y seguros de la vivienda podrá variar. Puede cancelar su cuenta en depósito, pero si lo hace, debe pagar sus costos de la propiedad directamente. Si no paga los impuestos sobre la propiedad, el estado o gobierno local pueden 1) imponer multas o sanciones o 2) imponer un embargo fiscal a esta propiedad. Si no paga ninguno de estos costos de la propiedad, su prestamista puede 1) agregar los montos al saldo de su préstamo, 2) agregar una cuenta en depósito a su préstamo o 3) exigirle que pague un seguro para la propiedad, que el prestamista adquiere en su nombre, y que tal vez tendrá un costo más alto y le brindará menos beneficios que el que podría adquirir por su cuenta.

Tabla de pagos ajustables (PA)

¿Pago de interés solamente?	
¿Pagos opcionales?	
¿Pagos escalonados?	
¿Pagos estacionales?	
Pagos mensuales de capital e intereses	
Primer cambio/Monto	
Cambios subsiguientes	
Pago máximo	

Información adicional sobre este préstamo

Declaraciones del préstamo

Amortización negativa (aumento del monto del préstamo)
De acuerdo con los términos de su préstamo, usted

- ☐ debe realizar pagos mensuales programados que no incluyen todos los intereses adeudados para ese mes. Como consecuencia, el monto de su préstamo aumentará (amortización negativa) y posiblemente, será más alto que el monto original del préstamo. Los aumentos del monto de su préstamo disminuyen su participación en el patrimonio que usted tiene en este inmueble.
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- ☐ no incluye una característica de amortización negativa.

Característica de demanda
Su préstamo

- ☐ incluye una característica de demanda, que le permite a su prestamista exigir el pago anticipado del préstamo. Debe revisar su pagaré para obtener detalles.
- ☐ no incluye una característica de demanda.

Cuenta en depósito para impuestos y seguros de la vivienda
Por ahora, su préstamo

- ☐ tendrá una cuenta en depósito para impuestos y seguros de la vivienda (también llamada cuenta de "depósito en garantía" o cuenta de "fideicomiso") para pagar los costos de la propiedad que se detallan a continuación. Sin una cuenta en depósito para impuestos y seguros de la vivienda, usted pagaría estos costos directamente, tal vez en un pago grande o en dos pagos al año. Es posible que su prestamista sea responsable por las sanciones y los intereses que resulten de la falta de pago.

Con cuenta en depósito para impuestos y seguros de la vivienda		
Costos de la propiedad con una cuenta en depósito durante el primer año		Monto total estimado durante el primer año para sus costos de la propiedad con depósito:
Costos de la propiedad sin una cuenta en depósito durante el primer año		Monto total estimado durante el primer año para sus costos de la propiedad sin depósito: Es posible que tenga que pagar otros costos de la propiedad.
Pago inicial para la cuenta en depósito		Respaldo para la cuenta en depósito que usted paga al cierre. Consulte la Sección G en la página 2.
Pago mensual para la cuenta en depósito		El monto incluido en su pago mensual total.

☐ no tendrá una cuenta en depósito porque ☐ usted la rechazó
☐ su prestamista no la ofrece. Usted debe pagar directamente sus costos de la propiedad, como los impuestos y el seguro de la vivienda. Comuníquese con su prestamista para preguntarle si su préstamo puede contar con una cuenta de depósito para impuestos y seguros de la vivienda.

Sin cuenta en depósito para impuestos y seguros de la vivienda		
Costos de la propiedad estimados durante el primer año		Monto total estimado durante el primer año. Usted debe pagar estos costos directamente, posiblemente en un pago grande o en dos pagos al año.
Comisión por renuncia a la cuenta en depósito		

En el futuro,
Es posible que los costos de la propiedad cambien y como consecuencia, su pago a la cuenta en depósito para impuestos y seguros de la vivienda podrá variar. Puede cancelar su cuenta en depósito, pero si lo hace, debe pagar sus costos de la propiedad directamente. Si no paga los impuestos sobre la propiedad, el estado o gobierno local pueden 1) imponer multas o sanciones o 2) imponer un embargo fiscal a esta propiedad. Si no paga ninguno de estos costos de la propiedad, su prestamista puede 1) agregar los montos al saldo de su préstamo, 2) agregar una cuenta en depósito a su préstamo o 3) exigirle que pague un seguro para la propiedad, que el prestamista adquiere en su nombre, y que tal vez tendrá un costo más alto y le brindará menos beneficios que el que podría adquirir por su cuenta.

Tabla de tasa de interés ajustable (TIA)

Índice + Margen	
Tasa de interés inicial	
Tasa de interés mínima/máxima	
Frecuencia de los cambios	
Primer cambio	
Cambios subsiguientes	
Límites de cambios en la tasa de interés	
Primer cambio	
Cambios subsiguientes	

Declaraciones del préstamo

Intereses de garantía
Se le otorga un interés de garantía en _____

Usted puede perder esta propiedad si no cumple con sus pagos o con el resto de las obligaciones de este préstamo.

Pago atrasado
Si su pago presenta un retraso de más de ____ días, su prestamista le cobrará un recargo de _____

Pagos parciales
Su prestamista
- ☐ aceptará pagos menores al monto total adeudado (pagos parciales) y se aplicarán a su préstamo.
- ☐ podrá mantenerlo en una cuenta separada hasta que cubra el resto del pago y luego aplicará el pago total a su préstamo.
- ☐ no acepta pagos parciales.

Si este préstamo se vende, es posible que su nuevo prestamista tenga una política diferente.

Supuestos
Si usted vende o transfiere esta propiedad a otra persona su prestamista,
- ☐ permitirá, en determinadas condiciones, que esta persona asuma este préstamo con sus términos y condiciones originales.
- ☐ no permitirá que se asuma este préstamo con sus términos y condiciones originales.

Cálculos del préstamo

Pagos totales. Total que habrá pagado después de haber hecho todos los pagos de capital, intereses, seguro hipotecario y costos del préstamo, según lo programado.	
Cargo financiero. El monto en dólares que le costará el préstamo.	
Monto financiado. El monto en dólares disponible después de que pague el cargo financiero inicial.	
Tasa porcentual anual (APR). Sus costos durante el plazo del préstamo, expresados como una tasa. Esta no es su tasa de interés.	
Total de intereses pagados (TIP). El monto total de los intereses que pagará durante el plazo del préstamo, como porcentaje del monto total del préstamo.	

Otras declaraciones

Deducciones tributarias
Si adquiere una deuda mayor al valor de este inmueble, los intereses del monto del préstamo que sean superiores al valor real de mercado no se deducirán de sus impuestos federales sobre la renta. Debería consultar con un asesor fiscal para obtener más información.

Detalles del contrato
Consulte su pagaré y su instrumento de garantía para obtener información sobre lo siguiente:
- ¿Qué sucede si no hace sus pagos?
- ¿Qué es un incumplimiento de pago del préstamo?
- Situaciones en que su prestamista puede exigirle que pague el préstamo por anticipado.
- Las reglas para realizar pagos antes de la fecha estipulada.

Refinanciamiento
El refinanciamiento de este préstamo dependerá de su situación financiera futura, del valor de propiedad y de las condiciones del mercado. Es posible que no se le pueda refinanciar este préstamo.

Responsabilidad luego de la ejecución de la hipoteca
Si su prestamista ejecuta la hipoteca sobre este inmueble y dicha ejecución no cubre el monto de saldo pendiente de este préstamo:
- ☐ la ley estatal puede protegerlo contra la responsabilidad de pagar el saldo pendiente. Si vuelve a financiar o adquiere otra deuda sobre este inmueble, puede perder esta protección y tendrá que pagar la deuda restante después de la ejecución de la hipoteca. Le recomendamos que consulte con un abogado para obtener más información.
- ☐ la ley estatal no lo protege contra la responsabilidad de pagar el saldo pendiente.

Valoración de la vivienda
Si la propiedad tuvo una valoración para su préstamo, su prestamista debe proporcionarle una copia sin costo adicional, al menos tres días antes del cierre. Si aún no la ha recibido, comuníquese con su prestamista utilizando la información que se le brinda en la página 6.

¿Tiene preguntas? Si tiene preguntas sobre los términos y costos del préstamo que se establecen en este formulario, utilice la información a continuación. Para obtener más información o para presentar un reclamo, comuníquese con la Oficina para la Protección Financiera del Consumidor en **www.consumerfinance.gov/mortgage-closing.**

Declaraciones del préstamo

Intereses de garantía
Se le otorga un interés de garantía en _____

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Si su pago presenta un retraso de más de ____ días, su prestamista le cobrará un recargo de _____

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- ☐ podrá mantenerlo en una cuenta separada hasta que cubra el resto del pago y luego aplicará el pago total a su préstamo.
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Cálculos del préstamo

Pagos totales. Total que habrá pagado después de haber hecho todos los pagos de capital, intereses, seguro hipotecario y costos del préstamo, según lo programado.	
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Monto financiado. El monto en dólares disponible después de que pague el cargo financiero inicial.	
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Total de intereses pagados (TIP). El monto total de los intereses que pagará durante el plazo del préstamo, como porcentaje del monto total del préstamo.	

Otras declaraciones

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Si adquiere una deuda mayor al valor de este inmueble, los intereses del monto del préstamo que sean superiores al valor real de mercado no se deducirán de sus impuestos federales sobre la renta. Debería consultar con un asesor fiscal para obtener más información.

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Consulte su pagaré y su instrumento de garantía para obtener información sobre lo siguiente:
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Responsabilidad luego de la ejecución de la hipoteca
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¿Tiene preguntas? Si tiene preguntas sobre los términos y costos del préstamo que se establecen en este formulario, utilice la información a continuación. Para obtener más información o para presentar un reclamo, comuníquese con la Oficina para la Protección Financiera del Consumidor en **www.consumerfinance.gov/mortgage-closing.**

Información de contacto

	Prestamista	Corredor hipotecario	Corredor inmobiliario (Deudor)	Corredor inmobiliario (Vendedor)	Agente a cargo de la operación de cierre
Nombre					
Dirección					
N.º de NMLS					
N.º de licencia de ___					
Contacto					
ID. de contacto de NMLS					
ID. de contacto de licencia de ___					
Correo electrónico					
Teléfono					

Confirmación de recepción

Al firmar, usted solo confirma que ha recibido este formulario. No es necesario que acepte este préstamo por el hecho de haber firmado o recibido este formulario.

Firma del solicitante Fecha Firma del cosolicitante Fecha

Declaraciones del préstamo

Intereses de garantía
Se le otorga un interés de garantía en _____

_____

_____

_____

Usted puede perder esta propiedad si no cumple con sus pagos o con el resto de las obligaciones de este préstamo.

Pago atrasado
Si su pago presenta un retraso de más de ____ días, su prestamista le cobrará un recargo de _____

_____

Pago parcial
Su prestamista

- ☐ aceptará pagos menores al monto total adeudado (pagos parciales) y se aplicarán a su préstamo.
- ☐ podrá mantenerlo en una cuenta separada hasta que cubra el resto del pago y luego aplicará el pago total a su préstamo.
- ☐ no acepta pagos parciales.

Si este préstamo se vende, es posible que su nuevo prestamista tenga una política diferente.

Supuestos
Si usted vende o transfiere esta propiedad a otra persona su prestamista,

- ☐ permitirá, en determinadas condiciones, que esta persona asuma este préstamo con sus términos y condiciones originales.
- ☐ no permitirá que se asuma este préstamo con sus términos y condiciones originales.

Cálculos del préstamo

Pagos totales. Total que habrá pagado después de haber hecho todos los pagos de capital, intereses, seguro hipotecario y costos del préstamo, según lo programado.	
Cargo financiero. El monto en dólares que le costará el préstamo.	
Monto financiado. El monto en dólares disponible después de que pague el cargo financiero inicial.	
Tasa porcentual anual (APR). Sus costos durante el plazo del préstamo, expresados como una tasa. Esta no es su tasa de interés.	
Total de intereses pagados (TIP). El monto total de los intereses que pagará durante el plazo del préstamo, como porcentaje del monto total del préstamo.	

Otras declaraciones

Aceptación del préstamo
No tiene que aceptar este préstamo por el hecho de haber recibido este formulario o firmado una aplicación para un préstamo.

Deducciones tributarias
Si adquiere una deuda mayor al valor de este inmueble, los intereses del monto del préstamo que sean superiores al valor real de mercado no se deducirán de sus impuestos federales sobre la renta. Debería consultar con un asesor fiscal para obtener más información.

Detalles del contrato
Consulte su pagaré y su instrumento de garantía para obtener información sobre lo siguiente:

- ¿Qué sucede si no hace sus pagos?
- ¿Qué es un incumplimiento de pago del préstamo?
- Situaciones en que su prestamista puede exigirle que pague el préstamo por anticipado.
- Las reglas para realizar pagos antes de la fecha estipulada.

Refinanciamiento
El refinanciamiento de este préstamo dependerá de su situación financiera futura, del valor de propiedad y de las condiciones del mercado. Es posible que no se le pueda refinanciar este préstamo.

Responsabilidad luego de la ejecución de la hipoteca
Si su prestamista ejecuta la hipoteca sobre este inmueble y dicha ejecución no cubre el monto de saldo pendiente de este préstamo:

- ☐ La ley estatal puede protegerlo contra la responsabilidad de pagar el saldo pendiente. Si vuelve a financiar o adquiere otra deuda sobre este inmueble, puede perder esta protección y tendrá que pagar la deuda restante después de la ejecución de la hipoteca. Le recomendamos que consulte con un abogado para obtener más información.
- ☐ La ley estatal no lo protege contra la responsabilidad de pagar el saldo pendiente.

Valoración de la vivienda
Si la propiedad tuvo una valoración para su préstamo, su prestamista debe proporcionarle una copia sin costo adicional, al menos tres días antes del cierre. Si aún no la ha recibido, comuníquese con su prestamista utilizando la información que se le brinda en la página 6.

¿Tiene preguntas? Si tiene preguntas sobre los términos y costos del préstamo que se establecen en este formulario, utilice la información a continuación. Para obtener más información o para presentar un reclamo, comuníquese con la Oficina para la Protección Financiera del Consumidor en **www.consumerfinance.gov/mortgage-closing.**

Declaraciones del préstamo

Intereses de garantía
Se le otorga un interés de garantía en _____

_____

_____

_____

Usted puede perder esta propiedad si no cumple con sus pagos o con el resto de las obligaciones de este préstamo.

Pago atrasado
Si su pago presenta un retraso de más de ____ días, su prestamista le cobrará un recargo de _____

_____

Pago parcial
Su prestamista

- ☐ aceptará pagos menores al monto total adeudado (pagos parciales) y se aplicarán a su préstamo.
- ☐ podrá mantenerlo en una cuenta separada hasta que cubra el resto del pago y luego aplicará el pago total a su préstamo.
- ☐ no acepta pagos parciales.

Si este préstamo se vende, es posible que su nuevo prestamista tenga una política diferente.

Supuestos
Si usted vende o transfiere esta propiedad a otra persona su prestamista,

- ☐ permitirá, en determinadas condiciones, que esta persona asuma este préstamo con sus términos y condiciones originales.
- ☐ no permitirá que se asuma este préstamo con sus términos y condiciones originales.

Cálculos del préstamo

Pagos totales. Total que habrá pagado después de haber hecho todos los pagos de capital, intereses, seguro hipotecario y costos del préstamo, según lo programado.	
Cargo financiero. El monto en dólares que le costará el préstamo.	
Monto financiado. El monto en dólares disponible después de que pague el cargo financiero inicial.	
Tasa porcentual anual (APR). Sus costos durante el plazo del préstamo, expresados como una tasa. Esta no es su tasa de interés.	
Total de intereses pagados (TIP). El monto total de los intereses que pagará durante el plazo del préstamo, como porcentaje del monto total del préstamo.	

Otras declaraciones

Aceptación del préstamo
No tiene que aceptar este préstamo por el hecho de haber recibido este formulario o firmado una aplicación para un préstamo.

Deducciones tributarias
Si adquiere una deuda mayor al valor de este inmueble, los intereses del monto del préstamo que sean superiores al valor real de mercado no se deducirán de sus impuestos federales sobre la renta. Debería consultar con un asesor fiscal para obtener más información.

Detalles del contrato
Consulte su pagaré y su instrumento de garantía para obtener información sobre lo siguiente:

- ¿Qué sucede si no hace sus pagos?
- ¿Qué es un incumplimiento de pago del préstamo?
- Situaciones en que su prestamista puede exigirle que pague el préstamo por anticipado.
- Las reglas para realizar pagos antes de la fecha estipulada.

Refinanciamiento
El refinanciamiento de este préstamo dependerá de su situación financiera futura, del valor de propiedad y de las condiciones del mercado. Es posible que no se le pueda refinanciar este préstamo.

Responsabilidad luego de la ejecución de la hipoteca
Si su prestamista ejecuta la hipoteca sobre este inmueble y dicha ejecución no cubre el monto de saldo pendiente de este préstamo:

- ☐ La ley estatal puede protegerlo contra la responsabilidad de pagar el saldo pendiente. Si vuelve a financiar o adquiere otra deuda sobre este inmueble, puede perder esta protección y tendrá que pagar la deuda restante después de la ejecución de la hipoteca. Le recomendamos que consulte con un abogado para obtener más información.
- ☐ La ley estatal no lo protege contra la responsabilidad de pagar el saldo pendiente.

¿Tiene preguntas? Si tiene preguntas sobre los términos y costos del préstamo que se establecen en este formulario, utilice la información a continuación. Para obtener más información o para presentar un reclamo, comuníquese con la Oficina para la Protección Financiera del Consumidor en **www.consumerfinance.gov/mortgage-closing.**

Información de contacto

	Prestamista	Corredor hipotecario	Corredor inmobiliario (Deudor)	Corredor inmobiliario (Vendedor)	Agente a cargo de la operación de cierre
Nombre					
Dirección					
N.º de NMLS					
N.º de licencia de ___					
Contacto					
ID. de contacto de NMLS					
ID. de contacto de licencia de ___					
Correo electrónico					
Teléfono					

H–28(G) Mortgage Loan Transaction Closing Disclosure—Spanish Language Purchase Sample

Description: This is a sample of the Closing Disclosure illustrated by form H–25(B) translated into the Spanish language as permitted by § 1026.38(t)(5)(viii).

Declaración de Cierre

Este formulario es una declaración sobre los términos y condiciones finales del préstamo y los costos de cierre. Compare este documento con su Estimación de Préstamo.

Información sobre el cierre

Fecha de emisión	4/15/2013
Fecha de cierre	4/15/2013
Fecha de desembolso	4/15/2012
Agente a cargo de la operación de cierre	Epsilon Title Co.
N.º de Archivo	12-3456
Inmueble	456 Somewhere Ave Anytown, ST 12345
Precio de venta	$180,000

Información sobre la transacción

Deudor	Michael Jones and Mary Stone 123 Anywhere Street Anytown, ST 12345
Vendedor	Steve Cole and Amy Doe 321 Somewhere Drive Anytown, ST 12345
Prestamista	Ficus Bank

Información sobre el préstamo

Plazo del préstamo	30 años
Finalidad	Adquisición por compra
Producto	Tasa fija
Tipo de préstamo	☒ Convencional ☐ FHA ☐ VA ☐ _____
N.º del préstamo	123456789
N.º de MIC	000654321

Términos del préstamo

		¿Puede aumentar este monto después del cierre?
Monto del préstamo	$162,000	NO
Tasa de interés	3.875%	NO
Pago mensual de intereses y capital *Consulte la sección de pagos proyectados para saber el total estimado de su pago mensual*	$761.78	NO
		¿Tiene el préstamo estas características?
Multa por pago anticipado		SÍ • **Hasta $3,240** si usted paga el préstamo en su totalidad durante los primeros 2 años
Cuota extraordinaria		NO

Pagos proyectados

Cálculo de los pagos	Años 1 a 7	Años 8 a 30
Capital e intereses	$761.78	$761.78
Seguro hipotecario	+ 82.35	+ —
Depósito estimado para impuestos y seguros de la vivienda *El monto puede aumentar con el paso del tiempo*	+ 206.13	+ 206.13
Pago total mensual estimado	$1,050.26	$967.91

		Esta estimación incluye	¿En depósito?
Impuestos, seguro y evaluaciones estimados *El monto puede aumentar con el paso del tiempo. Consulte los detalles en la página 4.*	$356.13 por mes	☒ Impuestos sobre la propiedad	SÍ
		☒ Seguro de la vivienda	SÍ
		☒ Otro: Obligaciones de la Asociación de Propietarios	NO
		Consulte en la página 4 los detalles de la cuenta de depósito para impuestos y seguros. Deberá pagar por separado los demás costos.	

Costos al momento del cierre

Costos de cierre	$9,712.10	Incluye $4,694.05 por costos del préstamo + $5,018.05 por otros costos – $0 por créditos del prestamista. *Consulte los detalles en la página 2.*
Dinero en efectivo para el cierre	$14,147.26	Incluye costos de cierre. *Consulte los detalles en Cálculo del dinero en efectivo para el cierre en la página 3.*

Detalles de los costos de cierre

Costos del préstamo		Pagados por el deudor Al cierre	Pagados por el deudor Antes del cierre	Pagados por el vendedor Al cierre	Pagados por el vendedor Antes del cierre	Pagados por otros
A. Gastos por tramitación		**$1,802.00**				
01 0.25 % del monto del préstamo (Puntos)		$405.00				
02 Cargo por el estudio del crédito		$1,097.00				
03 Cargo por la solicitud del préstamo		$300.00				
04						
05						
06						
07						
08						
B. Servicios que el deudor no contrató		**$236.55**				
01 Cargo por control de zonas de inundación	para Info Co.	$31.75				
02 Cargo por determinación de zonas de inundación	para Info Co.	$20.00				
03 Cargo por fiscalización tributaria	para Info Co.	$75.00				
04 Cargo por informe de crédito	para Information Inc		$29.80			
05 Cargo por investigación sobre situación tributaria	para Info Co.	$45.00				
06 Cargo por valoración de la vivienda	para John Smith Appraisers Inc.					$405.00
07						
08						
09						
C. Servicios que el deudor contrató		**$2,655.50**				
01 Cargo por inspección de plagas	para Pests Co.	$120.50				
02 Cargo por peritaje (suelos)	para Surveys Co.	$85.00				
03 Título – Estudio de títulos de propiedad	para Epsilon Title Co.	$800.00				
04 Título – Garantía provisional de seguro del título de propiedad	para Epsilon Title Co.	$650.00				
05 Título – Honorarios del agente a cargo de la operación del título de inmueble	para Epsilon Title Co.	$500.00				
06 Título – Póliza del prestamista	para Epsilon Title Co.	$500.00				
07						
D. COSTOS TOTALES DEL PRÉSTAMO (pagados por el deudor)		**$4,694.05**				
Subtotales de los costos del préstamo (A + B + C)		$4,664.25	$29.80			
Otros costos						
E. Impuestos y otros cargos gubernamentales		**$85.00**				
01 Costos de registro y otros impuestos por registro del título de inmueble: $40.00 Hipoteca: $45.00		$85.00				
02 Impuesto a las transferencias estatales	para Any State			$950.00		
F. Pagos anticipados		**$2,120.80**				
01 Impuestos sobre la propiedad (6 meses)	para Any County USA	$631.80				
02 Pago anticipado de intereses ($17.44 por día del 4/15/13 al 5/1/13)		$279.04				
03 Prima del seguro de hipoteca (meses)						
04 Prima del seguro de la vivienda (12 meses)	para Info Co.	$1,209.96				
05						
G. Pago inicial de la cuenta en depósito para impuestos y seguros de la vivienda		**$412.25**				
01 Impuestos sobre la propiedad de $105.30 por mes, durante 2 meses		$201.66				
02 Seguro de hipoteca de por mes, durante meses						
03 Seguro de la vivienda de $100.83 por mes, durante 2 meses		$210.60				
04						
05						
06						
07 Ajuste acumulado		– 0.01				
H. Otros		**$2,400.00**				
01 Aporte de capital de la HOA	para HOA Acre Inc.	$500.00				
02 Comisión de Bienes Raíces	para Alpha Real Estate Broker			$5,700.00		
03 Comisión de Bienes Raíces	para Omega Real Estate Broker			$5,700.00		
04 Tarifa de garantía de la vivienda	para XYZ Warranty Inc.			$450.00		
05 Tarifa de inspección de la vivienda	para Engineers Inc.	$750.00			$750.00	
06 Tarifa de procesamiento de HOA	para HOA Acre Inc.	$150.00				
07 Título – Póliza del título de propiedad del propietario (opcional)	para Epsilon Title Co.	$1,000.00				
08						
I. TOTAL DE OTROS COSTOS (pagados por el deudor)		**$5,018.05**				
Subtotales de otros costos (E + F + G + H)		$5,018.05				
J. TOTAL DE COSTOS DE CIERRE (pagados por el deudor)		**$9,712.10**				
Subtotales de costos de cierre (D + I)		$9,682.30	$29.80	$12,800.00	$750.00	$405.00
Créditos del prestamista						

Cálculo del dinero en efectivo para el cierre — **Utilice esta tabla para saber lo que ha cambiado en su Estimación de Préstamo.**

	Estimación del Préstamo	Final	¿Esto cambió?
Total de costos de cierre (J)	$8,054.00	$9,712.10	**SÍ** • Consulte **Costos totales del préstamo (D) y Total de otros costos (I)**
Costos de cierre pagados antes del cierre	$0	− $29.80	**SÍ** • Pagó estos costos de cierre **antes del cierre**
Costos de cierre financiados (pagados del monto del préstamo)	$0	$0	**NO**
Pago inicial/Fondos del deudor	$18,000.00	$18,000.00	**NO**
Depósito	− $10,000.00	− $10,000.00	**NO**
Fondos para el deudor	$0	$0	**NO**
Créditos del vendedor	$0	− $2,500.00	**SÍ** • Consulte créditos del vendedor en la **sección L**
Ajustes y otros créditos	$0	− $1,035.04	**SÍ** • Consulte los detalles en las **secciones K y L**
Dinero en efectivo para el cierre	$16,054.00	$14,147.26	

Resúmenes de transacciones — **Utilice esta tabla para ver el resumen de su transacción.**

TRANSACCIONES DEL DEUDOR

	K. Pagaderos por el deudor al cierre		**$189,762.30**
01	Precio de venta de la propiedad		$180,000.00
02	Precio de venta de cualquier propiedad personal incluida en la venta		
03	Costos de cierre pagados al cierre (J)		$9,682.30
04			
	Ajustes		
05			
06			
07			
	Ajustes para los artículos pagados por el vendedor por anticipado		
08	Impuestos municipales	al	
09	Impuestos del condado	al	
10	Evaluaciones estimadas	al	
11			
12			
13			
14			
15			
16			
	L. Pagado por el deudor, o en su nombre, al cierre		**$175,615.04**
01	Depósito		$10,000.00
02	Monto del préstamo		$162,000.00
03	Préstamos existentes atribuidos o adquiridos sujetos a		
04			
05	Crédito del vendedor		$2,500.00
	Otros créditos		
06	Devolución de Epsilon Title Co.		$750.00
07			
	Ajustes		
08			
09			
10			
11			
	Ajustes para los artículos no pagados por el vendedor		
12	Impuestos municipales del	1/1/13 al 4/14/13	$365.04
13	Impuestos del condado	al	
14	Evaluaciones estimadas	al	
15			
16			
17			
	CÁLCULO		
	Total pagado por el deudor al cierre (K)		$189,762.30
	Total pagado por el deudor, o en su nombre, al cierre (L)		− $175,615.04
	Dinero en efectivo para el cierre ☒ **Del Deudor** ☐ **Para Deudor**		**$14,147.26**

TRANSACCIONES DEL VENDEDOR

	M. Pagaderos al vendedor al cierre		**$180,080.00**
01	Precio de venta de la propiedad		$180,000.00
02	Precio de venta de cualquier propiedad personal incluida en la venta		
03			
04			
05			
06			
07			
08			
	Ajustes para los artículos pagados por el vendedor por anticipado		
09	Impuestos municipales	al	
10	Impuestos del condado	al	
11	Evaluaciones estimadas	al	
12			
13			
14			
15			
16			
17			
	N. Pagaderos por el vendedor al cierre		**$115,665.04**
01	Depósito excedente		
02	Costos de cierre pagados al cierre (J)		$12,800.00
03	Préstamos existentes atribuidos o adquiridos sujetos a		
04	Pago del primer préstamo hipotecario		$100,000.00
05	Pago del segundo préstamo hipotecario		
06			
07			
08	Crédito del vendedor		$2,500.00
09			
10			
11			
12			
13			
	Ajustes para los artículos no pagados por el vendedor		
14	Impuestos municipales del	1/1/13 al 4/14/13	$365.04
15	Impuestos del condado	al	
16	Evaluaciones estimadas	al	
17			
18			
19			
	CÁLCULO		
	Total pagado al vendedor al cierre (M)		$180,080.00
	Total pagado por el vendedor al cierre (N)		− $115,665.04
	Dinero en efectivo ☐ **Del Vendedor** ☒ **Para Vendedor**		**$64,414.96**

Información adicional sobre este préstamo

Declaraciones del préstamo

Amortización negativa (aumento del monto del préstamo)
De acuerdo con los términos de su préstamo, usted

☐ debe realizar pagos mensuales programados que no incluyen todos los intereses adeudados para ese mes. Como consecuencia, el monto de su préstamo aumentará (amortización negativa) y posiblemente, será más alto que el monto original del préstamo. Los aumentos del monto de su préstamo disminuyen su participación en el patrimonio que usted tiene en este inmueble.

☐ puede tener pagos mensuales que no incluyan todos los intereses adeudados para ese mes. Si los tiene, el monto de su préstamo aumentará (amortización negativa) y, como consecuencia, puede ser más alto que el monto original del préstamo. Los aumentos del monto de su préstamo disminuyen su participación en el patrimonio usted tiene en este inmueble.

☒ no incluye una característica de amortización negativa.

Característica de demanda
Su préstamo

☐ incluye una característica de demanda, que le permite a su prestamista exigir el pago anticipado del préstamo. Debe revisar su pagaré para obtener detalles.

☒ no incluye una característica de demanda.

Cuenta en depósito para impuestos y seguros de la vivienda
Por ahora, su préstamo

☒ tendrá una cuenta en depósito para impuestos y seguros de la vivienda (también llamada cuenta de "depósito en garantía" o cuenta de "fideicomiso") para pagar los costos de la propiedad que se detallan a continuación. Sin una cuenta en depósito para impuestos y seguros de la vivienda, usted pagaría estos costos directamente, tal vez en un pago grande o en dos pagos al año. Es posible que su prestamista sea responsable por las sanciones y los intereses que resulten de la falta de pago.

Con cuenta en depósito para impuestos y seguros de la vivienda		
Costos de la propiedad con una cuenta en depósito durante el primer año	$2,473.56	Monto total estimado durante el primer año para sus costos de la propiedad con depósito: *Seguro de la vivienda* *Impuestos sobre la propiedad*
Costos de la propiedad sin una cuenta en depósito durante el primer año	$1,800.00	Monto total estimado durante el primer año para sus costos de la propiedad sin depósito: *Obligaciones de la Asociación de Propietarios* Es posible que tenga que pagar otros costos de la propiedad.
Pago inicial para la cuenta en depósito	$412.25	Respaldo para la cuenta en depósito que usted paga al cierre. Consulte la Sección G en la página 2.
Pago mensual para la cuenta en depósito	$206.13	El monto incluido en su pago mensual total.

☐ no tendrá una cuenta de depósito porque ☐ usted la rechazó
☐ su prestamista no la ofrece. Usted debe pagar directamente los costos de la propiedad, como impuestos y el seguro de la vivienda. Comuníquese con su prestamista para preguntarle si su préstamo puede contar con una cuenta de depósito para impuestos y seguro de la vivienda.

Sin cuenta en depósito para impuestos y seguros de la vivienda		
Costos de la propiedad estimados durante el primer año		Monto total estimado durante el primer año. Usted debe pagar estos costos directamente, posiblemente en un pago grande o en dos pagos al año.
Comisión por renuncia a la cuenta en depósito		

En el futuro,
Es posible que los costos de la propiedad cambien y como consecuencia, su pago a la cuenta en depósito para impuestos y seguros de la vivienda podrá variar. Puede cancelar su cuenta en depósito, pero si lo hace, debe pagar sus costos de la propiedad directamente. Si no paga los impuestos sobre la propiedad, el estado o gobierno local pueden 1) imponer multas o sanciones o 2) imponer un embargo fiscal a esta propiedad. Si no paga ninguno de estos costos de la propiedad, su prestamista puede 1) agregar los montos al saldo de su préstamo, 2) agregar una cuenta en depósito a su préstamo o 3) exigirle que pague un seguro para la propiedad, que el prestamista adquiere en su nombre, y que tal vez tendrá un costo más alto y le brindará menos beneficios que el que podría adquirir por su cuenta.

Declaraciones del préstamo

Intereses de garantía
Se le otorga un interés de garantía en
456 Somewhere Ave., Anytown, ST 12345

Usted puede perder esta propiedad si no cumple con sus pagos o con el resto de las obligaciones de este préstamo.

Pago atrasado
Si su pago presenta un retraso de más de *15* días, le cobraremos un recargo de *5 % sobre el monto total de los intereses y el capital que paga mensualmente.*

Pagos parciales
Su prestamista
- ☐ aceptará pagos menores al monto total adeudado (pagos parciales) y se aplicarán a su préstamo.
- ☐ podrá mantenerlo en una cuenta separada hasta que cubra el resto del pago y luego aplicará el pago total a su préstamo.
- ☒ no acepta pagos parciales.

Si este préstamo se vende, es posible que su nuevo prestamista tenga una política diferente.

Supuestos
Si usted vende o transfiere esta propiedad a otra persona su prestamista,
- ☐ permitirá, en determinadas condiciones, que esta persona asuma este préstamo con sus términos y condiciones originales.
- ☒ no permitirá que se asuma este préstamo con sus términos y condiciones originales.

Cálculos del préstamo

Pagos totales. Total que habrá pagado después de haber hecho todos los pagos de capital, intereses, seguro hipotecario y costos del préstamo, según lo programado.	$285,803.36
Cargo financiero. El monto en dólares que le costará el préstamo.	$118,830.27
Monto financiado. El monto en dólares disponible después de que pague el cargo financiero inicial.	$162,000.00
Tasa porcentual anual (APR). Sus costos durante el plazo del préstamo, expresados como una tasa. Esta no es su tasa de interés.	4.174%
Total de intereses pagados (TIP). El monto total de los intereses que pagará durante el plazo del préstamo, como porcentaje del monto total del préstamo.	69.46%

Otras declaraciones

Deducciones tributarias
Si adquiere una deuda mayor al valor de este inmueble, los intereses del monto del préstamo que sean superiores al valor real de mercado no se deducirán de sus impuestos federales sobre la renta. Debería consultar con un asesor fiscal para obtener más información.

Detalles del contrato
Consulte su pagaré y su instrumento de garantía para obtener información sobre lo siguiente:
- ¿Qué sucede si no hace sus pagos?
- ¿Qué es un incumplimiento de pago del préstamo?
- Situaciones en que su prestamista puede exigirle que pague el préstamo por anticipado.
- Las reglas para realizar pagos antes de la fecha estipulada.

Refinanciamiento
El refinanciamiento de este préstamo dependerá de su situación financiera futura, del valor de propiedad y de las condiciones del mercado. Es posible que no se le pueda refinanciar este préstamo.

Responsabilidad luego de la ejecución de la hipoteca
Si su prestamista ejecuta la hipoteca sobre este inmueble y dicha ejecución no cubre el monto de saldo pendiente de este préstamo:
- ☒ la ley estatal puede protegerlo contra la responsabilidad de pagar el saldo pendiente. Si vuelve a financiar o adquiere otra deuda sobre este inmueble, puede perder esta protección y tendrá que pagar la deuda restante después de la ejecución de la hipoteca. Le recomendamos que consulte con un abogado para obtener más información.
- ☐ la ley estatal no lo protege contra la responsabilidad de pagar el saldo pendiente.

Valoración de la vivienda
Si la propiedad tuvo una valoración para su préstamo, su prestamista debe proporcionarle una copia sin costo adicional, al menos tres días antes del cierre. Si aún no la ha recibido, comuníquese con su prestamista utilizando la información que se le brinda en la página 6.

¿Tiene preguntas? Si tiene preguntas sobre los términos y costos del préstamo que se establecen en este formulario, utilice la información a continuación. Para obtener más información o para presentar un reclamo, comuníquese con la Oficina para la Protección Financiera del Consumidor en **www.consumerfinance.gov/mortgage-closing.**

Información de contacto

	Prestamista	Corredor hipotecario	Corredor inmobiliario (Deudor)	Corredor inmobiliario (Vendedor)	Agente a cargo de la operación de cierre
Nombre	Ficus Bank		Omega Real Estate Broker Inc.	Alpha Real Estate Broker Co.	Epsilon Title Co.
Dirección	4321 Random Blvd. Somecity, ST 12340		789 Local Lane Sometown, ST 12345	987 Suburb Ct. Someplace, ST 12340	123 Commerce Pl. Somecity, ST 12344
N.º de NMLS					
N.º de licencia de ST			Z765416	Z61456	Z61616
Contacto	Joe Smith		Samuel Green	Joseph Cain	Sarah Arnold
ID. de contacto de NMLS	12345				
ID. de contacto de licencia de ST			P16415	P51461	PT1234
Correo electrónico	joesmith@ ficusbank.com		sam@omegare.biz	joe@alphare.biz	sarah@ epsilontitle.com
Teléfono	123-456-7890		123-555-1717	321-555-7171	987-555-4321

Confirmación de recepción

Al firmar, usted solo confirma que ha recibido este formulario. No es necesario que acepte este préstamo por el hecho de haber firmado o recibido este formulario.

Firma del solicitante Fecha Firma del cosolicitante Fecha

H–28(H) Mortgage Loan Transaction Closing Disclosure—Spanish Language Refinance Sample

Description: This is a sample of the Closing Disclosure illustrated by form H–25(E) translated into the Spanish language as permitted by § 1026.38(t)(5)(viii).

Declaración de Cierre

Este formulario es una declaración sobre los términos y condiciones finales del préstamo y los costos de cierre. Compare este documento con su Estimación de Préstamo.

Información sobre el cierre

Fecha de emisión	4/15/2013
Fecha de cierre	4/15/2013
Fecha de desembolso	4/15/2012
Agente a cargo de la operación de cierre	Zeta Title
N.º de Archivo	12-3456
Inmueble	123 Anywhere Street Anytown, ST 12345
Valoración de la vivienda	$180,000

Información sobre la transacción

Deudor	Michael Jones and Mary Stone 123 Anywhere Street Anytown, ST 12345
Prestamista	Ficus Bank

Información sobre el préstamo

Plazo del préstamo	30 años
Finalidad	Refinanciamiento
Producto	Tasa fija
Tipo de préstamo	☒ Convencional ☐ FHA ☐ VA ☐ _____
N.º del préstamo	123456789
N.º de MIC	009874513

Términos del préstamo

		¿Puede aumentar este monto después del cierre?
Monto del préstamo	$150,000	NO
Tasa de interés	4.25%	NO
Pago mensual de intereses y capital *Consulte la sección de pagos proyectados para saber el total estimado de su pago mensual*	$737.91	NO
		¿Tiene el préstamo estas características?
Multa por pago anticipado		NO
Cuota extraordinaria		NO

Pagos proyectados

Cálculo de los pagos	Años 1 a 4	Años 5 a 30
Capital e intereses	$737.91	$737.91
Seguro hipotecario	+ 82.35	+ —
Depósito estimado para impuestos y seguros de la vivienda *El monto puede aumentar con el paso del tiempo*	+ 206.13	+ 206.13
Pago total mensual estimado	$1,026.39	$944.04

		Esta estimación incluye	¿En depósito?
Impuestos, seguro y evaluaciones estimados *El monto puede aumentar con el paso del tiempo. Consulte los detalles en la página 4.*	$356.13 por mes	☒ Impuestos sobre la propiedad	Sí
		☒ Seguro de la vivienda	Sí
		☒ Otro: Obligaciones de la asociación de propietarios	NO
		Consulte en la página 4 los detalles de la cuenta de depósito para impuestos y seguros. Deberá pagar por separado los demás costos.	

Costos al momento del cierre

Costos de cierre	$5,757.57	Incluye $3,495.50 por costos del préstamo + $2,762.07 por otros costos – $500 por créditos del prestamista. *Consulte los detalles en la página 2.*
Dinero en efectivo para el cierre	$29,677.43	Incluye costos de cierre. *Consulte los detalles en Cálculo del dinero en efectivo para el cierre en la página 3.* ☐ Del Deudor ☒ Para Deudor

Detalles de los costos de cierre

Costos del préstamo		Pagados por el deudor: Al cierre	Pagados por el deudor: Antes del cierre	Pagados por otros
A. Gastos por tramitación		**$1,950.00**		
01 .5 % del monto del préstamo (Puntos)		$750.00		
02 Cargo por el estudio del crédito		$500.00		
03 Cargo por tramitación		$450.00		
04 Cargo por la solicitud del préstamo		$250.00		
05				
06				
07				
08				
B. Servicios que el deudor no contrato		**$610.00**		
01 Cargo por control de zonas de inundación	para Info Co.	$45.00		
02 Cargo por determinación de zonas de inundación	para Info Co.	$20.00		
03 Cargo por fiscalización tributaria	para Info Co.	$65.00		
04 Cargo por informe de crédito	para Information Inc.		$30.00	
05 Cargo por investigación sobre situación tributaria	para Info Co.	$45.00		
06 Cargo por valoración de la vivienda	para John Smith Appraisers Inc.		$405.00	
07				
08				
09				
C. Servicios que el deudor contrato		**$935.50**		
01 Cargo por inspección de plagas	para Pests Co.	$85.00		
02 Título – Estudio de títulos de propiedad	para Epsilon Title Co.	$200.00		
03 Título – Garantía provisional de seguro del título de propiedad	para Epsilon Title Co.	$50.00		
04 Título – Honorarios del agente a cargo de la operación del título de inmueble	para Epsilon Title Co.	$350.00		
05 Título – Póliza del prestamista	para Epsilon Title Co.	$250.50		
06				
D. COSTOS TOTALES DEL PRÉSTAMO (pagados por el deudor)		**$3,495.50**		
Subtotales de los costos del préstamo (A + B + C)		$3,060.50	$435.00	

Otros costos				
E. Impuestos y otros cargos gubernamentales		**$60.00**		
01 Costos de registro y otros impuestos por registro del título de inmueble:	Hipoteca: $60.00	$60.00		
02				
F. Pagos anticipados		**$2,125.12**		
01 Impuestos sobre la propiedad (6 meses) para Any County USA		$631.80		
02 Pago anticipado de intereses ($17.71 por día del 4/15/2013 al 5/1/2013)		$283.36		
03 Prima del seguro de hipoteca (meses)				
04 Prima del seguro de la vivienda (12 meses) para Insurance Co.		$1,209.96		
05				
G. Pago inicial de la cuenta en depósito para impuestos y seguros de la vivienda		**$576.95**		
01 Impuestos sobre la propiedad de	$105.30 por mes, durante 2 meses	$210.60		
02 Seguro de hipoteca de	$82.35 por mes, durante 2 meses	$164.70		
03 Seguro de la vivienda de	$100.83 por mes, durante 2 meses	$201.66		
04				
05				
06				
07 Ajuste acumulado		– 0.01		
H. Otros				
01				
02				
03				
04				
05				
06				
07				
08				
I. TOTAL DE OTROS COSTOS (pagados por el deudor)		**$2,762.07**		
Subtotales de otros costos (E + F + G + H)		$2,762.07		

J. TOTAL DE COSTOS DE CIERRE (pagados por el deudor)	**$5,757.57**		
Subtotales de costos de cierre (D + I)	$5,822.57	$435.00	
Créditos del prestamista	– $500.00		

Liquidaciones y pagos Utilice esta tabla para ver un resumen de sus liquidaciones y de sus pagos realizados a otros utilizando el monto del préstamo.

PARA	MONTO
01 Liquidará el préstamo existente de Rho Servicing	$115,000.00
02	
03	
04	
05	
06	
07	
08	
09	
10	
11	
12	
13	
14	
15	
K. TOTAL DE LIQUIDACIONES Y PAGOS	$115,000.00

Cálculo del dinero en efectivo para el cierre Utilice esta tabla para saber lo que ha cambiado en su Estimación de Préstamo.

	Estimación del Préstamo	Final	¿Esto cambió?
Monto del préstamo	$150,000.00	$150,000.00	NO
Total de costos de cierre (J)	– $5,099.00	– $5,757.57	SÍ • Consulte **Costos totales del préstamo (D) y Total de otros costos (I)**
Costos de cierre pagados antes del cierre	$0	$435.00	SÍ • Pagó estos costos de cierre **antes del cierre**
Total de liquidaciones y pagos (K)	– $120,000	– $115,000	SÍ • Consulte **Liquidaciones y pagos (K)**
Dinero en efectivo para el cierre	$24,901.00 ☐ Del Deudor ☒ Para Deudor	$29,677.43 ☐ Del Deudor ☒ Para Deudor	Costos de cierre financiados (pagados del monto del préstamo) $5,322.57

Información adicional sobre este préstamo

Declaraciones del préstamo

Amortización negativa (aumento del monto del préstamo)
De acuerdo con los términos de su préstamo, usted

☐ debe realizar pagos mensuales programados que no incluyen todos los intereses adeudados para ese mes. Como consecuencia, el monto de su préstamo aumentará (amortización negativa) y posiblemente, será más alto que el monto original del préstamo. Los aumentos del monto de su préstamo disminuyen su participación en el patrimonio que usted tiene en este inmueble.

☐ puede tener pagos mensuales que no incluyan todos los intereses adeudados para ese mes. Si los tiene, el monto de su préstamo aumentará (amortización negativa) y, como consecuencia, puede ser más alto que el monto original del préstamo. Los aumentos del monto de su préstamo disminuyen su participación en el patrimonio que usted tiene en este inmueble.

☒ no incluye una característica de amortización negativa.

Característica de demanda
Su préstamo

☐ incluye una característica de demanda, que le permite a su prestamista exigir el pago anticipado del préstamo. Debe revisar su pagaré para obtener detalles.

☒ no incluye una característica de demanda.

Cuenta en depósito para impuestos y seguros de la vivienda
Por ahora, su préstamo

☒ tendrá una cuenta en depósito para impuestos y seguros de la vivienda (también llamada cuenta de "depósito en garantía" o cuenta de "fideicomiso") para pagar los costos de la propiedad que se detallan a continuación. Sin una cuenta en depósito para impuestos y seguros de la vivienda, usted pagaría estos costos directamente, tal vez en un pago grande o en dos pagos al año. Es posible que su prestamista sea responsable por las sanciones y los intereses que resulten de la falta de pago.

Con cuenta en depósito para impuestos y seguros de la vivienda		
Costos de la propiedad con una cuenta en depósito durante el primer año	$2,473.56	Monto total estimado durante el primer año para sus costos de la propiedad con depósito: *Seguro de la vivienda* *Impuestos sobre la propiedad*
Costos de la propiedad sin una cuenta en depósito durante el primer año	$1,800.00	Monto total estimado durante el primer año para sus costos de la propiedad sin depósito: *Obligaciones de la asociación de propietarios* Es posible que tenga que pagar otros costos de la propiedad.
Pago inicial para la cuenta en depósito	$576.95	Respaldo para la cuenta en depósito que usted paga al cierre. Consulte la Sección G en la página 2.
Pago mensual para la cuenta en depósito	$206.13	El monto incluido en su pago mensual total.

☐ no tendrá una cuenta de depósito porque ☐ usted la rechazó
☐ su prestamista no la ofrece. Usted debe pagar directamente los costos de la propiedad, como impuestos y el seguro de la vivienda. Comuníquese con su prestamista para preguntarle si su préstamo puede contar con una cuenta de depósito para impuestos y seguro de la vivienda.

Sin cuenta en depósito para impuestos y seguros de la vivienda		
Costos de la propiedad estimados durante el primer año		Monto total estimado durante el primer año. Usted debe pagar estos costos directamente, posiblemente en un pago grande o en dos pagos al año.
Comisión por renuncia a la cuenta en depósito		

En el futuro,
Es posible que los costos de la propiedad cambien y como consecuencia, su pago a la cuenta en depósito para impuestos y seguros de la vivienda podrá variar. Puede ser que cancelar su cuenta en depósito, pero si lo hace, debe pagar sus costos de la propiedad directamente. Si no paga los impuestos sobre la propiedad, el estado o gobierno local pueden 1) imponer multas o sanciones o 2) imponer un embargo fiscal a esta propiedad. Si no paga ninguno de estos costos de la propiedad, su prestamista puede 1) agregar los montos al saldo de su préstamo, 2) agregar una cuenta en depósito a su préstamo o 3) exigirle que pague un seguro para la propiedad, que el prestamista adquiere en su nombre, y que tal vez tendrá un costo más alto y le brindará menos beneficios que el que podría adquirir por su cuenta.

Declaraciones del préstamo

Intereses de garantía
Se le otorga un interés de garantía en
456 Somewhere Ave., Anytown, ST 12345

Usted puede perder esta propiedad si no cumple con sus pagos o con el resto de las obligaciones de este préstamo.

Pago atrasado
Si su pago presenta un retraso de más de *15* días, le cobraremos un recargo de *5 % sobre el monto total de los intereses y el capital que paga mensualmente.*

Pagos parciales
Su prestamista
- ☒ aceptará pagos menores al monto total adeudado (pagos parciales) y se aplicarán a su préstamo.
- ☐ podrá mantenerlo en una cuenta separada hasta que cubra el resto del pago y luego aplicará el pago total a su préstamo.
- ☐ no acepta pagos parciales.

Si este préstamo se vende, es posible que su nuevo prestamista tenga una política diferente.

Supuestos
Si usted vende o transfiere esta propiedad a otra persona su prestamista,
- ☐ su prestamista permitirá, en determinadas condiciones, que esta persona asuma este préstamo con sus términos y condiciones originales.
- ☒ no permitirá que se asuma este préstamo con sus términos y condiciones originales.

Cálculos del préstamo

Pagos totales. Total que habrá pagado después de haber hecho todos los pagos de capital, intereses, seguro hipotecario y costos del préstamo, según lo programado.	$273,214.50
Cargo financiero. El monto en dólares que le costará el préstamo.	$121,029.00
Monto financiado. El monto en dólares disponible después de que pague el cargo financiero inicial.	$148,241.94
Tasa porcentual anual (APR). Sus costos durante el plazo del préstamo, expresados como una tasa. Esta no es su tasa de interés.	4.543%
Total de intereses pagados (TIP). El monto total de los intereses que pagará durante el plazo del préstamo, como porcentaje del monto total del préstamo.	77.29%

Otras declaraciones

Deducciones tributarias
Si adquiere una deuda mayor al valor de este inmueble, los intereses del monto del préstamo que sean superiores al valor real de mercado no se deducirán de sus impuestos federales sobre la renta. Debería consultar con un asesor fiscal para obtener más información.

Detalles del contrato
Consulte su pagaré y su instrumento de garantía para obtener información sobre lo siguiente:
- ¿Qué sucede si no hace sus pagos?
- ¿Qué es un incumplimiento de pago del préstamo?
- Situaciones en que su prestamista puede exigirle que pague el préstamo por anticipado.
- Las reglas para realizar pagos antes de la fecha estipulada.

Refinanciamiento
El refinanciamiento de este préstamo dependerá de su situación financiera futura, del valor de propiedad y de las condiciones del mercado. Es posible que no se le pueda refinanciar este préstamo.

Responsabilidad luego de la ejecución de la hipoteca
Si su prestamista ejecuta la hipoteca sobre este inmueble y dicha ejecución no cubre el monto de saldo pendiente de este préstamo:
- ☐ la ley estatal puede protegerlo contra la responsabilidad de pagar el saldo pendiente. Si vuelve a financiar o adquiere otra deuda sobre este inmueble, puede perder esta protección y tendrá que pagar la deuda restante después de la ejecución de la hipoteca. Le recomendamos que consulte con un abogado para obtener más información.
- ☒ la ley estatal no lo protege contra la responsabilidad de pagar el saldo pendiente.

Valoración de la vivienda
Si la propiedad tuvo una valoración para su préstamo, su prestamista debe proporcionarle una copia sin costo adicional, al menos tres días antes del cierre. Si aún no la ha recibido, comuníquese con su prestamista utilizando la información que se le brinda en la página 6.

¿Tiene preguntas? Si tiene preguntas sobre los términos y costos del préstamo que se establecen en este formulario, utilice la información a continuación. Para obtener más información o para presentar un reclamo, comuníquese con la Oficina para la Protección Financiera del Consumidor en **www.consumerfinance.gov/mortgage-closing.**

Información de contacto

	Prestamista	Corredor hipotecario	Agente a cargo de la operación de cierre
Nombre	Ficus Bank		Zeta Title
Dirección	4321 Random Blvd. Somecity, ST 12340		321 Uptown Dr. Anytown, ST 12345
N.º de NMLS			
N.º de licencia de ST			P76821
Contacto	Joe Smith		Joan Taylor
ID. de contacto de NMLS	12345		
ID. de contacto de licencia de ST			PT1234
Correo electrónico	joesmith@ficusbank.com		joan@zt.biz
Teléfono	123-456-7890		555-321-9876

Confirmación de recepción

Al firmar, usted solo confirma que ha recibido este formulario. No es necesario que acepte este préstamo por el hecho de haber firmado o recibido este formulario.

Firma del solicitante Fecha

Firma del cosolicitante Fecha

H–28(I) Mortgage Loan Transaction Loan Estimate—Modification to Loan Estimate for Transaction Not Involving Seller—Spanish Language Model Form

Description: This is a blank model Loan Estimate that illustrates form H–24(G), with the optional alternative disclosures permitted by § 1026.37(d)(2) and (h)(2) for transactions without a seller, translated into the Spanish language as permitted by § 1026.37(o)(5)(ii).

Guarde esta Estimación de Préstamo para compararla con su Declaración de Cierre.

Estimación de Préstamo

FECHA DE EMISIÓN

SOLICITANTES

INMUEBLE

VALOR ESTIMADO DE LA VIVIENDA

PLAZO DEL PRÉSTAMO

FINALIDAD

PRODUCTO

TIPO DE PRÉSTAMO ☐ Convencional ☐ FHA ☐ VA ☐ _____

N.º DEL PRÉSTAMO

BLOQUEO DE TASA ☐ NO ☐ Sí, hasta el a las

Antes del cierre, la tasa de interés, los puntos y los créditos del prestamista podrían cambiar, a menos que usted bloquee la tasa de interés. Todos los demás costos de cierre estimados estarán vigentes hasta el

Términos del préstamo	¿Puede aumentar este monto después del cierre?
Monto del préstamo	
Tasa de interés	
Pago mensual de intereses y capital *Consulte la sección de pagos proyectados para saber el total estimado de su pago mensual*	
	¿Tiene el préstamo estas características?
Multa por pago anticipado	
Cuota extraordinaria	

Pagos proyectados	
Cálculo de los pagos	
Capital e intereses Seguro hipotecario Depósito estimado para impuestos y seguros de la vivienda *El monto puede aumentar con el paso del tiempo*	
Pago total mensual estimado	
Impuestos, seguro y evaluaciones estimados *El monto puede aumentar con el paso del tiempo*	**Esta estimación incluye** **¿En depósito?** ☐ Impuestos sobre la propiedad ☐ Seguro de la vivienda ☐ Otro: *Consulte la Sección G en la página 2 los detalles de la cuenta de depósito para impuestos y seguros. Deberá pagar por separado los demás costos.*

Costos al momento del cierre	
Costos de cierre estimados	Incluye por costos del préstamo + por otros costos – por créditos del prestamista. *Consulte los detalles en la página 2.*
Dinero en efectivo estimado para el cierre	Incluye costos de cierre. *Consulte los detalles en Cálculo del dinero en efectivo para el cierre en la página 2.* ☐ Del Deudor ☐ Para Deudor

Visite **www.consumerfinance.gov/mortgage-estimate** para información general y ayuda.

Detalles de los costos del cierre

Costos del préstamo

A. Gastos por tramitación

% del monto del préstamo (Puntos)

B. Servicios que usted no puede contratar

C. Servicios que usted puede contratar

D. COSTOS TOTALES DEL PRESTAMO (A + B + C)

Otros costos

E. Impuestos y otros cargos gubernamentales

Costos de registro y otros impuestos
Impuestos por transferencia de título

F. Pagos anticipados

Impuestos sobre la propiedad (meses)
Pago anticipado de intereses
(diarios durante días a la tasa de)
Prima del seguro de hipoteca (meses)
Prima del seguro de la vivienda (meses)

G. Pago inicial de la cuenta en depósito al cierre

Impuestos sobre la propiedad
de por mes durante meses
Seguro de hipoteca de por mes durante meses
Seguro de la vivienda de por mes durante meses

H. Otros

I. TOTAL DE OTROS COSTOS (E + F + G + H)

J. TOTAL DE COSTOS DE CIERRE

D + I
Créditos del prestamista

Cálculo del dinero en efectivo para el cierre

Monto del préstamo
Total de costos de cierre (J)
Liquidaciones y pagos totales estimados

Dinero en efectivo estimado para el cierre
☐ **Del Deudor** ☐ **Para Deudor**

Costos de cierre financiados estimados
(pagados del monto del préstamo)

Detalles de los costos del cierre

Costos del préstamo

A. Gastos por tramitación

% del monto del préstamo (Puntos)

B. Servicios que usted no puede contratar

C. Servicios que usted puede contratar

D. COSTOS TOTALES DEL PRESTAMO (A + B + C)

Otros costos

E. Impuestos y otros cargos gubernamentales

Costos de registro y otros impuestos
Impuestos por transferencia de título

F. Pagos anticipados

Impuestos sobre la propiedad (meses)
Pago anticipado de intereses
(diarios durante días a la tasa de)
Prima del seguro de hipoteca (meses)
Prima del seguro de la vivienda (meses)

G. Pago inicial de la cuenta en depósito al cierre

Impuestos sobre la propiedad
de por mes durante meses
Seguro de hipoteca de por mes durante meses
Seguro de la vivienda de por mes durante meses

H. Otros

I. TOTAL DE OTROS COSTOS (E + F + G + H)

J. TOTAL DE COSTOS DE CIERRE

D + I
Créditos del prestamista

Cálculo del dinero en efectivo para el cierre

Monto del préstamo
Total de costos de cierre (J)
Liquidaciones y pagos totales estimados

Dinero en efectivo estimado para el cierre
☐ **Del Deudor** ☐ **Para Deudor**

Costos de cierre financiados estimados
(pagados del monto del préstamo)

Tabla de pagos ajustables (PA)

¿Pago de interés solamente?	
¿Pagos opcionales?	
¿Pagos escalonados?	
¿Pagos estacionales?	
Pagos mensuales de capital e intereses	
Primer cambio/Monto	
Cambios subsiguientes	
Pago máximo	

Tabla de tasa de interés ajustable (TIA)

Índice + Margen	
Tasa de interés inicial	
Tasa de interés mínima/máxima	
Frecuencia de los cambios	
Primer cambio	
Cambios subsiguientes	
Límites de cambios en la tasa de interés	
Primer cambio	
Cambios subsiguientes	

Detalles de los costos del cierre

Costos del préstamo

A. Gastos por tramitación

% del monto del préstamo (Puntos)

B. Servicios que usted no puede contratar

C. Servicios que usted puede contratar

D. COSTOS TOTALES DEL PRESTAMO (A + B + C)

Otros costos

E. Impuestos y otros cargos gubernamentales

Costos de registro y otros impuestos
Impuestos por transferencia de título

F. Pagos anticipados

Impuestos sobre la propiedad (meses)
Pago anticipado de intereses
(diarios durante días a la tasa de)
Prima del seguro de hipoteca (meses)
Prima del seguro de la vivienda (meses)

G. Pago inicial de la cuenta en depósito al cierre

Impuestos sobre la propiedad
de por mes durante meses
Seguro de hipoteca de por mes durante meses
Seguro de la vivienda de por mes durante meses

H. Otros

I. TOTAL DE OTROS COSTOS (E + F + G + H)

J. TOTAL DE COSTOS DE CIERRE

D + I
Créditos del prestamista

Cálculo del dinero en efectivo para el cierre

Monto del préstamo
Total de costos de cierre (J)
Liquidaciones y pagos totales estimados

Dinero en efectivo estimado para el cierre
☐ **Del Deudor** ☐ **Para Deudor**

Costos de cierre financiados estimados
(pagados del monto del préstamo)

Tabla de pagos ajustables (PA)

¿Pago de interés solamente?	
¿Pagos opcionales?	
¿Pagos escalonados?	
¿Pagos estacionales?	
Pagos mensuales de capital e intereses	
Primer cambio/Monto	
Cambios subsiguientes	
Pago máximo	

Detalles de los costos del cierre

Costos del préstamo

A. Gastos por tramitación

% del monto del préstamo (Puntos)

B. Servicios que usted no puede contratar

C. Servicios que usted puede contratar

D. COSTOS TOTALES DEL PRESTAMO (A + B + C)

Otros costos

E. Impuestos y otros cargos gubernamentales

Costos de registro y otros impuestos
Impuestos por transferencia de título

F. Pagos anticipados

Impuestos sobre la propiedad (meses)
Pago anticipado de intereses
(diarios durante días a la tasa de)
Prima del seguro de hipoteca (meses)
Prima del seguro de la vivienda (meses)

G. Pago inicial de la cuenta en depósito al cierre

Impuestos sobre la propiedad
de por mes durante meses
Seguro de hipoteca de por mes durante meses
Seguro de la vivienda de por mes durante meses

H. Otros

I. TOTAL DE OTROS COSTOS (E + F + G + H)

J. TOTAL DE COSTOS DE CIERRE

D + I
Créditos del prestamista

Cálculo del dinero en efectivo para el cierre

Monto del préstamo
Total de costos de cierre (J)
Liquidaciones y pagos totales estimados

Dinero en efectivo estimado para el cierre
☐ **Del Deudor** ☐ **Para Deudor**

Costos de cierre financiados estimados
(pagados del monto del préstamo)

Tabla de tasa de interés ajustable (TIA)

Índice + Margen
Tasa de interés inicial
Tasa de interés mínima/máxima
Frecuencia de los cambios
Primer cambio
Cambios subsiguientes
Límites de cambios en la tasa de interés
Primer cambio
Cambios subsiguientes

Información adicional sobre este préstamo

PRESTAMISTA
N.º DE NMLS/ LICENCIA DE __
AGENTE DE PRÉSTAMO
N.º DE NMLS/ LICENCIA DE __
CORREO ELECTRÓNICO
TELÉFONO

CORREDOR HIPOTECARIO
N.º DE NMLS/ LICENCIA DE __
AGENTE DE PRÉSTAMO
N.º DE NMLS/ LICENCIA DE __
CORREO ELECTRÓNICO
TELÉFONO

Comparaciones	Utilice estas medidas para comparar este préstamo con otros.
En 5 años	Total que habrá pagado en capital, intereses, seguro hipotecario y costos del préstamo. Capital que habrá pagado.
Tasa porcentual anual (APR)	Sus costos durante el plazo del préstamo expresados como una tasa. Esta no es su tasa de interés.
Total de intereses pagados a lo largo del plazo del préstamo (TIP)	El monto total de intereses que pagará durante el plazo del préstamo como porcentaje del monto del préstamo.

Otras consideraciones

Administración del préstamo
Nuestra intención es
☐ brindarle servicios de administración de su préstamo. De ser así, usted emitirá los pagos a nuestro nombre.
☐ transferir los servicios de administración de su préstamo.

Pago atrasado
Si su pago presenta un retraso de más de ____ días, le cobraremos un recargo de _____

Refinanciamiento
El refinanciamiento de este préstamo dependerá de su situación financiera futura, del valor de la propiedad y de las condiciones del mercado. Es posible que no se le pueda refinanciar este préstamo.

Responsabilidad luego de la ejecución de la hipoteca
Si usted acepta este préstamo, podría perder la protección de la ley estatal que quizás tenga en este momento contra la responsabilidad de pagar la deuda impaga si su prestamista ejecuta la hipoteca sobre su casa. Si pierde esta protección, puede que tenga que pagar la deuda restante incluso después de la ejecución de la hipoteca. Le recomendamos que consulte con un abogado para obtener más información.

Seguro de la vivienda
Este préstamo exige un seguro de la vivienda, que puede obtenerse de una empresa que usted seleccione y que nosotros consideremos aceptable.

Supuestos
Si usted vende o transfiere esta propiedad a otra persona,
☐ permitiremos, en determinadas condiciones, que esta persona asuma este préstamo con sus términos y condiciones originales.
☐ no permitiremos que se asuma este préstamo con sus términos y condiciones originales.

Valoración de la vivienda
Es posible que pidamos una valoración de la vivienda para determinar el valor de la propiedad y que le cobremos por esta valoración de la vivienda. Inmediatamente, le daremos una copia de la valoración aunque su préstamo no se cierre. Puede pagar para que se haga otra valoración de la vivienda más para su uso personal y esta correrá por su cuenta.

Confirmación de recepción

Al firmar, usted solo confirma que ha recibido este formulario. No es necesario que acepte este préstamo por el hecho de haber firmado o recibido este formulario.

Firma del solicitante _____ Fecha _____ Firma del cosolicitante _____ Fecha _____

Información adicional sobre este préstamo

PRESTAMISTA
N.º DE NMLS/ LICENCIA DE __
AGENTE DE PRÉSTAMO
N.º DE NMLS/ LICENCIA DE __
CORREO ELECTRÓNICO
TELÉFONO

CORREDOR HIPOTECARIO
N.º DE NMLS/ LICENCIA DE __
AGENTE DE PRÉSTAMO
N.º DE NMLS/ LICENCIA DE __
CORREO ELECTRÓNICO
TELÉFONO

Comparaciones	Utilice estas medidas para comparar este préstamo con otros.
En 5 años	Total que habrá pagado en capital, intereses, seguro hipotecario y costos del préstamo. Capital que habrá pagado.
Tasa porcentual anual (APR)	Sus costos durante el plazo del préstamo expresados como una tasa. Esta no es su tasa de interés.
Total de intereses pagados a lo largo del plazo del préstamo (TIP)	El monto total de intereses que pagará durante el plazo del préstamo como porcentaje del monto del préstamo.

Otras consideraciones

Aceptación del préstamo	No tiene que aceptar este préstamo por el hecho de haber recibido este formulario o firmado una aplicación para un préstamo.
Administración del préstamo	Nuestra intención es ☐ brindarle servicios de administración de su préstamo. De ser así, usted emitirá los pagos a nuestro nombre. ☐ transferir los servicios de administración de su préstamo.
Pago atrasado	Si su pago presenta un retraso de más de ____ días, le cobraremos un recargo de _____
Refinanciamiento	El refinanciamiento de este préstamo dependerá de su situación financiera futura, del valor de la propiedad y de las condiciones del mercado. Es posible que no se le pueda refinanciar este préstamo.
Responsabilidad luego de la ejecución de la hipoteca	Si usted acepta este préstamo, podría perder la protección de la ley estatal que quizás tenga en este momento contra la responsabilidad de pagar la deuda impaga si su prestamista ejecuta la hipoteca sobre su casa. Si pierde esta protección, puede que tenga que pagar la deuda restante incluso después de la ejecución de la hipoteca. Le recomendamos que consulte con un abogado para obtener más información.
Seguro de la vivienda	Este préstamo exige un seguro de la vivienda, que puede obtenerse de una empresa que usted seleccione y que nosotros consideremos aceptable.
Supuestos	Si usted vende o transfiere esta propiedad a otra persona, ☐ permitiremos, en determinadas condiciones, que esta persona asuma este préstamo con sus términos y condiciones originales. ☐ no permitiremos que se asuma este préstamo con sus términos y condiciones originales.
Valoración de la vivienda	Es posible que pidamos una valoración de la vivienda para determinar el valor de la propiedad y que le cobremos por esta valoración de la vivienda. Inmediatamente, le daremos una copia de la valoración aunque su préstamo no se cierre. Puede pagar para que se haga otra valoración de la vivienda más para su uso personal y esta correrá por su cuenta.

Información adicional sobre este préstamo

PRESTAMISTA
N.º DE NMLS/ LICENCIA DE __
AGENTE DE PRÉSTAMO
N.º DE NMLS/ LICENCIA DE __
CORREO ELECTRÓNICO
TELÉFONO

CORREDOR HIPOTECARIO
N.º DE NMLS/ LICENCIA DE __
AGENTE DE PRÉSTAMO
N.º DE NMLS/ LICENCIA DE __
CORREO ELECTRÓNICO
TELÉFONO

Comparaciones	Utilice estas medidas para comparar este préstamo con otros.
En 5 años	Total que habrá pagado en capital, intereses, seguro hipotecario y costos del préstamo. Capital que habrá pagado.
Tasa porcentual anual (APR)	Sus costos durante el plazo del préstamo expresados como una tasa. Esta no es su tasa de interés.
Total de intereses pagados a lo largo del plazo del préstamo (TIP)	El monto total de intereses que pagará durante el plazo del préstamo como porcentaje del monto del préstamo.

Otras consideraciones

Administración del préstamo

Nuestra intención es
☐ brindarle servicios de administración de su préstamo. De ser así, usted emitirá los pagos a nuestro nombre.
☐ transferir los servicios de administración de su préstamo.

Pago atrasado

Si su pago presenta un retraso de más de ____ días, le cobraremos un recargo de _____

Refinanciamiento

El refinanciamiento de este préstamo dependerá de su situación financiera futura, del valor de la propiedad y de las condiciones del mercado. Es posible que no se le pueda refinanciar este préstamo.

Responsabilidad luego de la ejecución de la hipoteca

Si usted acepta este préstamo, podría perder la protección de la ley estatal que quizás tenga en este momento contra la responsabilidad de pagar la deuda impaga si su prestamista ejecuta la hipoteca sobre su casa. Si pierde esta protección, puede que tenga que pagar la deuda restante incluso después de la ejecución de la hipoteca. Le recomendamos que consulte con un abogado para obtener más información.

Supuestos

Si usted vende o transfiere esta propiedad a otra persona,
☐ permitiremos, en determinadas condiciones, que esta persona asuma este préstamo con sus términos y condiciones originales.
☐ no permitiremos que se asuma este préstamo con sus términos y condiciones originales.

Confirmación de recepción

Al firmar, usted solo confirma que ha recibido este formulario. No es necesario que acepte este préstamo por el hecho de haber firmado o recibido este formulario.

Firma del solicitante Fecha

Firma del cosolicitante Fecha

Información adicional sobre este préstamo

PRESTAMISTA
N.º DE NMLS/ LICENCIA DE __
AGENTE DE PRÉSTAMO
N.º DE NMLS/ LICENCIA DE __
CORREO ELECTRÓNICO
TELÉFONO

CORREDOR HIPOTECARIO
N.º DE NMLS/ LICENCIA DE __
AGENTE DE PRÉSTAMO
N.º DE NMLS/ LICENCIA DE __
CORREO ELECTRÓNICO
TELÉFONO

Comparaciones	Utilice estas medidas para comparar este préstamo con otros.
En 5 años	Total que habrá pagado en capital, intereses, seguro hipotecario y costos del préstamo. Capital que habrá pagado.
Tasa porcentual anual (APR)	Sus costos durante el plazo del préstamo expresados como una tasa. Esta no es su tasa de interés.
Total de intereses pagados a lo largo del plazo del préstamo (TIP)	El monto total de intereses que pagará durante el plazo del préstamo como porcentaje del monto del préstamo.

Otras consideraciones

Aceptación del préstamo	No tiene que aceptar este préstamo por el hecho de haber recibido este formulario o firmado una aplicación para un préstamo.
Administración del préstamo	Nuestra intención es ☐ brindarle servicios de administración de su préstamo. De ser así, usted emitirá los pagos a nuestro nombre. ☐ transferir los servicios de administración de su préstamo.
Pago atrasado	Si su pago presenta un retraso de más de ____ días, le cobraremos un recargo de _____
Refinanciamiento	El refinanciamiento de este préstamo dependerá de su situación financiera futura, del valor de la propiedad y de las condiciones del mercado. Es posible que no se le pueda refinanciar este préstamo.
Responsabilidad luego de la ejecución de la hipoteca	Si usted acepta este préstamo, podría perder la protección de la ley estatal que quizás tenga en este momento contra la responsabilidad de pagar la deuda impaga si su prestamista ejecuta la hipoteca sobre su casa. Si pierde esta protección, puede que tenga que pagar la deuda restante incluso después de la ejecución de la hipoteca. Le recomendamos que consulte con un abogado para obtener más información.
Supuestos	Si usted vende o transfiere esta propiedad a otra persona, ☐ permitiremos, en determinadas condiciones, que esta persona asuma este préstamo con sus términos y condiciones originales. ☐ no permitiremos que se asuma este préstamo con sus términos y condiciones originales.

H–28(J) Mortgage Loan Transaction Closing Disclosure—Modification to Closing Disclosure for Transaction Not Involving Seller—Spanish Language Model Form

Description: This is a blank model Closing Disclosure that illustrates form H–25(J), with the alternative disclosures under § 1026.38(d)(2), (e), and (t)(5)(vii) for transactions without a seller, translated into the Spanish language as permitted by § 1026.38(t)(5)(viii).

Declaración de Cierre

Este formulario es una declaración sobre los términos y condiciones finales del préstamo y los costos de cierre. Compare este documento con su Estimación de Préstamo.

Información sobre el cierre

Fecha de emisión
Fecha de cierre
Fecha de desembolso
Agente a cargo de la operación de cierre
N.º de Archivo
Inmueble

Valoración de la vivienda

Información sobre la transacción

Deudor

Prestamista

Información sobre el préstamo

Plazo del préstamo
Finalidad
Producto

Tipo de préstamo ☐ Convencional ☐ FHA ☐ VA ☐ _____

N.º del préstamo
N.º de MIC

Términos del préstamo

	¿Puede aumentar este monto después del cierre?
Monto del préstamo	
Tasa de interés	
Pago mensual de intereses y capital *Consulte la sección de pagos proyectados para saber el total estimado de su pago mensual*	
	¿Tiene el préstamo estas características?
Multa por pago anticipado	
Cuota extraordinaria	

Pagos proyectados

Cálculo de los pagos	
Capital e intereses Seguro hipotecario Depósito estimado para impuestos y seguros de la vivienda *El monto puede aumentar con el paso del tiempo*	
Pago total mensual estimado	
Impuestos, seguro y evaluaciones estimados *El monto puede aumentar con el paso del tiempo. Consulte los detalles en la página 4.*	**Esta estimación incluye** **¿En depósito?** ☐ Impuestos sobre la propiedad ☐ Seguro de la vivienda ☐ Otro: *Consulte en la página 4 los detalles de la cuenta de depósito para impuestos y seguros. Deberá pagar por separado los demás costos.*

Costos al momento del cierre

Costos de cierre	Incluye por costos del préstamo + por otros costos – por créditos del prestamista. *Consulte los detalles en la página 2.*
Dinero en efectivo para el cierre	Incluye costos de cierre. *Consulte los detalles en Cálculo del dinero en efectivo para el cierre en la página 3.* ☐ Del Deudor ☐ Para Deudor

Declaración de Cierre

Este formulario es una declaración sobre los términos y condiciones finales del préstamo y los costos de cierre. Compare este documento con su Estimación de Préstamo.

Información sobre el cierre	Información sobre la transacción	Información sobre el préstamo
Fecha de emisión	**Deudor**	**Plazo del préstamo**
Fecha de cierre		**Finalidad**
Fecha de desembolso		**Producto**
Agente a cargo de la operación de cierre	**Prestamista**	**Tipo de préstamo** ☐ Convencional ☐ FHA ☐ VA ☐ _____
N.º de Archivo		**N.º del préstamo**
Inmueble		**N.º de MIC**
Valor estimado de la vivienda		

Términos del préstamo	¿Puede aumentar este monto después del cierre?
Monto del préstamo	
Tasa de interés	
Pago mensual de intereses y capital *Consulte la sección de pagos proyectados para saber el total estimado de su pago mensual*	
	¿Tiene el préstamo estas características?
Multa por pago anticipado	
Cuota extraordinaria	

Pagos proyectados	
Cálculo de los pagos	
Capital e intereses Seguro hipotecario Depósito estimado para impuestos y seguros de la vivienda *El monto puede aumentar con el paso del tiempo*	
Pago total mensual estimado	
Impuestos, seguro y evaluaciones estimados *El monto puede aumentar con el paso del tiempo. Consulte los detalles en la página 4.*	**Esta estimación incluye** **¿En depósito?** ☐ Impuestos sobre la propiedad ☐ Seguro de la vivienda ☐ Otro: *Consulte en la página 4 los detalles de la cuenta de depósito para impuestos y seguros. Deberá pagar por separado los demás costos.*

Costos al momento del cierre	
Costos de cierre	Incluye por costos del préstamo + por otros costos – por créditos del prestamista. *Consulte los detalles en la página 2.*
Dinero en efectivo para el cierre	Incluye costos de cierre. *Consulte los detalles en Cálculo del dinero en efectivo para el cierre en la página 3.* ☐ Del Deudor ☐ Para Deudor

Detalles de los costos de cierre

Costos del préstamo	Pagados por el deudor: Al cierre	Pagados por el deudor: Antes del cierre	Pagados por otros
A. Gastos por tramitación			
01 % del monto del préstamo (Puntos)			
02			
03			
04			
05			
06			
07			
08			
B. Servicios que el deudor no contrato			
01			
02			
03			
04			
05			
06			
07			
08			
09			
C. Servicios que el deudor contrato			
01			
02			
03			
04			
05			
06			
07			
D. COSTOS TOTALES DEL PRÉSTAMO (pagados por el deudor)			
Subtotales de los costos del préstamo (A + B + C)			

Otros costos			
E. Impuestos y otros cargos gubernamentales			
01 Costos de registro y otros impuestos por registro del título de inmueble: Hipoteca:			
02			
F. Pagos anticipados			
01 Impuestos sobre la propiedad (meses)			
02 Pago anticipado de intereses (por día del al)			
03 Prima del seguro de hipoteca (meses)			
04 Prima del seguro de la vivienda (meses)			
05			
G. Pago inicial de la cuenta en depósito para impuestos y seguros de la vivienda			
01 Impuestos sobre la propiedad de por mes, durante meses			
02 Seguro de hipoteca de por mes, durante meses			
03 Seguro de la vivienda de por mes, durante meses			
04			
05			
06			
07 Ajuste acumulado			
H. Otros			
01			
02			
03			
04			
05			
06			
07			
08			
I. TOTAL DE OTROS COSTOS (pagados por el deudor)			
Subtotales de otros costos (E + F + G + H)			

J. TOTAL DE COSTOS DE CIERRE (pagados por el deudor)			
Subtotales de costos de cierre (D + I)			
Créditos del prestamista			

Liquidaciones y pagos

Utilice esta tabla para ver un resumen de sus liquidaciones y de sus pagos realizados a otros utilizando el monto del préstamo.

PARA	MONTO
01	
02	
03	
04	
05	
06	
07	
08	
09	
10	
11	
12	
13	
14	
15	
K. TOTAL DE LIQUIDACIONES Y PAGOS	

Cálculo del dinero en efectivo para el cierre

Utilice esta tabla para saber lo que ha cambiado en su Estimación de Préstamo.

	Estimación del Préstamo	Final	¿Esto cambió?
Monto del préstamo			
Total de costos de cierre (J)			
Costos de cierre pagados antes del cierre			
Total de liquidaciones y pagos (K)			
Dinero en efectivo para el cierre	☐ Del Deudor ☐ Para Deudor	☐ Del Deudor ☐ Para Deudor	Costos de cierre financiados (pagados del monto del préstamo)

Información adicional sobre este préstamo

Declaraciones del préstamo

Amortización negativa (aumento del monto del préstamo)
De acuerdo con los términos de su préstamo, usted

- ☐ debe realizar pagos mensuales programados que no incluyen todos los intereses adeudados para ese mes. Como consecuencia, el monto de su préstamo aumentará (amortización negativa) y posiblemente, será más alto que el monto original del préstamo. Los aumentos del monto de su préstamo disminuyen su participación en el patrimonio que usted tiene en este inmueble.
- ☐ puede tener pagos mensuales que no incluyan todos los intereses adeudados para ese mes. Si los tiene, el monto de su préstamo aumentará (amortización negativa) y, como consecuencia, puede ser más alto que el monto original del préstamo. Los aumentos del monto de su préstamo disminuyen su participación en el patrimonio que usted tiene en este inmueble.
- ☐ no incluye una característica de amortización negativa.

Característica de demanda
Su préstamo

- ☐ incluye una característica de demanda, que le permite a su prestamista exigir el pago anticipado del préstamo. Debe revisar su pagaré para obtener detalles.
- ☐ no incluye una característica de demanda.

Cuenta en depósito para impuestos y seguros de la vivienda
Por ahora, su préstamo

- ☐ tendrá una cuenta en depósito para impuestos y seguros de la vivienda (también llamada cuenta de "depósito en garantía" o cuenta de "fideicomiso") para pagar los costos de la propiedad que se detallan a continuación. Sin una cuenta en depósito para impuestos y seguros de la vivienda, usted pagaría estos costos directamente, tal vez en un pago grande o en dos pagos al año. Es posible que su prestamista sea responsable por las sanciones y los intereses que resulten de la falta de pago.

Con cuenta en depósito para impuestos y seguros de la vivienda		
Costos de la propiedad con una cuenta en depósito durante el primer año		Monto total estimado durante el primer año para sus costos de la propiedad con depósito:
Costos de la propiedad sin una cuenta en depósito durante el primer año		Monto total estimado durante el primer año para sus costos de la propiedad sin depósito: Es posible que tenga que pagar otros costos de la propiedad.
Pago inicial para la cuenta en depósito		Respaldo para la cuenta en depósito que usted paga al cierre. Consulte la Sección G en la página 2.
Pago mensual para la cuenta en depósito		El monto incluido en su pago mensual total.

☐ no tendrá una cuenta en depósito porque ☐ usted la rechazó
☐ su prestamista no la ofrece. Usted debe pagar directamente sus costos de la propiedad, como los impuestos y el seguro de la vivienda. Comuníquese con su prestamista para preguntarle si su préstamo puede contar con una cuenta de depósito para impuestos y seguros de la vivienda.

Sin cuenta en depósito para impuestos y seguros de la vivienda		
Costos de la propiedad estimados durante el primer año		Monto total estimado durante el primer año. Usted debe pagar estos costos directamente, posiblemente en un pago grande o en dos pagos al año.
Comisión por renuncia a la cuenta en depósito		

En el futuro,
Es posible que los costos de la propiedad cambien y como consecuencia, su pago a la cuenta en depósito para impuestos y seguros de la vivienda podrá variar. Puede cancelar su cuenta en depósito, pero si lo hace, debe pagar sus costos de la propiedad directamente. Si no paga los impuestos sobre la propiedad, el estado o gobierno local pueden 1) imponer multas o sanciones o 2) imponer un embargo fiscal a esta propiedad. Si no paga ninguno de estos costos de la propiedad, su prestamista puede 1) agregar los montos al saldo de su préstamo, 2) agregar una cuenta en depósito a su préstamo o 3) exigirle que pague un seguro para la propiedad, que el prestamista adquiere en su nombre, y que tal vez tendrá un costo más alto y le brindará menos beneficios que el que podría adquirir por su cuenta.

Información adicional sobre este préstamo

Declaraciones del préstamo

Amortización negativa (aumento del monto del préstamo)
De acuerdo con los términos de su préstamo, usted

- ☐ debe realizar pagos mensuales programados que no incluyen todos los intereses adeudados para ese mes. Como consecuencia, el monto de su préstamo aumentará (amortización negativa) y posiblemente, será más alto que el monto original del préstamo. Los aumentos del monto de su préstamo disminuyen su participación en el patrimonio que usted tiene en este inmueble.
- ☐ puede tener pagos mensuales que no incluyan todos los intereses adeudados para ese mes. Si los tiene, el monto de su préstamo aumentará (amortización negativa) y, como consecuencia, puede ser más alto que el monto original del préstamo. Los aumentos del monto de su préstamo disminuyen su participación en el patrimonio que usted tiene en este inmueble.
- ☐ no incluye una característica de amortización negativa.

Característica de demanda
Su préstamo

- ☐ incluye una característica de demanda, que le permite a su prestamista exigir el pago anticipado del préstamo. Debe revisar su pagaré para obtener detalles.
- ☐ no incluye una característica de demanda.

Cuenta en depósito para impuestos y seguros de la vivienda
Por ahora, su préstamo

- ☐ tendrá una cuenta en depósito para impuestos y seguros de la vivienda (también llamada cuenta de "depósito en garantía" o cuenta de "fideicomiso") para pagar los costos de la propiedad que se detallan a continuación. Sin una cuenta en depósito para impuestos y seguros de la vivienda, usted pagaría estos costos directamente, tal vez en un pago grande o en dos pagos al año. Es posible que su prestamista sea responsable por las sanciones y los intereses que resulten de la falta de pago.

Con cuenta en depósito para impuestos y seguros de la vivienda		
Costos de la propiedad con una cuenta en depósito durante el primer año		Monto total estimado durante el primer año para sus costos de la propiedad con depósito:
Costos de la propiedad sin una cuenta en depósito durante el primer año		Monto total estimado durante el primer año para sus costos de la propiedad sin depósito: Es posible que tenga que pagar otros costos de la propiedad.
Pago inicial para la cuenta en depósito		Respaldo para la cuenta en depósito que usted paga al cierre. Consulte la Sección G en la página 2.
Pago mensual para la cuenta en depósito		El monto incluido en su pago mensual total.

☐ no tendrá una cuenta en depósito porque ☐ usted la rechazó
☐ su prestamista no la ofrece. Usted debe pagar directamente sus costos de la propiedad, como los impuestos y el seguro de la vivienda. Comuníquese con su prestamista para preguntarle si su préstamo puede contar con una cuenta de depósito para impuestos y seguros de la vivienda.

Sin cuenta en depósito para impuestos y seguros de la vivienda		
Costos de la propiedad estimados durante el primer año		Monto total estimado durante el primer año. Usted debe pagar estos costos directamente, posiblemente en un pago grande o en dos pagos al año.
Comisión por renuncia a la cuenta en depósito		

En el futuro,
Es posible que los costos de la propiedad cambien y como consecuencia, su pago a la cuenta en depósito para impuestos y seguros de la vivienda podrá variar. Puede cancelar su cuenta en depósito, pero si lo hace, debe pagar sus costos de la propiedad directamente. Si no paga los impuestos sobre la propiedad, el estado o gobierno local pueden 1) imponer multas o sanciones o 2) imponer un embargo fiscal a esta propiedad. Si no paga ninguno de estos costos de la propiedad, su prestamista puede 1) agregar los montos al saldo de su préstamo, 2) agregar una cuenta en depósito a su préstamo o 3) exigirle que pague un seguro para la propiedad, que el prestamista adquiere en su nombre, y que tal vez tendrá un costo más alto y le brindará menos beneficios que el que podría adquirir por su cuenta.

Tabla de pagos ajustables (PA)

¿Pago de interés solamente?	
¿Pagos opcionales?	
¿Pagos escalonados?	
¿Pagos estacionales?	
Pagos mensuales de capital e intereses	
Primer cambio/Monto	
Cambios subsiguientes	
Pago máximo	

Tabla de tasa de interés ajustable (TIA)

Índice + Margen	
Tasa de interés inicial	
Tasa de interés mínima/máxima	
Frecuencia de los cambios	
Primer cambio	
Cambios subsiguientes	
Límites de cambios en la tasa de interés	
Primer cambio	
Cambios subsiguientes	

Información adicional sobre este préstamo

Declaraciones del préstamo

Amortización negativa (aumento del monto del préstamo)
De acuerdo con los términos de su préstamo, usted

- ☐ debe realizar pagos mensuales programados que no incluyen todos los intereses adeudados para ese mes. Como consecuencia, el monto de su préstamo aumentará (amortización negativa) y posiblemente, será más alto que el monto original del préstamo. Los aumentos del monto de su préstamo disminuyen su participación en el patrimonio que usted tiene en este inmueble.
- ☐ puede tener pagos mensuales que no incluyan todos los intereses adeudados para ese mes. Si los tiene, el monto de su préstamo aumentará (amortización negativa) y, como consecuencia, puede ser más alto que el monto original del préstamo. Los aumentos del monto de su préstamo disminuyen su participación en el patrimonio que usted tiene en este inmueble.
- ☐ no incluye una característica de amortización negativa.

Característica de demanda
Su préstamo

- ☐ incluye una característica de demanda, que le permite a su prestamista exigir el pago anticipado del préstamo. Debe revisar su pagaré para obtener detalles.
- ☐ no incluye una característica de demanda.

Cuenta en depósito para impuestos y seguros de la vivienda
Por ahora, su préstamo

- ☐ tendrá una cuenta en depósito para impuestos y seguros de la vivienda (también llamada cuenta de "depósito en garantía" o cuenta de "fideicomiso") para pagar los costos de la propiedad que se detallan a continuación. Sin una cuenta en depósito para impuestos y seguros de la vivienda, usted pagaría estos costos directamente, tal vez en un pago grande o en dos pagos al año. Es posible que su prestamista sea responsable por las sanciones y los intereses que resulten de la falta de pago.

Con cuenta en depósito para impuestos y seguros de la vivienda		
Costos de la propiedad con una cuenta en depósito durante el primer año		Monto total estimado durante el primer año para sus costos de la propiedad con depósito:
Costos de la propiedad sin una cuenta en depósito durante el primer año		Monto total estimado durante el primer año para sus costos de la propiedad sin depósito: Es posible que tenga que pagar otros costos de la propiedad.
Pago inicial para la cuenta en depósito		Respaldo para la cuenta en depósito que usted paga al cierre. Consulte la Sección G en la página 2.
Pago mensual para la cuenta en depósito		El monto incluido en su pago mensual total.

☐ no tendrá una cuenta en depósito porque ☐ usted la rechazó
☐ su prestamista no la ofrece. Usted debe pagar directamente sus costos de la propiedad, como los impuestos y el seguro de la vivienda. Comuníquese con su prestamista para preguntarle si su préstamo puede contar con una cuenta de depósito para impuestos y seguros de la vivienda.

Sin cuenta en depósito para impuestos y seguros de la vivienda		
Costos de la propiedad estimados durante el primer año		Monto total estimado durante el primer año. Usted debe pagar estos costos directamente, posiblemente en un pago grande o en dos pagos al año.
Comisión por renuncia a la cuenta en depósito		

En el futuro,
Es posible que los costos de la propiedad cambien y como consecuencia, su pago a la cuenta en depósito para impuestos y seguros de la vivienda podrá variar. Puede cancelar su cuenta en depósito, pero si lo hace, debe pagar sus costos de la propiedad directamente. Si no paga los impuestos sobre la propiedad, el estado o gobierno local pueden 1) imponer multas o sanciones o 2) imponer un embargo fiscal a esta propiedad. Si no paga ninguno de estos costos de la propiedad, su prestamista puede 1) agregar los montos al saldo de su préstamo, 2) agregar una cuenta en depósito a su préstamo o 3) exigirle que pague un seguro para la propiedad, que el prestamista adquiere en su nombre, y que tal vez tendrá un costo más alto y le brindará menos beneficios que el que podría adquirir por su cuenta.

Tabla de pagos ajustables (PA)

¿Pago de interés solamente?	
¿Pagos opcionales?	
¿Pagos escalonados?	
¿Pagos estacionales?	
Pagos mensuales de capital e intereses	
Primer cambio/Monto	
Cambios subsiguientes	
Pago máximo	

Información adicional sobre este préstamo

Declaraciones del préstamo

Amortización negativa (aumento del monto del préstamo)
De acuerdo con los términos de su préstamo, usted

- ☐ debe realizar pagos mensuales programados que no incluyen todos los intereses adeudados para ese mes. Como consecuencia, el monto de su préstamo aumentará (amortización negativa) y posiblemente, será más alto que el monto original del préstamo. Los aumentos del monto de su préstamo disminuyen su participación en el patrimonio que usted tiene en este inmueble.
- ☐ puede tener pagos mensuales que no incluyan todos los intereses adeudados para ese mes. Si los tiene, el monto de su préstamo aumentará (amortización negativa) y, como consecuencia, puede ser más alto que el monto original del préstamo. Los aumentos del monto de su préstamo disminuyen su participación en el patrimonio que usted tiene en este inmueble.
- ☐ no incluye una característica de amortización negativa.

Característica de demanda
Su préstamo

- ☐ incluye una característica de demanda, que le permite a su prestamista exigir el pago anticipado del préstamo. Debe revisar su pagaré para obtener detalles.
- ☐ no incluye una característica de demanda.

Cuenta en depósito para impuestos y seguros de la vivienda
Por ahora, su préstamo

- ☐ tendrá una cuenta en depósito para impuestos y seguros de la vivienda (también llamada cuenta de "depósito en garantía" o cuenta de "fideicomiso") para pagar los costos de la propiedad que se detallan a continuación. Sin una cuenta en depósito para impuestos y seguros de la vivienda, usted pagaría estos costos directamente, tal vez en un pago grande o en dos pagos al año. Es posible que su prestamista sea responsable por las sanciones y los intereses que resulten de la falta de pago.

Con cuenta en depósito para impuestos y seguros de la vivienda		
Costos de la propiedad con una cuenta en depósito durante el primer año		Monto total estimado durante el primer año para sus costos de la propiedad con depósito:
Costos de la propiedad sin una cuenta en depósito durante el primer año		Monto total estimado durante el primer año para sus costos de la propiedad sin depósito: Es posible que tenga que pagar otros costos de la propiedad.
Pago inicial para la cuenta en depósito		Respaldo para la cuenta en depósito que usted paga al cierre. Consulte la Sección G en la página 2.
Pago mensual para la cuenta en depósito		El monto incluido en su pago mensual total.

☐ no tendrá una cuenta en depósito porque ☐ usted la rechazó
☐ su prestamista no la ofrece. Usted debe pagar directamente sus costos de la propiedad, como los impuestos y el seguro de la vivienda. Comuníquese con su prestamista para preguntarle si su préstamo puede contar con una cuenta de depósito para impuestos y seguros de la vivienda.

Sin cuenta en depósito para impuestos y seguros de la vivienda		
Costos de la propiedad estimados durante el primer año		Monto total estimado durante el primer año. Usted debe pagar estos costos directamente, posiblemente en un pago grande o en dos pagos al año.
Comisión por renuncia a la cuenta en depósito		

En el futuro,
Es posible que los costos de la propiedad cambien y como consecuencia, su pago a la cuenta en depósito para impuestos y seguros de la vivienda podrá variar. Puede cancelar su cuenta en depósito, pero si lo hace, debe pagar sus costos de la propiedad directamente. Si no paga los impuestos sobre la propiedad, el estado o gobierno local pueden 1) imponer multas o sanciones o 2) imponer un embargo fiscal a esta propiedad. Si no paga ninguno de estos costos de la propiedad, su prestamista puede 1) agregar los montos al saldo de su préstamo, 2) agregar una cuenta en depósito a su préstamo o 3) exigirle que pague un seguro para la propiedad, que el prestamista adquiere en su nombre, y que tal vez tendrá un costo más alto y le brindará menos beneficios que el que podría adquirir por su cuenta.

Tabla de tasa de interés ajustable (TIA)

Índice + Margen	
Tasa de interés inicial	
Tasa de interés mínima/máxima	
Frecuencia de los cambios	
Primer cambio	
Cambios subsiguientes	
Límites de cambios en la tasa de interés	
Primer cambio	
Cambios subsiguientes	

Declaraciones del préstamo

Intereses de garantía
Se le otorga un interés de garantía en _____

Usted puede perder esta propiedad si no cumple con sus pagos o con el resto de las obligaciones de este préstamo.

Pago atrasado
Si su pago presenta un retraso de más de ____ días, su prestamista le cobrará un recargo de _____

Pagos parciales
Su prestamista
- ☐ aceptará pagos menores al monto total adeudado (pagos parciales) y se aplicarán a su préstamo.
- ☐ podrá mantenerlo en una cuenta separada hasta que cubra el resto del pago y luego aplicará el pago total a su préstamo.
- ☐ no acepta pagos parciales.

Si este préstamo se vende, es posible que su nuevo prestamista tenga una política diferente.

Supuestos
Si usted vende o transfiere esta propiedad a otra persona su prestamista,
- ☐ permitirá, en determinadas condiciones, que esta persona asuma este préstamo con sus términos y condiciones originales.
- ☐ no permitirá que se asuma este préstamo con sus términos y condiciones originales.

Cálculos del préstamo

Pagos totales. Total que habrá pagado después de haber hecho todos los pagos de capital, intereses, seguro hipotecario y costos del préstamo, según lo programado.	
Cargo financiero. El monto en dólares que le costará el préstamo.	
Monto financiado. El monto en dólares disponible después de que pague el cargo financiero inicial.	
Tasa porcentual anual (APR). Sus costos durante el plazo del préstamo, expresados como una tasa. Esta no es su tasa de interés.	
Total de intereses pagados (TIP). El monto total de los intereses que pagará durante el plazo del préstamo, como porcentaje del monto total del préstamo.	

Otras declaraciones

Deducciones tributarias
Si adquiere una deuda mayor al valor de este inmueble, los intereses del monto del préstamo que sean superiores al valor real de mercado no se deducirán de sus impuestos federales sobre la renta. Debería consultar con un asesor fiscal para obtener más información.

Detalles del contrato
Consulte su pagaré y su instrumento de garantía para obtener información sobre lo siguiente:
- ¿Qué sucede si no hace sus pagos?
- ¿Qué es un incumplimiento de pago del préstamo?
- Situaciones en que su prestamista puede exigirle que pague el préstamo por anticipado.
- Las reglas para realizar pagos antes de la fecha estipulada.

Refinanciamiento
El refinanciamiento de este préstamo dependerá de su situación financiera futura, del valor de propiedad y de las condiciones del mercado. Es posible que no se le pueda refinanciar este préstamo.

Responsabilidad luego de la ejecución de la hipoteca
Si su prestamista ejecuta la hipoteca sobre este inmueble y dicha ejecución no cubre el monto de saldo pendiente de este préstamo:
- ☐ la ley estatal puede protegerlo contra la responsabilidad de pagar el saldo pendiente. Si vuelve a financiar o adquiere otra deuda sobre este inmueble, puede perder esta protección y tendrá que pagar la deuda restante después de la ejecución de la hipoteca. Le recomendamos que consulte con un abogado para obtener más información.
- ☐ la ley estatal no lo protege contra la responsabilidad de pagar el saldo pendiente.

Valoración de la vivienda
Si la propiedad tuvo una valoración para su préstamo, su prestamista debe proporcionarle una copia sin costo adicional, al menos tres días antes del cierre. Si aún no la ha recibido, comuníquese con su prestamista utilizando la información que se le brinda en la página 6.

¿Tiene preguntas? Si tiene preguntas sobre los términos y costos del préstamo que se establecen en este formulario, utilice la información a continuación. Para obtener más información o para presentar un reclamo, comuníquese con la Oficina para la Protección Financiera del Consumidor en **www.consumerfinance.gov/mortgage-closing.**

Declaraciones del préstamo

Intereses de garantía
Se le otorga un interés de garantía en _____

Usted puede perder esta propiedad si no cumple con sus pagos o con el resto de las obligaciones de este préstamo.

Pago atrasado
Si su pago presenta un retraso de más de ____ días, su prestamista le cobrará un recargo de _____

Pagos parciales
Su prestamista
- ☐ aceptará pagos menores al monto total adeudado (pagos parciales) y se aplicarán a su préstamo.
- ☐ podrá mantenerlo en una cuenta separada hasta que cubra el resto del pago y luego aplicará el pago total a su préstamo.
- ☐ no acepta pagos parciales.

Si este préstamo se vende, es posible que su nuevo prestamista tenga una política diferente.

Supuestos
Si usted vende o transfiere esta propiedad a otra persona su prestamista,
- ☐ permitirá, en determinadas condiciones, que esta persona asuma este préstamo con sus términos y condiciones originales.
- ☐ no permitirá que se asuma este préstamo con sus términos y condiciones originales.

Cálculos del préstamo

Pagos totales. Total que habrá pagado después de haber hecho todos los pagos de capital, intereses, seguro hipotecario y costos del préstamo, según lo programado.	
Cargo financiero. El monto en dólares que le costará el préstamo.	
Monto financiado. El monto en dólares disponible después de que pague el cargo financiero inicial.	
Tasa porcentual anual (APR). Sus costos durante el plazo del préstamo, expresados como una tasa. Esta no es su tasa de interés.	
Total de intereses pagados (TIP). El monto total de los intereses que pagará durante el plazo del préstamo, como porcentaje del monto total del préstamo.	

Otras declaraciones

Deducciones tributarias
Si adquiere una deuda mayor al valor de este inmueble, los intereses del monto del préstamo que sean superiores al valor real de mercado no se deducirán de sus impuestos federales sobre la renta. Debería consultar con un asesor fiscal para obtener más información.

Detalles del contrato
Consulte su pagaré y su instrumento de garantía para obtener información sobre lo siguiente:
- ¿Qué sucede si no hace sus pagos?
- ¿Qué es un incumplimiento de pago del préstamo?
- Situaciones en que su prestamista puede exigirle que pague el préstamo por anticipado.
- Las reglas para realizar pagos antes de la fecha estipulada.

Refinanciamiento
El refinanciamiento de este préstamo dependerá de su situación financiera futura, del valor de propiedad y de las condiciones del mercado. Es posible que no se le pueda refinanciar este préstamo.

Responsabilidad luego de la ejecución de la hipoteca
Si su prestamista ejecuta la hipoteca sobre este inmueble y dicha ejecución no cubre el monto de saldo pendiente de este préstamo:
- ☐ la ley estatal puede protegerlo contra la responsabilidad de pagar el saldo pendiente. Si vuelve a financiar o adquiere otra deuda sobre este inmueble, puede perder esta protección y tendrá que pagar la deuda restante después de la ejecución de la hipoteca. Le recomendamos que consulte con un abogado para obtener más información.
- ☐ la ley estatal no lo protege contra la responsabilidad de pagar el saldo pendiente.

¿Tiene preguntas? Si tiene preguntas sobre los términos y costos del préstamo que se establecen en este formulario, utilice la información a continuación. Para obtener más información o para presentar un reclamo, comuníquese con la Oficina para la Protección Financiera del Consumidor en **www.consumerfinance.gov/mortgage-closing.**

Información de contacto

	Prestamista	Corredor hipotecario	Agente a cargo de la operación de cierre
Nombre			
Dirección			
N.º de NMLS			
N.º de licencia de ___			
Contacto			
ID. de contacto de NMLS			
ID. de contacto de licencia de ___			
Correo electrónico			
Teléfono			

Confirmación de recepción

Al firmar, usted solo confirma que ha recibido este formulario. No es necesario que acepte este préstamo por el hecho de haber firmado o recibido este formulario.

Firma del solicitante Fecha

Firma del cosolicitante Fecha

Declaraciones del préstamo

Intereses de garantía
Se le otorga un interés de garantía en _____

_____

_____

_____

Usted puede perder esta propiedad si no cumple con sus pagos o con el resto de las obligaciones de este préstamo.

Pago atrasado
Si su pago presenta un retraso de más de ____ días, su prestamista le cobrará un recargo de _____

_____

Pago parcial
Su prestamista

- ☐ aceptará pagos menores al monto total adeudado (pagos parciales) y se aplicarán a su préstamo.
- ☐ podrá mantenerlo en una cuenta separada hasta que cubra el resto del pago y luego aplicará el pago total a su préstamo.
- ☐ no acepta pagos parciales.

Si este préstamo se vende, es posible que su nuevo prestamista tenga una política diferente.

Supuestos
Si usted vende o transfiere esta propiedad a otra persona su prestamista,

- ☐ permitirá, en determinadas condiciones, que esta persona asuma este préstamo con sus términos y condiciones originales.
- ☐ no permitirá que se asuma este préstamo con sus términos y condiciones originales.

Cálculos del préstamo

Pagos totales. Total que habrá pagado después de haber hecho todos los pagos de capital, intereses, seguro hipotecario y costos del préstamo, según lo programado.	
Cargo financiero. El monto en dólares que le costará el préstamo.	
Monto financiado. El monto en dólares disponible después de que pague el cargo financiero inicial.	
Tasa porcentual anual (APR). Sus costos durante el plazo del préstamo, expresados como una tasa. Esta no es su tasa de interés.	
Total de intereses pagados (TIP). El monto total de los intereses que pagará durante el plazo del préstamo, como porcentaje del monto total del préstamo.	

Otras declaraciones

Aceptación del préstamo
No tiene que aceptar este préstamo por el hecho de haber recibido este formulario o firmado una aplicación para un préstamo.

Deducciones tributarias
Si adquiere una deuda mayor al valor de este inmueble, los intereses del monto del préstamo que sean superiores al valor real de mercado no se deducirán de sus impuestos federales sobre la renta. Debería consultar con un asesor fiscal para obtener más información.

Detalles del contrato
Consulte su pagaré y su instrumento de garantía para obtener información sobre lo siguiente:

- ¿Qué sucede si no hace sus pagos?
- ¿Qué es un incumplimiento de pago del préstamo?
- Situaciones en que su prestamista puede exigirle que pague el préstamo por anticipado.
- Las reglas para realizar pagos antes de la fecha estipulada.

Refinanciamiento
El refinanciamiento de este préstamo dependerá de su situación financiera futura, del valor de propiedad y de las condiciones del mercado. Es posible que no se le pueda refinanciar este préstamo.

Responsabilidad luego de la ejecución de la hipoteca
Si su prestamista ejecuta la hipoteca sobre este inmueble y dicha ejecución no cubre el monto de saldo pendiente de este préstamo:

- ☐ La ley estatal puede protegerlo contra la responsabilidad de pagar el saldo pendiente. Si vuelve a financiar o adquiere otra deuda sobre este inmueble, puede perder esta protección y tendrá que pagar la deuda restante después de la ejecución de la hipoteca. Le recomendamos que consulte con un abogado para obtener más información.
- ☐ La ley estatal no lo protege contra la responsabilidad de pagar el saldo pendiente.

Valoración de la vivienda
Si la propiedad tuvo una valoración para su préstamo, su prestamista debe proporcionarle una copia sin costo adicional, al menos tres días antes del cierre. Si aún no la ha recibido, comuníquese con su prestamista utilizando la información que se le brinda en la página 6.

¿Tiene preguntas? Si tiene preguntas sobre los términos y costos del préstamo que se establecen en este formulario, utilice la información a continuación. Para obtener más información o para presentar un reclamo, comuníquese con la Oficina para la Protección Financiera del Consumidor en **www.consumerfinance.gov/mortgage-closing.**

Declaraciones del préstamo

Intereses de garantía
Se le otorga un interés de garantía en _____

_____

_____

_____

Usted puede perder esta propiedad si no cumple con sus pagos o con el resto de las obligaciones de este préstamo.

Pago atrasado
Si su pago presenta un retraso de más de ____ días, su prestamista le cobrará un recargo de _____

_____

Pago parcial
Su prestamista

- ☐ aceptará pagos menores al monto total adeudado (pagos parciales) y se aplicarán a su préstamo.
- ☐ podrá mantenerlo en una cuenta separada hasta que cubra el resto del pago y luego aplicará el pago total a su préstamo.
- ☐ no acepta pagos parciales.

Si este préstamo se vende, es posible que su nuevo prestamista tenga una política diferente.

Supuestos
Si usted vende o transfiere esta propiedad a otra persona su prestamista,

- ☐ permitirá, en determinadas condiciones, que esta persona asuma este préstamo con sus términos y condiciones originales.
- ☐ no permitirá que se asuma este préstamo con sus términos y condiciones originales.

Cálculos del préstamo

Pagos totales. Total que habrá pagado después de haber hecho todos los pagos de capital, intereses, seguro hipotecario y costos del préstamo, según lo programado.	
Cargo financiero. El monto en dólares que le costará el préstamo.	
Monto financiado. El monto en dólares disponible después de que pague el cargo financiero inicial.	
Tasa porcentual anual (APR). Sus costos durante el plazo del préstamo, expresados como una tasa. Esta no es su tasa de interés.	
Total de intereses pagados (TIP). El monto total de los intereses que pagará durante el plazo del préstamo, como porcentaje del monto total del préstamo.	

Otras declaraciones

Aceptación del préstamo
No tiene que aceptar este préstamo por el hecho de haber recibido este formulario o firmado una aplicación para un préstamo.

Deducciones tributarias
Si adquiere una deuda mayor al valor de este inmueble, los intereses del monto del préstamo que sean superiores al valor real de mercado no se deducirán de sus impuestos federales sobre la renta. Debería consultar con un asesor fiscal para obtener más información.

Detalles del contrato
Consulte su pagaré y su instrumento de garantía para obtener información sobre lo siguiente:

- ¿Qué sucede si no hace sus pagos?
- ¿Qué es un incumplimiento de pago del préstamo?
- Situaciones en que su prestamista puede exigirle que pague el préstamo por anticipado.
- Las reglas para realizar pagos antes de la fecha estipulada.

Refinanciamiento
El refinanciamiento de este préstamo dependerá de su situación financiera futura, del valor de propiedad y de las condiciones del mercado. Es posible que no se le pueda refinanciar este préstamo.

Responsabilidad luego de la ejecución de la hipoteca
Si su prestamista ejecuta la hipoteca sobre este inmueble y dicha ejecución no cubre el monto de saldo pendiente de este préstamo:

- ☐ La ley estatal puede protegerlo contra la responsabilidad de pagar el saldo pendiente. Si vuelve a financiar o adquiere otra deuda sobre este inmueble, puede perder esta protección y tendrá que pagar la deuda restante después de la ejecución de la hipoteca. Le recomendamos que consulte con un abogado para obtener más información.
- ☐ La ley estatal no lo protege contra la responsabilidad de pagar el saldo pendiente.

¿Tiene preguntas? Si tiene preguntas sobre los términos y costos del préstamo que se establecen en este formulario, utilice la información a continuación. Para obtener más información o para presentar un reclamo, comuníquese con la Oficina para la Protección Financiera del Consumidor en **www.consumerfinance.gov/mortgage-closing.**

Información de contacto

	Prestamista	Corredor hipotecario	Agente a cargo de la operación de cierre
Nombre			
Dirección			
N.º de NMLS			
N.º de licencia de ___			
Contacto			
ID. de contacto de NMLS			
ID. de contacto de licencia de ___			
Correo electrónico			
Teléfono			

H–29 Escrow Cancellation Notice Model Form (§ 1026.20(e))

Description: This is a blank model form of the disclosures required by § 1026.20(e).

[Logo] [Name of Creditor or Servicer]

Escrow Closing Notice

BORROWER
MAILING ADDRESS

PROPERTY ADDRESS

ISSUE DATE
LENDER
ACCOUNT #/LOAN #

PHONE

As of ____[date]____, you will no longer have an escrow account (also called an "impound" or "trust" account) because

☐ you asked us to close it.

☐ we are closing it.

After this date, you must directly pay your property costs, such as taxes and homeowner's insurance, possibly in one or two large payments a year.

Cost to You	
Escrow Closing Fee *For closing your escrow account*	[dollar amount]

In the future,

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, we 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 we buy on your behalf, which likely would cost more and provide fewer benefits than what you could buy on your own.

Call ____[phone number]____ with any questions about the closing of your escrow account.

☐ We do not offer you the option of keeping the escrow account on your loan.

☐ Contact us at ____[phone number]____ by ____[date]____ if you want to keep the escrow account on your loan.

BILLING CODE 4810–AM–C

■ 24. In Supplement I to Part 1026:

■ A. Under *Section 1026.1—Authority, Purpose, Coverage, Organization, Enforcement and Liability:*

■ 1. Under the subheading *1(c) Coverage,* paragraph 1(c)(5)–1 is removed and the subheading *Paragraph 1(c)(5)* and paragraph 1 under that subheading are added.

■ 2. The subheading *1(d) Organization,* the subheading *Paragraph 1(d)(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 1026.17—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.
■ E. Under *Section 1026.18—Content of Disclosures:*
■ i. Paragraph 3 is added.
■ ii. Under subheading *18(b) Amount financed:*
■ a. Paragraph 2 is removed.
■ ii. 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.
■ iii. 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.
■ iv. 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.
■ v. Under subheading *18(r) Required deposit,* paragraph 6.vi is removed and reserved.
■ vi. 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),* paragraphs 1 and 2 are revised.
■ c. Under subheading *18(s)(6) Special disclosures for loans with negative amortization,* paragraph 1 is revised.
■ F. 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 subheadings *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.
■ G. Under *Section 1026.20—Disclosure Requirements Regarding Post-Consummation Events:*
■ i. New subheading *20(e) Escrow account cancellation notice for certain mortgage transactions* is 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, subheading 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,* subheading *25(c) Records related to certain requirements for mortgage loans,* 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.
■ 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.
■ P. Under *Appendix D—Multiple-Advance Construction Loans,* paragraphs 6 and 7 are revised.
■ Q. Under *Appendices G and H—Open-End and Closed-End Model Forms and Clauses,* paragraph 1 is revised.
■ R. The subheading *Appendix H—Closed-End Model Forms and Clauses* is revised.
■ i. Paragraphs 16 and 19 are revised.
■ ii. Paragraphs 29 and 30 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. *Exemption for certain mortgage transactions.* 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), 129D(j)(1)(A), and 129D(j)(1)(B) 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, except in certain transactions. The exemptions do not apply to certain transactions for which the disclosure requirements are implemented in other parts of Regulation Z. Sections 1026.37 and 1026.38 implement sections 128(a)(16) through (19), 128(b)(4), 129C(f)(1), 129C(g)(2) and (3), 129D(h), and 129D(j)(1)(A) of the Truth in Lending Act and section 4(c) of the Real Estate Settlement Procedures Act for transactions subject to § 1026.19(e) and (f). Section 1026.38(l)(5) implements the disclosure requirements of section 129C(h) of the Truth in Lending Act for transactions subject to § 1026.19(f). Section 1026.39(d)(5) implements the disclosure requirements of section 129C(h) of the Truth in Lending Act for transactions subject to § 1026.39(d)(5). Section 1026.20(e) implements the disclosure requirements of section 129D(j)(1)(B) of the Truth in Lending Act for transactions subject to § 1026.20(e). 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.

1(d) Organization.

Paragraph 1(d)(5).

1. *Effective date.* The Bureau's revisions to Regulation X and Regulation Z published on December 31, 2013 (the TILA–RESPA Final Rule), apply to covered loans (closed-end

credit transactions secured by real property) for which the creditor or mortgage broker receives an application on or after August 1, 2015 (the ''effective date''), except that new § 1026.19(e)(2), the amendments to § 1026.28(a)(1), and the amendments to the commentary to § 1026.29, become effective on August 1, 2015 without respect to whether an application has been received. The provisions of § 1026.19(e)(2) apply prior to a consumer's receipt of the disclosures required by § 1026.19(e)(1)(i), and therefore, restrict activity that may occur prior to receipt of an application by a creditor or mortgage broker under § 1026.19(e). These provisions include § 1026.19(e)(2)(i), which restricts the fees that may be imposed on a consumer, § 1026.19(e)(2)(ii), which requires a statement to be included on written estimates of terms or costs specific to a consumer, and § 1026.19(e)(2)(iii), which prohibits creditors from requiring the submission of documents verifying information related to the consumer's application. Accordingly, the provisions under § 1026.19(e)(2) are effective on August 1, 2015, without respect to whether an application has been received on that date. In addition, the amendments to § 1026.28 and the commentary to § 1026.29 govern the preemption of State laws and thus, the amendments to those provisions and associated commentary made by the TILA–RESPA Final Rule are effective on August 1, 2015, without respect to whether an application has been received on that date. The following examples illustrate the application of the effective date for the TILA–RESPA Final Rule.

i. *General.* Assume a creditor receives an application, as defined under § 1026.2(a)(3) of the TILA–RESPA Final Rule, for a transaction subject to § 1026.19(e) and (f) on August 1, 2015, and that consummation of the transaction occurs on August 31, 2015. The amendments of the TILA–RESPA Final Rule, including the requirements to provide the Loan Estimate and Closing Disclosure under § 1026.19(e) and (f), apply to the transaction. The creditor would also be required to provide the special information booklet under § 1026.19(g) of the TILA–RESPA Final Rule, as applicable. Assume a creditor receives an application, as defined under § 1026.2(a)(3) of the TILA–RESPA Final Rule, for a transaction subject to § 1026.19(e) and (f) on July 31, 2015, and that consummation of the transaction occurs on August 30, 2015. The amendments of the TILA–RESPA Final Rule, including the requirements to provide the Loan Estimate and Closing Disclosure under § 1026.19(e) and (f), do not apply to the transaction, except that the provisions of § 1026.19(e)(2), specifically § 1026.19(e)(2)(i), (e)(2)(ii), and (e)(2)(iii), do apply to the transaction beginning on August 1, 2015 because they become effective on August 1, 2015, without respect to whether an application, as defined under § 1026.2(a)(3) of the TILA–RESPA Final Rule, has been received by the creditor or mortgage broker on that date. The creditor does not provide the Closing Disclosure so that it is received by the consumer at least three business days before consummation; instead, the creditor and the settlement agent provide the disclosures under § 1026.19(a)(2)(ii) and § 1024.8, as applicable, under the Truth in Lending Act and the Real Estate Settlement Procedures Act, respectively. The requirement to provide the special information booklet under § 1026.19(g) of the TILA–RESPA Final Rule would also not apply to the transaction. But the creditor would provide the special information booklet under § 1024.6, as applicable.

ii. *Predisclosure written estimates.* Assume a creditor receives a request from a consumer for a written estimate of terms or costs specific to the consumer on August 1, 2015, before the consumer submits an application to the creditor, and thus, before the consumer has received the disclosures required under § 1026.19(e)(1)(i). The creditor, if it provides such written estimate to the consumer, must comply with the requirements of § 1026.19(e)(2)(ii) and provide the required statement on the written estimate, even though the creditor has not received an application for a transaction subject to § 1026.19(e) and (f) on that date.

iii. *Request for preemption determination.* Assume a creditor submits a request to the Bureau under § 1026.28(a)(1) for a determination of whether a State law is inconsistent with the disclosure requirements of the TILA–RESPA Final Rule on August 1, 2015. Because the amendments to § 1026.28(a)(1) are effective on that date and do not depend on whether the creditor has received an application as defined under § 1026.2(a)(3) of the TILA–RESPA Final Rule, § 1026.28(a)(1), as amended by the TILA–RESPA Final Rule, is applicable to the request on that date and the Bureau would make a determination based on the amendments of the TILA–RESPA Final Rule, including, for example, the requirements of § 1026.37.

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. For transactions subject to § 1026.19(e), (f), or (g) of this part, 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 for a transaction subject to § 1026.19(e), (f), or (g) 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 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.

* * * * *

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- or real estate-secured mortgage transactions under §§ 1026.19(a)(1)(ii), 1026.19(a)(2), 1026.19(e)(1)(iii)(B), 1026.19(e)(1)(iv), 1026.19(e)(2)(i)(A), 1026.19(e)(4)(ii), 1026.19(f)(1)(ii), 1026.19(f)(1)(iii), 1026.20(e)(5), 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 purposes of the Truth in Lending Act (15 U.S.C. 1601 *et seq.*) and Regulation Z.

* * * * *

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 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 may continue to use the assets and/or income 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 a trustee, rather than the beneficiaries of the trust. Regardless of the capacity or capacities in which the loan documents are executed, assuming the transaction is primarily 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.* 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 primarily 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).

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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), and § 1026.20(e). For the disclosures required by § 1026.19(e), (f), and (g), 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). For the disclosures required by § 1026.20(e), rules regarding the disclosures' form are found in § 1026.20(e)(4) and rules regarding timing are found in § 1026.20(e)(5).

17(a) Form of disclosures.

Paragraph 17(a)(1).

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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 terms to which the consumer and creditor are legally bound as of the outset of the transaction. In the case of disclosures required under § 1026.20(c), (d), and (e), the disclosures shall reflect the credit terms to which the 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 consumer and creditor legally modifies that note or contract. If the 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:

* * * * *

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 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 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 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 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 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 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 given by the bank must not reflect the seller buydown in any way. For example, the annual percentage rate and 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 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 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 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 given for the mortgage, the creditor must reflect the terms of the buydown agreement.

i. For example:

* * * * *

C. The 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 disclosures must reflect that the transaction is a step rate product under §§ 1026.37(a)(10)(B) 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 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 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 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 the disclosures required under §§ 1026.18(g) and (s), 1026.37(c), 1026.37(l)(1) and (3), 1026.38(c), and 1026.38(o)(5), 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), 1026.37(l)(1) and (3), 1026.38(c), and 1026.38(o)(5) 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 should be $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), 1026.37(l)(1) and (3), 1026.38(c), and 1026.38(o)(5) 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 should be $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), 1026.37(l)(1) and (3), 1026.38(c), and 1026.38(o)(5) 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 should be $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 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 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.

* * * * *

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 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 under §§ 1026.37 and 1026.38, 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) and (f), use of the Loan Estimate form H–24 of appendix H to this part pursuant to § 1026.37(o) or the Closing Disclosure form H–25 of appendix H to this part pursuant to § 1026.38(t), respectively, satisfies the requirement that the disclosure state clearly that the disclosure is an estimate. For all other disclosures, even though they are based on the same assumption on which a specific estimated disclosure was based, the creditor has 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 comply with § 1026.17(c)(2)(i) by basing 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.

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 disclose the actual amount of per diem interest that will be collected at consummation, subject only to the disclosure rules in those sections.

* * * * *

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), the disclosures required pursuant to §§ 1026.18(s), 1026.37(c), or 1026.38(c), or the 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. The disclosures for 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 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. When two consumers are joint obligors with primary liability on an obligation, the early disclosures required by § 1026.19(a), (e), or (g), as applicable, may be provided to any one of them. In rescindable transactions, the disclosures required by § 1026.19(f) must be given separately to each consumer who has the right to rescind under § 1026.23. In transactions that are not rescindable, the disclosures required by § 1026.19(f) may be provided to any consumer with primary liability on the obligation. *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 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, in some cases after consummation under § 1026.19(f), 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)(2) 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 § 1026.17(f) even if the prior disclosures would be considered accurate under the tolerances in § 1026.18(d) or 1026.22(a). To illustrate:

i. *Transactions not secured by real property.* A. For transactions not secured by real property, 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 1/8 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 1/8 of 1 percentage point of the rate at consummation, the creditor need not redisclose the changed terms (including the annual percentage rate).

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).

ii. *Reverse mortgages.* In a transaction subject to § 1026.19(a) and not § 1026.19(e) and (f), assume that, at the time 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. Assume further that consummation actually occurs on August 5, and per-diem interest for the remainder of August is collected as a prepaid finance charge. 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, assume that, 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. Assume further that 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, other than reverse mortgages.

3. *Content of new disclosures.* Except as provided by § 1026.19(e) and (f), 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) and (f), 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:

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17(h) Series of sales—delay in disclosures.

1. *Applicability.* Except for extensions of credit covered by § 1026.19(a) or (e) and (f), 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 § 1026.17(h) are met. If those conditions are not met, the general timing rules in § 1026.17(b) apply.

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Section 1026.18—Content of Disclosures

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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.

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18(c) Itemization of amount financed.

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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 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.

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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 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]

6. *Mortgage transactions.* Section 1026.18(g) applies 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). *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 is not subject to the requirements of § 1026.18(s) or §§ 1026.37(c) and 1026.38(c).

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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. 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 § 1026.18(g)(2) 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 where payments rise sharply for five years and then decline over the next 25 years, 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).

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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 rebate 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. However, the term prepayment penalty does not include a waived bona fide third-party charge imposed by the creditor if the consumer pays all of a covered transaction's principal before the date on which the principal is due sooner than 36 months after consummation. For example, assume that at consummation, the creditor waives $3,000 in closing costs to cover bona fide third-party charges but the terms of the loan agreement provide that the creditor may recoup the $3,000 in waived charges if the consumer repays the entire loan balance sooner than 36 months after consummation. The $3,000 charge is not a prepayment penalty. In contrast, for example, assume that at consummation, the creditor waives $3,000 in closing costs to cover bona fide third-party charges but the terms of the loan agreement provide that the creditor may recoup $4,500 in part to recoup waived charges, if the consumer repays the entire loan balance sooner than 36 months after consummation. The $3,000 that the creditor may impose to cover the waived bona fide third-party charges is not a prepayment penalty, but the additional $1,500 charge is a prepayment penalty and must be disclosed pursuant to § 1026.37(k)(1).

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, if such fees are imposed whether or not the loan is prepaid. Examples include 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.

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 an 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 § 1026.18(k)(2).

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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]

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. 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 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).

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18(s)(3) Payments for amortizing loans.

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Paragraph 18(s)(3)(i)(C).

1. *Taxes and insurance.* An estimated payment amount for taxes and insurance must be disclosed if the creditor will establish an escrow account for such amounts. If the escrow account will include amounts for items other than taxes and insurance, such as homeowners association dues, the creditor may but is not required to include such items in the estimate. When such estimated escrow payments must be disclosed in multiple columns of the table, such as for adjustable- and step-rate transactions, each column should use the same estimate for taxes

and insurance except that the estimate should reflect changes in periodic mortgage insurance premiums or any functionally equivalent fee that are known to the creditor at the time the disclosure is made. The estimated amounts of mortgage insurance premiums or any functionally equivalent fee should be based on the declining principal balance that will occur as a result of changes to the interest rate that are assumed for purposes of disclosing those rates under § 1026.18(s)(2) and accompanying commentary. The payment amount must include estimated amounts for property taxes and premiums for mortgage-related insurance required by the creditor, such as insurance against loss of or damage to property, or against liability arising out of the ownership or use of the property, or insurance protecting the creditor against the consumer's default or other credit loss. Premiums for credit insurance, debt suspension and debt cancellation agreements, however, should not be included. Except for periodic mortgage insurance premiums or any functionally equivalent fee included in the escrow payment under § 1026.18(s)(3)(i)(C), amounts included in the escrow payment disclosure such as property taxes and homeowner's insurance generally are not finance charges under § 1026.4 and, therefore, do not affect other disclosures, including the finance charge and annual percentage rate.

2. *Mortgage insurance or any functional equivalent.* For purposes of § 1026.18(s), ''mortgage insurance or any functional equivalent'' means the amounts identified in § 1026.4(b)(5). ''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.

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18(s)(6) Special disclosures for loans with negative amortization.

1. *Escrows.* See the commentary under § 1026.18(s)(3)(i)(C) for guidance on escrows for purposes of § 1026.18(s)(6). Under that guidance, because mortgage insurance payments and functionally equivalent fees decline over a loan's term, the payment amounts shown in the table should reflect the mortgage insurance payment and functionally equivalent fees that will be applicable at the time each disclosed periodic payment will be in effect. Accordingly, the disclosed mortgage insurance payment or functionally equivalent fee will be zero if it corresponds to a periodic payment that will occur after the creditor will be legally required to terminate mortgage insurance or any functional equivalent. On the other hand, because only one escrow amount is disclosed under § 1026.18(s)(6) for negative amortization loans and escrows that are not itemized in the payment amounts, the single escrow amount disclosed should reflect the mortgage insurance amount or any functionally equivalent fee that will be collected at the outset of the loan's term, even though that amount will decline in the future and ultimately will be discontinued pursuant to the terms of the mortgage insurance policy.

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Section 1026.19—Certain Mortgage and Variable-Rate Transactions

19(a)(1)(i) Time of disclosures.

1. *Coverage.* Section 1026.19(a) requires early disclosure of credit terms in reverse mortgage transactions subject to § 1026.33 that are secured by a consumer's dwelling 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(b)), and is subject to any interpretations by the Bureau.

* * * * *

19(e) Mortgage loans secured by real property—Early disclosures.

1. *Affiliate.* The term ''affiliate,'' as used in § 1026.19(e), has the same meaning as in § 1026.32(b)(5).

19(e)(1) Provision of 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 § 1026.17(c)(2)(i). Section 1026.17(c)(2)(i) provides that if any information necessary for an accurate disclosure is unknown to the creditor, the creditor shall make the disclosure based on the best information reasonably available to the creditor at the time the disclosure is provided to the consumer. The ''reasonably available'' standard requires that the creditor, acting in good faith, exercise due diligence in obtaining information. See comment 17(c)(2)(i)–1 for an explanation of the standard set forth in § 1026.17(c)(2)(i). See comment 17(c)(2)(i)–2 for labeling disclosures required under § 1026.19(e) that are estimates.

19(e)(1)(ii) Mortgage broker.

1. *Mortgage broker responsibilities.* Section 1026.19(e)(1)(ii)(A) provides that if a mortgage broker receives a consumer's application, either the creditor or the mortgage broker must provide the consumer with the disclosures required under § 1026.19(e)(1)(i) in accordance with § 1026.19(e)(1)(iii). Section 1026.19(e)(1)(ii)(A) also provides that if the mortgage broker provides the required disclosures, it must comply with all relevant requirements of § 1026.19(e). This means that ''mortgage broker'' should be read in the place of ''creditor'' for all provisions of § 1026.19(e), except to the extent that such a reading would create responsibility for mortgage brokers under § 1026.19(f). To illustrate, comment 19(e)(4)(ii)–1 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)(ii)–1 because mortgage brokers are not responsible for the disclosures required under § 1026.19(f)(1)(i). In addition, § 1026.19(e)(1)(ii)(A) provides that the creditor must ensure that disclosures provided by mortgage brokers comply with all requirements of § 1026.19(e), and that disclosures provided by mortgage brokers that do comply with all such requirements satisfy the creditor's obligation under § 1026.19(e). The term ''mortgage broker,'' as used in § 1026.19(e)(1)(ii), has the same meaning as in § 1026.36(a)(2). *See also* comment 36(a)–2. Section 1026.19(e)(1)(ii)(B) provides that if a mortgage broker provides any disclosure required under § 1026.19(e), the mortgage broker must also comply with the requirements of § 1026.25(c). For example, if a mortgage broker provides the disclosures required under § 1026.19(e)(1)(i), it must maintain records for three years, in compliance with § 1026.25(c)(1)(i).

2. *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, if a mortgage broker receives a consumer's application and provides the consumer with the disclosures required under § 1026.19(e)(1)(i), the creditor does not satisfy the requirements of § 1026.19(e)(1)(i) if it provides duplicative disclosures to the consumer. In the same example, even 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.

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)(A), the term ''business day'' means a day on which the creditor's offices are open to the public for carrying out substantially all of its business functions. *See* § 1026.2(a)(6).

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 considered 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)(B), 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 by, for instance, informing the creditor that he intends to take out a loan from another creditor 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).

4. *Timeshares.* If consummation occurs within three business days after a creditor's receipt of an application for a transaction that is secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D), a creditor complies with § 1026.19(e)(1)(iii) by providing the disclosures required under § 1026.19(f)(1)(i) instead of the disclosures required under § 1026.19(e)(1)(i).

19(e)(1)(iv) Receipt of early disclosures.

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 considered to have received the disclosures three business days after they are delivered or placed in the mail. The creditor may, alternatively, rely on 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.

2. *Electronic delivery.* The three-business-day period provided in § 1026.19(e)(1)(iv) applies to methods of electronic delivery, such as email. For example, if a creditor sends the disclosures required under § 1026.19(e) via email on Monday, pursuant to § 1026.19(e)(1)(iv) the consumer is considered to have received the disclosures on Thursday, three business days later. The creditor may, alternatively, rely on evidence that the consumer received the emailed disclosures earlier. For example, if the creditor emails the disclosures at 1 p.m. on Tuesday, the consumer emails the creditor with an acknowledgement of receipt of the disclosures at 5 p.m. on the same day, the creditor could demonstrate that the disclosures were received on the same day. Creditors using electronic delivery methods, such as email, must also comply with § 1026.37(o)(3)(iii), which provides that the disclosures in § 1026.37 may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the E-Sign Act. For example, if a creditor delivers the disclosures required under § 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 § 1026.37(o)(3)(iii), 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 circumstances of the individual situation. 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 business days before consummation, as required by § 1026.19(f)(1)(ii), on Tuesday, June 2, and the loan could be consummated on Friday, June 5. See § 1026.19(f)(1)(iv) for waiver of the three-business-day waiting period under § 1026.19(f).

19(e)(1)(vi) Shopping for settlement service providers.

1. *Permission to shop.* Section 1026.19(e)(1)(vi)(A) permits creditors to impose reasonable 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. 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)(B) 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 disclosure of services for which the consumer may shop.

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 at least one available provider of that service and stating that the consumer may choose a different provider for that service. The settlement service providers identified on the written list required by § 1026.19(e)(vi)(C) must correspond to the settlement services for which the consumer may shop, disclosed pursuant to § 1026.37(f)(3). See form H–27 of appendix H to this part for a model list.

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.

5. *Statement that consumer may choose different provider.* Section 1026.19(e)(1)(vi)(C) requires the creditor to include on the written list a statement that the consumer may choose a provider that is not included on that list. *See* form H–27 of appendix H to this part for a model 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 on the written list providers of services for which the consumer is not permitted to shop, provided that the creditor clearly and conspicuously 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 and surveys, but the consumer may select a provider, other than those identified on the list, for only the survey, 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 survey.

7. *Relation to RESPA and Regulation X.* Section 1026.19 does not prohibit creditors from including affiliates on the written list required under § 1026.19(e)(1)(vi)(C). 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) Predisclosure 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.* Section 1026.19(e)(2)(i)(A) provides that a consumer may indicate an intent to proceed with a transaction in any manner the consumer chooses, unless a particular manner of communication is required by the creditor. The 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 consumer's silence is not indicative of intent because it cannot be documented to satisfy the requirements of § 1026.25. For example, a creditor or third party 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 or third party disclosed that it would do so.

3. *Timing of fees.* At any time prior to delivery of the disclosures required under § 1026.19(e)(1)(i), a creditor or other person may impose a credit report fee in connection with the consumer's application for a mortgage loan that is subject to § 1026.19(e)(1)(i) as provided in § 1026.19(e)(2)(i)(B). The consumer must have received the disclosures required under § 1026.19(e)(1)(i) and indicated an intent to proceed with the transaction described by those disclosures 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 or other person complies with § 1026.19(e)(2)(i)(A) if:

i. A creditor receives a consumer's application directly from the consumer and does not impose any fee, other than a bona fide and reasonable fee for obtaining a consumer's credit report, until the consumer receives the disclosures required under § 1026.19(e)(1)(i) and indicates an intent to proceed with the transaction described by those disclosures.

ii. A third party submits a consumer's application to a creditor and neither the creditor nor the third party imposes any fee, other than a bona fide and reasonable fee for obtaining a consumer's credit report, until the consumer receives the disclosures required under § 1026.19(e)(1)(i) and indicates an intent to proceed with the transaction described by those disclosures.

iii. A third party submits a consumer's 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 for obtaining the credit report, the new creditor or third party does not impose any additional fee until the consumer receives disclosures required under § 1026.19(e)(1)(i) from the new creditor and indicates an intent to proceed with the transaction described by those disclosures.

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 or other person 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), the creditor or other person does not comply with § 1026.19(e)(2)(i), even if the creditor or other person had stated that the check will not be cashed until after the disclosures required by § 1026.19(e)(1)(i) are received by the consumer and waited until after the consumer subsequently indicated an intent to proceed to cash the check. Similarly, a creditor or other person does not comply with the requirements of § 1026.19(e)(2)(i) if the creditor or other person requires the consumer to provide a credit card number before the consumer receives the disclosures required by § 1026.19(e)(1)(i), even if the creditor or other person had promised 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 waited until after the consumer subsequently indicated an intent to proceed. In contrast, a creditor or other person complies with § 1026.19(e)(2)(i) if the creditor or other person 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 an intent to proceed, provided that the consumer's authorization is only to pay for the cost of a credit report and the creditor or other person only charges a reasonable and bona fide fee for obtaining the consumer's credit report. This is so even if the creditor or other person 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 an intent to proceed with the transaction described by those disclosures, provided that the creditor or other person requested and received a separate authorization from the consumer for the processing fee after the consumer received the disclosures required by § 1026.19(e)(1)(i) and indicated an intent to proceed with the transaction described by those disclosures.

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 the fee is for purchasing a credit report on the consumer. The fee also must be bona fide and reasonable in amount. For example, a creditor or other person may collect a fee for obtaining a credit report if it is in the creditor's or other person's ordinary course of business to obtain a credit report. If the criteria in § 1026.19(e)(2)(i)(B) are met, the creditor or other person 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 or other person to include a clear and conspicuous statement on the top of the front of the first page of a written estimate of terms or costs specific to the consumer if it is provided to the consumer before the consumer receives the disclosures required by § 1026.19(e)(1)(i). 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 statement 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 statement. Similarly, the statement 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). Section 1026.19(e)(2)(ii) requires that the notice must be in a font size that is no smaller than 12-point font, and must state: ''Your actual rate, payment, and costs could be higher. Get an official Loan Estimate before choosing a loan.'' *See* form H–26 of appendix H to this part for a model statement. Section 1026.19(e)(2)(ii) also prohibits the creditor or other person from making these written estimates with headings, content, and format substantially similar to form H–24 or H–25 of appendix H to this part.

19(e)(2)(iii) Verification of information.

1. *Requirements.* The creditor or other person may collect from the consumer any information that it requires prior to providing the early disclosures before or at the same time as collecting the information listed in § 1026.2(a)(3)(ii). However, the creditor or other person is not permitted to require, before providing the disclosures required by § 1026.19(e)(1)(i), that the consumer submit documentation to verify the information collected from the consumer. See also § 1026.2(a)(3) and the related commentary regarding the definition of application. To illustrate:

i. A creditor may ask for the sale price and address of the property, but the creditor may not require the consumer to provide a purchase and sale agreement to support the information the consumer provides orally before the creditor provides the disclosures required by § 1026.19(e)(1)(i).

ii. A mortgage broker may ask for the names, account numbers, and balances of the consumer's checking and savings accounts, but the mortgage broker may not require the consumer to provide bank statements, or similar documentation, to support the information the consumer provides orally before the mortgage broker provides the disclosures required by § 1026.19(e)(1)(i).

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 closing cost 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 under § 1026.19(e)(1)(i). 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 shop for a third party service provider for a settlement service.

v. Transfer taxes.

2. *Charges ''paid by or imposed on the consumer.''* For purposes of § 1026.19(e), a charge ''paid by or imposed on the consumer'' refers to the final amount for the charge paid by or imposed on the consumer at consummation or settlement, whichever is later. ''Consummation'' is defined in § 1026.2(a)(13). ''Settlement'' is defined in Regulation X, 12 CFR 1024.2(b). For example, at consummation, the consumer pays the creditor $100 for recording fees. Settlement of the transaction concludes five days after consummation, and the actual recording fees are $70. The creditor refunds the consumer $30 immediately after recording. The recording fee paid by the consumer is $70.

3. *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. For example, if a consumer pays the creditor transfer taxes and recording fees at the real estate closing and the creditor subsequently uses those funds to pay the county that imposed these charges, then the transfer taxes and recording fees are not ''paid to'' the creditor for purposes of § 1026.19(e). Similarly, 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). A fee is also not considered ''paid to'' a person, for purposes of § 1026.19(e), if the person retains the fee as reimbursement for an amount it has already paid to another party. 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.

4. *Transfer taxes and recording fees.* See comments 37(g)(1)–1, –2, and –3 for a discussion of the difference between transfer taxes and recording fees.

5. *Lender credits.* The disclosure of ''lender credits,'' as identified in § 1026.37(g)(6)(ii), is required by § 1026.19(e)(1)(i). ''Lender credits,'' as identified in § 1026.37(g)(6)(ii), represents the sum of non-specific lender credits and specific lender credits. Non-specific lender credits are generalized payments from the creditor to the consumer that do not pay for a particular fee on the disclosures provided pursuant to § 1026.19(e)(1). Specific lender credits are specific payments, such as a credit, rebate, or reimbursement, from a creditor to the consumer to pay for a specific fee. Non-specific lender credits and specific lender credits are negative charges to the consumer. The actual total amount of lender credits, whether specific or non-specific, provided by the creditor that is less than the estimated ''lender credits'' identified in § 1026.37(g)(6)(ii) and disclosed pursuant to § 1026.19(e) is an increased charge to the consumer for purposes of determining good faith under § 1026.19(e)(3)(i). For example, if the creditor discloses a $750 estimate for ''lender credits'' pursuant to § 1026.19(e), but only $500 of lender credits is actually provided to the consumer, the creditor has not complied with § 1026.19(e)(3)(i) because the actual amount of lender credits provided is less than the estimated ''lender credits'' disclosed pursuant to § 1026.19(e), and is therefore, an increased charge to the consumer for purposes of determining good faith under § 1026.19(e)(3)(i). However, if the creditor discloses a $750 estimate for ''lender credits'' identified in § 1026.37(g)(6)(ii) to cover the cost of a $750 appraisal fee, and the appraisal fee subsequently increases by $150, and the creditor increases the amount of the lender credit by $150 to pay for the increase, the credit is not being revised in a way that violates the requirements of § 1026.19(e)(3)(i) because, although the credit increased from the amount disclosed, the amount paid by the consumer did not. However, if the creditor discloses a $750 estimate for ''lender credits'' to cover the cost of a $750 appraisal fee, but subsequently reduces the credit by $50 because the appraisal fee decreased by $50, then the requirements of § 1026.19(e)(3)(i) have been violated because, although the amount of the appraisal fee decreased, the amount of the lender credit decreased. 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.

6. *Good faith analysis for lender credits.* For purposes of conducting the good faith analysis required under § 1026.19(e)(3)(i) for lender credits, the total amount of lender credits, whether specific or non-specific, actually provided to the consumer is compared to the amount of the ''lender credits'' identified in § 1026.37(g)(6)(ii). The total amount of lender credits actually provided to the consumer is determined by aggregating the amount of the ''lender credits'' identified in § 1026.38(h)(3) with the amounts paid by the creditor that are attributable to a specific loan cost or other cost, disclosed pursuant to § 1026.38(f) and (g).

7. *Use of unrounded numbers.* Sections 1026.37(o)(4) and 1026.38(t)(4) require that the dollar amounts of certain charges disclosed on the Loan Estimate and Closing Disclosure, respectively, to be rounded to the nearest whole dollar. However, to conduct the good faith analysis required under § 1026.19(e)(3)(i) and (ii), the creditor should use unrounded numbers to compare the actual charge paid by or imposed on the consumer for a settlement service with the estimated cost of the service.

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 10 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) increases by more than 10 percent, even if a particular charge does not increase by more than 10 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 10 percent (*i.e.,* exceeds $330), provided that the sum of all such charges does not exceed 10 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), 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), instead of § 1026.19(e)(3)(i). 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 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).

4. *Recording fees.* Section 1026.19(e)(3)(ii) provides that an estimate of a charge for a third-party service or recording fees is in good faith if the conditions specified in § 1026.19(e)(3)(ii)(A), (B), and (C) are satisfied. Recording fees are not charges for third-party services because recording fees are paid to the applicable government entity where the documents related to the mortgage transaction are recorded, and thus, the condition specified in § 1026.19(e)(3)(ii)(B) that the charge for third-party service 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 third-party 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).

5. *Calculating the aggregate amount of estimated charges.* In calculating the aggregate amount of estimated charges for purposes of conducting the good faith analysis pursuant to § 1026.19(e)(3)(ii), the aggregate amount of estimated charges must reflect charges for services that are actually performed. For example, assume that the creditor included a $100 estimated fee for a pest inspection in the disclosures provided pursuant to § 1026.19(e)(1)(i), and the fee is included in the category of charges subject to § 1026.19(e)(3)(ii), but a pest inspection was not obtained in connection with the transaction, then for purposes of the good faith analysis required under § 1026.19(e)(3)(ii), the sum of all charges subject to § 1026.19(e)(3)(ii) paid by or imposed on the consumer is compared to the sum of all such charges disclosed pursuant to § 1026.19(e), minus the $100 estimated pest inspection fee.

19(e)(3)(iii) Variations permitted for certain charges.

1. *Good faith requirement for prepaid interest, property insurance premiums, and escrowed amounts.* Estimates of prepaid interest, property insurance premiums, and amounts placed into an escrow, impound, reserve or similar account 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 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. This means that the estimate disclosed under § 1026.19(e)(1)(i) was obtained by the creditor through due diligence, acting in good faith. *See* comments 17(c)(2)(i)–1 and 19(e)(1)(i)–1. 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). If, however, the creditor estimates consistent with the best information reasonably available that the loan will close on the 30th of the month and bases the estimate of prepaid interest accordingly, but the loan actually closed on the 1st of the next month instead, the creditor complies 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 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 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 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 consumer informs the creditor that the consumer will obtain a type of inspection not required by the creditor, the creditor must 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). The original estimated charge, or lack of an estimated charge for a particular service, complies with § 1026.19(e)(3)(iii) if it is made based on the best information reasonably available to the creditor at the time that the estimate was provided. But, for example, if the subject property is located in a jurisdiction where consumers are customarily represented at closing by their own attorney, even though it is not a requirement, and 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 or imposed on the consumer. Section 1026.19(e)(3)(iv) provides the exception to this rule. Pursuant to § 1026.19(e)(3)(iv), for purposes of determining good faith under § 1026.19(e)(3)(i) and (ii), the creditor may use a revised estimate of a charge instead of the amount originally disclosed under § 1026.19(e)(1)(i) if the revision is due to one of the reasons set forth in § 1026.19(e)(3)(iv)(A) through (F).

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.* For the purpose of determining good faith under § 1026.19(e)(3)(i) and (ii), 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. *Charges subject to the zero percent tolerance category.* 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. *Charges subject to the ten percent tolerance category.* 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 10 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 10 percent. A changed circumstance has occurred (*i.e.,* new information), but the sum of all costs subject to the 10 percent tolerance category has not increased by more than 10 percent. Section 1026.19(e)(3)(iv) does not prohibit the creditor from issuing revised disclosures, but if the creditor issues revised disclosures in this scenario, 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 because the changed circumstance did not cause the sum of all costs subject to the 10 percent tolerance category to increase by more than 10 percent.

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 required under § 1026.19(e)(1)(i). 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 consists of the six pieces of information identified in § 1026.2(a)(3)(ii). A creditor is not required to collect the consumer's name, monthly income, 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 because the change in eligibility resulted in increased cost for a settlement service beyond the applicable tolerance threshold, the charge paid by or imposed on the consumer for the settlement service for which cost increased due to the change in eligibility is compared to the revised estimated cost for the settlement service 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 appraisal fee included in the revised disclosures 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 assuming that the increased title fees do not stem from the change in eligibility or any other change warranting a revised disclosure. 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 locked when the disclosures required by § 1026.19(e)(1)(i) are provided, a valid reason for revision exists when the interest rate is subsequently locked. On the date the interest rate is locked, § 1026.19(e)(3)(iv)(D) requires the creditor to provide a revised version of the disclosures required under § 1026.19(e)(1)(i) reflecting the revised interest rate, the points disclosed pursuant to § 1026.37(f)(1), lender credits, and any other interest rate dependent charges and terms. 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 original disclosures required under § 1026.19(e)(1)(i) are provided, then the actual points and lender credits are compared to the estimated points disclosed pursuant to § 1026.37(f)(1) and lender credits included in the original disclosures provided under § 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 under § 1026.19(e)(1)(i) were provided, then § 1026.19(e)(3)(iv)(D) requires the creditor to provide, on the date that the consumer and the creditor enters into a rate lock agreement, a revised version of the disclosures required under § 1026.19(e)(1)(i) reflecting the revised interest rate, the points disclosed pursuant to § 1026.37(f)(1), lender credits, and any other interest rate dependent charges and terms. Provided that the revised version of the disclosures required under § 1026.19(e)(1)(i) reflect any revised points disclosed pursuant to § 1026.37(f)(1) and lender credits, the actual points and lender credits are compared to the revised 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.* If the consumer indicates an intent to proceed with the transaction more than ten business days after the disclosures were originally provided pursuant to § 1026.19(e)(1)(iii), for the purpose of determining good faith under § 1026.19(e)(3)(i) and (ii), a creditor may use a revised estimate of a charge instead of the amount originally disclosed under § 1026.19(e)(1)(i). Section 1026.19(e)(3)(iv)(E) requires no justification for the change to the original estimate 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 that has yet to be constructed, or a loan to purchase a home under construction (*i.e.,* 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 disclosures required under § 1026.19(e)(1)(i), 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 and receipt of revised disclosures.

19(e)(4)(i) General rule.

1. *Three-business-day requirement.* Section 1026.19(e)(4)(i) provides that subject to the requirements of § 1026.19(e)(4)(ii), if a creditor uses a revised estimate pursuant to § 1026.19(e)(3)(iv) for the purpose of determining good faith under § 1026.19(e)(3)(i) and (ii), the creditor shall provide a revised version of the disclosures required under § 1026.19(e)(1)(i) reflecting the revised estimate within three business days of receiving information sufficient to establish that one of the reasons for revision provided under § 1026.19(e)(3)(iv)(A) through (C), (E) and (F) 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 10 percent. The creditor must provide 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 pest inspection 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. *Relationship to § 1026.19(e)(3)(iv)(D).* If the reason for the revision is provided under § 1026.19(e)(3)(iv)(D), notwithstanding the three-business-day rule set forth in § 1026.19(e)(4)(i), § 1026.19(e)(3)(iv)(D) requires the creditor to provide a revised version of the disclosures required under § 1026.19(e)(1)(i) on the date the interest rate is locked. *See* comment 19(e)(3)(iv)(D)–1.

19(e)(4)(ii) Relationship to disclosures required under § 1026.19(f)(1)(i).

1. *Revised disclosures may not be delivered at the same time as the Closing Disclosure.* Section 1026.19(e)(4)(ii) prohibits a creditor from providing a revised version of the disclosures required under § 1026.19(e)(1)(i) on or after the date on which the creditor provides the disclosures required under § 1026.19(f)(1)(i). Section 1026.19(e)(4)(ii) also requires that the consumer must receive a revised version of the disclosures required under § 1026.19(e)(1)(i) no later than four business days prior to consummation, and provides that if the revised version of the disclosures are not provided to the consumer in person, the consumer is considered to have received the revised version of the disclosures three business days after the creditor delivers or places in the mail the revised version of the disclosures. *See also* comments 19(e)(1)(iv)–1 and –2. If, however, there are less than four business days between the time the revised version of the disclosures is required to be provided pursuant to § 1026.19(e)(4)(i) and consummation, 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). See below for illustrative examples:

i. 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

complies with the requirements of § 1026.19(e)(4) by providing the disclosures required under § 1026.19(f)(1)(i) reflecting the revised APR on Wednesday. However, the creditor does not comply with the requirements of § 1026.19(e)(4) if it provided both a revised version of the disclosures required under § 1026.19(e)(1)(i) reflecting the revised APR on Wednesday, and also provides the disclosures required under § 1026.19(f)(1)(i) on Wednesday.

ii. If the creditor is scheduled to email the disclosures required under § 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 complies with the requirements of § 1026.19(e)(4) by providing the disclosures required under § 1026.19(f)(1)(i) reflecting the consumer-requested changes on Wednesday. However, the creditor does not comply if it provides both the revised version of the disclosures required under § 1026.19(e)(1)(i) reflecting consumer requested changes, and also the disclosures required under § 1026.19(f)(1)(i) on Wednesday.

19(f) Mortgage loans secured by real property—Final disclosures.

19(f)(1) Provision of disclosures.

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 corrected disclosures that contain the actual terms of the transaction and complies with the other requirements of § 1026.19(f), including the timing requirements in § 1026.19(f)(1)(ii) and (f)(2). For example, if the creditor provides the disclosures required by § 1026.19(f)(1)(i) on Monday, June 1, but the consumer adds a mobile notary service 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 corrected disclosures are also provided at or before consummation, pursuant to § 1026.19(f)(2)(i).

2. *Best information reasonably available.* Creditors may estimate disclosures provided under § 1026.19(f)(1)(ii)(A) and (f)(2)(ii) using the best information reasonably available when the actual term is unknown to the creditor at the time disclosures are made, consistent with § 1026.17(c)(2)(i).

i. *Actual term unknown.* An actual term 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 the 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, to realtors for taxes and escrow fees, or to a settlement agent for homeowner's association dues or other information in connection with a real estate settlement. The following examples illustrate the reasonably available standard for purposes of § 1026.19(f)(1)(i).

A. Assume a creditor provides the disclosure under § 1026.19(f)(1)(ii)(A) for a transaction in which the title insurance company that is providing the title insurance policies is acting as the settlement agent in connection with the transaction, but the creditor does not request the actual cost of the lender's title insurance policy that the consumer is purchasing from the title insurance company and instead discloses an estimate based on information from a different transaction. The creditor has not exercised due diligence in obtaining the information about the cost of the lender's title insurance policy required under the ''reasonably available'' standard in connection with the estimate disclosed for the lender's title insurance policy.

B. Assume that in the prior example the creditor obtained information about the terms of the consumer's transaction from the settlement agent regarding the amounts disclosed under § 1026.38(j) and (k). The creditor has exercised due diligence in obtaining the information about the costs under § 1026.38(j) and (k) for purposes of the ''reasonably available'' standard in connection with such disclosures under § 1026.38(j) and (k).

ii. *Estimates.* If an actual term is unknown, the creditor may utilize estimates using the best information reasonably available in making disclosures even though the creditor knows that more precise information will be available at or before consummation. However, the creditor may not utilize an estimate without exercising due diligence to obtain the actual term for the consumer's transaction. *See* comment 19(f)(1)(i)–2.i. The creditor is required to provide corrected disclosures containing the actual terms of the transaction at or before consummation under § 1026.19(f)(2), subject to the exceptions provided for in that paragraph. Disclosures under § 1026.19(f) are subject to the labeling rules set forth in § 1026.38. See comment 17(c)(2)(i)–2 for guidance on labeling estimates.

iii. *Settlement agent.* If a settlement agent provides disclosures required by § 1026.19(f)(1)(i) three business days before consummation pursuant to § 1026.19(f)(1)(v), the ''best information reasonably available'' standard applies to terms for which the actual term is unknown to the settlement agent at the time the disclosures are provided. The settlement agent normally may rely on the representations of other parties in obtaining information, but if information about actual terms is not reasonably available, the settlement agent also must satisfy the ''best information reasonably available'' standard. Accordingly, the settlement agent is required to exercise due diligence to obtain information if it is providing the Closing Disclosure pursuant to § 1026.19(f)(1)(v). For example, for the loan terms table required to be disclosed under § 1026.38(b), the settlement agent would be considered to have exercised due diligence if it obtained such information from the creditor. Because the creditor remains responsible under § 1026.19(f)(1)(v) for ensuring that the Closing Disclosure is provided in accordance with § 1026.19(f), the creditor is expected to maintain communication with the settlement agent to ensure that the settlement agent is acting in place of the creditor. See comment 19(f)(1)(v)–3 for guidance on a creditor's responsibilities where a settlement agent provides disclosures.

3. *Denied or withdrawn applications.* The creditor is not required to provide the disclosures required under § 1026.19(f)(1)(i) if, before the time the creditor is required to provide the disclosures under § 1026.19(f), the

creditor determines the consumer's application will not or cannot be approved on the terms requested, or the consumer has withdrawn the application, and, as such, the transaction will not be consummated. For transactions covered by § 1026.19(f)(1)(i), the creditor may rely on comment 19(e)(1)(iii)–3 in determining that disclosures are not required by § 1026.19(f)(1)(i) because the consumer's application will not or cannot be approved on the terms requested or the consumer has withdrawn the application.

19(f)(1)(ii) Timing.

1. *Timing.* Except as provided in § 1026.19(f)(1)(ii)(B), (f)(2)(i), (f)(2)(iii), (f)(2)(iv), and (f)(2)(v), 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.

2. *Receipt of disclosures three business days before consummation.* Section 1026.19(f)(1)(ii)(A) 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. 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 considered to have received the disclosures three business days after they are delivered or placed in the mail. Thus, for example, if consummation is scheduled for Thursday, a creditor would satisfy the requirements of § 1026.19(f)(1)(ii)(A) if the creditor places the disclosures in the mail on Thursday of the previous week, because, for the purposes of § 1026.19(f)(1)(ii), Saturday is a business day, pursuant to § 1026.2(a)(6), and, pursuant to § 1026.19(f)(1)(iii), the consumer would be considered to have received the disclosures on the Monday before consummation is scheduled. *See* comment 19(f)(1)(iii)–1. A creditor would not satisfy the requirements of § 1026.19(f)(1)(ii)(A) in this example if the creditor places the disclosures in the mail on the Monday before consummation. However, the creditor in this example could satisfy the requirements of § 1026.19(f)(1)(ii)(A) by delivering the disclosures on Monday, for instance, by way of electronic mail, provided the requirements of § 1026.38(t)(3)(iii) relating to disclosures in electronic form are satisfied and assuming that each weekday is a business day, and provided that the creditor obtains evidence that the consumer received the emailed disclosures on Monday. *See* comment 19(f)(1)(iii)–2.

3. *Timeshares.* For transactions secured by a consumer's interest in a timeshare plan described in 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) no later than consummation. Timeshare transactions covered by § 1026.19(f)(1)(ii)(B) may be consummated at the time or any time after the disclosures required by § 1026.19(f)(1)(i) are received by the consumer. 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, and consummation of the timeshare transaction is scheduled for Friday, June 5, the creditor complies with § 1026.19(f)(1)(ii)(B) by ensuring that the consumer receives the disclosures required by § 1026.19(f)(1)(i) no later than consummation on Friday, June 5. If a consumer provides the creditor with an application for a mortgage loan secured by a timeshare on Monday, June 1 and consummation of the timeshare transaction is scheduled for Tuesday, June 2, then the creditor complies with § 1026.19(f)(1)(ii)(B) by ensuring that the consumer receives the disclosures required by § 1026.19(f)(1)(i) no later than consummation on Tuesday, June 2. In some cases, a Loan Estimate must be provided under § 1026.19(e) before provision of the Closing Disclosure. See comment 19(e)(1)(iii)–4 for guidance on providing the Loan Estimate for transactions secured by a consumer's interest in a timeshare plan.

19(f)(1)(iii) Receipt of disclosures.

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 considered to have received the disclosures three business days after they are delivered or placed in the mail. If the creditor delivers the disclosures required under § 1026.19(f)(1)(i) in person, consummation may occur any time on the third business day following delivery. If the creditor provides the disclosures by mail, the consumer is considered to have received them three business days after they are placed in the mail, for purposes of determining when the three-business-day waiting period required under § 1026.19(f)(1)(ii)(A) begins. The creditor may, alternatively, rely on evidence that the consumer received the disclosures earlier than three business days after mailing. See comment 19(e)(1)(iv)–1 for an example in which the creditor sends disclosures via overnight mail.

2. *Other forms of delivery.* Creditors that use electronic mail or a courier other than the United States Postal Service also may follow the approach for disclosures provided by mail described in comment 19(f)(1)(iii)–1. 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 considered to have received the disclosure on Thursday, three business days later. The creditor may, alternatively, rely on evidence that the consumer received the emailed disclosures earlier after delivery. See comment 19(e)(1)(iv)–2 for an example in which the creditor emails disclosures and receives an acknowledgment from the consumer on the same day. Creditors using electronic delivery methods, such as email, must also comply with § 1026.38(t)(3)(iii). 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 § 1026.38(t)(3)(iii), 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 periods required by § 1026.19(f)(1)(ii)(A) or (f)(2)(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.* For purposes of § 1026.19(f), a settlement agent is the person conducting the settlement. 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 of § 1026.19(f), 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 agents under § 1026.19(e). For example, comment 19(f)(1)(ii)–3 explains that, in some cases involving transactions secured by a consumer's interest in a timeshare plan, a Loan Estimate must be provided under § 1026.19(e). ''Settlement agent'' could not be read in place of ''creditor'' in comment 19(f)(1)(ii)–3 because 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 § 1026.19(f)(1)(v), the creditor and settlement agent need to communicate effectively.

2. *Settlement agent responsibilities.* If a settlement agent provides any disclosure under § 1026.19(f), the settlement agent must comply with the relevant requirements of § 1026.19(f). For example, if the creditor and settlement agent agree that the creditor will deliver the disclosures required under § 1026.19(f)(1)(i) to be received by the consumer three business days before consummation, pursuant to § 1026.19(f)(1)(ii)(A), and that the settlement agent will deliver any corrected disclosures at or before consummation, including disclosures provided so that they are received by the consumer three business days before consummation under § 1026.19(f)(2)(ii), and will permit the consumer to inspect the disclosures during the business day before consummation, the settlement agent must ensure that the consumer receives the disclosures required under § 1026.19(f)(1)(i) at or before consummation and is able to inspect the disclosures during the business day before consummation, if the consumer so requests, in accordance with § 1026.19(f)(2)(i). See comment 19(f)(1)(v)–3 below for additional guidance regarding the creditor's responsibilities where the settlement agent provides disclosures. The settlement agent may assume the responsibility to provide some or all of the disclosures required by § 1026.19(f). See comment 19(f)(1)(v)–4 for guidance on how creditors and settlement agents may divide responsibilities for completing the disclosures.

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, if the settlement agent assumes the responsibility for providing all of the disclosures required under § 1026.19(f)(1)(i), the creditor does not comply with § 1026.19(f) if the settlement agent does not provide these disclosures at all, or if the consumer receives the disclosures later than three business days before consummation, as required by § 1026.19(f)(1)(ii)(A) and, as applicable, (f)(2)(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—completing the disclosures.* Creditors and settlement agents may agree to divide responsibility with respect to completing any of the disclosures under § 1026.38 for the disclosures provided under § 1026.19(f)(1)(i). The settlement agent may assume the responsibility to complete 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, and 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 before consummation not requiring a new waiting period.

1. *Requirements.* Under § 1026.19(f)(2)(i), if the disclosures provided under § 1026.19(f)(1)(i) become inaccurate before consummation, other than as provided under § 1026.19(f)(2)(ii), the creditor shall provide corrected disclosures reflecting any changed terms to the consumer so that the consumer receives the corrected disclosures at or before consummation. The creditor need not comply with the timing requirements in § 1026.19(f)(1)(ii) if an event other than one identified in § 1026.19(f)(2)(ii) occurs, 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 corrected disclosures so that the consumer receives them 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 must provide corrected disclosures so that the consumer receives them 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.

iii. 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. As a result of consumer and seller negotiations, the total amount due from the buyer

increases by $500. Also on Wednesday, the creditor discovers that the homeowner's insurance premium that was disclosed as $800 is actually $850. The new $500 amount due and the $50 insurance premium understatements are not violations of § 1026.19(f)(1)(i), and the creditor complies with § 1026.19(f)(1)(i) by providing corrected disclosures reflecting the $550 increase so that the consumer receives them at or before consummation, pursuant to § 1026.19(f)(2)(ii).

2. *Inspection.* A settlement agent may satisfy the requirement to permit the consumer to inspect the disclosures under § 1026.19(f)(2)(i), subject to § 1026.19(f)(1)(v).

19(f)(2)(ii) Changes before consummation requiring a new waiting period.

1. *Conditions for corrected disclosures.* Pursuant to § 1026.19(f)(2)(ii), if, at the time of consummation, the annual percentage rate becomes inaccurate, the loan product changes, or a prepayment penalty is added to the transaction, the creditor must provide corrected disclosures with all changed terms so that the consumer receives them not later than the third business day before consummation. Requirements for annual percentage rate disclosures are set forth in § 1026.38(o)(4), and requirements determining whether an annual percentage rate is accurate are set forth in § 1026.22. Requirements for loan product disclosures are set forth in § 1026.38(a)(5)(iii) and § 1026.37(a)(10). Requirements for prepayment penalty disclosures are set forth in § 1026.38(b) and § 1026.37(b)(4).

i. *Example—APR becomes inaccurate.* Assume consummation is scheduled for Thursday, June 11 and the disclosure for a regular mortgage transaction received by the consumer on Monday, June 8 under § 1026.19(f)(1)(i) discloses an annual percentage rate of 7.00 percent:

A. On Thursday, June 11, the annual percentage rate will be 7.10 percent. The creditor is not required to delay consummation to provide corrected disclosures under § 1026.19(f)(2)(ii) because the annual percentage rate is accurate pursuant to § 1026.22, but the creditor is required under § 1026.19(f)(2)(i) to provide corrected disclosures, including any other changed terms, so that the consumer receives them on or before Thursday, June 11.

B. On Thursday, June 11, the annual percentage rate will be 7.15 percent and corrected disclosures were not received by the consumer on or before Monday, June 8 because the annual percentage rate is inaccurate pursuant to § 1026.22. The creditor is required to delay consummation and provide corrected disclosures, including any other changed terms, so that the consumer receives them at least three business days before consummation under § 1026.19(f)(2)(ii).

ii. *Example—loan product changes.* Assume consummation is scheduled for Thursday, June 11 and the disclosures provided under § 1026.19(f)(1)(i) disclose a product required to be disclosed as a ''Fixed Rate'' that contains no features that may change the periodic payment.

A. On Thursday, June 11, the loan product required to be disclosed changes to a ''5/1 Adjustable Rate.'' The creditor is required to provide corrected disclosures and delay consummation until the consumer has received the corrected disclosures provided under § 1026.19(f)(1)(i) reflecting the change in the product disclosure, and any other changed terms, at least three business days before consummation. If, after the corrected disclosures in this example are provided, the loan product subsequently changes before consummation to a ''3/1 Adjustable Rate,'' the creditor is required to provide additional corrected disclosures and again delay consummation until the consumer has received the corrected disclosures provided under § 1026.19(f)(1)(i) reflecting the change in the product disclosure, and any other changed terms, at least three business days before consummation.

B. On Thursday, June 11, the loan product required to be disclosed has changed to a ''Fixed Rate'' with a ''Negative Amortization'' feature. The creditor is required to provide corrected disclosures and delay consummation until the consumer has received the corrected disclosures provided under § 1026.19(f)(1)(i) reflecting the change in the product disclosure, and any other changed terms, at least three business days before consummation.

iii. *Example—prepayment penalty is added.* Assume consummation is scheduled for Thursday, June 11 and the disclosure provided under § 1026.19(f)(1)(i) did not disclose a prepayment penalty. On Wednesday, June 10, a prepayment penalty is added to the transaction such that the disclosure required by § 1026.38(b) becomes inaccurate. The creditor is required to provide corrected disclosures and delay consummation until the consumer has received the corrected disclosures provided under § 1026.19(f)(1)(i) reflecting the change in the disclosure of the loan terms, and any other changed terms, at least three business days before consummation. If, after the revised disclosures in this example are provided but before consummation, the prepayment penalty is removed such that the description of the prepayment penalty again becomes inaccurate, and no other changes to the transaction occur, the creditor is required to provide corrected disclosures so that the consumer receives them at or before consummation under § 1026.19(f)(2)(i), but the creditor is not required to delay consummation because § 1026.19(f)(2)(ii)(C) applies only when a prepayment penalty is added.

19(f)(2)(iii) Changes due to events occurring after consummation.

1. *Requirements.* Under § 1026.19(f)(2)(iii), if during the 30-day period following consummation, an event in connection with the settlement of the transaction occurs that causes the disclosures to become inaccurate, and such inaccuracy results in a change to an amount actually paid by the consumer from that amount disclosed under § 1026.19(f)(1)(i), the creditor shall deliver or place in the mail corrected disclosures not later than 30 days after receiving information sufficient to establish that such event has occurred. The following examples illustrate this requirement. (See also comment 19(e)(4)(i)–1 for further guidance on when sufficient information has been received to establish an event has occurred.)

i. Assume consummation occurs on a Monday and the security instrument is recorded on Tuesday, the day after consummation. If the creditor learns on Tuesday that the fee charged by the recorder's office differs from that previously disclosed pursuant to § 1026.19(f)(1)(i), and the changed fee results in a change in the amount actually paid by the consumer, the creditor complies with § 1026.19(f)(1)(i) and (f)(2)(iii) by revising the disclosures accordingly and delivering or placing them in the mail no later than 30 days after Tuesday.

ii. Assume consummation occurs on a Tuesday, October 1 and the security instrument is not recorded until 15 days after October 1 on Thursday, October 16. The creditor learns on Monday, November 4 that the transfer taxes owed to the State differ from those previously disclosed pursuant to § 1026.19(f)(1)(i), resulting in an increase in the amount actually paid by the consumer. The creditor complies with § 1026.19(f)(1)(i) and § 1026.19(f)(2)(iii) by revising the disclosures accordingly and delivering or placing them in the mail no later than 30 days after Monday, November 4. Assume further that the increase in transfer taxes paid by the consumer also

exceeds the amount originally disclosed under § 1026.19(e)(1)(i) above the limitations prescribed by § 1026.19(e)(3)(i). Pursuant to § 1026.19(f)(2)(v), the creditor does not violate § 1026.19(e)(1)(i) if the creditor refunds the excess to the consumer no later than 60 days after consummation, and the creditor does not violate § 1026.19(f)(1)(i) if the creditor delivers disclosures corrected to reflect the refund of such excess no later than 60 days after consummation. The creditor satisfies these requirements under § 1026.19(f)(2)(v) if it revises the disclosures accordingly and delivers or places them in the mail by November 30.

iii. Assume consummation occurs on a Monday and the security instrument is recorded on Tuesday, the day after consummation. During the recording process on Tuesday the settlement agent and the creditor discover that the property is subject to an unpaid $500 nuisance abatement assessment, which was not disclosed pursuant to § 1026.19(f)(1)(i), and learns that pursuant to an agreement with the seller, the $500 assessment will be paid by the seller rather than the consumer. Because the $500 assessment does not result in a change to an amount actually paid by the consumer, the creditor is not required to provide a corrected disclosure pursuant to § 1026.19(f)(2)(iii). However, the assessment will result in a change to an amount actually paid by the seller from the amount disclosed under § 1026.19(f)(4)(i). Pursuant to § 1026.19(f)(4)(ii), the settlement agent must deliver or place in the mail corrected disclosures to the seller no later than 30 days after Tuesday and provide a copy to the creditor pursuant to § 1026.19(f)(4)(iv).

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 tax rates effective after the date on which settlement concludes. Section 1026.19(f)(2)(iii) does not require the creditor to provide the consumer with corrected disclosures because the increase in property tax rates is not in connection with the settlement of the transaction.

19(f)(2)(iv) Changes due to clerical errors.

1. *Requirements.* Section 1026.19(f)(2)(iv) requires the creditor to deliver or place in the mail corrected disclosures 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 deliver or place in the mail corrected disclosures reflecting the corrected non-numeric disclosure no later than 60 days after consummation. However, if, for example, the disclosure lists the wrong property address, which affects the delivery requirement imposed by § 1026.19(e) or (f), the error would not be considered clerical.

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 no later than 60 days after consummation, and the creditor does not violate § 1026.19(f)(1)(i) if the creditor delivers or places in the mail disclosures corrected to reflect the refund of such excess no later than 60 days after consummation. For example, assume that at consummation 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). The creditor does not violate § 1026.19(e)(1)(i) if the creditor refunds the excess to the consumer no later than 60 days after consummation. The creditor does not violate § 1026.19(f)(1)(i) if the creditor delivers or places in the mail corrected disclosures reflecting the $180 refund of the excess amount collected no later than 60 days after consummation. 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. *Requirements.* 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 settlement 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 transactions. For purposes of § 1026.19(f)(3)(ii)(B), a period of time is appropriate if the sample size is sufficient to calculate average costs with reasonable precision, 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 calculate average costs with reasonable precision, 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 appropriately defined if both subdivisions had a relatively normal distribution of appraisal costs, even if the distribution for each subdivision 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 fee for one product is $80, while the median recording fee for the other product is $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 appropriately defined if both products had a relatively normal distribution of recording fees, even if the distribution for each product 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 three 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)(i) Provision to seller.

1. *Requirement.* Section 1026.19(f)(4)(i) provides that, 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 settlement agent shall provide the seller with the disclosures in § 1026.38 that relate to the seller's transaction reflecting the actual terms of the seller's transaction. The settlement agent complies with this provision by providing a copy of the Closing Disclosure provided to the consumer, if it also contains the information under § 1026.38 relating to the seller's transaction, or alternatively providing the disclosures under § 1026.38(t)(5)(v) or (vi), as applicable.

19(f)(4)(ii) Timing.

1. *Requirement.* Section 1026.19(f)(4)(ii) provides that the settlement agent shall provide the disclosures required under § 1026.19(f)(4)(i) no later than the day of consummation. If during the 30-day period following consummation, an event in connection with the settlement of the transaction occurs that causes such disclosures to become inaccurate and such inaccuracy results in a change to the amount actually paid by the seller from that amount disclosed under § 1026.19(f)(4)(i), the settlement agent shall deliver or place in the mail corrected disclosures not later than 30 days after receiving information sufficient to establish that such event has occurred. Section 1026.19(f)(4)(i) requires disclosure of the items that relate to the seller's transaction. Thus, the settlement agent need only redisclose if an item related to the seller's transaction becomes inaccurate and such inaccuracy results in a change to the amount actually paid by the seller. 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 settlement agent receives information on Tuesday sufficient to establish that transfer taxes owed to the State differ from those disclosed pursuant to § 1026.19(f)(4)(i), the settlement agent complies with § 1026.19(f)(4)(ii) by revising the disclosures accordingly and delivering or placing them in the mail not later than 30 days after Tuesday. See comment 19(e)(4)(i)–1 for guidance on when sufficient information has been received to establish an event has occurred. See also comment 19(f)(2)(iii)–1.iii for another example in which corrected disclosures must be provided to the seller.

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, from time to time, issue revised or alternative versions of the special information booklet that addresses transactions subject to § 1026.19(g) by publishing a notice in the **Federal Register**. The Bureau also may choose to permit the forms or booklets of other Federal agencies to be used by creditors. 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.

3. *Consumer's application.* Section 1026.19(g)(1)(i) requires that the creditor deliver or place in the mail the special information booklet not later than three business days after the consumer's application is received. ''Application'' is defined in § 1026.2(a)(3)(ii). The creditor need not provide the booklet under § 1026.19(g)(1)(i) when it denies an application or if the consumer withdraws the application before the end of the three-business-day period under § 1026.19(e)(1)(iii)(A). See comment 19(e)(1)(iii)–3 for additional guidance on denied or withdrawn applications.

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)(2). *See also* comment 19(g)(2)–3. 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 than those specified in § 1026.19(g)(2)(i) through (iv) and comment 19(g)(2)–3 do not comply with § 1026.19(g).

3. *Permissible changes to title of booklets in use before August 1, 2015.* Section 1026.19(g)(2)(iv) provides that the title appearing on the cover of the booklet shall not be changed. Comment 19(g)(1)–1 states that the Bureau may, from time to time, issue revised or alternative versions of the special information booklet that address transactions subject to § 1026.19(g) by publishing a notice in the **Federal Register**. Until the Bureau issues a version of the special information booklet relating to the Loan Estimate and Closing Disclosure under §§ 1026.37 and 1026.38, for applications that are received on or after August 1, 2015, a creditor may change the title appearing on the cover of the version of the special information booklet in use before August 1, 2015, provided the words ''settlement costs'' are used in the title. See comment 1(d)(5)–1 for guidance regarding compliance with § 1026.19(g) for applications received on or after August 1, 2015.

Section 1026.20—Disclosure Requirements Regarding Post-Consummation Events

* * * * *

20(e) Escrow account cancellation notice for certain mortgage transactions.

20(e)(1) Scope.

1. *Real property or dwelling.* For purposes of § 1026.20(e)(1), the term ''real property'' includes vacant and unimproved land. The term ''dwelling'' includes vacation and second homes and mobile homes, boats, and trailers used as residences. *See* § 1026.2(a)(19) and related commentary for additional guidance regarding the term ''dwelling.''

2. *Escrow account established in connection with the consumer's delinquency or default.* Neither creditors nor servicers are required to provide the disclosures required by § 1026.20(e)(2) when an escrow account that was established solely in connection with the consumer's delinquency or default on the

underlying debt obligation will be cancelled.

3. *Termination of the underlying debt obligation.* Neither creditors nor servicers are required to provide disclosures required by § 1026.20(e)(2) when the underlying debt obligation for which an escrow account was established is terminated, including by repayment, refinancing, rescission, and foreclosure.

20(e)(2) Content requirements.

1. *Clear and conspicuous standard.* The clear and conspicuous standard generally requires that disclosures be in a reasonably understandable form and readily noticeable to the consumer.

Paragraph 20(e)(2)(i).

1. *Escrow closing fee.* Section 1026.20(e)(2)(i) requires the creditor to itemize the amount of any fee the creditor or servicer imposes on the consumer in connection with the closure of the consumer's escrow account, labeled ''Escrow Closing Fee.'' If the creditor or servicer independently decides to cancel the escrow account, rather than agreeing to close it at the request of the consumer, and does not charge a fee in connection with the cancellation, the creditor or service complies with § 1026.20(e)(2) by leaving the disclosure blank on the front-side of the one-page document described in § 1026.20(e)(4).

20(e)(3) Optional information.

1. *Optional information permitted.* Section 1026.20(e)(3) lists information that the creditor or servicer may, at its option, include on the notice required by § 1026.20(e). To comply with § 1026.20(e)(3), the creditor or servicer may place the information required by § 1026.20(e)(3), other than the name and logo of the creditor or servicer, between the heading required by § 1026.20(e)(2) and the disclosures required by § 1026.20(e)(2)(i) and (ii). The name and logo may be placed above the heading required § 1026.20(e)(2).

20(e)(4) Form of disclosures.

1. *Grouped and separate.* The disclosures required by § 1026.20(e)(2) must be grouped together on the front side of a separate one-page document that contains no other material.

2. *Notice must be in writing in a form that the consumer may keep.* The notice containing the disclosures required by § 1026.20(e)(2) must be in writing in a form that the consumer may keep. See also § 1026.17(a) and related commentary for additional guidance on the form requirements applicable to the disclosures required by § 1026.20(e)(2).

20(e)(5) Timing.

20(e)(5)(i) Cancellation upon consumer's request.

1. *Timing requirements* Section 1026.20(e)(5)(i) provides that if the creditor or servicer cancels the escrow account at the consumer's request, the creditor or servicer shall ensure that the consumer receives the disclosures required by § 1026.20(e)(2) no later than three business days before closure of the consumer's escrow account. For example, for closure to occur on Thursday, the consumer must receive the disclosures on or before Monday, assuming each weekday is a business day. For purposes of § 1026.20(e)(5), the term ''business day'' means all calendar days except Sundays and legal public holidays referred to in § 1026.2(a)(6). *See* comment 2(a)(6)–2.

20(e)(5)(iii) Receipt of disclosure.

1. *Timing of receipt.* Section 1026.20(e)(5)(iii) provides that if the disclosures required under § 1026.20(e)(2) are not provided to the consumer in person, the consumer is considered to have received the disclosures three business days after they are delivered or placed in the mail. If the creditor or servicer provides the disclosures required by § 1026.20(e)(2) by mail, the consumer is considered to have received them three business days after they are placed in the mail for purposes of determining when the waiting periods required by § 1026.20(e)(5)(i) and (ii) begins. Creditors and servicers that use electronic mail or a courier to provide disclosures may also follow this approach. If, however, the creditor or servicer delivers the disclosures required by § 1026.20(e)(2) to the consumer in person, the escrow account may be closed any time on the third or 30th business day following the date of delivery, as applicable. Whatever method is used to provide disclosures, creditors and servicers may rely on documentation of receipt in determining when the waiting periods required by § 1026.20(e)(5)(i) and (ii) begin.

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Section 1026.22—Determination of Annual Percentage Rate

22(a) Accuracy of annual percentage rate.

* * * * *

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.

* * * * *

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.

* * * * *

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 § 1026.19(e)(1)(ii)(B) for the responsibilities of mortgage brokers to comply with the requirements of § 1026.25(c).

* * * * *

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 settlement agent, as applicable.

* * * * *

Section 1026.29—State Exemptions

29(a) General rule.

* * * * *

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:

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.)

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.)

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.)

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.)

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 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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Subpart E—Special Rules for Certain Home Mortgage Transactions

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Section 1026.37—Content of Disclosures for Certain Mortgage Transactions (Loan Estimate)

1. *Disclosures not applicable.* The disclosures required by § 1026.37 are required to reflect the terms of the legal obligation between the parties, and if any information necessary for an accurate disclosure is unknown to the creditor, the creditor shall make the disclosure in good faith, based on the best information reasonably available to the creditor pursuant to §§ 1026.17(c) and 1026.19(e). See comments 17(c)(1)–1, 17(c)(2)(i)–1 and –2, and 19(e)(1)(i)–1. Where a disclosure is not applicable to a particular transaction, unless otherwise provided by § 1026.37, form H–24 of appendix H to this part may not be modified to delete the disclosure from form H–24, or to state ''not applicable'' or ''N/A'' in place of such disclosure. The portion of the form pertaining to the inapplicable disclosure may be left blank, unless otherwise provided by § 1026.37. For example, in a transaction for which the consumer does not pay points to the creditor to reduce the interest rate, the amounts required to be disclosed by § 1026.37(f)(1)(i) may be left blank on form H–24. 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 and address of the creditor must be disclosed, if known, even if the mortgage broker provides the disclosures to the consumer under § 1026.19(e)(1)(ii). As required by § 1026.19(e)(1)(i), the mortgage broker must make a good faith effort to disclose the name and address of the creditor, but if the name of the creditor is not yet known, the disclosure required by § 1026.37(a)(3) may be left blank. *See* comment 37–1.

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. For example, if the creditor hand delivers the Loan Estimate to the consumer on August 14, or if the creditor places the Loan Estimate in the mail on August 14, the date disclosed under § 1026.37(a)(4) is August 14.

2. *Mortgage broker as loan originator.* In transactions involving a mortgage broker, the date disclosed is the date the mortgage broker mails or delivers the Loan Estimate to the consumer, because pursuant to § 1026.19(e)(1)(ii), the mortgage broker is required to comply with all relevant requirements of § 1026.19(e).

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 the mailing address of each consumer to whom the Loan Estimate will be delivered. If the names and mailing addresses of all consumers applying for the credit do 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)(5) and its commentary.

37(a)(6) Property.

1. *Alternate property address.* Section 1026.37(a)(6) requires disclosure of the address including the zip code of the property that secures or will secure the transaction. A creditor complies with § 1026.37(a)(6) by disclosing a complete address for purposes of the U.S. Postal Service. If the address is unavailable, a creditor complies with § 1026.37(a)(6) by disclosing the location of such property including a zip code, which is required in all instances. Location of the property under § 1026.37(a)(6) includes location information, such as a lot number. The disclosure of multiple zip codes is permitted if the consumer is investigating home purchase opportunities in multiple zip codes.

2. *Personal property.* Where personal property also secures the credit transaction, a description of that property may be disclosed, at the creditor's option pursuant to § 1026.37(a)(6), if a description fits in the space provided on form H–24 for the disclosure required by § 1026.37(a)(6). An additional page may not be appended to the form to disclose a description of personal property.

3. *Multiple properties.* Where more than one property secures the credit transaction, § 1026.37(a)(6) requires disclosure of all properties. If the addresses of all properties securing the transaction do not fit in the space allocated on the Loan Estimate, an additional page with that information with respect to real properties may be appended to the end of the form.

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. If the creditor has obtained multiple appraisals or valuations and has not yet determined which one will be used during underwriting, it may disclose the value from any appraisal or valuation it reasonably believes it may use in underwriting the transaction. In a transaction that involves a seller, if the sale price is not yet known, the creditor complies with § 1026.37(a)(7) if it discloses the estimated value of the property that it used as the basis for the disclosures in the Loan Estimate.

2. *Personal property.* In transactions involving personal property that is separately valued from real property, only the value of the real property is disclosed pursuant to § 1026.37(a)(7). Where personal property is included in the sale price of the real property (for example, if the consumer is purchasing the furniture inside the dwelling), however, § 1026.37(a)(7) permits disclosure of the aggregate price without any reduction for the appraised or estimated value of the personal property.

37(a)(8) Loan term.

1. *Partial years.*

i. *Terms to maturity of 24 months or more.* Section 1026.37(a)(8) requires disclosure of the term to maturity in years, or months, or both, as applicable. Where the term exceeds 24 months and equals a whole number of years, a creditor complies with § 1026.37(a)(8) by disclosing the number of years, followed by the designation ''years.'' Where the term exceeds 24 months but does not equal a whole number of years, a creditor complies with § 1026.37(a)(8) by disclosing the term to maturity as the number of years followed by the designation ''yr.'' and the remaining number of months, followed by the designation ''mo.'' For example, if the term to maturity of the transaction is 185 months, the correct disclosure would be ''15 yr. 5 mo.''

ii. *Terms to maturity of less than 24 months.* If the term to maturity is less than 24 months and does not equal a whole number of years, a creditor complies with § 1026.37(a)(8) by disclosing the number of months only, followed by the designation ''mo.'' For example, if the term to maturity of a transaction is six months or 16 months, it would be disclosed as ''6 mo.'' or ''16 mo.,'' respectively. If the term to maturity is 12 months, however it would be disclosed simply as ''1 year.''

2. *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, *i.e.,* it is not known with certainty at consummation, the creditor complies with § 1026.37(a)(8), if it discloses the possible range of the loan term, including the maximum number of years possible under the terms of the legal obligation. 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 assumes 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. 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. If 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 proceeds from the transaction to purchase the property that will secure the extension of credit.

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 initial construction (construction-only loan), not renovations to existing dwellings, 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), comments 17(c)(6)–2 and –3, and appendix D to this part.

iv. *Home equity loan.* The creditor is required to disclose that the credit is for a ''home equity loan'' if the creditor intends to extend credit for any purpose other than a purchase, refinancing, or construction. This disclosure applies whether the loan is secured by 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 without regard to whether they are made by a creditor, holder, or servicer of the existing obligation. Section 1026.20(a) applies only to refinancings undertaken by the original creditor or a holder or servicer of the original debt. *See* comment 20(a)–5.

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 first 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 first adjustment period thereafter. Thus, for example, if the loan product is an adjustable rate with an introductory rate that is fixed 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(a)(10) is ''5/3 Adjustable Rate.'' If the first adjustment period is not the period for all adjustments under the terms of the legal obligation, the creditor should still disclose the initial adjustment period and should not disclose other adjustment periods. For example, if the loan product is an adjustable rate with an introductory rate that is fixed for the first five years of the loan term and then adjusts every three years starting in year six, and then annually starting in year fifteen, the disclosure required by § 1026.37(a)(10) would still be ''5/3 Adjustable Rate.''

A. *No introductory period.* If the loan product is an adjustable rate with no introductory rate, the creditor should disclose ''0'' where the introductory rate period would ordinarily be disclosed. For example, if the loan product is an adjustable rate that adjusts every three years with no introductory period, the disclosure required by § 1026.37(a)(10) is ''0/3 Adjustable Rate.''

B. *Introductory period not yet known.* If the loan product is an adjustable rate with an introductory period that is not yet known at the time of delivery of the Loan Estimate, the creditor should disclose the shortest potential introductory period for the particular loan product offered. For example, if the loan product is an adjustable rate with an introductory period that may be between 36 and 48 months and the rate would then adjust every year, the disclosure required by § 1026.37(a)(10) is ''3/1 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) is ''10/1 Step Rate.'' If the loan product is a step rate with no introductory rate, the creditor should disclose ''0'' where the introductory rate period would ordinarily be disclosed.

iii. *Fixed rate.* If the loan product is not an adjustable rate or a step rate, as described in § 1026.37(a)(10)(i)(A) and (B), 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) require 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 first adjustment period, 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 borrower is permitted to make payments that result in negative amortization (*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, as required by § 1026.37(a)(10)(iii), 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 referred to instead as a graduated payment), the period of time at the end of which the scheduled payments will change 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 a step 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.'' If the loan product includes more than one balloon payment, only the earliest year that a balloon payment is due shall be disclosed.

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.

3. *Periods not in whole years.*

i. *Terms of 24 months or more.* For product types and features that have introductory periods or adjustment periods that do not equate to a number of whole years, if the period is a number of months that is 24 or greater and does not equate to a whole number of years, § 1026.37(a)(10) requires disclosure of the whole number of years followed by a decimal point with the remaining months rounded to two places. For example, if the loan product is an adjustable rate with an introductory period of 30 months that adjusts every year thereafter, the creditor would be required to disclose ''2.5/1 Adjustable Rate.'' If the introductory period were 31 months, the required disclosure would be 2.58/1 Adjustable Rate.''

ii. *Terms of less than 24 months.* For product types and features that have introductory periods or adjustment periods that do not equate to a number of whole years, if the period is less than 24 months, § 1026.37(a)(10) requires disclosure of the number of months, followed by the designation ''mo.'' For example, if the product type is an adjustable rate with an 18-month introductory period that adjusts every 18 months starting in the 19th month, the required disclosure would be ''18 mo./18mo. Adjustable Rate.''

iii. *Adjustments more frequent than monthly.* For adjustment periods that change more frequently than monthly, § 1026.37(a)(10) requires disclosure of the applicable unit-period, such as daily, weekly, or bi-weekly. For example, for an adjustable rate construction loan with no introductory fixed rate period where the interest rate adjusts every seven days, the disclosure required by § 1026.37(a)(10) is ''0/ Weekly Adjustable Rate.''

37(a)(11) Loan type.

1. *Other.* If the transaction is a type other than a conventional, FHA, or VA loan, § 1026.37(a)(11)(iv) requires the creditor to disclose the loan type as ''Other'' and 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.'' 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.* Section 1026.37(a)(12) requires that the creditor disclose a loan identification number that may be used by the creditor, consumer, and other parties to identify the transaction, labeled as ''Loan ID # .'' The loan identification number is determined by the creditor, which number may contain any alpha-numeric characters. Because the number must allow for the identification of the particular credit transaction under § 1026.37(a)(12), a creditor must use a unique loan identification number, *i.e.,* the creditor may not use the same loan identification number for different, but related, loan transactions (such as different loans to the same borrower). Where a creditor issues a revised Loan Estimate for a transaction, the loan identification number must be sufficient to enable identification of the transaction pursuant to § 1026.37(a)(12).

37(a)(13) Rate lock.

1. *Interest rate.* For purposes of § 1026.37(a)(13), the interest rate is locked for a specific period of time if the creditor has agreed to extend credit to the consumer at a given rate, subject to contingencies that are described in any rate lock agreement between the creditor and consumer.

2. *Expiration date.* The disclosure required by § 1026.37(a)(13)(ii) related to estimated closing costs is required regardless of whether the interest rate is locked for a specific period of time or whether the terms and costs are otherwise accepted or extended.

3. *Time zone.* The disclosure required by § 1026.37(a)(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. Accordingly, if certain terms of the transaction are known or reasonably available 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, § 1026.37(b)(4) requires disclosure of the maximum amount of the prepayment penalty and period in which the prepayment penalty may be charged as known to the creditor at the time the disclosures are provided.

37(b)(2) Interest rate.

1. *Interest rate at consummation not known.* Where the interest rate that will apply at consummation is not known at the time the creditor must deliver the disclosures required by § 1026.19(e), § 1026.37(b)(2) requires disclosure of the fully-indexed rate, defined 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 disclosures are provided pursuant to § 1026.19(e)(1)(iii), *i.e.,* 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 delivered. The index in effect at consummation (or the time the disclosure is delivered 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, as defined in appendix J to this part, 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 not known.* 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 is not known because it will be based on an interest rate at consummation that is not known at the time the disclosures required by § 1026.19(e) must be provided, for example if it is based on an external index that may fluctuate before consummation, § 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 on which the penalty will no longer be imposed). For an example of such disclosure, see form H–24 of appendix H to this part. The disclosure under § 1026.37(b)(4) applies to transactions where the terms of the loan contract provide for a prepayment penalty, even though the creditor does not know 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, 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. See comment 37(b)(4)–3.iii below for additional guidance regarding waived bona fide third-party charges imposed by the creditor if the consumer pays all of a covered transaction's principal before the date on which the principal is due sooner than 36 months after consummation.

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 that are not prepayment penalties include, for example:

i. Fees imposed for preparing and providing documents when a loan is paid in full, if such fees are imposed whether or not the loan is prepaid. Examples include 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.

iii. A waived bona fide third-party charge imposed by the creditor if the consumer pays all of a covered transaction's principal before the date on which the principal is due sooner than 36 months after consummation. For example, assume that at consummation, the creditor waives $3,000 in closing costs to cover bona fide third-party charges but the terms of the loan agreement provide that the creditor may recoup the $3,000 in waived charges if the consumer repays the entire loan balance sooner than 36 months after consummation. The $3,000 charge is not a prepayment penalty. In contrast, for example, assume that at consummation, the creditor waives $3,000 in closing costs to cover bona fide third-party charges but the terms of the loan agreement provide that the creditor may recoup $4,500 in part to recoup waived charges, if the consumer repays the entire loan balance sooner than 36 months after consummation. The $3,000 that the creditor may impose to cover the waived bona fide third-party charges is not a prepayment penalty, but the additional $1,500 charge is a prepayment penalty and must be disclosed pursuant to § 1026.37(b)(4).

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 state 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 disclosure of prepayment penalties, see comment 18(k)–1.

37(b)(5) Balloon payment.

1. *Regular periodic payment.* If a payment is not itself a regular periodic payment and 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). 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.

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. Similarly, if a loan has an adjustable interest rate which does not adjust the regular periodic payment but would, if the rate increased, increase only the final payment, the amount of the final payment for purposes of the balloon payment determination is based on the fully-indexed rate, except as otherwise determined by any premium or discounted rate caps, or any other known, scheduled rates under the terms specified in the loan contract. 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. A final payment that differs from other regular periodic payments because of rounding to account for payment amounts including fractions of cents is still a regular periodic payment and

need not be disclosed as a balloon payment under § 1026.37(b)(5).

v. 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)(6) Adjustments after consummation.

1. *Periods not in whole years.* For guidance on how to disclose increases after consummation that occur after a period that does not equate to a number of whole years in compliance with § 1026.37(b)(6), see comment 37(a)(10)–3.

37(b)(6)(i) Adjustment in loan amount.

1. *Additional information regarding adjustment in loan amount.* A creditor complies with the requirement under § 1026.37(b)(6)(i) to disclose additional information indicating whether the maximum principal balance is potential or is scheduled to occur under the terms of the legal obligation by using the phrase ''Can go as high as'' or ''Goes as high as,'' respectively. A creditor complies with the requirement under § 1026.37(b)(6)(i) to disclose additional information indicating the due date of the last payment that may cause the principal balance to increase by using the phrase ''Increases until.'' See form H–24 of appendix H to this part for the required format of such phrases, which is required for federally related mortgage loans under § 1026.37(o)(3).

37(b)(6)(ii) Adjustment in interest rate.

1. *Additional information regarding adjustment in interest rate.* A creditor complies with the requirement under § 1026.37(b)(6)(ii) to disclose additional information indicating the frequency of adjustments to the interest rate and date when the interest rate may first adjust by using the phrases ''Adjusts every'' and ''starting in.'' A creditor complies with the requirement under § 1026.37(b)(6)(ii) to disclose additional information indicating the maximum interest rate, and the first date when the interest rate can reach the maximum interest rate using the phrase ''Can go as high as'' and then indicating the date at the end of that phrase or for a scheduled maximum interest rate under a step rate loan, ''Goes as high as.'' If the loan term may increase based on an interest rate adjustment, the disclosure shall indicate the maximum possible loan term using the phrase ''Can increase loan term to.'' See form H–24 of appendix H to this part for the required format of such phrases, which is required for federally related mortgage loans under § 1026.37(o)(3).

2. *Interest rates that adjust at multiple intervals.* If the terms of the legal obligation provide for more than one adjustment period, § 1026.37(b)(6)(ii) requires disclosure of only the frequency of the first interest rate adjustment. For example, if the interest rate is fixed for five years, then adjusts every two years starting in year six, then adjusts every year starting in year 10, the disclosure required is ''Adjusts every 2 years starting in year 6.''

37(b)(6)(iii) Increase in periodic payment.

1. *Additional information regarding increase in periodic payment.* A creditor complies with the requirement under § 1026.37(b)(6)(iii) to disclose additional information indicating the scheduled frequency of adjustments to the periodic principal and interest payment by using the phrases ''Adjusts every'' and ''starting in.'' A creditor complies with the requirement under § 1026.37(b)(6)(iii) to disclose additional information indicating 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 by using the phrase ''Can go as high as'' and then indicating the date at the end of that phrase or for a scheduled maximum amount, such as under a step payment loan, ''Goes as high as.'' A creditor complies with the requirement under § 1026.37(b)(6)(iii) to indicate that there is a period during which only interest is required to be paid and the due date of the last periodic payment of such period using the phrase ''Includes only interest and no principal until.'' See form H–24 of appendix H to this part for the required format of such phrases, which is required for federally related mortgage loans under § 1026.37(o)(3).

2. *Periodic principal and interest payments that adjust at multiple intervals.* If there are multiple periods of adjustment under the terms of the legal obligation, § 1026.37(b)(6)(iii) requires disclosure of the frequency of only the first adjustment to the periodic principal and interest payment, regardless of the basis for the adjustment. Accordingly, where the periodic principal and interest payment may change because of more than one factor and such adjustments are on different schedules, the frequency disclosed is the adjustment of whichever factor adjusts first. For example, where the interest rate for a transaction is fixed until year six and then adjusts every three years but the transaction also has a negative amortization feature that ends in year seven, § 1026.37(b)(6)(iii) requires disclosure that the interest rate will adjust every three years starting in year six because the periodic principal and interest payment adjusts based on the interest rate before it adjusts based on the end of the negative amortization period.

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 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.

2. *Additional information regarding prepayment penalty.* A creditor complies with the requirement under § 1026.37(b)(7)(i) to disclose additional information indicating the maximum amount of the prepayment penalty that may be imposed and the date when the period during which the penalty may be imposed terminates using the phrases ''As high as'' and ''if you pay off the loan during.'' See form H–24 of appendix H to this part for the required format of such phrases, which is

required for federally related mortgage loans under § 1026.37(o)(3).

Paragraph 37(b)(7)(ii).

1. *Additional information regarding balloon payment.* A creditor complies with the requirement under § 1026.37(b)(7)(ii) to disclose additional information indicating the maximum amount of the balloon payment and the due date of such payment using the phrases ''You will have to pay'' and ''at the end of.'' See form H–24 of appendix H to this part for the required format of such phrases, which is required for federally related mortgage loans under § 1026.37(o)(3). If the transaction includes more than one balloon payment, a creditor complies with § 1026.37(b)(7)(ii) by disclosing the highest of the balloon payments and the due date of that payment.

37(b)(8) Timing.

1. *Whole years.* For adjustments that occur after a period of whole years, 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 § 1026.37(b)(8)(i), or from the due date of the first periodic payment for § 1026.37(b)(8)(ii), or from the date of consummation for § 1026.37(b)(8)(iii). For example, an interest rate that is fixed for five years and 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 payment that adjusts starting with the 61st scheduled payment likewise would be disclosed as adjusting in ''year 6.''

2. *Periods not in whole years.* For adjustments that occur after a number of months less than 24 that do not equate to a number of whole years or within a number of days less than a week, see the guidance provided in comment 37(a)(10)–3.

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 premiums, 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.

2. *Initial periodic payment or range of payments.* Section 1026.37(c)(1)(i) requires the creditor to disclose the initial periodic payment or range of payments. The disclosure required is of the actual periodic payment or range of payments that corresponds to the interest rate that will apply at consummation, including any initial discounted or premium interest rate. For examples of discounted and premium rate transactions, see comment 17(c)(1)–10.v. For guidance regarding whether the disclosure should reflect a buydown, see comments 17(c)(1)–3 through –5. If the initial periodic payment or range of payments may vary based on an adjustment to an index value that applies at consummation, § 1026.37(c)(1)(i) requires that the disclosure of the initial periodic payment or range of payments be based on the fully-indexed rate disclosed under § 1026.37(b)(2). See comment 37(b)(2)–1 for guidance regarding calculating the fully-indexed rate.

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 contains a negative amortization feature, periodic principal and interest payments or the range of such payments may change for purposes of § 1026.37(c)(1)(i)(A) at the time the negative amortization period ends under the terms of the legal obligation, meaning the consumer must begin making payments that do not result in an increase of the principal balance. The occurrence of an event requiring disclosure of additional separate periodic payments or ranges of payments should be based on the assumption that the consumer will make payments as scheduled or, if applicable, elect to make the periodic payments that would extend the negative amortization period to the latest time permitted under the terms of the legal obligation. The occurrence of all subsequent events requiring disclosure of additional separate periodic payments or ranges of payments should be based on this assumption. The table required by § 1026.37(c) should also reflect any balloon payment that would result from such scheduled payments or election. See § 1026.37(c)(1)(ii)(A) for special rules regarding disclosure of balloon payments.

3. *Interest only.* In a loan that contains an interest only feature, periodic principal and interest payments may change for purposes of § 1026.37(c)(1)(i)(A) when the interest only period ends, meaning the consumer must begin making payments that do not defer repayment of principal.

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. For guidance on the amount of a balloon payment disclosed on the table required by § 1026.37(c), see comment 37(c)(2)(i)–3.

Paragraph 37(c)(1)(i)(C).

1. *General.* ''Mortgage insurance or any functional equivalent'' means the amounts identified in § 1026.4(b)(5). For purposes of § 1026.37(c), ''mortgage insurance or any functional equivalent'' includes any mortgage guarantee that provides coverage similar to mortgage insurance (such as a United States Department of Veterans Affairs or United States Department of Agriculture guarantee), even if not technically considered insurance under State or other applicable law. The fees for such a guarantee are included in ''mortgage insurance premiums.''

2. *Calculation of mortgage insurance termination.* For purposes of § 1026.37(c)(1)(i)(C), mortgage insurance premiums should be calculated based on the declining principal balance that will occur as a result of changes to the interest rate and payment amounts, applying the interest rates applicable to the transaction. Such calculation should take into account any initial discounted or premium interest rate. For example, for an adjustable rate transaction that has a discounted interest rate during an initial five-year period, the creditor makes the calculation using a composite rate based on the rate in effect during the initial five-year period and, thereafter, the fully-indexed rate, unless otherwise required by applicable law. For guidance on calculation of the amount of mortgage insurance premiums to disclose on the table required by § 1026.37(c), see § 1026.37(c)(2)(ii) and its commentary. See comment 37(b)(2)–1 for guidance regarding calculating the fully-indexed rate.

3. *Disclosure of mortgage insurance termination.* 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)(i)(D).

1. *Anniversary of the due date of initial periodic payment.* Section 1026.37(c)(1)(i)(D) provides that the anniversary of the due date of the initial periodic payment or range of payments that immediately follows the occurrence of multiple events described in § 1026.37(c)(1)(i)(A) during a single year is an event that requires disclosure of additional periodic payments or ranges of payments. Section 1026.37(c)(1)(i)(A) provides that a potential change in the periodic principal and interest payment is an event requiring disclosure of additional separate periodic payments. See comment 37(c)(1)(iii)(B)–1 for an example of the application of § 1026.37(c)(1)(i)(D).

Paragraph 37(c)(1)(ii).

Paragraph 37(c)(1)(ii)(A).

1. *Special rule regarding 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, in which case the creditor discloses as a single range of payments all events requiring disclosure of additional separate periodic payments or ranges of payments described in § 1026.37(c)(1)(i)(A) through (D), other than the final balloon payment, occurring after the second separate periodic payment or range of payments disclosed. Balloon payments that are not scheduled as final payments under the terms of the legal obligation, 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). A balloon payment that is a final payment is disclosed as a single payment, and not combined with other changes to periodic principal and interest payments and disclosed as a range.

2. *Example.* Assume a loan with a term of seven years, where the interest rate adjusts each year for the first three years and is fixed thereafter, that provides for a balloon payment as the final payment, where no mortgage insurance is required, and no escrow account will be established for the payment of charges described in § 1026.37(c)(4)(ii). The creditor discloses on the table required by § 1026.37(c) in the first column the initial periodic payment or range of payments, in the second column the periodic payment or range of payments that would apply after the first interest rate adjustment, in the third column the periodic payments or ranges of payments that would apply after the second interest rate adjustment until the final balloon payment (disclosed as a single range of payments), and in the fourth column the final balloon payment. Although the balloon payment that is scheduled as the final payment under the terms of the legal obligation occurs after the third separate periodic payment or range of payments, the creditor discloses the final balloon payment as a separate event requiring disclosure of additional periodic payments or range of payments due to the special rule in § 1026.37(c)(1)(ii)(A).

Paragraph 37(c)(1)(ii)(B).

1. *Special rule regarding disclosure of the automatic termination of mortgage insurance.* Section 1026.37(c)(1)(ii)(B) is an exception to the general rule in § 1026.37(c)(1)(ii), and requires that the automatic termination of mortgage insurance or any functional equivalent under applicable law is disclosed as a separate periodic payment or range of payments only if the total number of separate periodic payments or ranges of payments otherwise disclosed does not exceed three. This means that the automatic termination of mortgage insurance or any functional equivalent under applicable law is disclosed as its own event only if there is a column in which to disclose it, *i.e.,* there are only three other separate periodic payments or ranges of payments that are required to be disclosed. Where the automatic termination of mortgage insurance or any functional equivalent under applicable law is not disclosed as a separate periodic payment or range of payments, the absence of a required mortgage insurance payment is disclosed with the next disclosed event requiring disclosure of additional separate periodic payments or ranges of payments, as applicable.

2. *Examples of special rule regarding disclosure of the automatic termination of mortgage insurance.* i. Assume a step-rate loan with a 30-year term with an introductory interest rate that lasts for five years, a different interest rate that applies for the next five-year period, a final interest rate adjustment after 10 years, where mortgage insurance would terminate for purposes of § 1026.37(c)(1)(i)(C) in the third year, and where no escrow account would be established for the payment of charges described in § 1026.37(c)(4)(ii). The creditor would disclose on the table required by § 1026.37(c) the initial periodic payment for years one through three (reflecting the principal and interest payment corresponding to the introductory interest rate and payments for mortgage insurance premiums), an additional separate periodic payment for years four and five (reflecting the principal and interest payment corresponding to the introductory rate and no payments for mortgage insurance premiums), an additional separate periodic payment or range of payments for years six through 10 (reflecting the principal and interest payment corresponding to the interest rate that would apply after the introductory rate), and an additional separate periodic payment or range of payments for years 11 through 30 (reflecting the principal and interest payment corresponding to the interest rate that would apply after the second interest rate adjustment until the end of the loan term). In this example, the automatic termination of mortgage insurance would be separately disclosed on the table required by § 1026.37(c) because the total number of separate periodic payments or ranges of payments otherwise disclosed pursuant to § 1026.37(c)(1) does not exceed three.

ii. Assume the same loan as above, except that the terms of the legal obligation also provide for a third interest rate adjustment that would occur after 15 years. The creditor would disclose on the table required by § 1026.37(c) the initial periodic payment for years one through five (reflecting the principal and interest payment corresponding to the introductory interest rate and payments for mortgage insurance premiums), an additional separate periodic payment or range of payments for years six through 10 (reflecting the principal and interest payment corresponding to the interest rate that would apply after the first interest rate adjustment and no payments for mortgage insurance premiums), an additional separate periodic payment or range of payments for years 11 through 15 (reflecting the principal and interest payment corresponding to the interest rate that

would apply after the second interest rate adjustment), and an additional separate periodic payment or range of payments for years 16 through 30 (reflecting the principal and interest payment corresponding to the interest rate that would apply after the third interest rate adjustment until the end of the loan term). In this example, the automatic termination of mortgage insurance would not be separately disclosed on the table required by § 1026.37(c) because the total number of separate periodic payments or ranges of payments otherwise disclosed pursuant to § 1026.37(c)(1) exceeds three. However, the creditor would disclose the termination of mortgage insurance beginning with the periodic payment or range of payments for years six through 10, which is the next disclosed event requiring disclosure of additional separate periodic payments or ranges of payments.

Paragraph 37(c)(1)(iii).

1. *Ranges of payments.* When a range of payments is required to be disclosed under § 1026.37(c)(1), § 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.

Paragraph 37(c)(1)(iii)(B).

1. *Multiple events occurring in a single year.* If changes to periodic principal and interest payments would result in more than one separate periodic payment or range of payments in a single year, § 1026.37(c)(1)(iii)(B) requires the creditor to disclose the range of payments that would apply during the year in which the events occur. For example, assume a loan with a 30-year term with a payment that adjusts every month for the first 12 months and is fixed thereafter, where mortgage insurance is not required, and where no escrow account would be established for the payment of charges described in § 1026.37(c)(4)(ii). The creditor discloses as a single range of payments the initial periodic payment and the periodic payment that would apply after each payment adjustment during the first 12 months and would also disclose, as an additional separate periodic payment or range of payments, the periodic principal and interest payment or range of payments that would apply after the payment becomes fixed. Assume instead a loan with a 30-year term with a payment that adjusts upward at three months and at six months and is fixed thereafter, where mortgage insurance is not required, and where no escrow account would be established for the payment of charges described in § 1026.37(c)(4)(ii). The creditor discloses as a single range of payments the initial periodic payment, the periodic payment that would apply after the payment adjustment that occurs at three months, and the periodic payment that would apply after the payment adjustment that occurs at six months, which single range represents the minimum payment and maximum payment, respectively, which would apply during the first year of the loan. Pursuant to § 1026.37(c)(1)(i)(D), the creditor also discloses as an additional separate periodic payment or range of payments, the principal and interest payment that would apply on the one-year anniversary of the due date of the initial periodic payment or range of payments, because that is the anniversary that immediately follows the occurrence of the multiple payments or ranges of payments that occurred during the first year of the loan. Assume that the same loan has a payment that, instead of becoming fixed after the adjustment at six months, adjusts once more at 18 months and becomes fixed thereafter. The creditor would disclose the same single range of payments for year one. Pursuant to § 1026.37(c)(1)(iii)(B), the creditor also discloses the principal and interest payment that would apply on the one-year anniversary of the due date of the initial periodic payment (as required by § 1026.37(c)(1)(i)(D)) and the periodic payment that would apply after the payment adjustment that occurs at 18 months as a single range of payments in year two. Pursuant to § 1026.37(c)(1)(i)(D), the creditor also discloses as an additional separate periodic payment or range of payments, the principal and interest payment that would apply on the two-year anniversary of the due date of the initial periodic payment or range of payments, because that is the anniversary that immediately follows the occurrence of the multiple payments or ranges of payments that occurred during the second year of the loan.

Paragraph 37(c)(1)(iii)(C).

1. *Adjustable rate mortgages.* For an adjustable rate loan, 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)(i).

1. *General rule for adjustable rate loans.* For an adjustable rate loan, in disclosing the maximum possible payment for principal and interest under § 1026.37(c), the creditor assumes that the interest rate will rise as rapidly as possible after consummation, taking into account the terms of the legal obligation, including any applicable caps on interest rate adjustments and lifetime interest rate cap. For a loan with no lifetime interest rate cap, the maximum rate is determined by reference to other applicable laws, such as State usury law. In disclosing the minimum payment for purposes of § 1026.37(c), the creditor assumes that the interest rate will decrease as rapidly as possible after consummation, taking into account any introductory rates, caps on interest rate adjustments, and lifetime interest rate floor. For an adjustable rate loan based on an index that has no lifetime interest rate floor, the minimum interest rate is equal to the margin.

2. *Special rule for adjustable rate loans with negative amortization features.* Section 1026.37(c)(2)(i)(B) provides a special rule for calculation of the maximum principal and interest payment in an adjustable rate loan that contains a negative amortization feature. That section provides that the maximum amounts payable for principal and interest after the negative amortization period ends are calculated using the maximum principal amount permitted under the terms of the legal obligation at the end of the negative amortization period. See section § 1026.37(c)(1)(i)(A) and associated commentary for guidance regarding when the negative amortization period ends for purposes of § 1026.37(c)(2). For example, if the maximum principal balance for the last payment in the negative amortization period is achieved at an interest rate that is not the maximum interest rate permitted under the terms of the legal obligation before the negative amortization period ends, future events requiring disclosure of additional, separate periodic payments or ranges of payments assume that the interest rate in effect at the end of the negative amortization period was such interest rate, and not the maximum possible interest rate. After the end of the negative amortization period, the general rule under § 1026.37(c)(2)(i)(A) regarding assumptions of interest rate changes for the maximum principal and interest payment to be disclosed applies

from such interest rate. The minimum payment in an adjustable rate loan that contains a negative amortization feature is determined pursuant to the general rule under § 1026.37(c)(2)(i)(A).

3. *Disclosure of balloon payment amounts.* Although the existence of a balloon payment is determined pursuant to § 1026.37(b)(5) and its commentary (*see* comment 37(c)(1)(i)(B)–1), balloon payment amounts to be disclosed under § 1026.37(c) are calculated in the same manner as periodic principal and interest payments under § 1026.37(c)(2)(i). 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)(2)(i) and its commentary, and should be disclosed as a range of payments.

Paragraph 37(c)(2)(ii).

1. *Mortgage insurance disclosure.* 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 or any functional equivalent, the creditor discloses the mortgage insurance premium amount as ''0.'' If the creditor is disclosing the automatic termination or the absence of mortgage insurance or any functional equivalent under applicable law or the absence of mortgage insurance or any functional equivalent after coverage has terminated, the creditor discloses the mortgage insurance premium as ''-.''

2. *Relationship to principal and interest disclosure.* 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. If no escrow account for the payment of some or all such charges will be established, the creditor discloses the mortgage insurance premium as ''0.''

Paragraph 37(c)(2)(iii).

1. *Escrow disclosure.* 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).

37(c)(3) Subheadings.

Paragraph 37(c)(3)(ii).

1. *Years.* Section 1026.37(c)(3)(ii) requires that each separate periodic payment or range of payments be disclosed under a subheading that states the years during which that payment or range of payments will apply and that such subheadings be stated in a sequence of whole years from the due date of the initial periodic payment. Therefore, for purposes of § 1026.37(c), ''year'' is defined as the twelve-month interval beginning on the due date of the initial periodic payment, and the next whole year begins each anniversary thereafter. If an event requiring the disclosure of an additional separate periodic payment or range of payments occurs on a date other than the anniversary of the due date of the initial periodic payment, and no other events occur during that single year requiring disclosure of multiple events under § 1026.37(c)(1)(iii)(B), such event is disclosed beginning in the next year in the sequence, because the separate periodic payment or range of payments that applied during the previous year will also apply during a portion of that year. For example:

i. Assume a fixed rate loan with a term of 124 months (10 years, four months). The creditor would label the disclosure of periodic payments as ''Years 1–11.''

ii. Assume a loan with a 30-year term that does not require mortgage insurance and requires interest only payments for the first 60 months from the due date of the initial periodic payment, then requires fixed, fully amortizing payments of principal and interest beginning at the 61st month for the duration of the loan, the creditor would label the first disclosure of periodic payments as ''Years 1–5'' (including the term ''only interest'' pursuant to § 1026.37(c)(2)(i)) and the second disclosure of periodic payments or range of payments as ''Years 6–30.'' If that loan requires interest only payments for the first 54 months from the due date of the initial periodic payment, then requires fixed, fully amortizing payments of principal and interest for the duration of the loan, because the change in the periodic payment occurs on a date other than the anniversary of the due date of the initial periodic payment and the previous payment applies during that year, the creditor would likewise label the first disclosure of periodic payments as ''Years 1–5'' (including the term ''only interest'' pursuant to § 1026.37(c)(2)(i)) and the second disclosure of periodic payments or range of payments as ''Years 6–30.'' 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 from the due date of the initial periodic payment, the creditor would label the first disclosure of periodic payments as ''Years 1–5'' (including the term ''only interest'' pursuant to § 1026.37(c)(2)(i)), the second disclosure of periodic payments or range of payments as ''Years 6–9,'' and the third disclosure of periodic payments or range of payments as ''Years 10–30.''

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)–2.

37(c)(4) Taxes, insurance, and assessments.

Paragraph 37(c)(4)(ii).

1. *Definition of taxes, insurance, and assessments.* See the commentary under § 1026.43(b)(8) for guidance on the charges that are included in taxes, insurance, and assessments for purposes of § 1026.37(c)(4)(ii), except that the portion of that commentary related to amounts identified in § 1026.4(b)(5) is inapplicable to the disclosure required by § 1026.37(c)(4)(ii).

Paragraph 37(c)(4)(iv).

1. *Description of other amounts.* Section 1026.37(c)(4)(iv) requires the creditor to disclose a statement of whether the amount disclosed pursuant to § 1026.37(c)(4)(ii) includes payments for property taxes, amounts identified in § 1026.4(b)(8) (homeowner's insurance premiums), and other amounts described in § 1026.37(c)(4)(ii), along with a description of any such other amounts. If the amount disclosed pursuant to § 1026.37(c)(4)(ii) requires the creditor to disclose a description of more than one amount other than amounts for payment of property taxes or homeowner's insurance premiums, the creditor may disclose a descriptive statement of one such amount along with an indication that additional amounts are also included, such as by using the phrase ''and additional costs.''

2. *Amounts paid by the creditor using escrow account funds.* Section 1026.37(c)(4)(iv) requires the creditor to disclose an indication of whether the amounts disclosed pursuant to § 1026.37(c)(4)(ii) will be paid by the creditor using escrow account funds. If the amount disclosed pursuant to

§ 1026.37(c)(4)(ii) requires the creditor to disclose a description of more than one amount other than amounts for payments of property taxes or homeowner's insurance and only some of those amounts will be paid by the creditor using escrow account funds, the creditor may indicate that only some of those amounts will be paid using escrow account funds, such as by using the word ''some.''

37(d) Costs at closing.

37(d)(2) Optional alternative table for transactions without a seller.

1. *Optional use.* The optional disclosure of the estimated cash to close provided for in § 1026.37(d)(2) only may be used by a creditor in a transaction without a seller. The use of this alternative estimated cash to close disclosure for transactions without a seller is optional, but only may be used in conjunction with the alternative disclosure under § 1026.37(h)(2).

2. *Method of indication.* The indication of whether the estimated cash is either due from or payable to the consumer can be made by the use of check boxes as shown in form H–24(D) of appendix H to this part.

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.* 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 each creditor and 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 two or three decimal places, except that decimal places shall not be disclosed if the percentage is a whole number. See comment 19(e)(3)(i)–3 for a discussion of when a fee is considered to be ''paid to'' a person. See § 1026.36(a) and associated commentary 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 charged in connection with the transaction to reduce the interest rate, for which specific language must be used, the creditor may use a general label that uses terminology that, under § 1026.37(f)(5), is consistent with § 1026.17(a)(1), clearly and conspicuously describes the 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 there are no points charged in connection with the transaction to reduce the interest rate, the creditor leaves blank the percentage of points used in the label and the dollar amount disclosed under § 1026.37(f)(1)(i).

5. *Itemization.* Creditors determine the level of itemization of ''Origination Charges'' that is appropriate under § 1026.37(f)(1) in relation to charges paid by the consumer to the creditor, subject to the limitations in § 1026.37(f)(1)(ii). For example, the following charges should be itemized separately: compensation paid directly by a consumer to a loan originator that is not also the creditor; or a charge imposed to pay for a loan level pricing adjustment assessed on the creditor, which the creditor passes onto the consumer as a charge at consummation and not as an adjustment to the interest rate.

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). Comment 19(e)(1)(vi)–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 and amounts to be disclosed pursuant to § 1026.37(f)(2) might include an appraisal fee, appraisal management company fee, credit report fee, flood determination fee, government funding fee, homeowner's association certification fee, lender's attorney fee, tax status research fee, third-party subordination fee, title—closing protection letter fee, title—lender's title insurance policy, and an upfront mortgage insurance fee, provided that the fee is charged at consummation and is not a prepayment of future premiums over a specific future time period or a payment into an escrow account. Government funding fees include a United States Department of Veterans Affairs or United States Department of Agriculture guarantee fee, or any other fee paid to a government entity as part of a governmental loan program, that is paid at consummation.

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 or for conducting the closing. 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; and

v. Premiums for any title insurance coverage for the benefit of the creditor.

4. *Lender's title insurance policy.* Section 1026.37(f)(2) and (3) requires disclosure of the amount the consumer will pay for the lender's title insurance policy. However, an owner's title insurance policy that covers the consumer and is not required to be purchased by the creditor is only disclosed pursuant to § 1026.37(g). Accordingly, the creditor must quote the amount of the lender's title insurance coverage pursuant to § 1026.37(f)(2) or (3) as applicable based on the type of lender's title insurance policy required by its underwriting standards for that loan. The amount disclosed for the lender's title insurance policy 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 may 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 an owner's title insurance policy that covers the consumer.

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). Comments 19(e)(3)(ii)–1 through –3, and –5 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). 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 a pest inspection fee, survey fee, title—closing agent fee, and title—closing protection letter fee.

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)(5) Item descriptions and ordering.

1. *Clear and conspicuous standard.* Section 1026.37(f)(5) requires creditors to label the loan costs disclosed pursuant § 1026.37(f) using terminology that describes each item. A creditor complies with this requirement if it uses terminology that is clear and conspicuous, consistent with § 1026.17(a)(1), and describes the service or administrative function that the charge pays for in a manner that is reasonably understood by consumers within the space provided in form H–24 of appendix H to this part. For example, if a creditor imposes a fee on a consumer to cover the costs associated with underwriting the transaction, the creditor would comply with § 1026.37(f)(5) if it labeled the cost ''Underwriting Fee.'' A label that uses abbreviations or acronyms that are not reasonably understood by consumers would not comply with § 1026.37(f)(5).

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, for example, as an addendum to the Loan Estimate. *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 complies 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), or charges for optional credit insurance provided by the creditor, the creditor does not retain any of the amounts or portions of the amounts disclosed as other costs.

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 disclosed on the Loan Estimate to the extent the creditor has knowledge of those charges when it issues the Loan Estimate, consistent with the good faith standard under § 1026.19(e). A creditor has knowledge of those charges where, for example, it has the real estate purchase and sale contract. *See also* § 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 sale 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 percent 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 paid by 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) if 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 are 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 interest begins to accrue for the first scheduled periodic payment 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 rate of interest used to calculate the charge, and the total dollar amount of the charge. Examples of periodic charges that are disclosed pursuant to § 1026.37(g)(2) 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.* For purposes of § 1026.37(g)(2), the term ''property taxes'' has the same meaning as in § 1026.43(b)(8) and further described in comment 43(b)(8)–2; the term ''homeowner's insurance'' means the amounts identified in § 1026.4(b)(8); and the term ''mortgage insurance'' has the same meaning as ''mortgage insurance or any functional equivalent'' in § 1026.37(c), which means the amounts identified in § 1026.4(b)(5).

4. *Deletion of items.* The lines and labels required by § 1026.37(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 used in the labels are 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 described in § 1026.37(g)(3)(i) through (iii) is not charged to the consumer, the monthly payment amount and time period used in the labels are 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 term ''property taxes'' has the same meaning as in § 1026.43(b)(8) and further described in comment 43(b)(8)–2; the term ''homeowner's insurance'' means the amounts identified in § 1026.4(b)(8); and the term ''mortgage insurance'' has the same meaning as ''mortgage insurance or any functional equivalent'' in § 1026.37(c).

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.

5. *Escrowed tax payments for different time frames.* Payments for property taxes that are paid at different time periods can be itemized separately when done in accordance with 12 CFR 1024.17, as applicable. For example, a general property tax covering a fiscal year from January 1 to December 31 can be listed as a property tax under § 1026.37(g)(3)(i); and a separate property tax to fund schools that cover a fiscal year from November 1 to October 31 can be added as a separate item under § 1026.37(g)(3)(v).

37(g)(4) Other.

1. *Owner's title insurance 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, except that the creditor may instead disclose the premium for an ''enhanced'' policy when the ''enhanced'' title insurance policy is required by the real estate sales contract, if such requirement is known to the creditor when issuing the Loan Estimate. 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 optional 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 guidance on determining when credit life insurance, debt suspension coverage, debt cancellation coverage, and similar 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.

2. *Credits or rebates from the creditor to offset a portion or all of the closing costs.* For loans where a portion or all of the closing costs are offset by a credit or rebate provided by the creditor (sometimes referred to as ''no-cost'' loans), whether all or a defined portion of the closing costs disclosed under § 1026.37(f) or (g) will be paid by a credit or rebate from the creditor, the creditor discloses such credit or rebate as a lender credit under § 1026.37(g)(6)(ii). The creditor should ensure that the lender credit disclosed under § 1026.37(g)(6)(ii) is sufficient to cover the estimated costs the creditor represented to the consumer as not being required to be paid by the consumer at consummation, regardless of whether such representations pertained to specific items.

37(g)(7) Item descriptions and ordering.

1. *Clear and conspicuous standard.* See comment 37(f)(5)–1 for guidance regarding the requirement to label items using terminology that describes each item.

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.

37(h)(1) For all transactions.

1. *Labels for amounts disclosed.* Section 1026.37(h)(1) describes the amounts that are used to calculate the estimated amount of cash or other funds that the consumer must provide at consummation. The labels that are to be used under § 1026.37(h)(1) are illustrated by form H–24(A) of appendix H to this part.

37(h)(1)(ii) Closing costs financed.

1. *Calculating amount.* The amount of closing costs financed disclosed under § 1026.37(h)(1)(ii) is determined by subtracting the estimated total amount of payments to third parties not otherwise disclosed pursuant to § 1026.37(f) and § 1026.37(g) from the total loan amount disclosed pursuant to § 1026.37(b)(1). If the result of the calculation is a positive number, that amount is disclosed as a negative number under § 1026.37(h)(1)(ii), but only to the extent that it does not exceed the total amount of lender credits disclosed under § 1026.37(g)(6)(ii). If the result of the calculation is zero or negative, the amount of $0 is disclosed under § 1026.37(h)(1)(ii).

37(h)(1)(iii) Downpayment and other funds from borrower.

1. *No downpayment or funds from borrower.* When the loan amount exceeds the purchase price of the property (other than a construction loan), the amount of $0 is disclosed under § 1026.37(h)(1)(iii).

37(h)(1)(iv) Deposit.

1. Section 1026.37(h)(1)(iv)(A) requires disclosure of a deposit in a purchase transaction. The deposit to be disclosed under § 1026.37(h)(1)(iv)(A) is any amount that the consumer has agreed to pay to a party identified in the real estate purchase and sale agreement to be held until consummation of the transaction, which is often referred to as an earnest money deposit. In a purchase transaction in which no such deposit is paid in connection with the transaction, § 1026.37(h)(1)(iv)(A) requires the creditor to disclose $0. In any other type of transaction, § 1026.37(h)(1)(iv)(B) requires disclosure of the deposit amount as $0.

37(h)(1)(v) Funds for borrower.

1. *Use of calculation—non-purchase transactions.* The calculation described in § 1026.37(h)(1)(v) is only used to determine the amounts disclosed under § 1026.37(h)(1)(iii) and (h)(1)(v) in a transaction that is not described as a purchase transaction under § 1026.37(a)(9)(i), in accordance with the provisions of § 1026.37(h)(1)(iii)(A). In a purchase transaction (other than a construction loan), the amount disclosed under § 1026.37(h)(1)(v) will be $0, in accordance with § 1026.37(h)(1)(v)(A).

37(h)(1)(vi) Seller credits.

1. *Credits to be disclosed.* The seller credits known to the creditor at the time of delivery of the Loan Estimate are disclosed under § 1026.37(h)(1)(vi). For example, a creditor may know the amount of seller credits that will be paid in the transaction from information obtained verbally from the consumer, from a review of the purchase and sale contract, or from information obtained from a real estate agent in the transaction.

2. *Seller credits for specific charges.* To the extent known by the creditor at the time of delivery of the Loan Estimate, seller credits for specific items disclosed under § 1026.37(f) and (g) are represented by the total amount disclosed for those items.

37(h)(1)(vii) 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)(1), are included in the amount disclosed pursuant to § 1026.37(h)(1)(vii).

2. *Persons that may make payments causing adjustment and other credits.* Persons, as defined under § 1026.2(a)(22), means natural persons or organizations. Accordingly, persons that may pay amounts disclosed under § 1026.37(h)(1)(vii) include, for example, any individual family members providing gifts or a developer or home builder organization providing a credit in the transaction.

3. *Credits.* Only credits from persons other than the creditor or seller can be disclosed pursuant to § 1026.37(h)(1)(vii). Seller credits and credits from the creditor are disclosed pursuant to § 1026.37(h)(1)(vi) and § 1026.37(g)(6)(ii), respectively.

4. *Other credits to be disclosed.* Credits other than those from the creditor or seller are disclosed under § 1026.37(h)(1)(vii). Disclosure of other credits is, like other disclosures under § 1026.37, subject to the good faith requirement under § 1026.19(e)(1)(i). *See* § 1026.19(e)(1)(i) and comments 17(c)(2)(i)–1 and 19(e)(1)(i)–1. The

creditor may obtain information regarding items to be disclosed under § 1026.37(h)(1)(vii), for example, verbally from the consumer, from a review of the purchase and sale contract, or from information obtained from a real estate agent in the transaction.

5. *Proceeds from subordinate financing or other source.* Funds that are provided to the consumer from the proceeds of subordinate financing, local or State housing assistance grants, or other similar sources are included in the amount disclosed under § 1026.37(h)(1)(vii).

6. *Reduction in amounts for adjustments.* Adjustments that require additional funds from the consumer pursuant to the real estate purchase and sale contract, such as for additional personal property that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(iii) or adjustments that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(v) can be included in the amount disclosed under § 1026.37(h)(1)(vii), and because the amount disclosed is a sum of adjustments and other credits, such amount would reduce the total amount disclosed. Additional examples of such adjustments for additional funds from the consumer include prorations for property taxes and homeowner's association dues.

37(h)(1)(viii) Estimated cash to close.

1. *Result of cash to close calculation.* The sum of the amounts disclosed pursuant to § 1026.37(h)(1)(i) through (vii) is disclosed under § 1026.37(h)(1)(viii) as either a positive number, a negative number, or zero. A positive number indicates the amount that the consumer will pay at consummation. A negative number indicates the amount that the consumer will receive at consummation. A result of zero indicates that the consumer will neither pay nor receive any amount at consummation.

37(h)(2) Optional alternative calculating cash to close table for transactions without a seller.

1. *Optional use.* The optional disclosure of the calculating cash to close table in § 1026.37(h)(2) may only be provided by a creditor in a transaction without a seller. The use of this alternative table for transactions without a seller is optional, but must be used in conjunction with the disclosure under § 1026.37(d)(2).

37(h)(2)(iii) Payoffs and payments.

1. *Examples.* Examples of the amounts incorporated in the total amount disclosed under § 1026.37(h)(2)(iii) include, but are not limited to: payoffs of existing liens secured by the property identified under § 1026.37(a)(6) such as existing mortgages, deeds of trust, judgments that have attached to the real property, mechanics' and materialmans' liens, and local, State and Federal tax liens; payments of unsecured outstanding debts of the consumer; and payments to other third parties for outstanding debts of the consumer (but not for settlement services) as required to be paid as a condition for the extension of credit.

37(h)(2)(iv) Cash to or from consumer.

1. *Method of indication.* The indication of whether the estimated cash to close is either due from or payable to the consumer is made by the use of check boxes, which is illustrated by form H–24(D) of appendix H to this part.

37(h)(2)(v) Closing costs financed.

1. *Limitation on amount disclosed.* The amount disclosed under § 1026.37(h)(2)(v) is limited to the total amount of closing costs disclosed under § 1026.37(g)(6), even if the difference between § 1026.37(h)(2)(i) and § 1026.37(h)(2)(iii) is greater than the amount disclosed under § 1026.37(g)(6).

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 shall not appear on the Loan Estimate.

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. The disclosures required by § 1026.37(i)(1) through (4) may include abbreviations to fit in the space provided for the information on form H–24, provided the information is disclosed in a clear and conspicuous manner. 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 through 12th payments, does not occur from 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 20th quarter, the period is disclosed as ''every quarter until the 20th quarter.'' As described above in this comment 37(i)–2, the creditor may abbreviate ''quarter'' to ''quart.'' or ''Q.''

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 payment 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 under the terms of the legal obligation, 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 reaches 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 maximum 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 not permitted to be disclosed.* The disclosure described in § 1026.37(j) is required only 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.

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 interest 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 permitted 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 best 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 Nationwide Mortgage Licensing System and Registry (NMLSR 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 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. In addition, § 1026.37(k)(1) and (2) require the abbreviation of the State of the jurisdiction or regulatory body that issued such license or registration is required to be included before the word ''License'' in the label required by § 1026.37(k)(1) and (2). If no such license or registration is required to be disclosed, such as if an NMLSR number is disclosed, the space provided for such an abbreviation in form H–24 of appendix H to this part may be left blank. A U.S. Postal Service State abbreviation complies with § 1026.37(k)(1) and (2), if applicable.

3. *Contact.* Section 1026.37(k)(2) requires the disclosure of the name and NMLSR ID of the person who is the primary contact for the consumer, labeled ''Loan Officer.'' The loan officer is generally the natural person employed by the creditor or mortgage broker disclosed under § 1026.37(k)(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(k)(2), as applicable.

4. *Email address and phone number.* Section 1026.37(k)(3) requires disclosure of the loan officer's email address and phone number. Disclosure of a general number or email address for the loan officer's lender or mortgage broker, as applicable, satisfies this requirement if no such information is generally available for such person.

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 guidance on how to calculate interest for mortgage loans that are Adjustable Rate products under § 1026.37(a)(10)(i)(A) for purposes of § 1026.37(l)(1)(i), see comment 17(c)(1)–10. 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 means ''mortgage insurance or any fractional equivalent'' as 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 have a negative amortization feature under § 1026.37(a)(10)(ii)(A), the creditor calculates the total payments in five years using the scheduled payments, even if it is a 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 products under § 1026.37(a)(10)(i)(A), § 1026.37(l)(3) requires that the creditor compute the total interest percentage in accordance with comment 17(c)(1)–10. For Step Rate products under § 1026.37(a)(10)(i)(B), § 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 have a negative amortization feature under § 1026.37(a)(10)(ii)(A), § 1026.37(l)(3) requires that the creditor compute the total interest percentage using the scheduled payment, even if it is a 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.* 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) or both, as implemented by this part or Regulation B, 12 CFR part 1002, respectively. Accordingly, if a transaction is not also subject to either or both of these provisions, as implemented by this part or Regulation B, respectively, the disclosure required by § 1026.37(m)(1) may be omitted from the Loan Estimate as described by comment 37–1 as illustrated by form H–24 of appendix H to this part. For transactions subject to section 1639h but not section 1691(e), the creditor may delete the word ''promptly'' from the disclosure required by § 1026.37(m)(1)(ii).

2. *Consummation.* Section 1026.37(m)(1) requires the creditor to disclose that it will provide a copy of any appraisal, even if the transaction is not consummated. On form H–24, the disclosure required by § 1026.37(m)(1) states that the creditor will provide an appraisal, even if the ''loan does not close.'' Pursuant to § 1026.37(o)(3), the disclosure required by § 1026.37(m)(1) is that illustrated by form H–24.

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 loan, 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 imposition of an assumption fee is not a departure from the original terms of the obligation but a modification of the legal obligation, such as a change in the contract interest rate, represents a departure from the original 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. For transactions subject to § 1026.19(e), 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 consummation. 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 disclosure described by § 1026.37(m)(7) is required 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)(ii). Under any other conditions, this statement is not permitted to appear in the Loan Estimate.

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 who will be obligated 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. However, the creditor is required to disclose the heading and statement required by § 1026.37(m)(7) on such additional pages.

3. *Consumer's name.* The creditor may insert the consumer's name under the signature line, rather than using the designation ''Applicant'' or ''Co-Applicant'' as illustrated in form H–24 of appendix H to this part, but is not required to do so pursuant to § 1026.37(n)(1).

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 and segregated from everything else. For example, creditors may not add additional pages in between the pages of the Loan Estimate, or attach to the Loan Estimate additional pages that are not provided for under § 1026.37 after the last page of the Loan Estimate. 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 of appendix H to this part. Accordingly, use of that form constitutes compliance with the clear and conspicuous and segregation requirements of § 1026.37(o). In addition, § 1026.37(o)(1)(ii) requires creditors to disclose on the Loan Estimate only the information required by § 1026.37(a) through (n), except as otherwise provided by § 1026.37(o), and 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. For example, creditors may not use form H–24, but include in the Loan Terms table under the subheading ''Can this amount increase after closing?'' information that is not required by § 1026.37(b)(6).

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) Headings and labels.

1. *Estimated amounts.* Section 1026.37(o)(2) incorporates the ''estimated'' designations reflected on form H–24 of appendix H to this part into the disclosure requirements of § 1026.37, even if the relevant provision of § 1026.37 does not expressly require or permit disclosure of the word ''estimate.'' Where form H–24 uses the abbreviation ''est.'' in place of the word ''estimated,'' § 1026.37(o)(2) also incorporates that designation into its requirement. 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 of 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 § 1026.37 comply with the requirement to be in a format substantially similar to form H–24 when provided on letter size (8.5″ x 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 is not permitted to be rounded and is disclosed 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 or permitted 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 use such unrounded numbers. In addition, if any such unrounded component amount is required to be disclosed under § 1026.37, consistent with § 1026.2(b)(4), it should be disclosed as an unrounded 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 also* 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 unrounded 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), periodic mortgage insurance payments of $164.50 are required to be disclosed under § 1026.37(c)(2)(ii) as $165. However, if the periodic mortgage insurance payment equaled $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 truncated at the decimal place if the loan amount is a whole number. 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 § 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 to be truncated at the decimal point, 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%.'' If any percentage amounts required to be disclosed contain more than three decimal places, they shall be rounded to three decimal places.

37(o)(5) Exceptions.

1. *Permissible changes.* The changes required or permitted by § 1026.37(o)(5) are permitted for federally related mortgage loans for which the use of form H–24 is required under § 1026.37(o)(3). For non-federally related mortgage loans, 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 are not permissible for federally related mortgage loans. Creditors in non-federally related mortgage loans making any changes that affect the substance, clarity, or meaningful sequence of the disclosure will lose their protection from civil liability under TILA section 130.

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 information and amounts required to be disclosed by § 1026.37 on form H–24 of appendix H to this part may be filled in by hand printing or using any other method,

provided the information is clear and legible and complies with the formatting required by form H–24, including replicating bold font where required.

3. *Contact information.* If a transaction involves more than one creditor or mortgage broker, the space provided on form H–24 of 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 of 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. *Unit-period.* Section 1026.37(o)(5)(i) provides that wherever form H–24 or § 1026.37 uses ''monthly'' to describe the frequency of any payments or uses ''month'' to describe the applicable unit-period, the creditor is required to 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. For purposes of § 1026.37, the term ''unit-period'' has the same meaning as in appendix J to Regulation Z.

5. *Additional page.* Information required or permitted to be disclosed by § 1026.37 on a separate page should be formatted similarly to form H–24 of appendix H to this part, so as not to 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. *Translation.* Section 1026.37(o)(5)(ii) permits the translation of form H–24 into languages other than English, consistent with § 1026.27. Pursuant to § 1026.37(o)(5)(ii) creditors may modify form H–24 to the extent that translation prevents the headings, labels, designations, and required disclosure items under § 1026.37 from fitting in the space provided on form H–24. For example, if the translation of a required label does not fit within the line provided for such label in form H–24, the label may be disclosed over two lines. See form H–28 of appendix H to this part for Spanish translations of form H–24.

Section 1026.38—Content of Disclosures for Certain Mortgage Transactions (Closing Disclosure)

1. *Disclosures not applicable.* Where a disclosure is not applicable to a particular transaction, form H–25 of appendix H to this part may not be modified to state ''not applicable'' or ''N/A.'' The portion of the form pertaining to the inapplicable disclosure may be left blank unless otherwise provided by § 1026.38. For example, the disclosure required by § 1026.38(r) of the consumer's or seller's real estate broker may be left blank for a transaction that does not involve real estate brokers, such as a refinance or home equity loan. As provided in § 1026.38(m) and (n), 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 § 1026.38(t) and its commentary for guidance on the proper format to be used in making the disclosures, as well as required and permissible modifications.

3. *Good faith requirement.* The disclosures required by § 1026.38 are required to reflect the actual terms of the legal obligation between the parties, and the actual costs associated with the settlement of the transaction. Creditors and settlement agents may estimate disclosures as provided pursuant to § 1026.19(f)(1)(i) when the actual term or cost is unknown at the time the disclosures are made. *See* §§ 1026.17(c)(2) and 1026.19(f)(1)(i) and comments 17(c)(2)(i)–1 and –2, and 19(f)(1)(i)–2.

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) Settlement agent.

1. *Entity name.* Section 1026.38(a)(3)(iv) requires the name of the entity that employs the settlement agent. The name of the individual conducting the closing is not required.

38(a)(3)(v) File number.

1. *Alpha-numeric characters.* The file number required by § 1026.38(a)(3)(v) may contain any alpha-numeric characters and need not be limited to numbers.

38(a)(3)(vi) Property.

1. *Alternative property.* For guidance on disclosing the location of a property for which an address is unavailable, see the commentary to § 1026.37(a)(6). Where personal property also secures the credit transaction, a description of that property may be disclosed, at the creditor's option, pursuant to § 1026.38(a)(3)(vi). If the form does not provide enough space to disclose a description of personal property under § 1026.38(a)(3)(vi), at the creditor's option 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).

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. If the creditor has not obtained an appraisal, the creditor may disclose the estimated value of the property. Where an estimate is disclosed, rather than an appraisal, the label for the disclosure is changed to ''Estimated Prop. Value.'' 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, disclose that estimate provided that it was the estimate the creditor used to determine approval of the credit transaction.

2. *Personal property.* For guidance on how to disclose the sale price of a transaction that includes personal property under § 1026.38(a)(3)(vii), see comment 37(a)(7)–2.

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 consumer and 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 comment 37(a)(5)–1.

2. *No seller.* In transactions where there is no seller, such as in a refinancing or home equity loan, the disclosure under § 1026.38(a)(4)(ii) may be left blank. *See also* § 1026.38(t)(5)(vii)(A).

3. *Multiple creditors.* See comment 37(a)(3)–1 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(a)(5)(v) Loan identification number.

1. *Same identification number as Loan Estimate.* The loan identification number disclosed pursuant to § 1026.38(a)(5)(v) must be one that enables the creditor, consumer, and other parties to identify the transaction as the same transaction disclosed on the Loan Estimate. The loan identification number may contain any alpha-numeric characters. If a creditor uses the same loan identification number on several revised Loan Estimates to the consumer, but adds after such number a hyphen and a number to denote the number of revised Loan Estimates in sequence, the creditor must disclose the loan identification number before such hyphen on the Closing Disclosure to identify the transaction as the same for which the initial and revised Loan Estimates were provided.

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(d) Costs at closing.

38(d)(2) Alternative table for transactions without a seller.

1. *Required use.* The disclosure of the cash to close table in § 1026.38(d)(2) may only be provided by a creditor in a transaction without a seller. The use of this alternative table for transactions without a seller is required if the Loan Estimate provided to the consumer disclosed the optional alternative table pursuant to § 1026.37(d)(2), and must be used in conjunction with the use of the alternative calculating cash to close disclosure under § 1026.38(e).

2. *Method of indication.* The indication of whether the cash is either due from or payable to the consumer is made by the use of check boxes as shown in form H–25(J) of appendix H to this part. Forms H–25(E) and H–25(G) of appendix H to this part contain examples of the use of these checkboxes.

38(e) Alternative calculating cash to close table for transactions without a seller.

1. *Required use.* The disclosure of the table in § 1026.38(e) may only be provided by a creditor in a transaction without a seller. The use of this alternative calculating cash to close table for transactions without a seller is required for transactions in which the Loan Estimate provided to the consumer disclosed the optional alternative table pursuant to § 1026.37(h)(2), and must be used in conjunction with the alternative disclosure under § 1026.38(d)(2).

2. *More prominent disclosures.* Section 1026.38(e)(1)(iii), (2)(iii), (3)(iii), and (4)(iii) requires that statements are given as to whether the ''Final'' amount disclosed under each subparagraph (ii) of § 1026.38(e)(1) through (e)(4) is different than or equal to, and in some cases whether the amount is greater than or less than, the corresponding ''Loan Estimate'' amount disclosed under each subparagraph (i) of § 1026.38(e)(1) through (e)(4). These statements are more prominent than the other disclosures under § 1026.38(e). The statement of whether the estimated and final amounts are different, stated as a ''Yes'' or ''No'' in capital letters and in boldface, under the subheading ''Did this change?,'' as shown on forms H–25(E) and H–25(G) of 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(e)(2)(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 forms H–25(E) and H–25(G) of appendix H to this part. See comment 38(e)–4 for further guidance regarding the prominence of such statements.

3. *Statements of differences.* The dollar amounts disclosed under § 1026.38 generally are shown to two decimal places unless otherwise required. *See* comment 38(t)(4)–1. As a result, any ''Final'' amount that is disclosed in the alternative ''Calculating Cash to Close'' table under § 1026.38(e) is shown to two decimal places unless otherwise required. Pursuant to § 1026.38(t)(4)(i)(C), however, any ''Loan Estimate'' amount that is disclosed in the alternative ''Calculating Cash to Close'' table under § 1026.38(e) 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(e)(1)(iii), (2)(iii), (3)(iii), and (4)(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 ''Loan Estimate'' amount of ''Total Closing Costs'' disclosed under § 1026.38(e)(2)(i) is $12,500, and the ''Final'' amount of ''Total Closing Costs'' disclosed under § 1026.38(e)(2)(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(e)(2)(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.

4. *Statements that the consumer should see details.* The provisions of § 1026.38(e)(2)(iii)(A) and (e)(4)(iii)(A) each require a statement that the consumer should see certain details of the closing costs disclosed under § 1026.38(f), (g), or (t). Forms H–25(E) and H–25(G) of appendix H to this part contain examples of these statements. For example, § 1026.38(e)(4)(iii)(A) requires a statement that the consumer should see the details disclosed pursuant to § 1026.38(t)(5)(vii)(B), and, as shown on forms H–25(E) and H–25(G) of appendix H to this part, the statement, ''See Payoffs and Payments,'' in which the words ''Payoffs and Payments'' are in boldface, complies with this provision.

5. *Statement of increase or decrease.* Section 1026.38(e)(1)(iii)(A) requires a statement of whether the loan amount increased or decreased. A creditor

complies with this requirement by disclosing, ''This amount increased'' or ''This amount decreased'' with the words ''increase'' and ''decrease'' in boldface font.

38(e)(1) Loan amount.

Paragraph 38(e)(1)(iii)(A).

1. *Statements of increases or decreases.* Section 1026.38(e)(1)(iii)(A) requires a statement of whether the amount increased or decreased from the estimated amount. For § 1026.38(e)(1)(iii)(A), the statement, ''You increased this amount,'' in which the word ''increased'' is in boldface font and is replaced with the word ''decreased'' as applicable, complies with this provision.

38(e)(2) Total closing costs.

Paragraph 38(e)(2)(i).

1. *Reference to disclosure of total closing costs.* Under § 1026.38(e)(2)(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 of appendix H to this part.

Paragraph 38(e)(2)(iii)(A).

1. *Statements and references regarding the total loan costs and total other costs.* Under § 1026.38(e)(2)(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) are 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(e)(2)(i)–1. For an example of such reference, see form H–25 of 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.,* recording 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(e)(2)(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(e)(2)(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. For an example, see form H–25 of appendix H to this part.

iii. Under § 1026.38(e)(2)(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(e)(3) Closing costs paid before closing.

Paragraph 38(e)(3)(i).

1. *Estimate of closing costs paid before closing.* Under § 1026.38(e)(3)(i), the ''Loan 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(e)(3)(iii)(B).

1. *Equal amount.* Under § 1026.38(e)(3)(iii)(B), the creditor or settlement agent gives a statement that the ''Final'' amount disclosed under § 1026.38(e)(3)(ii) is equal to the ''Loan Estimate'' amount disclosed under § 1026.38(e)(3)(i), only if the ''Final'' amount is $0, because the ''Loan Estimate'' amount is always disclosed as $0 pursuant to § 1026.38(e)(3)(i). *See* comment 38(e)(3)(i)–1.

38(f) Closing cost details; loan costs.

1. *Lender-paid charges and specific lender credits.* Charges that are designated as paid by others under § 1026.38(f) and (g), below, may include the letter ''L'' in parentheses, *i.e.* ''(L),'' to the left of the amount in the column to designate those charges paid by the creditor pursuant to the legal obligation between the creditor and consumer.

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.

2. *Loan originator compensation.* All compensation paid to a loan originator, as defined by § 1026.36(a)(1), that is a third-party 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 third-party loan originator is designated as borrower-paid at or before closing, as applicable, on the Closing Disclosure. Compensation from the creditor to a third-party loan originator is designated as paid by others on the Closing Disclosure. Compensation to a third-party 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 third-party loan originator under § 1026.38(f)(1) is the dollar value of salaries, commissions, and any financial or similar compensation provided to a third-party loan originator by the creditor that are considered to be points and fees under § 1026.32(b)(1)(ii). For additional guidance and examples on the calculation of compensation paid to the third-party loan originator from the creditor, see comments 32(b)(1)(ii)–1, —2, –3, and –4.

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.

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 § 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.

2. *Transfer taxes—itemization.* The creditor may itemize the transfer taxes paid on as many lines as necessary pursuant to § 1026.38(g)(1) in order to disclose all of the transfer taxes paid as part of the transaction. The taxes should be allocated in the applicable columns as borrower-paid at or before closing, seller-paid at or before closing, or paid by others, as provided by State or local law, the terms of the legal obligation, or the real estate purchase contract.

38(g)(2) Prepaids.

1. *Guidance.* For additional guidance on prepaids, see comments 37(g)(2)–1 and –2.

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).

4. *Interest rate for prepaid interest.* The interest rate disclosed pursuant to § 1026.38(g)(2) is the interest rate disclosed under § 1026.38(b), as required by § 1026.37(b)(2).

5. *Property taxes.* For a description of items that constitute property taxes, see comment 43(b)(8)–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. The aggregate adjustment, as illustrated by form H–25 of appendix H to this part, is disclosed as the last listed item in the amounts disclosed under § 1026.38(g)(3).

3. *Escrowed tax payments for different timeframes.* Payments for property taxes that are paid at different time periods can be itemized separately when done in accordance with 12 CFR 1024.17. For example, a general property tax covering a fiscal year from January 1 to December 31 can be listed as a property tax under § 1026.38(g)(3) and a separate property tax to fund schools that cover a fiscal year from November 1 to October 31 can be added as a separate itemized amount under § 1026.38(g)(3).

4. *Property taxes.* For a description of items that constitute property taxes, see comment 43(b)(8)–2.

5. *Definition of escrow account.* For a description of the amounts included in the initial escrow account disclosure under § 1026.38(g)(3), see the definition of ''escrow account'' in 12 CFR 1024.17(b).

38(g)(4) Other.

1. *Costs disclosed.* The costs disclosed under § 1026.38(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 not 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 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 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 § 1026.38(g)(4)(ii), see comment 37(g)(4)–3.

4. *Real estate commissions.* The amount of real estate commissions pursuant to § 1026.38(g)(4) must be the total amount paid to any real estate brokerage as a commission, regardless of the identity of the party holding any earnest money deposit. Additional charges made by real estate brokerages or agents to the seller or consumer are itemized separately as additional items for services rendered, with a description of the service and an identification of

the person ultimately receiving the payment.

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 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 the creditor for closing costs, the amount of the credit must be disclosed under § 1026.38(h)(3). 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 general lender credits and lender credits for specific charges, see comment 19(e)(3)(i)–5.

2. *Credits for excess charges.* Credits from the creditor to offset an amount charged in excess of the limitations described in § 1026.19(e)(3) 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 to the consumer is discovered after consummation and a refund provided, the corrected disclosure must be provided to the consumer under § 1026.19(f)(2)(v). For an example, see form H–25(F) of appendix H to this part.

Paragraph 38(h)(4).

1. *Consistent terminology and order of charges.* On the Closing Disclosure the creditor must label the corresponding services and costs disclosed under § 1026.38(f) and (g) using terminology that describes each item, as applicable, and must use terminology or the prescribed label, as applicable, that is consistent with that used on the Loan Estimate to identify each corresponding item. In addition, § 1026.38(h)(4) requires the creditor to list the items disclosed under each subcategory of charges in a consistent order. If costs move between subheadings under § 1026.38(f)(2) and (f)(3), listing the costs in alphabetical order in each subheading category is considered to be in compliance with § 1026.38(h)(4). See comment 37(f)(5)–1 for guidance regarding the requirement to use terminology that describes the items to be disclosed.

38(i) Calculating cash to close.

1. *More prominent disclosures.* Section 1026.38(i)(1)(iii), (2)(iii), (3)(iii), (4)(iii), (5)(iii), (6)(iii), (7)(iii), and (8)(iii) requires 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 ''Loan 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 in boldface font, under the subheading ''Did this change?,'' as shown on form H–25 of 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'' and ''Total Other Costs'' being shown in boldface, as shown on form H–25 of 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 required. *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 required. Pursuant to § 1026.38(t)(4)(i)(C), however, any ''Loan Estimate'' amount that is disclosed in the ''Calculating Cash to Close'' table under § 1026.38(i) is shown rounded 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 rounded 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 ''Loan Estimate'' amount shown rounded 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), (2)(iii), (3)(iii), (4)(iii), (5)(iii), (6)(iii), (7)(iii), and (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 ''Loan 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 of 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(B) of appendix H to this part, the statement, ''See Seller Credits in Section L,'' in which the words ''Section L'' are in boldface font, 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 statement which is similar to that shown on form H–25(B) of appendix H to this part for § 1026.38(i)(7)(iii)(A), ''See Deposit in Section L,'' in which

the words ''Section L'' are in boldface font, complies with this provision. In addition, for example, the statement ''See details in Sections K and L,'' in which the words ''Sections K and L'' are in boldface font, complies with the requirement under § 1026.38(i)(8)(iii)(A). See form H–25(B) of appendix H to this part for an example of the statement required by § 1026.38(i)(8)(iii)(A).

4. *Statements of increases or decreases.* 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. For the statement required by § 1026.38(i)(6)(iii)(A), the statement ''This amount increased,'' in which the word ''increased'' is in boldface and is replaced with the word ''decreased'' as applicable, complies with this requirement. For the statements required by § 1026.38(i)(4)(iii)(A) and (i)(5)(iii)(A), the statement, ''You increased this payment,'' in which the word ''increased'' is in boldface and is replaced with the word ''decreased'' as applicable, complies with these requirements.

38(i)(1) Total closing costs.

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. For an example of such reference, see form H–25 of 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.,* recording 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).

3. *Statements regarding excess amount and any credit to the consumer.* Section 1026.38(i)(1)(iii)(A)(*3*) requires statements that an increase in closing costs exceeds legal limits by the dollar amount of the excess and a statement directing the consumer to the disclosure of lender credits under § 1026.38(h)(3) if a credit is provided under § 1026.19(f)(2)(v). See form H–25(F) of appendix H to this part for examples of such statements.

38(i)(2) Closing costs paid before closing.

Paragraph 38(i)(2)(i).

1. *Estimate of closing costs paid before closing.* Under § 1026.38(i)(2)(i), the ''Loan Estimate'' amount for ''Closing Costs 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 ''Loan Estimate'' amount disclosed under § 1026.38(i)(2)(i), only if the ''Final'' amount is $0, because the ''Loan Estimate'' amount is always disclosed as $0 pursuant to § 1026.38(i)(2)(i). *See* comment 38(i)(2)(i)–1.

38(i)(4) Down payment/funds from borrower.

Paragraph 38(i)(4)(ii)(A).

1. *Down payment.* 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 ''Down Payment/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 ''Down Payment/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 ''Loan 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 ''Down Payment/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 ''Down Payment/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 ''Down Payment'' amount to increase, the statement, ''You increased this payment. See details in Section K,'' with the words ''increased'' and ''Section K'' in boldface, 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 in boldface.

38(i)(5) Deposit.

1. *When no deposit in a purchase transaction.* Section 1026.38(i)(5) requires the disclosure in the Calculating Cash to Close table of the deposit required to be disclosed under § 1026.37(h)(1)(iv) and under § 1026.38(j)(2)(ii), and the subheadings ''Loan Estimate'' and ''Final,'' respectively. Under § 1026.37(h)(1)(iv), in all transactions other than a purchase transaction as defined in § 1026.37(a)(9)(i), the amount required to be disclosed is $0. In a purchase transaction in which no such deposit is paid in connection with the transaction, under §§ 1026.37(h)(1)(iv) and 1026.38(i)(5)(i) and (ii) the amount required to be disclosed is $0.

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) and 1026.38(j)(2)(vi) and (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 of 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 that reflects the seller's costs and credits only, which is provided to the seller. *See* § 1026.38(t)(5)(v) and (vi). Some State laws may prohibit provision of information about the consumer to the seller and about the seller to the consumer.

2. *Addenda.* 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 under § 1026.38(j) and (k), 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)(ix). A reference such as ''See attached page for additional information'' should be placed in the applicable section of the Closing Disclosure.

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 (k)(1)(ii); § 1026.38(j)(1)(iii) and (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 (k)(1)(iv); § 1026.38(j)(1)(vii) and (k)(1)(vi); § 1026.38(j)(1)(viii) and (k)(1)(vii); § 1026.38(j)(1)(ix) and (k)(1)(viii); § 1026.38(j)(1)(x) and (k)(1)(ix); § 1026.38(j)(2)(iv) and (k)(2)(iv); § 1026.38(j)(2)(v) and (k)(2)(vii); § 1026.38(j)(2)(viii) and (k)(2)(x); § 1026.38(j)(2)(ix) and (k)(2)(xi); § 1026.38(j)(2)(x) and (k)(2)(xii); and § 1026.38(j)(2)(xi) and (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; and

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 the 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 the 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 the 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). If there is no deposit paid in a transaction, that amount is left blank on the Closing Disclosure.

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 a new 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 loans 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). When more than one loan is being assumed, the total amount of all outstanding loans being assumed should 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 must be 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(C) of 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. For an example, see form H–25(D) of appendix H to this part.

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 amount 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 closing, or cash payable to the consumer at closing.

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(D) of 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 sums.* 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 addenda for items disclosed on the Closing Disclosure under § 1026.38(k), see comment 38(j)–2.

3. *Identical amounts.* The amounts disclosed under certain provisions of § 1026.38(k) are the same as the amounts disclosed under certain provisions of § 1026.38(j). *See* comment 38(j)–3 for a listing of the specific provisions.

38(k)(2) Itemization of amounts due from seller.

Paragraph 38(k)(2)(ii).

1. *Distributions of deposit to seller prior to closing.* If the deposit or any portion thereof has been disbursed to the seller prior to closing, the amount of the deposit that has 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 liens are to be deducted from the sales price, the amounts of the outstanding balance of the liens 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 a 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.

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)(i)–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 fees, as required under § 1026.38(l)(3).

38(l)(6) Security interest.

1. *Alternate property address.* Section 1026.38(l)(6) requires disclosure of the address for the property that secures the credit, including the zip code. If the address is unavailable, § 1026.38(l)(6) requires disclosure of other location information for the property, such as a lot number; however, disclosure of a zip code is required in all instances. For transactions secured by a consumer's interest in a timeshare plan, the creditor may disclose as other location information a lot, square, or other such number or other legal description of the property assigned by the local governing authority, or if no such number or description is available, disclose the name of the timeshare property or properties with a designation indicating that the property is an interest in a timeshare plan.

2. *Personal property.* Where personal property also secures the credit transaction, a description of that property may be disclosed, at the creditor's option, pursuant to § 1026.38(l)(6). If the form does not provide enough space to disclose a description of personal property to be disclosed under § 1026.38(l)(6), 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). The creditor may use one addendum to disclose the personal property under § 1026.38(a)(3)(vi) and (l)(6). *See* comment 38(a)(3)(vi)–1.

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 required 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 required by § 1026.19(f). *See* comments 19(f)(1)(i)–1 and –2.

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 required 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(l)(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.* 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 left blank on form H–25 of appendix H to this part.

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. If the applicable State law affords any type of protection, other than a statute of limitations that only limits the timeframe in which a creditor may seek redress, § 1026.38(p)(3) 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 of appendix H to this part, the standard form or model form, as applicable, pursuant to § 1026.38(t). If the creditor deviates from the depiction of the question mark as shown on form H–25, the creditor 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 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 of 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 settlement agent). Columns are left blank 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 left blank. Conversely, in the event the transaction involves more than one of each such person (*e.g.,* two sellers' real estate brokers splitting a commission), the space in the contact information table provided on form H–25 of appendix H to this part may be altered to accommodate the information for such persons, provided that the information required by § 1026.38(o),(p),(q),(r) and (s) is disclosed on the same page as illustrated by form H–25. If the space provided on form H–25 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. A creditor or settlement 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 sufficiently distinct 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 settlement 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, both the NMLSR ID and the separate license number or unique identifier may be disclosed. The space in the table is left blank for the disclosures in the columns corresponding to persons that have no NMLSR ID to be disclosed under § 1026.38(r)(3) and (5); provided that, the creditor may omit the column from the table or, if necessary, replace the column with the contact information for an additional person. *See* 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 who does not

have a NMLSR ID 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 under § 1026.38(r)(3) and (5). The space in the table is left blank for the disclosures in the columns corresponding to persons who are not subject to the issuance of such a license number or unique identifier to be disclosed under § 1026.38(r)(3) and (5); provided that, the creditor or settlement agent may omit the column from the table or, if necessary, replace the column with the contact information for an additional person. *See* comment 38(r)–1. In addition, under § 1026.38(r)(3) and (5), the abbreviation of the State or the jurisdiction or regulatory body that issued such license or registration is required to be included before the word ''License'' in the label required by § 1026.37(r)(3) and (5). If no such license or registration is required to be disclosed, such as if an NMLSR number is disclosed, the space provided for such an abbreviation in form H–25 of appendix H to this part may be left blank. A creditor complies with the requirements of § 1026.38(r)(3) and (5) to disclose the abbreviation of the State by disclosing a U.S. Postal Service State abbreviation, if applicable.

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. 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 sales 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 settlement agent disclosed under § 1026.38(r)(1) has a State-issued settlement agent license number, but the consumer meets with the attorney's assistant 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) because the assistant is only performing clerical functions.

7. *Email address and phone number.* Section 1026.38(r)(6) and (7) requires disclosure of the email address and phone number, respectively, for the persons listed in § 1026.37(r)(4). Disclosure of a general number or email address for the lender, mortgage broker, real estate broker, or settlement agent, as applicable, satisfies this requirement if no such information is generally available for such person.

38(s) Signature statement.

1. *General requirements.* See the commentary to § 1026.37(n) for guidance regarding the 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 and segregated from everything else. As required by § 1026.38(t)(3), 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 of appendix H to this part. Accordingly, use of that form constitutes compliance with the clear and conspicuous and segregation requirements of § 1026.38(t)(1).

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)(1)(ii), 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) Headings and labels.

1. *Estimated amounts.* Certain amounts are estimated when provided on the disclosure required by § 1026.37. When disclosed as required by § 1026.38, however, many of the corresponding disclosures must be actual amounts rather than estimates in accordance with the requirements of § 1026.19(f), even though the 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 of 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 of 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 form 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 § 1026.38 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 and not required to be rounded by § 1026.38(t)(4) must be disclosed as an exact numerical amount using decimal places where applicable, unless otherwise provided. For example, under § 1026.38(t)(4), the principal and interest payment disclosed under § 1026.37(b)(3) and § 1026.38(b) must be disclosed using decimal places even if the amount of cents is zero, in contrast to the loan amount disclosed under § 1026.37(b)(1) and § 1026.38(b).

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) are permitted for federally related mortgage loans for which the use of form H–25 is required under § 1026.38(t)(3). For non-federally related mortgage loans, the changes required or 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 are not permissible for federally related mortgage loans. Creditors in non-federally related mortgage loans making any changes that affect the substance, clarity, or meaningful sequence of the disclosure will lose their protection from civil liability under TILA section 130.

2. *Manual completion.* The creditor, or settlement agent preparing the form, under § 1026.19(f)(1)(v) is not required to use a computer, typewriter, or other word processor to complete the disclosure required by § 1026.38. The creditor or settlement agent may fill in information and amounts required to be disclosed by § 1026.38 on form H–25 of 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 § 1026.38, including replicating bold font where required.

3. *Unit-period.* Section 1026.38(t)(5)(i) provides that wherever form H–25 or § 1026.38 uses ''monthly'' to describe the frequency of any payments or uses ''month'' to describe the applicable unit-period, the creditor is required to 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. For purposes of § 1026.38, the term ''unit-period'' has the same meaning as in appendix J to Regulation Z.

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 of 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 on a separate page should be formatted similarly to form H–25 of appendix H to this part, so as not to 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 so as not to 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 of appendix H, may be altered to refer to the appropriate page number of the form containing such information.

7. *Translation.* Section 1026.38(t)(5)(viii) permits the translation of form H–25 into languages other than English, similar to § 1026.37(o)(5)(ii). Pursuant § 1026.38(t)(5)(viii) creditors may modify form H–25 to the extent that translation prevents the headings, labels, designations, and required disclosure items under § 1026.38 from fitting in the space provided on form H–25. For example, if the translation of a required label does not fit within the line provided for such label in form H–25, the label may be disclosed over two lines. See form H–28 of appendix H to this part for Spanish translations of form H–25.

38(t)(5)(iv) Closing Cost Details.

1. *Line numbers; closing cost details.* Section 1026.38(t)(5)(iv)(A) permits the deletion of unused lines from the disclosures required by § 1026.38(f)(1) through (3) and (g)(1) through (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 of 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.

2. *Two pages; closing cost details.* Section 1026.38(t)(5)(iv)(B) permits the disclosure of the information required by § 1026.38(f) through (h) over two pages, but only if form H–25 of appendix H to this part, as modified pursuant to § 1026.38(t)(5)(iv)(A), 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) through (h) to fit on one page, modification pursuant to § 1026.38(t)(5)(iv)(B) is not permissible.

3. *Separate pages for Loan Costs and Other Costs.* The modification permitted by § 1026.38(t)(5)(iv)(B) allows the information required by § 1026.38(f) through (h) to be disclosed over two pages, numbered as ''2a'' and ''2b.'' For an example of such a modification, see form H–25(H) of appendix H to this part. 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 section of form H–25 may appear on its own page ''2a,'' but the Other Costs section must appear on the same page as the Total Closing Costs section on page ''2b.'' The modifications permitted by § 1026.38(t)(5)(iv)(A) and (B) may be used in conjunction to ensure disclosure of § 1026.38(f) on one page and § 1026.38(g) and (h) on a separate page.

38(t)(5)(vii) Transaction without a seller.

1. *Alternative tables.* The alternative tables pursuant to § 1026.38(d)(2) and (e) are required to be disclosed to use the modification permitted under § 1026.38(t)(5)(vii).

2. *Appraised property value.* The modifications permitted by § 1026.38(t)(5)(vii) 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'' or ''Estimated Prop. Value'' where there is no appraisal, and the information is required by § 1026.38(a)(3)(vii)(B).

38(t)(5)(ix) Customary recitals and information.

1. *Customary recitals and information.* Section 1026.38(t)(5)(ix) 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 a 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 periodic payments from the consumer that are less than the full amount due and whether the covered person applies the payments to a consumer's loan or holds the payments in a separate account until the consumer pays the remainder of the full amount due. The disclosures required by § 1026.39(d)(5) apply only to a mortgage loan that is a closed-end consumer credit transaction secured by a dwelling or real property and that is not a reverse mortgage transaction subject to § 1026.33. In an open-end consumer credit transaction secured by the consumer's principal dwelling, § 1026.39(d) requires a covered person to provide the disclosures required by § 1026.39(d)(1) through (4), but not the partial payment policy disclosure required by § 1026.39(d)(5). If, however, the dwelling in the open-end consumer credit transaction is not the consumer's principal dwelling (*e.g.,* it is used solely for vacation purposes), none of the disclosures required by § 1026.39(d) is required because the transaction is not a mortgage loan for purposes of § 1026.39. *See* § 1026.39(a)(2). In contrast, a closed-end consumer credit transaction secured by the consumer's dwelling that is not the consumer's principal dwelling is considered a mortgage loan for purposes of § 1026.39. Assuming that the transaction is not a reverse mortgage transaction subject to § 1026.33, § 1026.39(d) requires a covered person to provide the disclosures under § 1026.39(d)(1) through (5). But if the transaction is a reverse mortgage transaction subject to § 1026.33, § 1026.39(d) requires a covered person to provide only the disclosures under § 1026.39(d)(1) through (4).

* * * * *

39(d)(5) Partial payment policy.

1. *Format of disclosure.* Section 1026.39(d)(5) requires disclosure of the partial payment policy of covered persons for closed-end consumer credit transactions secured by a dwelling or real property, other than a reverse mortgage transaction subject to § 1026.33. A covered person may utilize the format of the disclosure illustrated by form H–25 of 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 payment 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 may'' or ''Your lender does not,'' 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

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6. *Relation to § 1026.18(s).* A creditor must disclose an interest rate and payment summary table for certain transactions secured by a dwelling, pursuant to § 1026.18(s), instead of the general payment schedule required by § 1026.18(g) or the projected payments table required by §§ 1026.37(c) and 1026.38(c). Accordingly, some home construction loans that are secured by 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) or the interest rate and payments summary table required by § 1026.18(s). 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.

* * * * *

Appendices G and H—Open-End and Closed-End Model Forms and Clauses

1. *Permissible changes.* Although use of the model forms and clauses is not required, creditors using them properly will be deemed to be in compliance with the regulation with regard to those disclosures. Creditors may make certain changes in the format or content of the forms and clauses and may delete any disclosures that are inapplicable to a transaction or a plan without losing the Act's protection from liability, except formatting changes may not be made to model forms and samples in H–18, H–19, H–20, H–21, H–22, H–23, H–24, H–25, H–26, H–27, H–28, G–2(A), G–3(A), G–4(A), G–10(A)–(E), G–17(A)–(D), G–18(A) (except as permitted pursuant to § 1026.7(b)(2)), G–18(B)–(C), G–19, G–20, and G–21, or to the model clauses in H–4(E), H–4(F), H–4(G), and H–4(H). Creditors may modify the heading of the second column shown in Model Clause H–4(H) to read ''first adjustment'' or ''first increase,'' as applicable, pursuant to § 1026.18(s)(2)(i)(C). The rearrangement of the model forms and clauses may not be so extensive as to affect the substance, clarity, or meaningful sequence of the forms and clauses. Creditors making revisions with that effect will lose their protection from civil liability. Except as otherwise specifically required, acceptable changes include, for example:

i. Using the first person, instead of the second person, in referring to the borrower.

ii. Using ''borrower'' and ''creditor'' instead of pronouns.

iii. Rearranging the sequences of the disclosures.

iv. Not using bold type for headings.

v. Incorporating certain State ''plain English'' requirements.

vi. Deleting inapplicable disclosures by whiting out, blocking out, filling in ''N/A'' (not applicable) or ''0,'' crossing out, leaving blanks, checking a box for applicable items, or circling applicable items. (This should permit use of multipurpose standard forms.)

vii. Using a vertical, rather than a horizontal, format for the boxes in the closed-end disclosures.

* * * * *

Appendix H—Closed-End Forms and Clauses

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16. *Samples H–13 through H–15.* These samples illustrate various closed-end transactions. Samples H–13 and H–15 are for transactions subject to § 1026.17(a). 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 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 guarantee insurance premium of $225.00, are included in the prepaid finance charge. The 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 guarantee insurance portion of the obligation.

* * * * *

29. *Model Form H–29.* Model form H–29 contains the disclosures for the cancellation of an escrow account established in connection with a closed-end transaction secured by a first lien on real property or a dwelling.

i. This model form illustrates the disclosures required by § 1026.20(e).

ii. A creditor or servicer satisfies § 1026.20(e) if it provides model form H–29 or a substantially similar notice, which is properly completed with the disclosures required by § 1026.20(e).

iii. Although creditors and servicers are not required to use a certain paper size in disclosing the information under § 1026.20(e), model form H–29 is designed to be printed on an 8½ × 1-inch sheet of paper. In addition, the following formatting techniques were used in presenting the information in the model form to ensure that the information is readable:

A. A readable font style and font size (10-point minimum font size);

B. Sufficient spacing between lines of the text;

C. Standard spacing between words and characters. In other words, the text was not compressed to appear smaller than 10-point type;

D. Sufficient white space around the text of the information in each row, by providing sufficient margins above, below and to the sides of the text;

E. Sufficient contrast between the text and the background. Generally, black text was used on white paper.

iv. While the regulation does not require creditors or servicers to use the above formatting techniques in presenting information in the tabular format (except for the 10-point minimum font size requirement), creditors and servicers are encouraged to consider these techniques when deciding how to disclose information in the notice to ensure that the information is presented in a readable format.

v. Creditors and servicers may use color, shading and similar graphic techniques with respect to the notice, so long as the notice remains substantially similar to model form H–29.

30. *Standard Loan Estimate and Closing Disclosure forms.* Forms H–24(A) through (G), H–25(A) through (J), and H–28(A) through (J) are model forms for the disclosures required under §§ 1026.37 and 1026.38. However, pursuant to §§ 1026.37(o)(3) and 1026.38(t)(3), for federally related mortgage loans forms H–24(A) through (G) and H–25(A) through (J) are standard forms required to be used for the disclosures required under §§ 1026.37 and 1026.38, respectively.

Dated: November 20, 2013.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2013–28210 Filed 12–30–13; 8:45 am]

BILLING CODE 4810–AM–P

FEDERAL REGISTER

Vol. 78 Tuesday,

No. 251 December 31, 2013

Part III

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1

Federal Acquisition Regulation; Federal Acquisition Circular 2005–72; Introduction; Service Contracts Reporting Requirements; Prioritizing Sources of Supplies and Services for Use by the Government; Terms of Service and Open-Ended Indemnification and Unenforceability of Unauthorized Obligations; Trade Agreements Thresholds; Federal Acquisition Circular 2005–72; Small Entity Compliance Guide; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR 2013–0076, Sequence No. 8]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–72; Introduction

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2005–72. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.regulations.gov.*

DATES: For effective dates and comment dates see separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to the FAR case. Please cite FAC 2005–72 and the specific FAR case numbers. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755.

RULES LISTED IN FAC 2005–72

Item	Subject	FAR Case	Analyst
I	Service Contracts Reporting Requirements	2010–010	Loeb.
II	Prioritizing Sources of Supplies and Services for Use by Government	2009–024	Morgan.
III	Terms of Service and Open-Ended Indemnification, and Unenforceability of Unauthorized Obligations.	2013–005	Petrusek.
IV	Trade Agreements Thresholds	2013–021	Davis.

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2005–72 amends the FAR as specified below:

Item I—Service Contracts Reporting Requirements (FAR Case 2010–010)

This final rule amends the FAR to implement section 743 of Division C of the Consolidated Appropriations Act, 2010. Section 743 calls for certain agencies, not including the Department of Defense, to submit annual inventories of service contracts. FAR subpart 4.17, Service Contracts Inventory, provides annual reporting requirements for agencies and contractors. Guidance for agencies is available at: *http://www.whitehouse.gov/omb/procurement-service-contract-inventories.* FAR clauses 52.204–14 and 52.204–15 provide contractors' annual reporting requirements. Prime and first-tier contractors will submit the information by October 31 at *www.sam.gov,* including total dollar amount invoiced for services performed in the prior Government fiscal year and total amount of labor hours for the previous Government fiscal year.

To lessen the burden on small and large business prime contractors, information is reported annually, reporting is phased in over three fiscal years, and only first-tier subcontracts are covered, not all tiers.

Contracting officers will verify that the clause is included in the contract or order. Agencies are responsible for reviewing contractor reported information to ensure it appears reasonable and consistent with available contract information. The agency is not required to address data for which the agency would not normally have supporting information. In the event the agency believes that revisions to the contractor reported information are warranted, the contractor is to be notified no later than November 15. By November 30, the contractor shall revise the report, or document its rationale for the agency for maintaining the information without change.

Item II—Prioritizing Sources of Supplies and Services for Use by Government (FAR Case 2009–024)

This final rule amends the FAR to update and clarify the priority of sources of supplies and services for use by the Government at FAR subpart 8.0. The final rule also includes a list of other existing Federal contract vehicles to consider for agency use, such as Governmentwide Acquisition Contracts (GWACs), Multi-Agency Contracts (MACs), and other procurement instruments intended for use by multiple agencies, including blanket purchase agreements under Federal Supply Service contracts. The policy at FAR 7.102(a) is also revised to conform with the amendments to FAR subpart 8.0.

Item III—Terms of Service and Open-Ended Indemnification, and Unenforceability of Unauthorized Obligations (FAR Case 2013–005)

This final rule adopts, without change, an interim rule which was published in the **Federal Register** at 78 FR 37686 on June 21, 2013. The interim rule amended the FAR to address concerns raised in an opinion from the U.S. Department of Justice Office of Legal Counsel that determined the Anti-Deficiency Act is violated when a Government contracting officer or other employee with the authority to bind the Government agrees, without statutory authorization or other exception, to an open-ended, unrestricted indemnification clause. This rule clarified for the public that an End User License Agreement, Term of Service, or similar agreement containing an indemnification provision, is unenforceable and nonbinding against the Government and Government-authorized end-users. The rule contained a new clause that applies to all solicitations and contracts and automatically applies to micro-purchases, including those made with the Governmentwide commercial purchase card.

Item IV—Trade Agreements Thresholds (FAR Case 2013–021)

This final rule amends the FAR to adjust the thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements as determined by the United States Trade Representative, according to a pre-determined formula under the agreements.

Dated: December 19, 2013.

William Clark,

Acting Director, Office of Government-Wide Acquisition Policy, Office of Acquisition Policy, Office of Government-Wide Policy.

Federal Acquisition Circular (FAC) 2005–72 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005–72 is effective December 31, 2013 except for items I and II, which are effective January 30, 2014.

Dated: December 20, 2013.

Richard Ginman,

Director, Defense Procurement and Acquisition Policy.

Dated: December 20, 2013.

Houston Taylor,

Acting Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.

Dated: December 18, 2013.

William P. McNally,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 2013–31147 Filed 12–30–13; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 4, 8, 17, 37, and 52

[FAC 2005–72; FAR Case 2010–010; Item I; Docket 2010–0010, Sequence 1]

RIN 9000–AM06

Federal Acquisition Regulation; Service Contracts Reporting Requirements

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement a section of the Consolidated Appropriations Act, 2010. This final rule amends the FAR to require service contractors for executive agencies, except where DoD has fully funded the contract or order, to submit information annually in support of agency-level inventories for service contracts.

DATES: *Effective:* January 30, 2014.

Applicability: The changes in this rule apply to solicitations issued and contracts awarded on or after January 30, 2014. Contracting officers will modify existing indefinite-delivery contracts, on a bilateral basis in accordance with FAR 1.108(d)(3), within six months of the effective date of the final rule, if the remaining period of performance extends beyond October 1, 2013, and $2.5 million or more remains to be obligated.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Procurement Analyst, at 202–501–0650, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–72, FAR Case 2010–010.

SUPPLEMENTARY INFORMATION:

I. Background

Section 743(a) of Division C of the Consolidated Appropriations Act, 2010 (Pub. L. 111–117) requires executive agencies covered by the Federal Activities Inventory Reform (FAIR) Act (Pub. L. 105–270), except DoD, to submit to the Office of Management and Budget (OMB) annually an inventory of activities performed by service contractors. To allow review by the agency and any necessary correction by the contractor, Office of Federal Procurement Policy (OFPP) agreed to change the deadline for agencies to submit a service contract inventory to OMB from December 30 to January 15, even though section 743 of P.L. 111–117 establishes December. DoD is exempt from this reporting requirement because 10 U.S.C. 2462 and 10 U.S.C. 2330a(c) already require DoD to develop an annual service contract inventory.

Specifically, FAR 4.1703 establishes service contractor reporting requirements based on type of contract and dollar amount as stated below:

- Contract types (*e.g.,* cost-reimbursement, time-and-materials, and labor-hour contracts), which already require contractors to track labor hours closely in order to invoice the Government, will have lower dollar thresholds than fixed-price contracts. Contractors will now be required to report on all cost-reimbursement, time-and-materials, and labor-hour contracts and orders above the simplified acquisition threshold (SAT).
- Contractors will be required to report on new fixed-price definite-delivery contracts at or above the following—
  - $2.5 million in Fiscal Year 2014;
  - 1 million in Fiscal Year 2015; and
  - $500,000 from Fiscal Year 2016 onwards.
- For indefinite-delivery contracts including, but not limited to, indefinite-delivery indefinite-quantity (IDIQ) contracts, Federal Supply Schedule (FSS) contracts, Governmentwide Acquisition contracts (GWACs), and multi-agency contracts, reporting requirements will be determined based on the expected dollar amount and type of the orders issued under the contracts.
- First-tier subcontracts for services will be reported using the phase-in thresholds.
- Existing indefinite-delivery contracts will be bilaterally modified within six months of the effective date of the final rule if sufficient time and value remain on the base contract, which is defined as—

(i) A performance period that extends beyond October 1, 2013; and

(ii) $2.5 million or more remaining to be obligated to the indefinite-delivery contract.

The threshold for existing indefinite-delivery contracts is consistent with the threshold for new fixed-price contracts. Agencies placing orders on these existing contracts after the effective date of this final rule will be required to report this information if the order meets the thresholds established in FAR 4.1703 (*e.g.,* above the SAT for cost-reimbursement, time-and-materials, and labor-hour contracts, and fixed-price contracts at or above $2.5 million in Fiscal Year 2014 and phased-in thresholds thereafter).

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 76 FR 22070 on April 20, 2011, to implement section 743(a). The section of the preamble discussing coverage for existing contracts was included in the correction published in the **Federal Register** at 76 FR 24443 on May 2, 2011.

On June 20, 2011, the period for public comment ended. Twelve respondents submitted comments on the proposed rule.

II. Determinations

The Federal Acquisition Regulatory (FAR) Council has made the following

determination with respect to the rule's applicability to contracts for the acquisition of commercial items.

Applicability to Contracts for the Acquisition of Commercial Items

Pursuant to 41 U.S.C. § 1906, the FAR is required to include a list of provisions of law that are inapplicable to acquisitions of commercial items (other than acquisitions of commercially available off-the-shelf items, which are addressed in 41 U.S.C. § 1907). Recently enacted laws that set forth policies, procedures, requirements, or restrictions for the acquisition of property or services by the Federal Government shall be included on the list, unless the law—

1. Provides for criminal or civil penalties;
2. Specifically refers to 41 U.S.C. § 1906 and states that the law applies to acquisitions of commercial items; or
3. Is applicable because the FAR Council makes a written determination that it would not be in the best interest of the Federal Government to exempt acquisitions of commercial items from this law.

Given the requirements of section 743(a) of Division C of the Consolidated Appropriations Act, 2010, for service contract reporting, the FAR Council has determined the rule should apply to contracts for the acquisition of commercial items, as defined at FAR 2.101, in order to fulfill the intended result of the statutory requirement for increased visibility of contracted services to determine whether the agency has the right balance of contractor and in-house resources needed to accomplish its mission.

III. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule.

The following changes from the proposed rule were made in the final rule:

- The subpart has been renumbered from FAR 4.16 to 4.17.
- The definition of ''first-tier subcontract'' has been modified slightly to conform to the definition at FAR 52.204–10, Reporting Executive Compensation and First-Tier Subcontract Awards. In addition, the definition of ''service contract'' has been deleted because the cross reference to the definition of service contract at FAR 37.101, did not include construction services, to which this rule is applicable.
- FAR 4.1702 is modified to add ''as specified in 4.1705.'' This is done to clarify that the clauses at FAR 52.204–14 and 52.204–15 are not applicable to actions entirely funded by DoD.
- The thresholds in FAR 4.1703(a)(2)(ii) are updated to begin in Fiscal Year 2014. This change results from internal review and the anticipated publication date for the final rule. The only existing contracts that are covered by this rule are existing indefinite-delivery contracts if sufficient time and value remain on the base contract. The stipulation ''for services'' was added at FAR 4.1703(a)(1) and 4.1703(a)(3) to clarify that first-tier subcontract for services reporting is only required for subcontractors that are primarily providing services.
- FAR 4.1703(a)(3) was changed from the proposed rule to clarify that first-tier subcontract reporting thresholds are the same as the prime contract reporting thresholds in 4.1703(a)(2)(i) and 4.1703(a)(2)(ii).
- FAR 4.1703(b). The responsibility of the agency for reviewing the contractor reported data was changed as a result of internal review to provide for the respective agency to review the contractor's report for reasonableness and consistency and to advise the contractor of possible errors. The contractor is to revise the report, unless the contractor believes the report was accurate, and so advises the agency. These changes have been incorporated into the clauses that are included within this rule.
- FAR 4.1705 is modified to add ''for actions entirely funded by DoD or''. This is done to clarify that the clauses at FAR 52.204–14 and 52.204–15 are not applicable to DoD funded actions.
- A definition of ''first-tier subcontract'' has been added to FAR 52.204–14 and 52.204–15.
- FAR 52.204–14(c) is renumbered as (d) and revised to remove ''[to] the online Service Contract Reporting Portal and will be publicly available at *www.acquisition.gov*''; information will be found and reporting will be made at *www.sam.gov* (See section 3.10 of the SAM User Guide at *https://www.sam.gov/sam/SAM_Guide/SAM_User_Guide.htm*. The reported information will be publicly available as required by section 743.
- FAR 52.204–14(d)(1)(i) is renumbered, and revised to change ''Subcontractor DUNS number, or if DUNS number is unavailable, subcontractor name'' to ''subcontract number (including subcontractor name and DUNS number)'' because contracts at this threshold already require a DUNS number.
- The stipulation ''providing services'' was added at FAR 52.204–14(f)(1) and 52.204–15(f)(1) to clarify that first-tier subcontract reporting is only required for subcontractors that are primarily providing services.
- FAR 52.204–14, Alternate I is changed to ''52.204–15, Service Contract Reporting Requirements for Indefinite Delivery Contracts''. References in FAR subpart 4.17 were conformed. Paragraph (c) from FAR 52.204–14, now renumbered as (d), is added to the new clause at 52.204–15. FAR 52.204–14(d)(1)(i) is renumbered as (f)(1)(i), and the words ''Subcontractor DUNS number, or if DUNS number is unavailable, subcontract name'' are changed to ''subcontract number (including subcontractor name and DUNS number)'' because contracts at this threshold already require a DUNS number.
- FAR 52.212–5 is added for applicability to commercial items for contractor reporting requirements.

A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

A. Application to Fixed-Price Performance-Based Services

Comments: Three respondents commented that this requirement could cause contractors to change their internal accounting processes for firm-fixed-price contracts. Another respondent gave the example that in test scenarios, labor hours may not be easily assigned, since analysts work on batches of samples at a time, which may include samples for both Government and non-Governmental contracts. This respondent recommended clarifying whether the threshold applies to fixed unit prices on IDIQ services. Similarly, another respondent commented that the reporting does not take into account how software and maintenance fixed-price contract costs and labor can significantly fluctuate each year or how this type of labor can be comingled between government and non-government work on a contract. Lastly, another respondent stated that limiting the definition of ''service contracts'' to the FAR part 37 definition would exclude reporting and evaluation of billions of dollars of services that are included in supply, maintenance and repair, and construction contracts.

Response: Section 743(a) requires agencies to compile service contract inventories for all service contracts, regardless of contract type. Therefore, this rule requires contractors to submit the information for fixed price contracts as well as for other contract types. To alleviate the reporting burden, the case establishes higher reporting thresholds for fixed-price contracts, where the information may not be as readily available. The same thresholds apply at the contract and task order level. The

rule does not mandate how contractors track labor hours, but simply requires the reporting of aggregated number of hours for each year of contract performance. The statute specifies that reporting is required for service contracts.

Comment: One respondent stated that ''requiring the disclosure of direct labor hours expended on the services performed is extremely concerning, particularly in a Firm Fixed Price scenario. Pricing data is exceptionally sensitive information . . . and is routinely protected under Exemption 4 under FOIA''.

Response: The statute requires the agency to report the number of contractor employees expressed as full-time equivalents for direct labor, compensated under the contract. To relieve burden on the contractor, the clause requires direct labor hours to be reported rather than the full-time equivalent. The statute also requires the reporting and that the agency's service contract inventory be publicly available. The number of hours is the total for the entire fiscal year and is not broken down by type of employee.

B. Type of Information Collected

Comments: One respondent commented that this rule would not provide agency officials with enough information to determine whether services are excessively costly and should be insourced, so more information should be required from the contractor. Five other respondents stated that the rule places additional burden on contractors, especially considering information is already reported in contractor proposals or invoices. One of these respondents recommended deleting FAR 52.204–14(b)(2) from the clause because the information is already collected.

Response: This rule requires the collection of information that will supplement existing data available to the Government in order to fulfill the requirements mandated in section 743(a) of Division C of the Consolidated Appropriations Act, 2010 (Pub. L. 111–117). The statute requires reporting of incurred direct labor hours, not proposal information. While reporting of direct labor hours currently may be required for some payment processes, the information collected pursuant to this requirement is not required at the same level of detail for all contract types or submitted in the same format for all agencies. In other words, this rule requires contractors to report information that is not readily available to the Government.

C. Small Business Impact

Comments: Two respondents stated that the rule would impose additional reporting burden on small businesses, thereby increasing overhead rates and eventually passing the cost of implementation on to the Government.

Response: The rule attempts to minimize burden on small businesses by implementing contract value thresholds and phasing in the reporting requirement.

D. Increased Cost for Contractors and the Government

Comment: Two respondents questioned whether the value of this information will be worth the additional contract costs associated with collecting the information. Another respondent stated that even though DoD is exempt from section 743, it is required to compile service contract inventories, and DoD should be covered by this rule to avoid burdening contractors with separate reporting processes, definitions, and locations when they provide identical information for civilian and DoD contracts.

Response: This rule implements the requirements of section 743(a) of Division C of the Consolidated Appropriations Act, 2010, (Pub. L. 111–117), which specifically excludes DoD.

E. Subcontractor Data

Comments: Three respondents commented on subcontractor data. One respondent questioned why the data needs to be broken down to the subcontractor level, since the Government appears to be interested in the total dollars being expended for all non-Government performed work, not whether it is prime contractors or subcontractors. Another respondent stated that the exclusion of lower-tier subcontracts is an improper interpretation of the statute, which requires the reporting of all subcontractor employees, not just first-tier subcontractor employees. A third respondent recommended changing the word ''subcontract'' to ''subcontractor'' in FAR 52.204–14, Alternate I paragraph (d)(1)(i) since the work is being performed by subcontractors under the subcontract.

Response: Section 743(a) requires the reporting of both contractor and subcontractor labor hours, and the rule limits the reporting to first-tier subcontracts for services to alleviate the burden on contractors. The recommendation to change the text of the clauses to state 'subcontractor name' instead of 'subcontract name' has been incorporated into the final rule.

F. Reporting Direct Labor Hours Versus Full-Time Equivalent (FTE)

Comments: Two respondents questioned why direct labor hours are being collected instead of FTE. One of these respondents also stated that the rule should include a requirement for contractors to report the work location for each FTE. In addition, this respondent stated that the total dollar amount invoiced for services performed during the previous fiscal year may not always represent the number of direct labor hours expended on services performed during the previous fiscal years, so the Councils should consider changing the requirement to direct labor hours invoiced, instead of number of direct labor hours expended.

Response: The rule requires contractors to submit an aggregated number of hours for each year of contract performance. The Government will calculate FTEs based on the number of labor hours submitted, so contractors should not submit FTE information. The service contract inventories are utilizing the place of performance data currently available in the Federal Procurement Data System (FPDS), so this rule is not requiring contractors to submit that information. The rule will continue to capture direct labor hours expended, as required by section 743(a).

G. Reporting Time-Frame

Comments: Two respondents stated that reporting within 30-days after the end of the fiscal year is too tight a reporting timeframe.

Response: Section 743(a) requires agencies submit inventories to OMB by December 30 annually. In order for agencies to be able to compile inventories and provide for a review and possible correction, contractors need to submit this information by the end of October. The Councils have determined that this reporting timeframe is adequate, but have modified the rule to allow up to November 30th of each year for review by the agency and any necessary corrections by the contractor.

H. Reporting Thresholds

Comments: Two respondents commented on reporting thresholds. One respondent recommends implementing the same thresholds for all contract types by the end of FY 2014 and aligning the thresholds with OFPP guidance on Service Contract Inventories. Another respondent commented that unsupported reporting thresholds were included in the proposed rule, which do not exist in

section 743 and will exclude billions of dollars in service contracts annually.

Response: The rule minimizes the burden on contractors, especially for contract types that do not typically require this type of detailed reporting of labor hours, by implementing contract value thresholds and the phase-in of the reporting requirement. The thresholds for determining if a contract or order should include this clause have been revised to reflect the thresholds beginning as of FY 2014, since that is now when the reporting will begin.

I. Generic Data Universal Numbering System (DUNS)

Comment: One respondent cited to the proposed rule, which stated that contracts reported using the generic DUNS number allowed at FAR 4.605(c) will interfere with the contractor's ability to comply with this reporting requirement, because the data will not pre-populate from FPDS. The respondent recommended adding an Alternate II to FAR 52.204–14 for contractors using the generic DUNS number that identifies the additional data these contractors will have to provide manually.

Response: Contractors awarded a contract with a generic DUNS number will not be able to report information. Contracting officers should only use generic DUNS numbers under the very specific conditions in FAR 4.605(c).

J. OFPP Guidance

Comments: Two respondents raised issues that related to OFPP guidance. One respondent recommended consolidating the reporting requirements of section 743(a) and section 736 with OFPP guidance documents to simplify the reporting process for contractors and agencies. Another respondent stated that the rule does not establish whether functions performed by contractors will be determined based on Office of Personnel Management (OPM) job series codes, the GSA Product and Service Codes (PSC) Manual, or FAIR inventory function codes. The rule should adopt a services classification system that reflects the broad spectrum of occupational services recognized in the real world and that tailors that system to be compatible with the OPM classification system so that compensation standards can be compared across comparable service clusters.

Response: OFPP guidance supplements this rule, which implements section 743(a). This rule requires contractors to submit information that will supplement existing contract information, so it does not create a new classification system for services.

K. Failure To Report

Comment: One respondent recommended adding the following language to FAR 52.204–14(d)(2): ''The Contractor shall advise the subcontractor that the information reported, or the failure to report, will be made available to the public.'' The respondent also recommended adding the following to FAR 52.204–14(b)(4) (Alternate I): ''Data reported by subcontractors under paragraph (d) of this clause, and any failure of subcontractors to submit reports as required''.

Response: In the event that a contractor fails to comply with this reporting requirement, the contracting officer is required to document the failure in the contractor's performance evaluation (see FAR 4.1704 ''Contracting officer responsibilities''). This is the most appropriate enforcement tool for dealing with noncompliance.

L. Interagency Acquisitions

Comment: One respondent stated that the proposed FAR language is unclear as to whether the applicability is based on which agency is issuing the contract versus which agency is funding the action, especially if a contract is supporting multiple agencies.

Response: Applicability is based on the funding agency. FAR 4.1705 is modified to add ''for actions entirely funded by DoD or''. This is done to clarify that the clauses are not applicable to DoD-funded actions.

M. Definition of ''Classified Contracts''

Comment: One respondent questioned whether the use of the term ''classified contract'' in proposed FAR 4.1705 references the definition of the same from FAR part 2.

Response: Yes. FAR 1.108, ''FAR Conventions'' states that the definitions of words and terms used in part 2 apply throughout the FAR, unless specifically defined in another part, subpart, section, provision, or clause.

N. Effect on Competition

Comment: One respondent stated that the rule will create a significant barrier for commercial companies to participate in the Government market.

Response: While this rule might be one factor of a commercial contractor choosing not to participate in the Government market, the Councils have determined the rule's overall impact to be minimal, and do not consider that it will have a significant effect on such participation.

O. Public Burden

Comment: One respondent questioned the methodology used to calculate the hours needed to prepare responses and considered the reporting requirement estimates in the Paperwork Reduction Act submission to be grossly underestimated.

Response: Two hours is the estimated time to report per contract, one hour to calculate the data and one hour to enter the data at *www.sam.gov*. The burden estimate is based on the average burden experienced under all contract types, including cost-reimbursement, time-and-materials, and labor-hour contracts, which already require contractors to track labor hours closely in order to invoice the Government, and will therefore require less additional effort to meet this reporting requirement. This new paperwork burden is approved under OMB control number 9000–0179.

P. Existing Contracts

Comment: One respondent stated that the proposed rule contains no requirement to modify existing contracts or task orders to require reporting, meaning that more than 10 years could pass before these provisions are applicable to many contracts or task orders. The statute clearly states that the reporting requirements become effective at the exercise of an option year.

Response: The May 2, 2011, correction to the **Federal Register** at 76 FR 24443 states applicability to existing contracts in the preamble.

''Existing indefinite-delivery contracts will be bilaterally modified within six months of the effective date of the final rule if sufficient time and value remain on the base contract, which is defined as—

1. A performance period that extends beyond October 1, 2012; and

2. $5 million or more remaining to be obligated to the indefinite-delivery contract.''

This is repeated in the final rule, in the **DATES** section, updated to show the year as 2013 and the dollar threshold as $2.5 million.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the

importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This rule amends the FAR to implement section 743(a) of Division C of the Consolidated Appropriations Act, 2010 (Pub. L. 111–117). Section 743(a) requires agencies covered by the Federal Activities Inventory Reform (FAIR) Act, except for the Department of Defense (DoD), to submit annual agency inventories of their service contracts. DoD is exempt because DoD was already required to do annual service contract reporting under 10 U.S.C. 2462 and 10 U.S.C. 2330a(c). Section 743(a) calls for agencies to develop annually an inventory that reports, for each service contract, the following:

(1) A description of the services purchased by the executive agency and the role the services played in achieving objectives, regardless of whether such a purchase was made through a contract or task order.

(2) The organizational component of the executive agency administering the contract, and the organizational component of the agency whose requirements are being met through contractor performance of the service.

(3) The total dollar amount obligated for services under the contract and the funding source for the contract.

(4) The total dollar amount invoiced for services under the contract.

(5) The contract type and date of award.

(6) The name of the contractor and place of performance.

(7) The number and work location of contractor and subcontractor employees, expressed as full-time equivalents for direct labor, compensated under the contract.

(8) Whether the contract is a personal services contract.

(9) Whether the contract was awarded on a noncompetitive basis, regardless of date of award.

DoD, GSA, and NASA attempted to minimize the information-collection requirement for contractors by requiring agencies to obtain as much of the data as possible from existing sources, such as the FPDS. However, certain minimum data must be collected from service contractors in order for agencies to meet the annual statutory service contract inventory requirement.

Therefore, contractors will be required to report annually the following information on each service contract or order in accordance with the thresholds established, excluding actions entirely funded by DoD:

(1) Contract number and, as applicable, task order number.

(2) The total dollar amount invoiced for services performed during the previous Government fiscal year under the contract or order.

(3) The number of contractor direct labor hours expended on the services performed during the previous Government fiscal year.

(4) The number of first-tier subcontractor direct labor hours expended on the services performed during the previous Government fiscal year.

In order to invoice the Government, contractors track labor hours worked for cost-reimbursement, time-and-materials and labor-hour contracts. Therefore, a lower reporting threshold was established for these types of contracts. Contractors are not required to track or report labor hour information for fixed price contracts, so higher thresholds and a phased-in implementation schedule were developed to minimize the burden for contractors.

In addition, the final rule will require service contractor reporting to include first-tier subcontracts for services only. The same reporting thresholds will apply to both first-tier subcontracts and prime contracts. First-tier subcontract reporting of direct labor hours and amount invoiced will be done electronically by the prime contractor. Further lessening the reporting requirement, service contractors will not be asked to convert the number of direct labor hours into full-time equivalents.

Two comments were received stating that there would be an impact on small business, in addition to large businesses, but the two respondents did not include specific supporting data.

Each contractor will be required to report once annually on the services provided during the previous Government fiscal year. The information will be input to a Government-managed data system. There is no hard-copy reporting required, nor is there an agency certification or approval requirement.

When providing a proper invoice to the Government for cost-reimbursement, time-and-materials, and labor-hour contracts, the information on the number of direct labor hours worked is already compiled by contractors, so the information collected should be minimal for these types of contracts. Currently, the information on the number of employee hours worked must already be compiled by prime and subcontractors in order to (a) pay employees and (b) properly invoice for services provided.

There are no additional professional skills necessary in this area on the part of small businesses. If the small business has the personnel needed to account for and invoice the Government in compliance with preexisting financial data regulations and procedures, then compliance with the new reporting requirement should be transparent. In fact, the Contractors are already collecting the data. Therefore, since the data would already have been collected for paying employees and monthly invoicing, a reasonable average is that two additional hours of labor per contract per year is required. One hour has been allotted to adding the total labor hours for twelve monthly invoices and one hour to input the data.

Since both large and small entities already prepare monthly billing and collect and pay hourly wages as a standard business practice, it is not considered to be any greater burden for small entities. In fact, the cost is estimated to be primarily an additional two hour labor burden for an employee such as a payroll clerk at a cost of approximately $60/contract/year.

To minimize the burden on small businesses, the following alternatives were considered and included in the FAR rule:

- Minimizing the inventory data elements collected by using existing systems, such as FPDS.
- Minimizing the reporting to once a year.
- Enabling electronic reporting by the contractor.
- Requiring contractors to provide only the number of direct labor hours and developing the system to automatically generate the number of full-time equivalents.
- Limiting the reporting requirement to first-tier subcontractors for services in lieu of all subcontractors.
- Establishing a phased-in approach based on contract type and estimated total dollar amount, from 2014 to 2016.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat. The Regulatory Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

VI. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies. The rule contains information collection requirements. The Office of Management and Budget (OMB) has cleared this information collection requirement under OMB Control Number 9000–0179, titled: Service Contractor Reporting Requirements.

List of Subjects in 48 CFR Parts 1, 4, 8, 17, 37, and 52

Government procurement.

Dated: December 19, 2013.

William Clark,

Acting Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 4, 8, 17, 37, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 4, 8, and 17 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 1—FEDERAL ACQUISITION REGULATION SYSTEM

1.106 [Amended]

■ 2. Amend section 1.106 in the table following the introductory text, by adding in numerical sequence, FAR segments ''4.17'', ''52.204–14'', and ''52.204–15'' and their corresponding OMB Control Number ''9000–0179''.

PART 4—ADMINISTRATIVE MATTERS

■ 3. Add subpart 4.17 to read as follows:

Subpart 4.17—Service Contracts Inventory

Sec.
4.1700 Scope of subpart.
4.1701 Definitions.
4.1702 Applicability.
4.1703 Reporting requirements.
4.1704 Contracting officer responsibilities.
4.1705 Contract clauses.

Subpart 4.17—Service Contracts Inventory

4.1700 Scope of subpart.

This subpart implements section 743(a) of Division C of the Consolidated Appropriations Act, 2010 (Pub. L. 111–117), which requires agencies to report annually to the Office of Management and Budget (OMB) on activities performed by service contractors. Section 743(a) applies to executive agencies, other than the Department of Defense (DoD), covered by the Federal Activities Inventory Reform Act (Pub. L. 105–270) (FAIR Act). The information reported in the inventory will be publicly accessible.

4.1701 Definitions.

As used in this subpart—

FAIR Act agencies means the agencies required under the FAIR Act to submit inventories annually of the activities performed by Government personnel.

First-tier subcontract means a subcontract awarded directly by the contractor for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include the contractor's supplier agreements with vendors, such as long-term arrangements for materials or supplies that benefit multiple contracts and/or the costs of which are normally applied to a contractor's general and administrative expenses or indirect costs.

4.1702 Applicability.

(a) This subpart applies to—

(1) All FAIR Act agencies, except DoD as specified in 4.1705;

(2) Solicitations, contracts, and orders for services (including construction) that meet or exceed the thresholds at 4.1703; and

(3) Contractors and first-tier subcontractors.

(b) Procedures for compiling and submitting agency service contract inventories are governed by section 743(a)(3) of Division C of Pub. L. 111–117 and Office of Federal Procurement Policy (OFPP) guidance. The guidance is available at the following Web site: *http://www.whitehouse.gov/omb/procurement-service-contract-inventories.*

(c) This subpart addresses requirements for obtaining information from, and reporting by, agency service contractors.

4.1703 Reporting requirements.

(a) *Thresholds.* (1) Except as exempted by OFPP guidance, service contractor reporting shall be required for contracts and first-tier subcontracts for services based on type of contract and estimated total value. For indefinite-delivery contracts, reporting shall be determined based on the type and estimated total value of the orders issued under the contract. Indefinite-delivery contracts include, but are not limited to, contracts such as indefinite-delivery indefinite-quantity (IDIQ) contracts, Federal Supply Schedule contracts (FSSs), Governmentwide acquisition contracts (GWACs), and multi-agency contracts.

(2) Reporting is required according to the following thresholds:

(i) All cost-reimbursement, time-and-materials, and labor-hour service contracts and orders with an estimated total value above the simplified acquisition threshold.

(ii) All fixed-price service contracts awarded and orders issued according to the following thresholds:

(A) Awarded or issued in Fiscal Year 2014, with an estimated total value of $2.5 million or greater.

(B) Awarded or issued in Fiscal Year 2015, with an estimated total value of $1 million or greater.

(C) Awarded or issued in Fiscal Year 2016, and subsequent years, with an estimated total value of $500,000 or greater.

(3) Reporting is required for all first-tier subcontracts for services as prescribed in paragraphs (a)(2)(i) and (ii) of this section.

(b) *Agency reporting responsibilities.* (1) Agencies shall ensure that contractors comply with the reporting requirements of 52.204–14, Service Contract Reporting Requirements and 52.204–15, Service Contract Reporting Requirements for Indefinite-Delivery Contracts. Agencies shall review contractor reported information for reasonableness and consistency with available contract information. The agency is not required to address data for which the agency would not normally have supporting information. In the event the agency believes that revisions to the contractor reported information are warranted, the agency shall notify the contractor no later than November 15. By November 30, the contractor shall revise the report, or document its rationale for the agency. Authorized agency officials may review the reports at *www.sam.gov.*

(2) Agencies are required to compile annually an inventory of service contracts performed for, or on behalf of, the agency during the prior fiscal year in order to determine the extent of the agency's reliance on service contractors. Agencies shall submit a service contract inventory to OMB by January 15 annually. Then, each agency must post the inventory on its Web site and publish a **Federal Register** Notice of Availability by February 15 annually.

(3) Most of the required information is already collected in the Federal Procurement Data System (FPDS). Information not collected in FPDS will be provided by the contractor, as specified in 52.204–14, Service Contract Reporting Requirements and 52.204–15, Service Contract Reporting Requirements for Indefinite-Delivery Contracts.

4.1704 Contracting officer responsibilities.

(a) For other than indefinite-delivery contracts, the contracting officer shall ensure that 52.204–14, Service Reporting Requirement, is included in solicitations, contracts, and orders as prescribed at 4.1705. For indefinite-delivery contracts, the contracting officer who awarded the contract shall ensure that 52.204–15, Service Contract Reporting Requirements for Indefinite-Delivery Contracts, is included in solicitations and contracts as prescribed at 4.1705. The contracting officer at the order level shall verify the clause's inclusion in the contract.

(b) If the contractor fails to submit a report in a timely manner, the contracting officer shall exercise appropriate contractual remedies. In addition, the contracting officer shall make the contractor's failure to comply with the reporting requirements a part of the contractor's performance information under subpart 42.15.

4.1705 Contract clauses.

(a) The contracting officer shall insert the clause at 52.204–14, Service Contract Reporting Requirements, in solicitations and contracts for services

(including construction) that meet or exceed the thresholds at 4.1703, except for indefinite-delivery contracts. This clause is not required for actions entirely funded by DoD, contracts awarded with a generic DUNS number, or in classified solicitations, contracts, or orders.

(b) The contracting officer shall insert the clause at 52.204–15, Service Contract Reporting Requirements for Indefinite-Delivery Contracts, in solicitations and indefinite-delivery contracts for services (including construction) where one or more orders issued thereunder are expected to each meet or exceed the thresholds at 4.1703. This clause is not required for actions entirely funded by DoD, contracts awarded with a generic DUNS number, or in classified solicitations, contracts, or orders.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 4. Amend section 8.404 by adding paragraph (i) to read as follows:

8.404 Use of Federal Supply Schedules.

* * * * *

(i) Ensure that service contractor reporting requirements are met in accordance with subpart 4.17, Service Contracts Inventory.

PART 17—SPECIAL CONTRACTING METHODS

■ 5. Revise section 17.504 to read as follows:

17.504 Reporting requirements.

(a) The senior procurement executive for each executive agency shall submit to the Director of OMB an annual report on interagency acquisitions, as directed by OMB.

(b) The contracting officer for the servicing agency shall ensure that service contractor reporting requirements are met in accordance with subpart 4.17, Service Contracts Inventory.

PART 37—SERVICE CONTRACTING

■ 6. The authority citation for 48 CFR part 37 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

■ 7. Amend section 37.103 by adding paragraph (e) to read as follows:

37.103 Contracting officer responsibility.

* * * * *

(e) Ensure that service contractor reporting requirements are met in accordance with subpart 4.17, Service Contracts Inventory.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 8. The authority citation for 48 CFR part 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

■ 9. Add sections 52.204–14 and 52.204–15 to read as follows:

52.204–14 Service Contract Reporting Requirements.

As prescribed in 4.1705(a), insert the following clause:

Service Contract Reporting Requirements (Jan 2014)

(a) Definition.

First-tier subcontract means a subcontract awarded directly by the Contractor for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include the Contractor's supplier agreements with vendors, such as long-term arrangements for materials or supplies that benefit multiple contracts and/or the costs of which are normally applied to a Contractor's general and administrative expenses or indirect costs.

(b) The Contractor shall report, in accordance with paragraphs (c) and (d) of this clause, annually by October 31, for services performed under this contract during the preceding Government fiscal year (October 1–September 30).

(c) The Contractor shall report the following information:

(1) Contract number and, as applicable, order number.

(2) The total dollar amount invoiced for services performed during the previous Government fiscal year under the contract.

(3) The number of Contractor direct labor hours expended on the services performed during the previous Government fiscal year.

(4) Data reported by subcontractors under paragraph (f) of this clause.

(d) The information required in paragraph (c) of this clause shall be submitted via the internet at *www.sam.gov.* (See SAM User Guide). If the Contractor fails to submit the report in a timely manner, the contracting officer will exercise appropriate contractual remedies. In addition, the Contracting Officer will make the Contractor's failure to comply with the reporting requirements a part of the Contractor's performance information under FAR subpart 42.15.

(e) Agencies will review Contractor reported information for reasonableness and consistency with available contract information. In the event the agency believes that revisions to the Contractor reported information are warranted, the agency will notify the Contractor no later than November 15. By November 30, the Contractor shall revise the report, or document its rationale for the agency.

(f)(1) The Contractor shall require each first-tier subcontractor providing services under this contract, with subcontract(s) each valued at or above the thresholds set forth in 4.1703(a)(2), to provide the following detailed information to the Contractor in sufficient time to submit the report:

(i) Subcontract number (including subcontractor name and DUNS number); and

(ii) The number of first-tier subcontractor direct-labor hours expended on the services performed during the previous Government fiscal year.

(2) The Contractor shall advise the subcontractor that the information will be made available to the public as required by section 743 of Division C of the Consolidated Appropriations Act, 2010.

(End of clause)

52.204–15 Service Contract Reporting Requirements for Indefinite-Delivery Contracts.

As prescribed in 4.1705(b), insert the following clause:

Service Contract Reporting Requirements for Indefinite-Delivery Contracts (January 30, 2014)

(a) Definition.

First-tier subcontract means a subcontract awarded directly by the Contractor for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include the Contractor's supplier agreements with vendors, such as long-term arrangements for materials or supplies that benefit multiple contracts and/or the costs of which are normally applied to a Contractor's general and administrative expenses or indirect costs.

(b) The Contractor shall report, in accordance with paragraphs (c) and (d) of this clause, annually by October 31, for services performed during the preceding Government fiscal year (October 1–September 30) under this contract for orders that exceed the thresholds established in 4.1703(a)(2).

(c) The Contractor shall report the following information:

(1) Contract number and order number.

(2) The total dollar amount invoiced for services performed during the previous Government fiscal year under the order.

(3) The number of Contractor direct labor hours expended on the services performed during the previous Government fiscal year.

(4) Data reported by subcontractors under paragraph (f) of this clause.

(d) The information required in paragraph (c) of this clause shall be submitted via the internet at *www.sam.gov.* (See SAM User Guide). If the Contractor fails to submit the report in a timely manner, the Contracting Officer will exercise appropriate contractual remedies. In addition, the Contracting Officer will make the Contractor's failure to comply with the reporting requirements a part of the Contractor's performance information under FAR subpart 42.15.

(e) Agencies will review Contractor reported information for reasonableness and consistency with available contract information. In the event the agency believes that revisions to the Contractor reported information are warranted, the agency will notify the Contractor no later than November 15. By November 30, the Contractor shall

revise the report, or document its rationale for the agency.

(f)(1) The Contractor shall require each first-tier subcontractor providing services under this contract, with subcontract(s) each valued at or above the thresholds set forth in 4.1703(a)(2), to provide the following detailed information to the Contractor in sufficient time to submit the report:

(i) Subcontract number (including subcontractor name and DUNS number), and

(ii) The number of first-tier subcontractor direct-labor hours expended on the services performed during the previous Government fiscal year.

(2) The Contractor shall advise the subcontractor that the information will be made available to the public as required by section 743 of Division C of the Consolidated Appropriations Act, 2010.

(End of clause)

■ 10. Amend section 52.212–5 by—

■ a. Revising the date of the clause;

■ b. Redesignating paragraphs (b)(6) through (b)(51) as paragraphs (b)(8) through (b)(53), respectively; and

■ c. Adding new paragraphs (b)(6) and (b)(7).

The revised and added text reads as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (JAN 2014)

* * * * *

(b) * * *

____ (6) 52.204–14, Service Contract Reporting Requirements (JAN 2014) (Pub. L. 111–117, section 743 of Div. C).

____ (7) 52.204–15, Service Contract Reporting Requirements for Indefinite-Delivery Contracts (JAN 2014) (Pub. L. 111–117, section 743 of Div. C).

* * * * *

[FR Doc. 2013–31148 Filed 12–30–13; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 7, 8, 9, and 52

[FAC 2005–72; FAR Case 2009–024; Item II; Docket No. 2011–0086, Sequence No. 1]

RIN 9000–AM07

Federal Acquisition Regulation; Prioritizing Sources of Supplies and Services for Use by the Government

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to update and clarify the priority of sources of supplies and services for use by the Government.

DATES: *Effective:* January 30, 2014.

FOR FURTHER INFORMATION CONTACT: Mr. Karlos Morgan, Procurement Analyst, at 202–501–2364, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–72, FAR Case 2009–024.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 76 FR 34634 on June 14, 2011, to amend the Federal Acquisition Regulation (FAR) to limit the section of the FAR addressing the priorities for use of Government supply sources to a discussion of the mandatory Government sources of supplies and services. Seventy-nine respondents submitted comments. Most respondents requested that an Initial Regulatory Flexibility Analysis (IRFA) be performed. Based on the comments, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) performed an IRFA after the initial publication of the proposed rule. The IRFA was published in the **Federal Register** at 77 FR 54872 on September 6, 2012. Six respondents submitted comments in response to the Notice of Correction.

II. Discussion and Analysis

The Councils reviewed the comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

A. Summary of Significant Changes

- Language was added at FAR 7.102(a) to require consideration of existing contracts before creating new contracts.
- FAR 8.002(a)(1)(i) was revised to read ''Inventories of the requiring agency'' for clarification.
- FAR 8.003(d) has been revised to note that the Defense National Stockpile Center has been renamed ''DLA Strategic Materials''.
- FAR 8.004 was revised to note that the sources listed in 8.004(a) are not listed in any order of priority.
- A sentence was added to FAR 8.004 reminding users that when satisfying requirements from non-mandatory sources, they should refer to FAR 7.105(b) and part 19 regarding consideration of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business (including 8(a) participants), and women-owned small business concerns. Use of these sources can be counted towards an agency's small business contracting goals.

B. Analysis of Public Comments

1. Federal Strategic Sourcing Initiative (FSSI) Blanket Purchase Agreement (BPA) for Office Supplies

Comment: Most respondents believe the rule is both unnecessary and damaging to competition from small businesses throughout their industry. The FSSI program has curtailed their Federal market business which led to reduction in employees' hours.

Response: The purpose of the rule is to update and clarify the order of priority at FAR 8.002, and add a new section to encourage agencies to give consideration to using certain existing non-mandatory sources to leverage agency buying power and achieve administrative efficiencies that reduce costs and produce savings for our taxpayers. The rule does not change how agencies are purchasing supplies and/or services under Federal Supply Schedules.

No new mandatory sources are proposed for consideration, only existing sources were included for informational purposes. The existing non-mandatory sources are being listed prior to commercial sources, but agencies remain free to compete their requirements among commercial sources of supply, where it is in their

best interest to meet their needs through open-market procurement.

2. Competition

Comment: Respondents indicated that the proposed rule would severely hamper competition in the Federal market place.

Response: This rule does not impede competition. No new mandatory sources are proposed for consideration under this rule. Existing sources were included for informational purposes, as a means of supporting market research, which is required by law (41 U.S.C. 3301(a)(2)) for the procurement of supplies and services. Competition in the open market will continue if it is in an agency's best interests to meet its needs through open-market procurement.

3. Federal Supply Schedule (FSS) Contracts

Comment: A respondent stated that the proposed rule is not clear about whether the contracting officer must check and use contracts under FSS if there is an FSS holder that can meet the agency's needs.

Response: The use of FSS is not required. However, under FAR 7.102(a)(4) of the final rule, agencies are encouraged to consider using FSS and other existing vehicles before considering sources in the open market.

4. The Murray Benjamin Electric Company Protest

Comment: One respondent indicated that use of FSS is mandatory if the schedule holder is able to meet the agency's needs. The respondent stated that the Murray Benjamin case is ambiguous and the Government interpretation is faulty.

Response: The final rule amends FAR part 8 to clarify that use of FSS is not mandatory. Rather, as part of good market research, agencies are encouraged to consider using FSS and other existing vehicles before considering sources in the open market.

5. FAR Case 2008–003

Comment: One respondent indicated that the proposed rule undermines the intent behind the rule change from FAR Case 2008–003. According to the respondent, 2008–003 final rule requires competition within the FSS for contracts over the simplified acquisition threshold. The respondent believed that the proposed rule requires competition to the open market, not just within FSS.

Response: Final rule 2008–003, ''Public Disclosure of Justification and Approval Documents for Noncompetitive Contracts,'' which required posting justification and approval documents for noncompetitive contracts, did not apply to placement of orders under the FSS. FAR Case 2007–012, ''Requirements for Acquisitions Pursuant to Multiple-Award Contracts,'' which implemented section 863 of the Duncan Hunter National Defense Act for Fiscal Year 2009, required posting of sole source task or delivery orders in excess of the simplified acquisition threshold that are placed against multiple award contracts. This rule is consistent with the intent of FAR Case 2007–012 to provide enhanced competition.

6. Other Requested Changes to FAR Part 8

Comment: A respondent indicated that the rule should not include Governmentwide Acquisition Contracts (GWACs) in FAR part 8 and give them the same level of priority as FSS contracts.

Response: The inclusion of GWACs in FAR part 8 is appropriate as they are existing contract vehicles available for use by multiple agencies. Agencies are encouraged to consider existing vehicles prior to awarding new contracts.

Comment: A respondent recommended that FAR 8.004 be revised to include text that explains that the enumerated contracts are not, as the preamble to the proposed rule notes, listed in any order of priority.

Response: The language of the final rule was revised to include this clarification.

7. Comments Submitted on the IRFA

Comment: Several respondents expressed their disappointment with the rule and suggested further study of the negative impacts of the rule.

Response: Because the rule reflects existing policy and practices, there is no need to conduct additional economic impact analysis and other research called for by the respondents.

Comment: Various respondents expressed dissatisfaction with FSSI, due to a perceived impediment to competition.

Response: The reference to FSSI agreements in FAR 8.004(a)(1) of the final rule is provided as an example of existing non-mandatory sources that agencies are encouraged to consider as part of their market research before considering open market sources.

Comment: One respondent recommended requiring documentation in the contract file to reflect why an existing source does not meet the Government's needs.

Response: This type of documentation may be appropriate as part of the market research process detailed in FAR part 10, Market Research, and, in many cases, is already required by agency supplements to FAR part 10.

Comment: One respondent recommended that the Government require agencies to consider the use of existing sources rather than merely encouraging them to do so.

Response: The final rule amends FAR 7.102(a) to require, as part of acquisition planning, appropriate consideration of the use of pre-existing contracting (including interagency and intra-agency contracts) to fulfill requirements before awarding new contracts.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

Considerable concern was expressed by small business entities with the concept and practice of strategic sourcing as evidenced through FSSI agreements. However, the rule itself only references FSSI agreements as an example of existing contract sources that agencies, as part of good market research, are encouraged to consider using before considering sources in the open market. After due consideration of pre-existing contracts, agencies remain free to compete their requirements among commercial sources of supply.

No significant changes were made from the proposed rule in response to comments on the IRFA.

No comments were submitted by the Chief Counsel for Advocacy of the Small Business Administration.

This rule deals with the order of preference for sources that must be considered, and to distinguish them from sources that should be considered where an agency is unable to satisfy requirements for supplies and services from mandatory sources. This rule will not

affect how many small businesses are awarded this type of contract.

This rule does not add any new information collection requirements.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat. The Regulatory Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

V. Paperwork Reduction Act

The final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 7, 8, 9, and 52

Government procurement.

Dated: December 19, 2013.

William Clark,

Acting Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 7, 8, 9, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 7, 8, 9, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 7—ACQUISITION PLANNING

■ 2. Amend section 7.102 by revising paragraph (a) to read as follows:

7.102 Policy.

(a) Agencies shall perform acquisition planning and conduct market research (see part 10) for all acquisitions in order to promote and provide for—

(1) Acquisition of commercial items or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items, to the maximum extent practicable (10 U.S.C. 2377 and 41 U.S.C. 251, *et seq.*);

(2) Full and open competition (see part 6) or, when full and open competition is not required in accordance with Part 6, to obtain competition to the maximum extent practicable, with due regard to the nature of the supplies or services to be acquired (10 U.S.C. 2301(a)(5) and 41 U.S.C. 253a(a)(1));

(3) Selection of appropriate contract type in accordance with part 16; and

(4) Appropriate consideration of the use of pre-existing contracts, including interagency and intra-agency contracts, to fulfill the requirement, before awarding new contracts. (See 8.002 through 8.004 and subpart 17.5).

* * * * *

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 3. Revise section 8.000 to read as follows:

8.000 Scope of part.

This part deals with prioritizing sources of supplies and services for use by the Government.

■ 4. Revise section 8.002 to read as follows:

8.002 Priorities for use of mandatory Government sources.

(a) Except as required by 8.003, or as otherwise provided by law, agencies shall satisfy requirements for supplies and services from or through the mandatory Government sources and publications listed below in descending order of priority:

(1) *Supplies.* (i) Inventories of the requiring agency.

(ii) Excess from other agencies (see subpart 8.1).

(iii) Federal Prison Industries, Inc. (see subpart 8.6).

(iv) Supplies that are on the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled (see Subpart 8.7).

(v) Wholesale supply sources, such as stock programs of the General Services Administration (GSA) (see 41 CFR 101–26.3), the Defense Logistics Agency (see 41 CFR 101–26.6), the Department of Veterans Affairs (see 41 CFR 101–26.704), and military inventory control points.

(2) *Services.* Services that are on the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled (see subpart 8.7).

(b) Sources other than those listed in paragraph (a) of this section may be used as prescribed in 41 CFR 101–26.301 and in an unusual and compelling urgency as prescribed in 6.302–2 and in 41 CFR 101–25.101–5.

(c) The statutory obligation for Government agencies to satisfy their requirements for supplies or services available from the Committee for Purchase From People Who Are Blind or Severely Disabled also applies when contractors purchase the supplies or services for Government use.

■ 5. Revise section 8.003 to read as follows:

8.003 Use of other mandatory sources.

Agencies shall satisfy requirements for the following supplies or services from or through specified sources, as applicable:

(a) Public utility services (see part 41).

(b) Printing and related supplies (see subpart 8.8).

(c) Leased motor vehicles (see subpart 8.11).

(d) Strategic and critical materials (*e.g.,* metals and ores) from inventories exceeding Defense National Stockpile requirements (detailed information is available from the DLA Strategic Materials, 8725 John J. Kingman Rd., Suite 3229, Fort Belvoir, VA 22060–6223.

(e) Helium (see subpart 8.5—Acquisition of Helium).

■ 6. Redesignate section 8.004 as section 8.005; and add a new section 8.004 to read as follows:

8.004 Use of other sources.

If an agency is unable to satisfy requirements for supplies and services from the mandatory sources listed in 8.002 and 8.003, agencies are encouraged to consider satisfying requirements from or through the non-mandatory sources listed in paragraph (a) of this section (not listed in any order of priority) before considering the non-mandatory source listed in paragraph (b) of this section. When satisfying requirements from non-mandatory sources, see 7.105(b) and part 19 regarding consideration of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business (including 8(a) participants), and women-owned small business concerns.

(a)(1) *Supplies.* Federal Supply Schedules, Governmentwide acquisition contracts, multi-agency contracts, and any other procurement instruments intended for use by multiple agencies, including blanket purchase agreements (BPAs) under Federal Supply Schedule contracts (*e.g.,* Federal Strategic Sourcing Initiative (FSSI) agreements accessible at *http://www.gsa.gov/fssi* (see also 5.601)).

(2) *Services.* Agencies are encouraged to consider Federal Prison Industries, Inc., as well as the sources listed in paragraph (a)(1) of this section (see subpart 8.6).

(b) Commercial sources (including educational and non-profit institutions) in the open market.

8.402 [Amended]

■ 7. Amend section 8.402 by removing from paragraph (a) ''(see 8.002)'' and adding ''(see 8.004)'' in its place.

PART 9—CONTRACTOR QUALIFICATIONS

9.405–1 [Amended]

■ 8. Amend section 9.405–1 by removing from paragraph (b)(2) ''optional use''.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.208–9 [Amended]

■ 9. Amend section 52.208–9 by removing from the introductory paragraph ''8.004'' and adding ''8.005'' in its place.

[FR Doc. 2013–31149 Filed 12–30–13; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22, 25, and 52

[FAC 2005–72; FAR Case 2013–021; Item IV; Docket No. 2013–0021, Sequence No. 1]

RIN 9000–AM67

Federal Acquisition Regulation; Trade Agreements Thresholds

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to incorporate revised thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements, as determined by the United States Trade Representative.

DATES: *Effective Date:* January 1, 2014.

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, at 202–219–0202 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–72, FAR case 2013–021.

SUPPLEMENTARY INFORMATION:

I. Background

Every two years, the trade agreements thresholds are adjusted according to a pre-determined formula under the agreements. These thresholds become effective on January 1, 2014. On December 18, 2013 (78 FR 76700), the United States Trade Representative published new procurement thresholds. The United States Trade Representative has specified the following new thresholds:

Trade agreement	Supply contract (equal to or exceeding)	Service contract (equal to or exceeding)	Construction contract (equal to or exceeding)
WTO GPA	$204,000	$204,000	$7,864,000
FTAs:			
Australia FTA	79,507	79,507	7,864,000
Bahrain FTA	204,000	204,000	10,335,931
CAFTA–DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua)	79,507	79,507	7,864,000
Chile FTA	79,507	79,507	7,864,000
Colombia FTA	79,507	79,507	7,864,000
Korea FTA	100,000	100,000	7,864,000
Morocco FTA	204,000	204,000	7,864,000
NAFTA:			
—Canada	25,000	79,507	10,335,931
—Mexico	79,507	79,507	10,335,931
Oman FTA	204,000	204,000	10,335,931
Panama FTA	204,000	204,000	7,864,000
Peru FTA	204,000	204,000	7,864,000
Singapore FTA	79,507	79,507	7,864,000
Israeli Trade Act	50,000		

II. Discussion and Analysis

This final rule implements the new thresholds in FAR subpart 25.4, Trade Agreements, and other sections in the FAR that include trade agreements thresholds (*i.e.,* 22.1503, 25.202, 25.603, 25.1101, and 25.1102).

In addition, changes are required to the clauses 52.204–8, Annual Representations and Certifications, and 52.222–19, Child Labor—Cooperation with Authorities and Remedies, with conforming changes to the clause dates in 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, and 52.213–4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

III. Publication of This Final Rule for Public Comment Is Not Required by Statute

''Publication of proposed regulations,'' 41 U.S.C. 1707, is the statute which applies to the publication of the Federal Acquisition Regulation. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it only adjusts the thresholds according to pre-determined formula to adjust for changes in economic conditions, thus maintaining the status quo, without significant effect beyond the internal operating procedures of the Government.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant FAR revision and 41 U.S.C. 1707 does not require publication for public comment.

VI. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does apply, because the final rule affects the prescriptions for use of the certification and information collection requirements in the provisions at 52.225–4 (OMB Control No. 9000–0130, Buy American Act—Free Trade Agreement—Israeli Trade Certificate), and 52.225–6 (OMB Control No. 9000–0025, Trade Agreements Certificate), and the clauses at 52.225–9, 52.225–11, 52.225–21, and 52.225–23 (OMB Control No. 9000–0141, Buy American—Construction) respectively. However, there is no impact on the estimated burden hours, because the threshold changes are in line with inflation and maintain the status quo.

List of Subjects in 48 CFR Parts 22, 25, and 52

Government procurement.

Dated: December 19, 2013.

William Clark,

Acting Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 22, 25, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 22, 25, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1503 [Amended]

■ 2. Amend section 22.1503 by removing from paragraph (b)(1) ''Subpart'' and adding ''subpart'' in its place.

■ 3. Amend section 22.1503 by removing from paragraph (b)(3) ''$77,494'' and ''Subpart'', and adding ''$79,507'' and ''subpart'' in its place, respectively.

■ 4. Amend section 22.1503 by removing from paragraph (b)(4) ''$202,000'' and adding ''$204,000'' in its place.

PART 25—FOREIGN ACQUISITION

25.202 [Amended]

■ 5. Amend section 25.202 by removing from paragraph (c) ''$7,777,000'' and ''Subpart'', and adding ''$7,864,000'' and ''subpart'' in its place, respectively.

■ 6. Amend section 25.402 by revising the table in paragraph (b) to read as follows:

25.402 General.

* * * * *

(b) * * *

Trade agreement	Supply contract (equal to or exceeding)	Service contract (equal to or exceeding)	Construction contract (equal to or exceeding)
WTO GPA	$204,000	$204,000	$7,864,000
FTAs:			
Australia FTA	79,507	79,507	7,864,000
Bahrain FTA	204,000	204,000	10,335,931
CAFTA–DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua)	79,507	79,507	7,864,000
Chile FTA	79,507	79,507	7,864,000
Colombia FTA	79,507	79,507	7,864,000
Korea FTA	100,000	100,000	7,864,000
Morocco FTA	204,000	204,000	7,864,000
NAFTA:			
—Canada	25,000	79,507	10,335,931
—Mexico	79,507	79,507	10,335,931
Oman FTA	204,000	204,000	10,335,931
Panama FTA	204,000	204,000	7,864,000
Peru FTA	204,000	204,000	7,864,000
Singapore FTA	79,507	79,507	7,864,000
Israeli Trade Act	50,000		

25.603 [Amended]

■ 7. Amend section 25.603 by removing from paragraph (c)(1) ''$7,777,000'' and adding ''$7,864,000'' in its place.

25.1101 [Amended]

■ 8. Amend section 25.1101 by—

■ a. Removing from paragraph (b)(1)(i)(A) ''$202,000'' and adding ''$204,000'' in its place;

■ b. Removing from paragraph (b)(1)(iii) ''$77,494'' and adding ''$79,507'' in its place;

■ c. Removing from paragraph (b)(1)(iv) ''$77,494'' and adding ''$79,507'' in its place;

■ d. Removing from paragraph (b)(2)(iii) ''$77,494'' and adding ''$79,507'' in its place;

■ e. Removing from paragraph (b)(2)(iv) ''$77,494'' and adding ''$79,507'' in its place;

■ f. Removing from paragraph (c)(1) ''$202,000'' and ''Subpart'', and adding

''$204,000'' and ''subpart'' in its place, respectively; and

■ g. Removing from paragraph (d) ''$202,000'' and adding ''$204,000'' in its place.

25.1102 [Amended]

■ 9. Amend section 25.1102 by—

■ a. Removing from the introductory text of paragraph (a) ''$7,777,000'' and adding ''$7,864,000'' in its place;

■ b. Removing from the introductory text of paragraph (c) ''$7,777,000'' and adding ''$7,864,000'' in its place;

■ c. Removing from paragraph (c)(3) ''$7,777,000'' and ''$10,074,262'', and adding ''$7,864,000'' and ''$10,335,931'' in its place, respectively; and

■ d. Removing from paragraph (d)(3) ''$7,777,000'' and ''$10,074,262'', and adding ''$7,864,000'' and ''$10,335,931'' in its place, respectively.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 10. Amend section 52.204–8 by—

■ a. Revising the date of the clause;

■ b. Removing from paragraph (c)(1)(xvii)(C) ''$77,494'' and adding ''$79,507 in its place; and

■ c. Removing from (c)(1)(xvii)(D) ''$77,494'' and adding ''$79,507'' in its place.

The revised text reads as follows:

52.204–8 Annual Representations and Certifications.

* * * * *

Annual Representations and Certifications (DEC 2013)

* * * * *

■ 11. Amend section 52.212–5 by revising the date of the clause and paragraph (b)(27) to read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (DEC 2013)

* * * * *

(b) * * *

__(27) 52.222–19, Child Labor—Cooperation with Authorities and Remedies (DEC 2013) ERT Abbreviated Month and Year of Publication in the **Federal Register**]) (E.O. 13126).

* * * * *

■ 12. Amend section 52.213–4 by revising the date of the clause and paragraph (b)(1)(ii) to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (DEC 2013)

* * * * *

(b) * * *

(1) * * *

(ii) 52.222–19, Child Labor—Cooperation with Authorities and Remedies (DEC 2013) (E.O. 13126). (Applies to contracts for supplies exceeding the micro-purchase threshold.)

* * * * *

■ 13. Amend section 52.222–19 by—

■ a. Revising the date of the clause;

■ b. Removing from paragraph (a)(3) ''$77,494'' and adding ''$79,507'' in its place; and

■ c. Removing from paragraph (a)(4) ''$202,000'' and adding ''$204,000'' in its place.

The revised text reads as follows:

52.222–19 Child Labor—Cooperation With Authorities and Remedies.

* * * * *

Child Labor—Cooperation With Authorities and Remedies (DEC 2013)

* * * * *

[FR Doc. 2013–31151 Filed 12–30–13; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR 2013–0078, Sequence No. 8]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–72; Small Entity Compliance Guide

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of DOD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rules appearing in Federal Acquisition Circular (FAC) 2005–72, which amends the Federal Acquisition Regulation (FAR). An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2005–72, which precedes this document. These documents are also available via the Internet at *http://www.regulations.gov.*

DATES: December 31, 2013.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2005–72 and the FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755.

RULES LISTED IN FAC 2005–72

Item	Subject	FAR Case	Analyst
*I	Service Contracts Reporting Requirements	2010–010	Loeb.
*II	Prioritizing Sources of Supplies and Services for Use by Government	2009–024	Morgan.
*III	Terms of Service and Open-Ended Indemnification, and Unenforceability of Unauthorized Obligations.	2013–005	Petrusek.
IV	Trade Agreements Thresholds	2013–021	Davis.

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2005–72 amends the FAR as specified below:

Item I—Service Contracts Reporting Requirements (FAR Case 2010–010)

This final rule amends the FAR to implement section 743 of Division C of the Consolidated Appropriations Act,

2010. Section 743 calls for certain agencies, not including the Department of Defense, to submit annual inventories of service contracts. FAR subpart 4.17, Service Contracts Inventory, provides annual reporting requirements for agencies and contractors. Guidance for agencies is available at: *http://www.whitehouse.gov/omb/procurement-service-contract-inventories.* FAR clauses 52.204–14 and 52.204–15 provide contractors' annual reporting requirements. Prime and first-tier contractors will submit the information by October 31 at *www.sam.gov,* including total dollar amount invoiced for services performed in the prior Government fiscal year and total amount of labor hours for the previous Government fiscal year.

To lessen the burden on small and large business prime contractors, information is reported annually, reporting is phased in over three fiscal years, and only first-tier subcontracts are covered, not all tiers.

Contracting officers will verify that the clause is included in the contract or order. Agencies are responsible for reviewing contractor reported information to ensure it appears reasonable and consistent with available contract information. The agency is not required to address data for which the agency would not normally have supporting information. In the event the agency believes that revisions to the contractor reported information are warranted, the contractor is to be notified no later than November 15. By November 30, the contractor shall revise the report, or document its rationale for the agency for maintaining the information without change.

Item II—Prioritizing Sources of Supplies and Services for Use by Government (FAR Case 2009–024)

This final rule amends the FAR to update and clarify the priority of sources of supplies and services for use by the Government at FAR subpart 8.0. The final rule also includes a list of other existing Federal contract vehicles to consider for agency use, such as Governmentwide Acquisition Contracts (GWACs), Multi-Agency Contracts (MACs), and other procurement instruments intended for use by multiple agencies, including blanket purchase agreements under Federal Supply Service contracts. The policy at FAR 7.102(a) is also revised to conform with the amendments to FAR subpart 8.0.

Item III—Terms of Service and Open-Ended Indemnification, and Unenforceability of Unauthorized Obligations (FAR Case 2013–005)

This final rule adopts, without change, an interim rule which was published in the **Federal Register** at 78 FR 37686 on June 21, 2013. The interim rule amended the FAR to address concerns raised in an opinion from the U.S. Department of Justice Office of Legal Counsel that determined the Anti-Deficiency Act is violated when a Government contracting officer or other employee with the authority to bind the Government agrees, without statutory authorization or other exception, to an open-ended, unrestricted indemnification clause. This rule clarified for the public that an End User License Agreement, Term of Service, or similar agreement containing an indemnification provision, is unenforceable and nonbinding against the Government and Government-authorized end-users. The rule contained a new clause that applies to all solicitations and contracts and automatically applies to micro-purchases, including those made with the Governmentwide commercial purchase card.

Item IV—Trade Agreements Thresholds (FAR Case 2013–021)

This final rule amends the FAR to adjust the thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements as determined by the United States Trade Representative, according to a pre-determined formula under the agreements.

Dated: December 19, 2013.

William Clark,

Acting Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2013–31152 Filed 12–30–13; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 12, 13, 32, 43, and 52

[FAC 2005–72; FAR Case 2013–005; Item III; Docket 2013–0005, Sequence 1]

RIN 9000–AM45

Federal Acquisition Regulation; Terms of Service and Open-Ended Indemnification and Unenforceability of Unauthorized Obligations

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA have adopted as final, without change, an interim rule amending the Federal Acquisition Regulation (FAR) to address concerns raised in an opinion from the U.S. Department of Justice (DOJ) Office of Legal Counsel (OLC) involving the use of unrestricted, open-ended indemnification clauses in acquisitions for social media applications.

DATES: *Effective:* December 31, 2013.

FOR FURTHER INFORMATION CONTACT: Ms. Marissa Petrusek, Procurement Analyst, at 202–501–0136, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–72, FAR Case 2013–005.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 78 FR 37686 on June 21, 2013, to implement a recent DOJ OLC opinion, entitled ''Memorandum for Barbara S. Fredericks, Assistant General Counsel for Administration, United States Department of Commerce,'' which noted that the Anti-Deficiency Act (ADA) (31 U.S.C. 1341) is violated when a Government contracting officer or other employee with authority to bind the Government agrees, without statutory authorization or other exception, to an open-ended, unrestricted indemnification clause. On April 4, 2013, the Office of Management and Budget (OMB) issued guidance outlining a series of management actions to ensure agencies act in compliance with the ADA and in accordance with OLC's opinion. See

OMB Guidance M–13–10, Anti-deficiency Act Implications of Certain Online Terms of Service Agreements. The interim rule became effective on June 21, 2013. One respondent submitted comments on the interim rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the comments in the development of the final rule. A discussion of the comments is provided as follows:

A. Summary of Significant Changes

No changes were made as a result of the public comments.

B. Analysis of Public Comments

1. Attachment of Clause to Licenses

Comment: The respondent believed that the clause does not reliably attach to licenses because of situations where an End User License Agreement (EULA) or Terms of Service (TOS) is passed through an intermediary contractor or subcontractor to the Government. The respondent recommended that the Government directly negotiate with major commercial software and service providers to ensure that the clause ''is included in those providers' EULAs or TOSs with the Government and that the interim rule make clear that commercial items and software can be accepted only where such an agreement has been made directly with the licensor''.

Response: The clause does attach to licenses. The clause is not limited to instances in which the Government has directly negotiated with the indemnitees. No change is made in the final rule.

2. Unintended Consequences

Comment: The respondent expressed concern that this rule could lead commercial companies to forego doing business with the Government. Not all contractors may be able to accept the risk re-allocation effected by the interim rule, according to the respondent.

Response: The interim rule became effective on June 21, 2013. The objective of the rule is to clarify that the inclusion of an open-ended indemnification clause in a EULA, TOS, or other agreement, is not binding on the Government unless expressly authorized by statute and specifically authorized under applicable agency regulations and procedures, and shall be deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement. Since the interim rule was published, the Councils have received no indications that the scenario envisioned by the respondent has come to pass. No change is made in the final rule.

3. Alternative Solutions To Address the ADA Concerns

Comment: The respondent suggested two alternatives. The first was for the Department of Justice to definitively indicate that agency disclosures are not required for (and contracting officers will not be prosecuted for) ADA violations stemming solely from open-ended indemnifications contained in commercial EULAs and TOSs so long as, once discovered, the Government negotiates with the licensor directly to limit the attendant open-ended risk. The other alternative was for the Government to retain the clause from the interim rule with a cap on licensors' liability at the amount of appropriated funds directed to the particular purchase.

Response: This type of additional guidance would not be included in the FAR. Development of this additional guidance is outside the purview of the Councils. No change is made in the final rule.

III. Executive Order 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This final rule is required to implement an opinion by the U.S. Department of Justice Office of Legal Counsel. The objective of the final rule is to clarify that the inclusion of an open-ended indemnification clause in a EULA, TOS, or other agreement, is not binding on the Government unless expressly authorized by statute and specifically authorized under applicable agency regulations and procedures, and shall be deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

The Chief Counsel for Advocacy of the Small Business Administration did not submit any comments in response to the rule.

This rule will impact all small entities with a supply or service contract subject to a supplier license agreement. There may be a small beneficial impact on small entities because these revisions to the FAR will help save time and streamline processes since small entities will no longer have to individually renegotiate, on a prospective basis, a EULA, TOS, or similar agreement containing an indemnification provision. Further, clauses like open-ended, unrestricted indemnification clauses have generally been unenforceable against the Government, unless expressly authorized by statute, and the FAR is being revised to reflect this.

DoD, GSA and NASA estimate that this rule will impact approximately 3,538 small entities. Many supplies or services are acquired subject to supplier license agreements. These are particularly common in information technology acquisitions, but they may apply to any supply or service. DoD, GSA and NASA considered that the majority of the information technology purchases associated with this rule will be purchased through the GSA Information Technology Schedule 70 contracts. As such, DoD, GSA, and NASA used, as a basis for the estimate, the number of GSA Information-Technology Schedule 70 vendors, plus an estimate for contractors other than information technology acquisitions.

There are currently 4,988 GSA Information-Technology Schedule 70 vendors. DoD, GSA and NASA estimate that this rule will impact 75 percent, or 3,741, of those vendors because they have EULAs or TOS in their Government contracts. Of those affected entities, it is estimated that around 86 percent, or 3,217, will be small entities. DoD, GSA, and NASA estimate that there are approximately 10 percent, or 321, more small entities across the Government with information technology acquisitions and other than information-technology acquisition with Government contracts that include EULAs or TOS and therefore impacted. As a result, it is estimated that this rule will impact approximately 3,538 small entities.

DoD, GSA, and NASA do not anticipate an impact on small entities in acquisitions conducted through Government purchase cards. This is because the rule does not require entities to negotiate or change their agreement language.

There is no record keeping or reporting requirement for this rule.

Steps have been taken in this interim rule to minimize the impact on small entities which help to save them time and streamline their processes; for example, this would greatly reduce the requirement to negotiate all EULAs, TOS, or similar arrangements on a case-by-case basis.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat. The Regulatory Secretariat

has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

V. Paperwork Reduction Act

The final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 12, 13, 32, 43, and 52

Government procurement.

Dated: December 19, 2013.

William Clark,

Acting Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR parts 12, 13, 32, 43, and 52, which was published in the **Federal Register** at 78 FR 37686 on June 21, 2013, is adopted as a final rule without change.

[FR Doc. 2013–31150 Filed 12–30–13; 8:45 am]

BILLING CODE 6820–EP–P

FEDERAL REGISTER

Vol. 78 Tuesday,

No. 251 December 31, 2013

Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Seismic Survey in Cook Inlet, Alaska; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD039

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Seismic Survey in Cook Inlet, Alaska

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS received an application from Apache Alaska Corporation (Apache) for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to a proposed 3D seismic survey in Cook Inlet, Alaska, between March 1, 2014, and December 31, 2014. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS requests comments on its proposal to issue an IHA to Apache to take, by Level B harassment only, five species of marine mammals during the specified activity.

DATES: Comments and information must be received no later than January 29, 2014.

ADDRESSES: Comments on the application should be addressed to Jolie Harrison, Supervisor, Incidental Take Program, 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 (for example, name, address, etc.) 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 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.* 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 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.''

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 July 18, 2013, NMFS received an application from Apache for the taking of marine mammals incidental to a 3D seismic survey program. Based on comments and questions from NMFS, the application was revised. Apache submitted a new application on November 11, 2013. The application was determined adequate and complete on November 20, 2013.

Apache proposes to conduct a 3D seismic survey in Cook Inlet, Alaska. The proposed activity would occur for approximately 8–9 months between March 1 and December 31, 2014. In-water airguns will only be active for approximately 2–3 hours during each of the slack tide periods. There are approximately four slack tide periods in a 24-hour period; therefore, airgun operations will be active during approximately 8–12 hours per day, if weather conditions allow. The following specific aspects of the proposed activities are likely to result in the take of marine mammals: seismic airgun operations. Take, by Level B Harassment only, of individuals of five species/stocks is anticipated to result from the specified activity.

This is the third IHA application NMFS has received from Apache for takes of marine mammals incidental to conducting a seismic survey in Cook Inlet. On April 30, 2012, NMFS issued a 1-year IHA to Apache for their first season of seismic acquisition in Cook Inlet (77 FR 27720). NMFS issued a second 1-year IHA to Apache in February 2013 (78 FR 12720, February 25, 2013). That IHA expires on March 1, 2014. Except for the location and the size of the survey area, the activities proposed for the 2014 survey season are essentially the same as those conducted during the first season. No seismic survey operations were conducted under the second IHA.

Description of the Specified Activity

Overview

Apache proposes to conduct a 3D seismic survey in Cook Inlet, Alaska, in an area that encompasses approximately 4,238 km^2 (1,636 mi^2) of intertidal and offshore areas (see Figure 2 in Apache's application). Vessels will lay and retrieve nodal sensors on the sea floor in periods of low current, or, in the case of the intertidal area, during high tide over a 24-hour period. Apache proposes to use two synchronized vessels. Each source vessel will be equipped with compressors and 2,400 cubic inch (in^3) airgun arrays. Additionally, one of the source vessels will be equipped with a 440 in^3 shallow water source array, which can be deployed at high tide in the intertidal area in less than 1.8 m (6 ft) of water. The two source vessels do not fire the airguns simultaneously; rather, each vessel fires a shot every 24 seconds, leaving 12 seconds between shots.

The operation will utilize two source vessels, three cable/nodal deployment

and retrieval operations vessels, a mitigation/monitoring vessel, a node recharging and housing vessel, and two small vessels for personnel transport and node support in the extremely shallow waters in the intertidal area. Water depths for the proposed program will range from 0–128 m (0–420 ft).

Apache has acquired over 800,000 acres of oil and gas leases in Cook Inlet since 2010 with the primary objective to explore for and develop oil and gas resources in Cook Inlet. Seismic surveys are designed to collect bathymetric and sub-seafloor data that allow the evaluation of potential shallow faults, gas zones, and archeological features at prospective exploration drilling locations. In the spring of 2011, Apache conducted a seismic test program to evaluate the feasibility of using new nodal (no cables) technology seismic recording equipment for operations in Cook Inlet. This test program found and provided important input to assist in finalizing the design of the 3D seismic program in Cook Inlet (the nodal technology was determined to be feasible). Apache began seismic onshore acquisition on the west side of Cook Inlet in September 2011 and offshore acquisition in May 2012 under an IHA issued by NMFS for April 30, 2012 through April 30, 2013 (77 FR 27720, May 11, 2012) (see Figure 1 in Apache's application).

Dates and Duration

Apache proposes to acquire offshore/transition zone operations for approximately 8 to 9 months in offshore areas in open water periods from March 1 through December 31, 2014. During each 24-hour period, seismic support activities may be conducted throughout the entire period; however, in-water airguns will only be active for approximately 2–3 hours during each of the slack tide periods. There are approximately four slack tide periods in a 24-hour period; therefore, airgun operations will be active during approximately 8–12 hours per day, if weather conditions allow. Two airgun source vessels will work concurrently on the spread, acquiring source lines approximately 12 km (7.5 mi) in length. Apache anticipates that a crew can acquire approximately 6.2 km^2 (2.4 mi^2) per day, assuming a crew can work 8–12 hours per day. Thus, the actual survey duration will take approximately 160 days over the course of 8 to 9 months. The vessels will be mobilized out of Homer or Anchorage with resupply runs occurring multiple times per week out of Homer, Anchorage, or Nikiski.

Specified Geographic Region

Each phase of the Apache program would encounter land, intertidal transition zone, and marine environments in Cook Inlet, Alaska. However, only the portions occurring in the intertidal zone and marine environments have the potential to take marine mammals. The land-based portion of the proposed program would not result in underwater sound levels that would rise to the level of a marine mammal take.

The proposed location of Apache's acquisition plan has been divided into areas denoted as Zone 1 and Zone 2 (see Figure 2 in Apache's application). Zone 1 is located in mid-Cook Inlet and extends on the east coast from approximately 10 km (6.2 mi) south of Point Possession to 25 km (15.5 mi) north of the East Foreland. Zone 1 only reaches into mid-channel and parallels the western shoreline from the Beluga River south to Bertha Bay. Zone 2 begins at the southern edge of Zone 1 (25 km [15.5 mi] north of the East Foreland) on both the east and west coasts and extends down to approximately Harriet Point on the west coast and to an area about 12 km (7.5 mi) north of Homer. Zones 1 and 2 together encompass approximately 4,238 km^2 (1,636 mi^2) of intertidal and offshore areas. Although Apache would only operate in a portion of this entire area between March 1 and December 31, 2014, Apache has requested to operate in this entire region in order to allow for operational flexibility. There are numerous factors that influence the survey areas, including the geology of the Cook Inlet area, other permitting restrictions (i.e., commercial fishing, Alaska Department of Fish and Game refuges), seismic imaging of leases held by other entities with whom Apache has agreements (e.g., data sharing), overlap of sources and receivers to obtain the necessary seismic imaging data, and general operational restrictions (ice, weather, environmental conditions, marine life activity, etc.). Water depths for the program will range from 0–128 m (0–420 ft).

Detailed Description of Activities

(1) Recording System

The recording system is an autonomous system ''nodal'' (i.e., no cables), made up of at least two types of nodes; one for the land and one for the intertidal and marine environment. For the land operator, a single-component sensor land node will be used (see Figure 4 in Apache's application); the inter-tidal and marine zone operators will use a submersible multi-component system made up of three velocity sensors and a hydrophone (see Figure 5 in application). These systems have the ability to record continuous data. Inline receiver intervals for the node systems will be 50 m (165 ft). The nodes are deployed in patches for the seismic source and deployed for up to 15 days. The deployment length is limited by battery length and data storage capacity.

The geometry methodology that Apache will use to gather seismic data is called *patch shooting*. This type of seismic survey requires the use of multiple vessels for cable layout/pickup, recording, and sourcing. Operations begin by laying node lines on the seafloor parallel to each other with a node line spacing of approximately 402 m (1,320 ft). Apache's patch will have 6–8 node lines (receivers) that generally run perpendicular to the shoreline for transition zones and parallel to the shoreline for offshore areas. The node lines will be separated by either 402 or 503 m (1,320 or 1,650 ft). Inline spacing between nodes will be 50 m (165 ft). The node vessels will lay the entire patch on the seafloor prior to the airgun activity. Individual vessels are capable of carrying up to 400 nodes. With three node vessels operating simultaneously, a patch can be laid down in a single 24-hour period, weather permitting. A sample transition zone patch is depicted in Figure 6 in Apache's application. A sample offshore patch is depicted in Figure 7 in Apache's application.

As the patches are acquired, the node lines will be moved either side-to-side or inline to the next patch's location. Figure 8 in Apache's application depicts multiple side-to-side patches that are acquired individually but when seamed together at the processing phase, create continuous coverage along the coastline.

(2) Sensor Positioning

Transition Zone/Offshore Components: Once the nodes are in place on the seafloor, the exact position of each node is required. There are several techniques used to locate the nodes on the seafloor, depending on the depth of the water. In very shallow water, the node positions are either surveyed by a land surveyor when the tide is low, or the position is accepted based on the position at which the navigator has laid the unit.

In deeper water, there are two recognized techniques, known as Ocean Bottom Receiver Location (OBRL) and Ultra-Short Baseline (USBL) methods. For sensor positioning, Apache will employ the USBL method by using a hull or pole mounted pinger to send a signal to a transponder which is

attached to each node. The transponders are coded, and the crew knows which transponder goes with which node prior to the layout. The transponder's response (once pinged) is added together with several other responses to create a suite of ranges and bearings between the pinger boat and the node. Those data are then calculated to precisely position the node. In good conditions, the nodes can be interrogated as they are laid out. It is also common for the nodes to be pinged after they have been laid out. The pinger that will be used is a Sonardyne Shallow Water Cable Positioning system. The two instruments used are a Scout USBL Transceiver that operates at a frequency of 33–55 kilohertz (kHz) at a max source level of 188 decibels referenced to one micro Pascal (dB re 1 μPa) at 1 m; and a LR USBL Transponder that operates at a frequency of 35–50 kHz at a source level of 185 dB re 1 μPa at 1 m.

Onshore/Intertidal Components: Onshore and intertidal locating of source and receivers will be accomplished with Differential Global Positioning System/roving units (DGPS/RTK) equipped with telemetry radios which will be linked to a base station established on the *M/V Arctic Wolf* or similar vessel. Survey crews will have both helicopter and light tracked vehicle support. Offshore source and receivers will be positioned with an integrated navigation system utilizing DGPS/RTK link to the land located base stations. The integrated navigation system will be capable of many features that are critical to efficient safe operations. The system will include a hazard display system that can be loaded with known obstructions or exclusion zones. Typically the vessel displays are also loaded with the day-to-day operational hazards, buoys, etc. This display gives a quick reference when a potential question regarding positioning or tracking arises. In the case of inclement weather, the hazard display can and has been used to vector vessels to safety.

(3) Seismic Source

Transition Zone/Offshore Components: Apache proposes to use two synchronized source vessels in time. The source vessels, *M/V Peregrine Falcon* and the *M/V Arctic Wolf* (or similar vessels), will be equipped with compressors and 2,400 in^3 airgun arrays (1,200 in^3, if feasible). The *M/V Peregrine Falcon,* or similar, will be equipped with a 440 in^3 shallow water source, which it can deploy at high tide in the intertidal area in less than 1.8 m (6 ft) of water. Most of the airgun sound energy is contained at frequencies below approximately 500 Hz. The modeled broadband source level for the array was 251 dB re 1uPa peak and 238 dB re 1 uPa rms. Source lines are orientated perpendicular to the node lines and parallel to the beach (see red lines on Figure 6 in Apache's application). The two source vessels will traverse source lines of the same patch using a shooting technique called *ping/pong.* The *ping/pong* methodology will have the first source boat commence the source effort. As the first airgun pop is initiated, the second gun boat is sent a command and begins a countdown to pop its guns 12 seconds later than the first vessel. The first source boat would then take its second pop 12 seconds after the second vessel has popped and so on. The vessels try to manage their speed so that they cover approximately 50 m (165 ft) between pops. The objective is to generate source positions for each of the two arrays close to a 50 m (165 ft) interval along each of the source lines in a patch. Vessel speeds range from 2–4 knots (2.3–4.6 miles/hour [mph]). The source effort will average 10–12 hours per day.

Each source line is approximately 12.9 km (8 mi) long. A single vessel is capable of acquiring a source line in approximately 1 hour. With two source vessels operating simultaneously, a patch of approximately 3,900 source points can be acquired in a single day assuming a 10–12 hour source effort. When the data from the patch of nodes have been acquired, the node vessels pick up the patch and roll it to the next location. The pickup effort takes approximately 18 hours.

Onshore/Intertidal Components: The onshore source effort will be shot holes. These holes are drilled every 50 m (165 ft) along source lines which are orientated perpendicular to the receiver lines and parallel to the coast. To access the onshore drill sites, Apache would use a combination of helicopter portable and tracked vehicle drills. At each source location, Apache will drill to the prescribed hole depth of approximately 10 m (35 ft) and load it with 4 kilograms (kg) (8.8 pounds [lbs]) of explosive (likely Orica OSX Pentolite Explosive). The hole will be capped with a ''smart cap'' that will make it impossible to detonate the explosive without the proper blaster. At the request of NMFS, Apache conducted a sound source characterization (SSC) of the onshore shot hole to determine if underwater received sound levels exceeded the NMFS thresholds for harassment. The results of the SSC verified received sound levels in the water are not expected to exceed NMFS' MMPA harassment thresholds (see Appendix A of Apache's application), therefore, onshore sources are not discussed further in this application.

Description of Marine Mammals in the Area of the Specified Activity

The marine mammal species under NMFS's jurisdiction that could occur near operations in Cook Inlet include three cetacean species, all odontocetes (toothed whales): beluga whale (*Delphinapterus leucas*), killer whale (*Orcinus orca*), and harbor porpoise (*Phocoena phocoena*), and two pinniped species: harbor seal (*Phoca vitulina richardsi*) and Steller sea lions (*Eumetopias jubatus*). The marine mammal species that is likely to be encountered most widely (in space and time) throughout the period of the planned surveys is the harbor seal. While killer whales and Steller sea lions have been sighted in upper Cook Inlet, their occurrence is considered rare in that portion of the Inlet.

Of the five marine mammal species likely to occur in the proposed marine survey area, Cook Inlet beluga whales and Steller sea lions are listed as endangered under the ESA (Steller sea lions are listed as two distinct population segments (DPSs), an eastern and a western DPS; the relevant DPS in Cook Inlet is the western DPS). The eastern DPS was recently removed from the endangered species list (78 FR 66139, November 4, 2013). These species are also designated as ''depleted'' under the MMPA. Despite these designations, Cook Inlet beluga whales and the western DPS of Steller sea lions have not made significant progress towards recovery. Data indicate that the Cook Inlet population of beluga whales has been decreasing at a rate of 1.1 percent annually between 2001 and 2011 (Allen and Angliss, 2013). A recent review of the status of the population indicated that there is an 80% chance that the population will decline further (Hobbs and Shelden 2008). Counts of non-pup Steller sea lions at trend sites in the Alaska western stock increased 11% from 2000 to 2004 (Allen and Angliss, 2013). These were the first region-wide increases for the western stock since standardized surveys began in the 1970s and were due to increased or stable counts in all regions except the western Aleutian Islands. Between 2004 and 2008, Alaska western non-pup counts increased only 3%: eastern Gulf of Alaska (Prince William Sound area) counts were higher and Kenai Peninsula through Kiska Island counts were stable, but western Aleutian counts continued to decline. Johnson (2010) analyzed western Steller sea lion population trends in Alaska and concluded that the

overall 2000–2008 trend was a decline 1.5% per year; however, there continues to be considerable regional variability in recent trends (Allen and Angliss, 2013). NMFS has not been able to complete a non-pup survey of the AK western stock since 2008, due largely to weather and closure of the Air Force base on Shemya in 2009 and 2010.

Pursuant to the ESA, critical habitat has been designated for Cook Inlet beluga whales and Steller sea lions. The proposed action falls within critical habitat designated in Cook Inlet for beluga whales but is not within critical habitat designated for Steller sea lions. The portion of beluga whale critical habitat—identified as Area 2 in the critical habitat designation—where the seismic survey will occur is located south of the Area 1 critical habitat where belugas are particularly vulnerable to impacts due to their high seasonal densities and the biological importance of the area for foraging, nursery, and predator avoidance. Area 2 is based on dispersed fall and winter feeding and transit areas in waters where whales typically appear in smaller densities or deeper waters (76 FR 20180, April 11, 2011).

There are several species of mysticetes that have been observed infrequently in lower Cook Inlet, including minke whale (*Balaenoptera acutorostrata*), humpback whale (*Megaptera novaeangliae*), fin whale (*Balaenoptera physalus*), and gray whale (*Eschrichtius robustus*). Because of their infrequent occurrence in the location of seismic acquisition, they are not included in this proposed IHA notice. Sea otters also occur in Cook Inlet. However, sea otters are managed by the U.S. Fish and Wildlife Service and are therefore not considered further in this proposed IHA notice.

Cetaceans

1. Beluga Whales

Cook Inlet beluga whales reside in Cook Inlet year-round although their distribution and density changes seasonally. Factors that are likely to influence beluga whale distribution within the inlet include prey availability, predation pressure, sea-ice cover, and other environmental factors, reproduction, sex and age class, and human activities (Rugh *et al.,* 2000; NMFS 2008). Seasonal movement and density patterns as well as site fidelity appear to be closely linked to prey availability, coinciding with seasonal salmon and eulachon concentrations (Moore *et al.,* 2000). For example, during spring and summer, beluga whales are generally concentrated near the warmer waters of river mouths where prey availability is high and predator occurrence is low (Huntington 2000; Moore *et al.,* 2000). During the winter (November to April), belugas disperse throughout the upper and mid-inlet areas, with animals found between Kalgin Island and Point Possession (Rugh *et al.,* 2000). During these months, there are generally fewer observations of beluga whales in the Anchorage and Knik Arm area (NMML 2004; Rugh *et al.,* 2004).

Beluga whales use several areas of the upper Cook Inlet for repeated summer and fall feeding. The primary hotspots for beluga feeding include the Big and Little Susitna rivers, Eagle Bay to Eklutna River, Ivan Slough, Theodore River, Lewis River, and Chickaloon River and Bay (NMFS, 2008). Availability of prey species appears to be the most influential environmental variable affecting Cook Inlet beluga whale distribution and relative abundance (Moore *et al.,* 2000). The patterns and timing of eulachon and salmon runs have a strong influence on beluga whale feeding behavior and their seasonal movements (Nemeth *et al.,* 2007; NMFS, 2008). The presence of prey species may account for the seasonal changes in beluga group size and composition (Moore *et al.,* 2000). Aerial and vessel-based monitoring conducted by Apache during the March 2011 2D test program in Cook Inlet reported 33 beluga sightings. One of the sightings was of a large group (~25 individuals on March 27, 2011) of feeding/milling belugas near the mouth of the Drift River. Also on March 27, 2011, protected species observers (PSOs) onboard the *M/V Dreamcatcher* reported a group of seven beluga whales approximately 0.9 km (0.6 mi) from the vessel. Land-based PSOs were able to observe this group of beluga whales for approximately 2.5 hrs. A single beluga whale was observed near the mouth of the Drift River by the aerial-based monitors on March 28, 2011, prior to the seismic ramp-up period. If belugas are present during the late summer/early fall, they are more likely to occur in shallow areas near river mouths in upper Cook Inlet. For example, no beluga whales were sighted in Trading Bay during the sound source verification (SSV) conducted in September 2011 because during this time of year they are more likely to be in the upper regions of Cook Inlet. During the SSV in May 2012, belugas were sighted on both days near Drift River (some of which were observed to be feeding).

2. Killer Whales

In general, killer whales are rare in upper Cook Inlet, where transient killer whales are known to feed on beluga whales, and resident killer whales are known to feed on anadromous fish (Shelden *et al.,* 2003). The availability of these prey species largely determines the likeliest times for killer whales to be in the area. Between 1993 and 2004, 23 sightings of killer whales were reported in the lower Cook Inlet during aerial surveys by Rugh *et al.* (2005). Surveys conducted over a span of 20 years by Shelden *et al.* (2003) reported 11 sightings in upper Cook Inlet between Turnagain Arm, Susitna Flats, and Knik Arm. No killer whales were spotted during recent surveys by Funk *et al.* (2005), Ireland *et al.* (2005), Brueggeman *et al.* (2007a, 2007b, 2008), or Prevel Ramos *et al.* (2006, 2008). Eleven killer whale strandings have been reported in Turnagain Arm, six in May 1991 and five in August 1993. Therefore, very few killer whales, if any, are expected to approach or be in the vicinity of the action area.

3. Harbor Porpoise

The most recent estimated density for harbor porpoises in Cook Inlet is 7.2 per 1,000 km^2 (Dahlheim *et al.,* 2000) indicating that only a small number use Cook Inlet. Harbor porpoise have been reported in lower Cook Inlet from Cape Douglas to the West Foreland, Kachemak Bay, and offshore (Rugh *et al.,* 2005). Small numbers of harbor porpoises have been consistently reported in upper Cook Inlet between April and October, except for a recent survey that recorded higher than usual numbers (Prevel Ramos *et al.,* 2008). Prevel Ramos *et al.* (2008) reported 17 harbor porpoises from spring to fall 2006, while other studies reported 14 in the spring of 2007 (Brueggeman *et al.* 2007) and 12 in the fall of 2007 (Brueggeman *et al.* 2008). During the spring and fall of 2007, 129 harbor porpoises were reported between Granite Point and the Susitna River; however, the reason for the increase in numbers of harbor porpoise in the upper Cook Inlet remains unclear and the disparity with the result of past sightings suggests that it may be an anomaly. The spike in reported sightings occurred in July, which was followed by sightings of 79 harbor porpoises in August, 78 in September, and 59 in October 2007. It is important to note that the number of porpoises counted more than once was unknown, which suggests that the actual numbers are likely smaller than those reported. In addition, recent passive acoustic

research in Cook Inlet by the Alaska Department of Fish and Game and the National Marine Mammal Laboratory have indicated that harbor porpoises occur in the area more frequently than previously thought, particularly in the West Foreland area in the spring (NMFS 2011); however overall numbers are still unknown at this time.

Pinnipeds

Two species of pinnipeds may be encountered in Cook Inlet: harbor seal and Steller sea lion.

1. Harbor Seals

Harbor seals inhabit the coastal and estuarine waters of Cook Inlet. In general, harbor seals are more abundant in lower Cook Inlet than in upper Cook Inlet, but they do occur in the upper inlet throughout most of the year (Rugh *et al.* 2005). Harbor seals are non-migratory; their movements are associated with tides, weather, season, food availability, and reproduction. The major haulout sites for harbor seals are located in lower Cook Inlet, and their presence in the upper inlet coincides with seasonal runs of prey species. For example, harbor seals are commonly observed along the Susitna River and other tributaries along upper Cook Inlet during the eulachon and salmon migrations (NMFS, 2003). During aerial surveys of upper Cook Inlet in 2001, 2002, and 2003, harbor seals were observed 24 to 96 km (15 to 60 mi) south-southwest of Anchorage at the Chickaloon, Little Susitna, Susitna, Ivan, McArthur, and Beluga Rivers (Rugh *et al.,* 2005). During the 2D test program in March 2011, two harbor seals were observed by vessel-based PSOs. On March 25, 2011, one harbor seal was observed approximately 400 m (0.2 mi) from the *M/V Miss Diane.* At the time of the observation, the vessel was operating the positioning pinger, and PSOs instructed the operator to implement a shut-down. The pinger was shut down for 30 minutes while PSOs monitored the area and re-started the device when the animal was not sighted again during the 30 minute site clearing protocol. No unusual behaviors were reported during the time the animal was observed. The second harbor seal was observed on March 26, 2011, by vessel-based PSO onboard the *M/V Dreamcatcher* approximately 4,260 m (2.6 mi) from the source vessel, which was operating the 10 in^3 air gun at the time. Many harbor seals were observed during the 3D seismic survey conducted under the April 2012 IHA, especially when survey operations were conducted close to shore. NMFS and Apache do not anticipate encountering large haulouts of seals (the closest haulout site to the action area is located on Kalgin Island, which is approximately 22 km [14 mi] south of the McArthur River), but we do expect to see curious individual harbor seals; especially during large fish runs in the various rivers draining into Cook Inlet.

2. Steller Sea Lion

Two separate stocks of Steller sea lions are recognized within U.S. waters: an eastern U.S. stock, which includes animals east of Cape Suckling, Alaska; and a western U.S. stock, which includes animals west of Cape Suckling (NMFS, 2008). Individuals in Cook Inlet are considered part of the western U.S. stock, which is listed as endangered under the ESA. Steller sea lions primarily occur in lower, rather than upper Cook Inlet and are rarely sighted north of Nikiski on the Kenai Peninsula. Haul-outs and rookeries are located near Cook Inlet at Gore Point, Elizabeth Island, Perl Island, and Chugach Island (NMFS, 2008). No Steller seal lion haul-outs or rookeries are located in the vicinity of the proposed seismic survey. Furthermore, no sightings of Steller sea lions were reported by Apache during the 2D test program in March 2011. During the 3D seismic survey, one Steller sea lion was observed from the *M/V Dreamcatcher* on August 18, 2012, during a period when the air guns were not active. Although Apache has requested takes of Steller sea lions, Steller sea lions would be rare in the action area during seismic survey operations.

Apache's application contains information on the status, distribution, seasonal distribution, and abundance of each of the species under NMFS jurisdiction mentioned in this document. Please refer to the application for that information (see **ADDRESSES**). Additional information can also be found in the NMFS Stock Assessment Reports (SAR). The Alaska 2012 SAR is available on the Internet at: *http://www.nmfs.noaa.gov/pr/sars/pdf/ak2012.pdf.*

Potential Effects of the Specified Activity on Marine Mammals

This section includes a summary and discussion of the ways that the types of stressors associated with the specified activity (e.g., seismic airgun operations, vessel movement) have been observed to or are thought to impact marine mammals. This section may include a discussion of known effects that do not rise to the level of an MMPA take (for example, with acoustics, we may include a discussion of studies that showed animals not reacting at all to sound or exhibiting barely measurable avoidance). The discussion may also include reactions that we consider to rise to the level of a take and those that we do not consider to rise to the level of a take. This section is intended as a background of potential effects and does not consider either the specific manner in which this activity will be carried out or the mitigation that will be implemented or how either of those will shape the anticipated impacts from this specific activity. The ''Estimated Take by Incidental Harassment'' section later in this document will include a quantitative analysis of the number of individuals that are expected to be taken by this activity. The ''Negligible Impact Analysis'' section will include the analysis of how this specific activity will impact marine mammals and will consider the content of this section, the ''Estimated Take by Incidental Harassment'' section, the ''Proposed Mitigation'' section, and the ''Anticipated Effects on Marine Mammal Habitat'' section to draw conclusions regarding the likely impacts of this activity on the reproductive success or survivorship of individuals and from that on the affected marine mammal populations or stocks.

Operating active acoustic sources, such as air gun arrays, has the potential for adverse effects on marine mammals. The majority of anticipated impacts would be from the use of acoustic sources.

Acoustic Impacts

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Based on available behavioral data, audiograms have been derived using auditory evoked potentials, anatomical modeling, and other data, Southall *et al.* (2007) designate ''functional hearing groups'' for marine mammals and estimate the lower and upper frequencies of functional hearing of the groups. The functional groups and the associated frequencies are indicated below (though animals are less sensitive to sounds at the outer edge of their functional range and most sensitive to sounds of frequencies within a smaller range somewhere in the middle of their functional hearing range):

- Low-frequency cetaceans (13 species of mysticetes): functional hearing is estimated to occur between approximately 7 Hz and 22 kHz (however, a study by Au *et al.* (2006) of humpback whale songs indicate that the range may extend to at least 24 kHz);

• Mid-frequency cetaceans (32 species of dolphins, six species of larger toothed whales, and 19 species of beaked and bottlenose whales): functional hearing is estimated to occur between approximately 150 Hz and 160 kHz;

• High-frequency cetaceans (eight species of true porpoises, six species of river dolphins, Kogia, the franciscana, and four species of cephalorhynchids): functional hearing is estimated to occur between approximately 200 Hz and 180 kHz; and

• Pinnipeds in Water: functional hearing is estimated to occur between approximately 75 Hz and 75 kHz, with the greatest sensitivity between approximately 700 Hz and 20 kHz.

As mentioned previously in this document, five marine mammal species (three cetacean and two pinniped species) are likely to occur in the proposed seismic survey area. Of the three cetacean species likely to occur in Apache's proposed project area, two are classified as mid-frequency cetaceans (i.e., beluga and killer whales), and one is classified as a high-frequency cetacean (i.e., harbor porpoise) (Southall *et al.,* 2007). A species functional hearing group is a consideration when we analyze the effects of exposure to sound on marine mammals.

1. Potential Effects of Air Gun Sounds on Marine Mammals

The effects of sounds from airgun pulses might include one or more of the following: tolerance, masking of natural sounds, behavioral disturbance, and temporary or permanent hearing impairment or non-auditory effects (Richardson *et al.,* 1995). As outlined in previous NMFS documents, the effects of noise on marine mammals are highly variable, often depending on species and contextual factors (based on Richardson *et al.,* 1995).

Tolerance: Numerous studies have shown that pulsed sounds from air guns are often readily detectable in the water at distances of many kilometers. Numerous studies have also shown that marine mammals at distances more than a few kilometers from operating survey vessels often show no apparent response. That is often true even in cases when the pulsed sounds must be readily audible to the animals based on measured received levels and the hearing sensitivity of that mammal group. In general, pinnipeds and small odontocetes (toothed whales) seem to be more tolerant of exposure to air gun pulses than baleen whales. Although various toothed whales, and (less frequently) pinnipeds have been shown to react behaviorally to airgun pulses under some conditions, at other times, mammals of both types have shown no overt reactions. Weir (2008) observed marine mammal responses to seismic pulses from a 24 airgun array firing a total volume of either 5,085 in^3 or 3,147 in^3 in Angolan waters between August 2004 and May 2005. Weir recorded a total of 207 sightings of humpback whales (n = 66), sperm whales (n = 124), and Atlantic spotted dolphins (n = 17) and reported that there were no significant differences in encounter rates (sightings/hr) for humpback and sperm whales according to the airgun array's operational status (i.e., active versus silent).

Behavioral Disturbance: Marine mammals may behaviorally react to sound when exposed to anthropogenic noise. These behavioral reactions are often shown as: changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where noise sources are located; and/or flight responses (e.g., pinnipeds flushing into water from haulouts or rookeries).

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification have the potential to be biologically significant if the change affects growth, survival, or reproduction. Examples of significant behavioral modifications include:

• Drastic change in diving/surfacing patterns (such as those thought to be causing beaked whale stranding due to exposure to military mid-frequency tactical sonar);

• Habitat abandonment due to loss of desirable acoustic environment; and

• Cessation of feeding or social interaction.

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography) and is also difficult to predict (Southall *et al.* 2007).

Few systematic data are available describing reactions of toothed whales to noise pulses. However, systematic work on sperm whales is underway (Tyack *et al.,* 2003), and there is an increasing amount of information about responses of various odontocetes to seismic surveys based on monitoring studies (e.g., Stone, 2003; Smultea *et al.,* 2004; Moulton and Miller, 2005).

Seismic operators and marine mammal observers sometimes see dolphins and other small toothed whales near operating airgun arrays, but, in general, there seems to be a tendency for most delphinids to show some limited avoidance of seismic vessels operating large airgun systems. However, some dolphins seem to be attracted to the seismic vessel and floats, and some ride the bow wave of the seismic vessel even when large arrays of airguns are firing. Nonetheless, there have been indications that small toothed whales sometimes move away or maintain a somewhat greater distance from the vessel when a large array of airguns is operating than when it is silent (e.g., Goold, 1996a,b,c; Calambokidis and Osmek, 1998; Stone, 2003). The beluga may be a species that (at least in certain geographic areas) shows long-distance avoidance of seismic vessels. Aerial surveys during seismic operations in the southeastern Beaufort Sea recorded much lower sighting rates of beluga whales within 10–20 km (6.2–12.4 mi) of an active seismic vessel. These results were consistent with the low number of beluga sightings reported by observers aboard the seismic vessel, suggesting that some belugas might have been avoiding the seismic operations at distances of 10–20 km (6.2–12.4 mi) (Miller *et al.,* 2005).

Captive bottlenose dolphins and (of more relevance in this project) beluga whales exhibit changes in behavior when exposed to strong pulsed sounds similar in duration to those typically used in seismic surveys (Finneran *et al.,* 2002, 2005). However, the animals tolerated high received levels of sound (pk–pk level >200 dB re 1 μPa) before exhibiting aversive behaviors.

Observers stationed on seismic vessels operating off the United Kingdom from 1997–2000 have provided data on the occurrence and behavior of various toothed whales exposed to seismic pulses (Stone, 2003; Gordon *et al.,* 2004). Killer whales were found to be significantly farther from large airgun arrays during periods of shooting compared with periods of no shooting. The displacement of the median distance from the array was approximately 0.5 km (0.3 mi) or more. Killer whales also appear to be more tolerant of seismic shooting in deeper water.

Reactions of toothed whales to large arrays of airguns are variable and, at least for delphinids, seem to be confined to a smaller radius than has been observed for mysticetes. However, based

on the limited existing evidence, belugas should not be grouped with delphinids in the ''less responsive'' category.

Pinnipeds are not likely to show a strong avoidance reaction to the airgun sources proposed for use. Visual monitoring from seismic vessels has shown only slight (if any) avoidance of airguns by pinnipeds and only slight (if any) changes in behavior. Monitoring work in the Alaskan Beaufort Sea during 1996–2001 provided considerable information regarding the behavior of Arctic ice seals exposed to seismic pulses (Harris *et al.,* 2001; Moulton and Lawson, 2002). These seismic projects usually involved arrays of 6 to 16 airguns with total volumes of 560 to 1,500 in^3. The combined results suggest that some seals avoid the immediate area around seismic vessels. In most survey years, ringed seal sightings tended to be farther away from the seismic vessel when the airguns were operating than when they were not (Moulton and Lawson, 2002). However, these avoidance movements were relatively small, on the order of 100 m (328 ft) to a few hundreds of meters, and many seals remained within 100–200 m (328–656 ft) of the trackline as the operating airgun array passed by. Seal sighting rates at the water surface were lower during airgun array operations than during no-airgun periods in each survey year except 1997. Similarly, seals are often very tolerant of pulsed sounds from seal-scaring devices (Mate and Harvey, 1987; Jefferson and Curry, 1994; Richardson *et al.,* 1995a). However, initial telemetry work suggests that avoidance and other behavioral reactions by two other species of seals to small airgun sources may at times be stronger than evident to date from visual studies of pinniped reactions to airguns (Thompson *et al.,* 1998). Even if reactions of the species occurring in the present study area are as strong as those evident in the telemetry study, reactions are expected to be confined to relatively small distances and durations, with no long-term effects on pinniped individuals or populations.

Masking: Masking is the obscuring of sounds of interest by other sounds, often at similar frequencies. Marine mammals use acoustic signals for a variety of purposes, which differ among species, but include communication between individuals, navigation, foraging, reproduction, avoiding predators, and learning about their environment (Erbe and Farmer, 2000; Tyack, 2000). Masking, or auditory interference, generally occurs when sounds in the environment are louder than, and of a similar frequency as, auditory signals an animal is trying to receive. Masking is a phenomenon that affects animals that are trying to receive acoustic information about their environment, including sounds from other members of their species, predators, prey, and sounds that allow them to orient in their environment. Masking these acoustic signals can disturb the behavior of individual animals, groups of animals, or entire populations.

Masking occurs when anthropogenic sounds and signals (that the animal utilizes) overlap at both spectral and temporal scales. For the airgun sound generated from the proposed seismic surveys, sound will consist of low frequency (under 500 Hz) pulses with extremely short durations (less than one second). Lower frequency man-made sounds are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey noise. There is little concern regarding masking near the sound source due to the brief duration of these pulses and relatively longer silence between air gun shots (approximately 12 seconds). However, at long distances (over tens of kilometers away), due to multipath propagation and reverberation, the durations of airgun pulses can be ''stretched'' to seconds with long decays (Madsen *et al.* 2006), although the intensity of the sound is greatly reduced.

This could affect communication signals used by low frequency mysticetes when they occur near the noise band and thus reduce the communication space of animals (e.g., Clark *et al.* 2009) and cause increased stress levels (e.g., Foote *et al.* 2004; Holt *et al.* 2009); however, no baleen whales are expected to occur within the proposed action area. Marine mammals are thought to be able to compensate for masking by adjusting their acoustic behavior by shifting call frequencies, and/or increasing call volume and vocalization rates. For example, blue whales are found to increase call rates when exposed to seismic survey noise in the St. Lawrence Estuary (Di Iorio and Clark 2010). The North Atlantic right whales (*Eubalaena glacialis*) exposed to high shipping noise increase call frequency (Parks *et al.* 2007), while some humpback whales respond to low-frequency active sonar playbacks by increasing song length (Miller *el al.* 2000). Additionally, beluga whales have been known to change their vocalizations in the presence of high background noise possibly to avoid masking calls (Au *et al.,* 1985; Lesage *et al.,* 1999; Scheifele *et al.,* 2005). Although some degree of masking is inevitable when high levels of manmade broadband sounds are introduced into the sea, marine mammals have evolved systems and behavior that function to reduce the impacts of masking. Structured signals, such as the echolocation click sequences of small toothed whales, may be readily detected even in the presence of strong background noise because their frequency content and temporal features usually differ strongly from those of the background noise (Au and Moore, 1988, 1990). The components of background noise that are similar in frequency to the sound signal in question primarily determine the degree of masking of that signal.

Redundancy and context can also facilitate detection of weak signals. These phenomena may help marine mammals detect weak sounds in the presence of natural or manmade noise. Most masking studies in marine mammals present the test signal and the masking noise from the same direction. The sound localization abilities of marine mammals suggest that, if signal and noise come from different directions, masking would not be as severe as the usual types of masking studies might suggest (Richardson *et al.,* 1995). The dominant background noise may be highly directional if it comes from a particular anthropogenic source such as a ship or industrial site. Directional hearing may significantly reduce the masking effects of these sounds by improving the effective signal-to-noise ratio. In the cases of higher frequency hearing by the bottlenose dolphin, beluga whale, and killer whale, empirical evidence confirms that masking depends strongly on the relative directions of arrival of sound signals and the masking noise (Penner *et al.,* 1986; Dubrovskiy, 1990; Bain *et al.,* 1993; Bain and Dahlheim, 1994). Toothed whales, and probably other marine mammals as well, have additional capabilities besides directional hearing that can facilitate detection of sounds in the presence of background noise. There is evidence that some toothed whales can shift the dominant frequencies of their echolocation signals from a frequency range with a lot of ambient noise toward frequencies with less noise (Au *et al.,* 1974, 1985; Moore and Pawloski, 1990; Thomas and Turl, 1990; Romanenko and Kitain, 1992; Lesage *et al.,* 1999). A few marine mammal species are known to increase the source levels or alter the frequency of their calls in the presence of elevated sound levels (Dahlheim, 1987; Au, 1993; Lesage *et al.,* 1993, 1999; Terhune, 1999; Foote *et al.,* 2004;

Parks *et al.,* 2007, 2009; Di Iorio and Clark, 2009; Holt *et al.,* 2009).

These data demonstrating adaptations for reduced masking pertain mainly to the very high frequency echolocation signals of toothed whales. There is less information about the existence of corresponding mechanisms at moderate or low frequencies or in other types of marine mammals. For example, Zaitseva *et al.* (1980) found that, for the bottlenose dolphin, the angular separation between a sound source and a masking noise source had little effect on the degree of masking when the sound frequency was 18 kHz, in contrast to the pronounced effect at higher frequencies. Directional hearing has been demonstrated at frequencies as low as 0.5–2 kHz in several marine mammals, including killer whales (Richardson *et al.,* 1995a). This ability may be useful in reducing masking at these frequencies. In summary, high levels of sound generated by anthropogenic activities may act to mask the detection of weaker biologically important sounds by some marine mammals. This masking may be more prominent for lower frequencies. For higher frequencies, such as that used in echolocation by toothed whales, several mechanisms are available that may allow them to reduce the effects of such masking.

Threshold Shift (noise-induced loss of hearing)—When animals exhibit reduced hearing sensitivity (i.e., sounds must be louder for an animal to detect them) following exposure to an intense sound or sound for long duration, it is referred to as a noise-induced threshold shift (TS). An animal can experience temporary threshold shift (TTS) or permanent threshold shift (PTS). TTS can last from minutes or hours to days (i.e., there is complete recovery), can occur in specific frequency ranges (i.e., an animal might only have a temporary loss of hearing sensitivity between the frequencies of 1 and 10 kHz), and can be of varying amounts (for example, an animal's hearing sensitivity might be reduced initially by only 6 dB or reduced by 30 dB). PTS is permanent, but some recovery is possible. PTS can also occur in a specific frequency range and amount as mentioned above for TTS.

The following physiological mechanisms are thought to play a role in inducing auditory TS: Effects to sensory hair cells in the inner ear that reduce their sensitivity, modification of the chemical environment within the sensory cells, residual muscular activity in the middle ear, displacement of certain inner ear membranes, increased blood flow, and post-stimulatory reduction in both efferent and sensory neural output (Southall *et al.,* 2007). The amplitude, duration, frequency, temporal pattern, and energy distribution of sound exposure all can affect the amount of associated TS and the frequency range in which it occurs. As amplitude and duration of sound exposure increase, so, generally, does the amount of TS, along with the recovery time. For intermittent sounds, less TS could occur than compared to a continuous exposure with the same energy (some recovery could occur between intermittent exposures depending on the duty cycle between sounds) (Kryter *et al.,* 1966; Ward, 1997). For example, one short but loud (higher SPL) sound exposure may induce the same impairment as one longer but softer sound, which in turn may cause more impairment than a series of several intermittent softer sounds with the same total energy (Ward, 1997). Additionally, though TTS is temporary, prolonged exposure to sounds strong enough to elicit TTS, or shorter-term exposure to sound levels well above the TTS threshold, can cause PTS, at least in terrestrial mammals (Kryter, 1985). Although in the case of the seismic survey, animals are not expected to be exposed to levels high enough or durations long enough to result in PTS.

PTS is considered auditory injury (Southall *et al.,* 2007). Irreparable damage to the inner or outer cochlear hair cells may cause PTS; however, other mechanisms are also involved, such as exceeding the elastic limits of certain tissues and membranes in the middle and inner ears and resultant changes in the chemical composition of the inner ear fluids (Southall *et al.,* 2007).

Although the published body of scientific literature contains numerous theoretical studies and discussion papers on hearing impairments that can occur with exposure to a loud sound, only a few studies provide empirical information on the levels at which noise-induced loss in hearing sensitivity occurs in nonhuman animals. For marine mammals, published data are limited to the captive bottlenose dolphin, beluga, harbor porpoise, and Yangtze finless porpoise (Finneran *et al.,* 2000, 2002b, 2003, 2005a, 2007, 2010a, 2010b; Finneran and Schlundt, 2010; Lucke *et al.,* 2009; Mooney *et al.,* 2009a, 2009b; Popov *et al.,* 2011a, 2011b; Kastelein *et al.,* 2012a; Schlundt *et al.,* 2000; Nachtigall *et al.,* 2003, 2004). For pinnipeds in water, data are limited to measurements of TTS in harbor seals, an elephant seal, and California sea lions (Kastak *et al.,* 1999, 2005; Kastelein *et al.,* 2012b).

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (i.e., recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. Also, depending on the degree and frequency range, the effects of PTS on an animal could range in severity, although it is considered generally more serious because it is a permanent condition. Of note, reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Given the higher level of sound necessary to cause PTS as compared with TTS, it is considerably less likely that PTS would occur during the proposed seismic survey in Cook Inlet. Cetaceans generally avoid the immediate area around operating seismic vessels, as do some other marine mammals. Some pinnipeds show avoidance reactions to airguns, but their avoidance reactions are generally not as strong or consistent as those of cetaceans, and occasionally they seem to be attracted to operating seismic vessels (NMFS, 2010).

Non-auditory Physical Effects: Non-auditory physical effects might occur in marine mammals exposed to strong underwater pulsed sound. Possible types of non-auditory physiological effects or injuries that theoretically might occur in mammals close to a strong sound source include stress, neurological effects, bubble formation, and other types of organ or tissue damage. Some marine mammal species (i.e., beaked whales) may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds.

Classic stress responses begin when an animal's central nervous system perceives a potential threat to its homeostasis. That perception triggers stress responses regardless of whether a stimulus actually threatens the animal; the mere perception of a threat is sufficient to trigger a stress response (Moberg, 2000; Sapolsky *et al.,* 2005; Seyle, 1950). Once an animal's central nervous system perceives a threat, it mounts a biological response or defense that consists of a combination of the four general biological defense responses: Behavioral responses; autonomic nervous system responses; neuroendocrine responses; or immune responses.

In the case of many stressors, an animal's first and most economical (in terms of biotic costs) response is behavioral avoidance of the potential stressor or avoidance of continued exposure to a stressor. An animal's second line of defense to stressors involves the sympathetic part of the autonomic nervous system and the classical ''fight or flight'' response, which includes the cardiovascular system, the gastrointestinal system, the exocrine glands, and the adrenal medulla to produce changes in heart rate, blood pressure, and gastrointestinal activity that humans commonly associate with ''stress.'' These responses have a relatively short duration and may or may not have significant long-term effects on an animal's welfare.

An animal's third line of defense to stressors involves its neuroendocrine or sympathetic nervous systems; the system that has received the most study has been the hypothalmus-pituitary-adrenal system (also known as the HPA axis in mammals or the hypothalamus-pituitary-interrenal axis in fish and some reptiles). Unlike stress responses associated with the autonomic nervous system, virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction (Moberg, 1987; Rivier, 1995), altered metabolism (Elasser *et al.,* 2000), reduced immune competence (Blecha, 2000), and behavioral disturbance. Increases in the circulation of glucocorticosteroids (cortisol, corticosterone, and aldosterone in marine mammals; see Romano *et al.,* 2004) have been equated with stress for many years.

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and distress is the biotic cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose a risk to the animal's welfare. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other biotic functions, which impair those functions that experience the diversion. For example, when mounting a stress response diverts energy away from growth in young animals, those animals may experience stunted growth. When mounting a stress response diverts energy from a fetus, an animal's reproductive success and fitness will suffer. In these cases, the animals will have entered a pre-pathological or pathological state which is called ''distress'' (sensu Seyle, 1950) or ''allostatic loading'' (sensu McEwen and Wingfield, 2003). This pathological state will last until the animal replenishes its biotic reserves sufficient to restore normal function. Note that these examples involved a long-term (days or weeks) stress response exposure to stimuli.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses have also been documented fairly well through controlled experiment; because this physiology exists in every vertebrate that has been studied, it is not surprising that stress responses and their costs have been documented in both laboratory and free-living animals (for examples see, Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005; Reneerkens *et al.,* 2002; Thompson and Hamer, 2000). Although no information has been collected on the physiological responses of marine mammals to anthropogenic sound exposure, studies of other marine animals and terrestrial animals would lead us to expect some marine mammals to experience physiological stress responses and, perhaps, physiological responses that would be classified as ''distress'' upon exposure to anthropogenic sounds.

For example, Jansen (1998) reported on the relationship between acoustic exposures and physiological responses that are indicative of stress responses in humans (e.g., elevated respiration and increased heart rates). Jones (1998) reported on reductions in human performance when faced with acute, repetitive exposures to acoustic disturbance. Trimper *et al.* (1998) reported on the physiological stress responses of osprey to low-level aircraft noise while Krausman *et al.* (2004) reported on the auditory and physiology stress responses of endangered Sonoran pronghorn to military overflights. Smith *et al.* (2004a, 2004b) identified noise-induced physiological transient stress responses in hearing-specialist fish (i.e., goldfish) that accompanied short- and long-term hearing losses. Welch and Welch (1970) reported physiological and behavioral stress responses that accompanied damage to the inner ears of fish and several mammals.

Hearing is one of the primary senses marine mammals use to gather information about their environment and communicate with conspecifics. Although empirical information on the relationship between sensory impairment (TTS, PTS, and acoustic masking) on marine mammals remains limited, we assume that reducing a marine mammal's ability to gather information about its environment and communicate with other members of its species would induce stress, based on data that terrestrial animals exhibit those responses under similar conditions (NRC, 2003) and because marine mammals use hearing as their primary sensory mechanism. Therefore, we assume that acoustic exposures sufficient to trigger onset PTS or TTS would be accompanied by physiological stress responses. More importantly, marine mammals might experience stress responses at received levels lower than those necessary to trigger onset TTS. Based on empirical studies of the time required to recover from stress responses (Moberg, 2000), NMFS also assumes that stress responses could persist beyond the time interval required for animals to recover from TTS and might result in pathological and pre-pathological states that would be as significant as behavioral responses to TTS. However, as stated previously in this document, the source levels of the drillships are not loud enough to induce PTS or likely even TTS.

Resonance effects (Gentry, 2002) and direct noise-induced bubble formations (Crum *et al.,* 2005) are implausible in the case of exposure to an impulsive broadband source like an airgun array. If seismic surveys disrupt diving patterns of deep-diving species, this might result in bubble formation and a form of the bends, as speculated to occur in beaked whales exposed to sonar. However, there is no specific evidence of this upon exposure to airgun pulses. Additionally, no beaked whale species occur in the proposed seismic survey area.

In general, very little is known about the potential for strong, anthropogenic

underwater sounds to cause non-auditory physical effects in marine mammals. Such effects, if they occur at all, would presumably be limited to short distances and to activities that extend over a prolonged period. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.,* 2007) or any meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. There is no definitive evidence that any of these effects occur even for marine mammals in close proximity to large arrays of airguns. In addition, marine mammals that show behavioral avoidance of seismic vessels, including belugas and some pinnipeds, are especially unlikely to incur non-auditory impairment or other physical effects. Therefore, it is unlikely that such effects would occur during Apache's proposed surveys given the brief duration of exposure and the planned monitoring and mitigation measures described later in this document.

Stranding and Mortality: Marine mammals close to underwater detonations of high explosive can be killed or severely injured, and the auditory organs are especially susceptible to injury (Ketten *et al.* 1993; Ketten 1995). Airgun pulses are less energetic and their peak amplitudes have slower rise times. To date, there is no evidence that serious injury, death, or stranding by marine mammals can occur from exposure to air gun pulses, even in the case of large air gun arrays.

However, in numerous past IHA notices for seismic surveys, commenters have referenced two stranding events allegedly associated with seismic activities, one off Baja California and a second off Brazil. NMFS has addressed this concern several times, including in the **Federal Register** notice announcing the IHA for Apache's first seismic survey in 2012, and, without new information, does not believe that this issue warrants further discussion. For information relevant to strandings of marine mammals, readers are encouraged to review NMFS' response to comments on this matter found in 69 FR 74905 (December 14, 2004), 71 FR 43112 (July 31, 2006), 71 FR 50027 (August 24, 2006), 71 FR 49418 (August 23, 2006), and 77 FR 27720 (May 11, 2012).

It should be noted that strandings related to sound exposure have not been recorded for marine mammal species in Cook Inlet. Beluga whale strandings in Cook Inlet are not uncommon; however, these events often coincide with extreme tidal fluctuations (''spring tides'') or killer whale sightings (Shelden *et al.,* 2003). For example, in August 2012, a group of Cook Inlet beluga whales stranded in the mud flats of Turnagain Arm during low tide and were able to swim free with the flood tide. No strandings or marine mammals in distress were observed during the 2D test survey conducted by Apache in March 2011, and none were reported by Cook Inlet inhabitants. Furthermore, no strandings were reported during seismic survey operations conducted under the April 2012 IHA. As a result, NMFS does not expect any marine mammals will incur serious injury or mortality in Cook Inlet or strand as a result of the proposed seismic survey.

2. Potential Effects From Pingers on Marine Mammals

Active acoustic sources other than the airguns have been proposed for Apache's 2014 seismic survey in Cook Inlet. The specifications for the pingers (source levels and frequency ranges) were provided earlier in this document. In general, the potential effects of this equipment on marine mammals are similar to those from the airguns, except the magnitude of the impacts is expected to be much less due to the lower intensity of the source.

3. Potential Effects From Aircraft Noise on Marine Mammals

Apache plans to utilize aircraft to conduct aerial surveys near river mouths in order to identify locations or congregations of beluga whales and other marine mammals prior to the commencement of operations. The aircraft will not be used every day but will be used for surveys near river mouths. Aerial surveys will fly at an altitude of 305 m (1,000 ft) when practicable and weather conditions permit. In the event of a marine mammal sighting, aircraft will try to maintain a radial distance of 457 m (1,500 ft) from the marine mammal(s). Aircraft will avoid approaching marine mammals from head-on, flying over or passing the shadow of the aircraft over the marine mammals.

Studies on the reactions of cetaceans to aircraft show little negative response (Richardson *et al.,* 1995). In general, reactions range from sudden dives and turns and are typically found to decrease if the animals are engaged in feeding or social behavior. Whales with calves or in confined waters may show more of a response. Generally there has been little or no evidence of marine mammals responding to aircraft overflights when altitudes are at or above 305 m (1,000 ft), based on three decades of flying experience in the Arctic (NMFS, unpublished data). Based on long-term studies that have been conducted on beluga whales in Cook Inlet since 1993, NMFS expect that there will be no effects of this activity on beluga whales or other cetaceans. No change in beluga swim directions or other noticeable reactions have been observed during the Cook Inlet aerial surveys flown from 183 to 244 m (600 to 800 ft) (e.g., Rugh *et al.,* 2000). By applying the operational requirements discussed above, sound levels underwater are not expected to rise to the level of a take.

The majority of observations of pinnipeds reacting to aircraft noise are associated with animals hauled out on land or ice. There are few data describing the reactions of pinnipeds in water to aircraft (Richardson *et al.,* 1995). In the presence of aircraft, pinnipeds hauled out for pupping or molting generally became alert and then rushed or slipped (when on ice) into the water. Stampedes often result from this response and may increase pup mortality due to crushing or an increase rate of pup abandonment. The greatest reactions from hauled out pinnipeds were observed when low flying aircrafts passed directly above the animal(s) (Richardson *et al.,* 1995). Although noise associated with aircraft activity could cause hauled out pinnipeds to rush into the water, there are no known haul out sites in the vicinity of the survey site. Therefore, the operation of aircraft during the seismic survey is not expected to have effects that could cause significant or long-term consequences for individual marine mammals or their populations. To minimize the noise generated by aircraft, Apache will follow NMFS' Marine Mammal Viewing Guidelines and Regulations found on the Internet at: *http://www.alaskafisheries.noaa.gov/protectedresources/mmv/guide.htm.*

Vessel Impacts

Vessel activity and noise associated with vessel activity will temporarily increase in the action area during Apache's seismic survey as a result of the operation of nine vessels. To minimize the effects of vessels and noise associated with vessel activity, Apache will follow NMFS' Marine Mammal Viewing Guidelines and Regulations and will alter heading or speed if a marine mammal gets too close to a vessel. In addition, vessels will be operating at slow speed (2–4 knots) when conducting surveys and in a purposeful manner to and from work sites in as direct a route as possible. Marine mammal monitoring observers

and passive acoustic devices will alert vessel captains as animals are detected to ensure safe and effective measures are applied to avoid coming into direct contact with marine mammals. Therefore, NMFS neither anticipates nor authorizes takes of marine mammals from ship strikes.

Odontocetes, such as beluga whales, killer whales, and harbor porpoises, often show tolerance to vessel activity; however, they may react at long distances if they are confined by ice, shallow water, or were previously harassed by vessels (Richardson *et al.,* 1995). Beluga whale response to vessel noise varies greatly from tolerance to extreme sensitivity depending on the activity of the whale and previous experience with vessels (Richardson *et al.,* 1995). Reactions to vessels depends on whale activities and experience, habitat, boat type, and boat behavior (Richardson *et al.,* 1995) and may include behavioral responses, such as altered headings or avoidance (Blane and Jaakson, 1994; Erbe and Farmer, 2000); fast swimming; changes in vocalizations (Lesage *et al.,* 1999; Scheifele *et al.,* 2005); and changes in dive, surfacing, and respiration patterns.

There are few data published on pinniped responses to vessel activity, and most of the information is anecdotal (Richardson *et al.,* 1995). Generally, sea lions in water show tolerance to close and frequently approaching vessels and sometimes show interest in fishing vessels. They are less tolerant when hauled out on land; however, they rarely react unless the vessel approaches within 100–200 m (330–660 ft; reviewed in Richardson *et al.,* 1995).

The addition of nine vessels and noise due to vessel operations associated with the seismic survey would not be outside the present experience of marine mammals in Cook Inlet, although levels may increase locally. Given the large number of vessels in Cook Inlet and the apparent habituation to vessels by Cook Inlet beluga whales and the other marine mammals that may occur in the area, vessel activity and noise is not expected to have effects that could cause significant or long-term consequences for individual marine mammals or their populations.

Anticipated Effects on Marine Mammal Habitat

The primary potential impacts to marine mammal habitat and other marine species are associated with elevated sound levels produced by airguns and other active acoustic sources. However, other potential impacts to the surrounding habitat from physical disturbance are also possible. This section describes the potential impacts to marine mammal habitat from the specified activity. Because the marine mammals in the area feed on fish and/or invertebrates there is also information on the species typically preyed upon by the marine mammals in the area.

Common Marine Mammal Prey in the Project Area

Fish are the primary prey species for marine mammals in upper Cook Inlet. Beluga whales feed on a variety of fish, shrimp, squid, and octopus (Burns and Seaman, 1986). Common prey species in Knik Arm include salmon, eulachon and cod. Harbor seals feed on fish such as pollock, cod, capelin, eulachon, Pacific herring, and salmon, as well as a variety of benthic species, including crabs, shrimp, and cephalopods. Harbor seals are also opportunistic feeders with their diet varying with season and location. The preferred diet of the harbor seal in the Gulf of Alaska consists of pollock, octopus, capelin, eulachon, and Pacific herring (Calkins, 1989). Other prey species include cod, flat fishes, shrimp, salmon, and squid (Hoover, 1988). Harbor porpoises feed primarily on Pacific herring, cod, whiting (hake), pollock, squid, and octopus (Leatherwood *et al.,* 1982). In the upper Cook Inlet area, harbor porpoise feed on squid and a variety of small schooling fish, which would likely include Pacific herring and eulachon (Bowen and Siniff, 1999; NMFS, unpublished data). Killer whales feed on either fish or other marine mammals depending on genetic type (resident versus transient respectively). Killer whales in Knik Arm are typically the transient type (Shelden *et al.,* 2003) and feed on beluga whales and other marine mammals, such as harbor seal and harbor porpoise. The Steller sea lion diet consists of a variety of fishes (capelin, cod, herring, mackerel, pollock, rockfish, salmon, sand lance, etc.), bivalves, squid, octopus, and gastropods.

Potential Impacts on Prey Species

With regard to fish as a prey source for cetaceans and pinnipeds, fish are known to hear and react to sounds and to use sound to communicate (Tavolga *et al.,* 1981) and possibly avoid predators (Wilson and Dill, 2002). Experiments have shown that fish can sense both the strength and direction of sound (Hawkins, 1981). Primary factors determining whether a fish can sense a sound signal, and potentially react to it, are the frequency of the signal and the strength of the signal in relation to the natural background sound level.

Fishes produce sounds that are associated with behaviors that include territoriality, mate search, courtship, and aggression. It has also been speculated that sound production may provide the means for long distance communication and communication under poor underwater visibility conditions (Zelick *et al.,* 1999), although the fact that fish communicate at low-frequency sound levels where the masking effects of ambient noise are naturally highest suggests that very long distance communication would rarely be possible. Fishes have evolved a diversity of sound generating organs and acoustic signals of various temporal and spectral contents. Fish sounds vary in structure, depending on the mechanism used to produce them (Hawkins, 1993). Generally, fish sounds are predominantly composed of low frequencies (less than 3 kHz).

Since objects in the water scatter sound, fish are able to detect these objects through monitoring the ambient noise. Therefore, fish are probably able to detect prey, predators, conspecifics, and physical features by listening to environmental sounds (Hawkins, 1981). There are two sensory systems that enable fish to monitor the vibration-based information of their surroundings. The two sensory systems, the inner ear and the lateral line, constitute the acoustico-lateralis system.

Although the hearing sensitivities of very few fish species have been studied to date, it is becoming obvious that the intra- and inter-specific variability is considerable (Coombs, 1981). Nedwell *et al.* (2004) compiled and published available fish audiogram information. A noninvasive electrophysiological recording method known as auditory brainstem response is now commonly used in the production of fish audiograms (Yan, 2004). Popper and Carlson (1998) and the Navy (2001) found that fish generally perceive underwater sounds in the frequency range of 50–2,000 Hz, with peak sensitivities below 800 Hz. Even though some fish are able to detect sounds in the ultrasonic frequency range, the thresholds at these higher frequencies tend to be considerably higher than those at the lower end of the auditory frequency range.

Fish are sensitive to underwater impulsive sounds due to swimbladder resonance. As the pressure wave passes through a fish, the swimbladder is rapidly squeezed as the high pressure wave, and then the under pressure component of the wave, passes through the fish. The swimbladder may repeatedly expand and contract at the high sound pressure levels, creating

pressure on the internal organs surrounding the swimbladder.

Literature relating to the impacts of sound on marine fish species can be divided into the following categories: (1) pathological effects; (2) physiological effects; and (3) behavioral effects. Pathological effects include lethal and sub-lethal physical damage to fish; physiological effects include primary and secondary stress responses; and behavioral effects include changes in exhibited behaviors of fish. Behavioral changes might be a direct reaction to a detected sound or a result of the anthropogenic sound masking natural sounds that the fish normally detect and to which they respond. The three types of effects are often interrelated in complex ways. For example, some physiological and behavioral effects could potentially lead to the ultimate pathological effect of mortality. Hastings and Popper (2005) reviewed what is known about the effects of sound on fishes and identified studies needed to address areas of uncertainty relative to measurement of sound and the responses of fishes. Popper *et al.* (2003/2004) also published a paper that reviews the effects of anthropogenic sound on the behavior and physiology of fishes.

The level of sound at which a fish will react or alter its behavior is usually well above the detection level. Fish have been found to react to sounds when the sound level increased to about 20 dB above the detection level of 120 dB (Ona, 1988); however, the response threshold can depend on the time of year and the fish's physiological condition (Engas *et al.,* 1993). In general, fish react more strongly to pulses of sound rather than a continuous signal (Blaxter *et al.,* 1981), and a quicker alarm response is elicited when the sound signal intensity rises rapidly compared to sound rising more slowly to the same level.

Investigations of fish behavior in relation to vessel noise (Olsen *et al.,* 1983; Ona, 1988; Ona and Godo, 1990) have shown that fish react when the sound from the engines and propeller exceeds a certain level. Avoidance reactions have been observed in fish such as cod and herring when vessels approached close enough that received sound levels are 110 dB to 130 dB (Nakken, 1992; Olsen, 1979; Ona and Godo, 1990; Ona and Toresen, 1988). However, other researchers have found that fish such as polar cod, herring, and capeline are often attracted to vessels (apparently by the noise) and swim toward the vessel (Rostad *et al.,* 2006). Typical sound source levels of vessel noise in the audible range for fish are 150 dB to 170 dB (Richardson *et al.,* 1995).

Carlson (1994), in a review of 40 years of studies concerning the use of underwater sound to deter salmonids from hazardous areas at hydroelectric dams and other facilities, concluded that salmonids were able to respond to low-frequency sound and to react to sound sources within a few feet of the source. He speculated that the reason that underwater sound had no effect on salmonids at distances greater than a few feet is because they react to water particle motion/acceleration, not sound pressures. Detectable particle motion is produced within very short distances of a sound source, although sound pressure waves travel farther.

Potential Impacts to the Benthic Environment

Apache's seismic survey requires the deployment of a submersible recording system in the inter-tidal and marine zones. An autonomous ''nodal'' (i.e., no cables) system would be placed on the seafloor by specific vessels in lines parallel to each other with a node line spacing of 402 m (0.25 mi). Each nodal ''patch'' would have six to eight node lines parallel to each other. The lines generally run perpendicular to the shoreline. An entire patch would be placed on the seafloor prior to airgun activity. As the patches are surveyed, the node lines would be moved either side to side or inline to the next location. Placement and retrieval of the nodes may cause temporary and localized increases in turbidity on the seafloor. The substrate of Cook Inlet consists of glacial silt, clay, cobbles, pebbles, and sand (Sharma and Burrell, 1970). Sediments like sand and cobble dissipate quickly when suspended, but finer materials like clay and silt can create thicker plumes that may harm fish; however, the turbidity created by placing and removing nodes on the seafloor would settle to background levels within minutes after the cessation of activity.

In addition, seismic noise will radiate throughout the water column from airguns and pingers until it dissipates to background levels. No studies have demonstrated that seismic noise affects the life stages, condition, or amount of food resources (fish, invertebrates, eggs) used by marine mammals, except when exposed to sound levels within a few meters of the seismic source or in few very isolated cases. Where fish or invertebrates did respond to seismic noise, the effects were temporary and of short duration. Consequently, disturbance to fish species due to the activities associated with the seismic survey (i.e, placement and retrieval of nodes and noise from sound sources) would be short term and fish would be expected to return to their pre-disturbance behavior once seismic survey activities cease.

As noted earlier in this document, upper Cook Inlet is an important feeding and calving area for the Cook Inlet beluga whale, and critical habitat has been designated for this stock in the proposed seismic survey area.

Based on the preceding discussion, the proposed activity is not expected to have any habitat-related effects 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 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). Later in this document in the ''Proposed Incidental Harassment Authorization'' section, NMFS lays out the proposed conditions for review, as they would appear in the final IHA (if issued).

Mitigation Measures Proposed by Apache

For the proposed mitigation measures, Apache listed the following protocols to be implemented during its seismic survey in Cook Inlet.

1. Operation of Mitigation Air Gun at Night

Apache proposes to conduct both daytime and nighttime operations. Nighttime operations would only be initiated if a mitigation air gun (typically the 10 in^3) has been continuously operational from the time that PSO monitoring has ceased for the day. The mitigation airgun would operate on a longer duty cycle than the full airgun arrays, firing every 60 seconds. Seismic activity would not ramp up from an extended shut-down (i.e., when the airgun has been down with no activity for at least 10 minutes) during nighttime operations and survey activities would be suspended until the following day because dedicated PSOs would not be on duty and any unseen animals may be exposed to injurious levels of sound from the full array. At night, the vessel captain and crew

would maintain lookout for marine mammals and would order the airgun(s) to be shut down if marine mammals are observed in or about to enter the established exclusion zones.

2. Exclusion and Disturbance Zones

Apache proposes to establish zones to avoid Level A harassment of all marine mammals and will shut down or power down operations if animals are seen approaching this zone (more detail next). Additionally, Apache proposes to monitor the Level B harassment zone and implement shut down measures if beluga whales are seen entering or approaching the Level B harassment zone.

In the previous Apache IHAs, NMFS required a seasonal exclusion zone for airgun activities within 16 km (10 mi) of the mean high waterline of the Susitna Delta (''Susitna Delta'' being defined as shoreline between the mouth of the Beluga River to the mouth of the Little Susitna River). Airgun activities within this exclusion zone are prohibited from mid-April to mid-October. This exclusion was contingent on (as stated in the February 14, 2013 Biological Opinion), 'Once results of the SSV study in the upper Cook Inlet are available, Apache will contact NMFS AKR [Alaska Region] to determine if a new minimum setback distance is required for this area during this time' (NMFS 2013a). Apache proposes that the results of the SSV (see Appendices B, C, and D in Apache's application) in upper Cook Inlet indicate a distance of 9.5 km (5.9 mi) is a more appropriate setback distance to protect beluga whales. NMFS does not agree with this assertion, and our recommendation for this seasonal exclusion zone can be found in the next sub-heading of this section.

3. Power Down and Shutdown Procedures

A power down is the immediate reduction in the number of operating energy sources from all firing to some smaller number. A shutdown is the immediate cessation of firing of all energy sources. The arrays will be immediately powered down whenever a marine mammal is sighted approaching close to or within the applicable exclusion zone of the full arrays but is outside the applicable exclusion zone of the single source. If a marine mammal is sighted within the applicable exclusion zone of the single energy source, the entire array will be shutdown (i.e., no sources firing). Following a power down or a shutdown, airgun activity will not resume until the marine mammal has clearly left the applicable Level A harassment exclusion zone. The animal will be considered to have cleared the zone if it: (1) Is visually observed to have left the zone; (2) has not been seen within the zone for 15 minutes in the case of pinnipeds and small odontocetes; or (3) has not been seen within the zone for 30 minutes in the case of large odontocetes, including killer whales and belugas.

4. Ramp-Up Procedures

A ramp-up of an airgun array provides a gradual increase in sound levels, and involves a step-wise increase in the number and total volume of air guns firing until the full volume is achieved. The purpose of a ramp-up (or ''soft start'') is to ''warn'' cetaceans and pinnipeds in the vicinity of the airguns and to provide the time for them to leave the area and thus avoid any potential injury or impairment of their hearing abilities.

During the proposed seismic survey, the seismic operator will ramp up the airgun array slowly. NMFS requires the rate of ramp-up to be no more than 6 dB per 5-minute period. Ramp-up is used at the start of airgun operations, after a power- or shut-down, and after any period of greater than 10 minutes in duration without airgun operations (i.e., extended shutdown).

A full ramp-up after a shutdown will not begin until there has been a minimum of 30 minutes of observation of the safety zone by PSOs to assure that no marine mammals are present. The entire exclusion zone must be visible during the 30-minute lead-in to a full ramp up. If the entire exclusion zone is not visible, then ramp-up from a cold start cannot begin. If a marine mammal(s) is sighted within the Level A harassment exclusion zone during the 30-minute watch prior to ramp-up, ramp-up will be delayed until the marine mammal(s) is sighted outside of the zone or the animal(s) is not sighted for at least 15–30 minutes: 15 minutes for small odontocetes and pinnipeds (e.g. harbor porpoises, harbor seals, and Steller sea lions), or 30 minutes for large odontocetes (e.g., killer whales and beluga whales).

5. Speed or Course Alteration

If a marine mammal is detected outside the Level A (injury) harassment zone and, based on its position and the relative motion, is likely to enter that zone, the vessel's speed and/or direct course may, when practical and safe, be changed that also minimizes the effect on the seismic program. This can be used in coordination with a power down procedure. The marine mammal activities and movements relative to the seismic and support vessels will be closely monitored to ensure that the marine mammal does not approach within the applicable exclusion radius. If the mammal appears likely to enter the exclusion radius, further mitigative actions will be taken, i.e., either further course alterations, power down, or shut down of the airgun(s).

6. Shut-Downs for Aggregations of Whales and Beluga Cow-Calf Pairs

The following additional protective measures for beluga whale cow-calf pairs and aggregations of whales are proposed. Specifically, a 160-dB vessel monitoring zone would be established and monitored in Cook Inlet during all seismic surveys. Whenever an aggregation of beluga whales or killer whales (five or more whales of any age/sex class), or beluga whale cow-calf pairs are observed approaching the 160-dB zone around the survey operations, the survey activity would not commence or would shut down, until they are no longer present within the 160-dB zone of seismic surveying operations.

Additional Mitigation Measures Proposed by NMFS

As noted earlier in this section of the document, Apache proposes to implement a seasonal exclusion setback distance of 9.5 km (5.9 mi) in the Susitna Delta area. However, NMFS' Biological Opinion states that activities must remain at least 16 km (10 mi) from the mean high waterline of the Susitna Delta. The purpose of this mitigation measure is to protect the designated critical habitat in this area that is important for beluga whale feeding and calving during the spring and fall months. The range of the setback required by NMFS was designated to create this important habitat area and also to create an effective buffer where sound does not encroach on this habitat. Because this measure is in the current Biological Opinion, unless it is changed, NMFS cannot alter the distance as requested by Apache. NMFS proposes to keep the setback at the current distance of 16 km (10 mi). This seasonal exclusion is in effect from April 15–October 15. Activities can occur within this area from October 16–April 14 in a given year.

Additionally, NMFS proposes that seismic survey operations, involving the use of airguns and pingers, must cease if the total authorized takes of any marine mammal species are met or exceeded.

Mitigation Conclusions

NMFS has carefully evaluated Apache's 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 measures are 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.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

1. Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).
2. A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to received levels of seismic airguns, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).
3. A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to received levels of seismic airguns or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).
4. A reduction in the intensity of exposures (either total number or number at biologically important time or location) to received levels of seismic airguns or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing the severity of harassment takes only).
5. Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.
6. For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammals 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 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. Apache submitted information regarding marine mammal monitoring to be conducted during seismic operations as part of the IHA application. That information can be found in Sections 12 and 14 of the application. The monitoring measures may be modified or supplemented based on comments or new information received from the public during the public comment period.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

1. An increase in the probability of detecting marine mammals, both within the mitigation zone (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the analyses mentioned below;
2. An increase in our understanding of how many marine mammals are likely to be exposed to levels of active seismic airguns that we associate with specific adverse effects, such as behavioral harassment, TTS, or PTS;
3. An increase in our understanding of how marine mammals respond to active seismic airguns or other stimuli expected to result in take and how anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival) through any of the following methods:
   - Behavioral observations in the presence of active seismic operations compared to observations in the absence of active seismic airguns (need to be able to accurately predict received level and report bathymetric conditions, distance from source, and other pertinent information);
   - Physiological measurements in the presence of active seismic airgun operations compared to observations in the absence of seismic airgun operations (need to be able to accurately predict received level and report bathymetric conditions, distance from source, and other pertinent information); and
   - Distribution and/or abundance comparisons in times or areas with concentrated active seismic airgun operations versus times or areas without active airgun operations.
4. An increased knowledge of the affected species; and
5. An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

Proposed Monitoring Measures

1. Visual Vessel-Based Monitoring

Vessel-based monitoring for marine mammals would be done by experienced PSOs throughout the period of marine survey activities. PSOs would monitor the occurrence and behavior of marine mammals near the survey vessel during all daylight periods during operation and during most daylight periods when airgun operations are not occurring. PSO duties would include watching for and identifying marine mammals, recording their numbers, distances, and reactions to the survey operations, and documenting ''take by harassment'' as defined by NMFS.

A sufficient number of PSOs would be required onboard the survey vessel to meet the following criteria: (1) 100 percent monitoring coverage during all periods of survey operations in daylight; (2) maximum of 4 consecutive hours on watch per PSO; and (3) maximum of 12 hours of watch time per day per PSO.

PSO teams would consist of experienced field biologists. An experienced field crew leader would supervise the PSO team onboard the survey vessel. Apache currently plans to have PSOs aboard three vessels: The two source vessels (*M/V Peregrine Falcon* and *M/V Arctic Wolf*) and one support vessel (*M/V Dreamcatcher*). Two PSOs would be on the source vessels, and two PSOs would be on the support vessel to observe and

implement the exclusion, power down, and shut down areas. When marine mammals are about to enter or are sighted within designated harassment and exclusion zones, airgun or pinger operations would be powered down (when applicable) or shut down immediately. The vessel-based observers would watch for marine mammals during all periods when sound sources are in operation and for a minimum of 30 minutes prior to the start of airgun or pinger operations after an extended shut down.

Crew leaders and most other biologists serving as observers would be individuals with experience as observers during seismic surveys in Alaska or other areas in recent years.

The observer(s) would watch for marine mammals from the best available vantage point on the source and support vessels, typically the flying bridge. The observer(s) would scan systematically with the unaided eye and 7×50 reticle binoculars. Laser range finders would be available to assist with estimating distance on the two source vessels. Personnel on the bridge would assist the observer(s) in watching for marine mammals.

All observations would be recorded in a standardized format. Data would be entered into a custom database using a notebook computer. The accuracy of the data would be verified by computerized validity data checks as the data are entered and by subsequent manual checks of the database. These procedures would allow for initial summaries of the data to be prepared during and shortly after the completion of the field program, and would facilitate transfer of the data to statistical, geographical, or other programs for future processing and achieving. When a mammal sighting is made, the following information about the sighting would be recorded:

- Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from the PSO, apparent reaction to activities (e.g., none, avoidance, approach, paralleling, etc.), closest point of approach, and behavioral pace;
- Time, location, speed, activity of the vessel (e.g., seismic airguns off, pingers on, etc.), sea state, ice cover, visibility, and sun glare; and
- The positions of other vessel(s) in the vicinity of the PSO location.

The ship's position, speed of support vessels, and water temperature, water depth, sea state, ice cover, visibility, and sun glare would also be recorded at the start and end of each observation watch, every 30 minutes during a watch, and whenever there is a change in any of those variables.

2. Visual Shore-Based Monitoring

In addition to the vessel-based PSOs, Apache proposes to utilize a shore-based station, when possible, to visually monitor for marine mammals. The shore-based station would follow all safety procedures, including bear safety. The location of the shore-based station would need to be sufficiently high to observe marine mammals; the PSOs would be equipped with pedestal mounted ''big eye'' (20x110) binoculars. The shore-based PSOs would scan the area prior to, during, and after the airgun operations and would be in contact with the vessel-based PSOs via radio to communicate sightings of marine mammals approaching or within the project area. This communication will allow the vessel-based observers to go on a ''heightened'' state of alert regarding occurrence of marine mammals in the area and aid in timely implementation of mitigation measures.

3. Aerial-Based Monitoring

Apache proposes, safety and weather permitting, to conduct daily aerial surveys when there are any seismic-related activities (including but not limited to node laying/retrieval or airgun operations) occurring north or east of a line from Tyonek across to the eastern side of Number 3 Bay of the Captain Cook State Recreation Area, Cook Inlet. Safety and weather permitting, surveys are to be flown even if the airguns are not being fired.

Apache also proposes, safety and weather permitting, and when operating north or east of a line from Tyonek to the eastern side of Number 3 Bay of the Captain Cook State Recreation Area, Cook Inlet, to fly daily aerial surveys around the most important beluga whale foraging and reproductive areas of the upper Inlet. Flights are to be conducted with a plane with adequate viewing capabilities, i.e., view not obstructed by wing or other part of the plane. Flight paths should encompass areas from Anchorage, along the coastline of the Susitna Delta to Tyonek, across the inlet to Point Possession, around the coastline of Chickaloon Bay to Burnt Island, and across to Anchorage (or in reverse order). The surveys will continue daily when Apache has any activities north or east of a line from Tyonek across to the eastern side of Number 3 Bay of the Captain Cook State Recreation Area (see Figure 19 in Apache's application). These aerial surveys will be conducted in order to notify the vessel-based PSOs of marine mammals that may be on a path that could intersect with the seismic survey, and so that Apache can determine if operations should be relocated or temporarily suspended.

Apache also proposes to, safety and weather permitting, conduct aerial surveys when operating near river mouths to identify large congregations of beluga whales and harbor seal haul outs. Again, these aerial surveys will be conducted in order to notify the vessel-based PSOs of the presence of marine mammals that may be on a path that could intersect with the seismic survey, and so that Apache can determine if operations should be relocated or temporarily supsended. Weather and scheduling permitting, aerial surveys would fly at an altitude of 305 m (1,000 ft). In the event of a marine mammal sighting, aircraft would attempt to maintain a radial distance of 457 m (1,500 ft) from the marine mammal(s). Aircraft would avoid approaching marine mammals from head-on, flying over or passing the shadow of the aircraft over the marine mammal(s). By following these operational requirements, sound levels underwater are not expected to meet or exceed NMFS harassment thresholds (Richardson *et al.,* 1995; Blackwell *et al.,* 2002).

Based on data collected from Apache during its survey operations conducted under the April 2012 IHA, NMFS believes that the foregoing monitoring measures will allow Apache to identify animals nearing or entering the Level B harassment zone with a reasonably high degree of accuracy.

Reporting Measures

Immediate reports will be submitted to NMFS if 25 belugas are detected in the Level B harassment zone to evaluate and make necessary adjustments to monitoring and mitigation. If the number of detected takes for any marine mammal species is met or exceeded, Apache will immediately cease survey operations involving the use of active sound sources (e.g., airguns and pingers) and notify NMFS.

1. Weekly Reports

Weekly reports will be submitted to NMFS no later than the close of business (Alaska time) each Thursday during the weeks when in-water seismic activities take place. The field reports will summarize species detected, in-water activity occurring at the time of the sighting, behavioral reactions to in-water activities, and the number of marine mammals taken.

2. Monthly Reports

Monthly reports will be submitted to NMFS for all months during which in-water seismic activities take place. The monthly report will contain and summarize the following information:

• Dates, times, locations, heading, speed, weather, sea conditions (including Beaufort sea state and wind force), and associated activities during all seismic operations and marine mammal sightings.

• Species, number, location, distance from the vessel, and behavior of any sighted marine mammals, as well as associated seismic activity (number of power-downs and shutdowns), observed throughout all monitoring activities.

• An estimate of the number (by species) of: (i) Pinnipeds that have been exposed to the seismic activity (based on visual observation) at received levels greater than or equal to 160 dB re 1 μPa (rms) and/or 190 dB re 1 μPa (rms) with a discussion of any specific behaviors those individuals exhibited; and (ii) cetaceans that have been exposed to the seismic activity (based on visual observation) at received levels greater than or equal to 160 dB re 1 μPa (rms) and/or 180 dB re 1 μPa (rms) with a discussion of any specific behaviors those individuals exhibited.

• A description of the implementation and effectiveness of the: (i) Terms and conditions of the Biological Opinion's Incidental Take Statement (ITS); and (ii) mitigation measures of the IHA. For the Biological Opinion, the report shall confirm the implementation of each Term and Condition, as well as any conservation recommendations, and describe their effectiveness, for minimizing the adverse effects of the action on ESA-listed marine mammals.

3. 90-Day Technical Report

A report will be submitted to NMFS within 90 days after the end of the project. The report will summarize all activities and monitoring results (i.e., vessel and shore-based visual monitoring and aerial monitoring) conducted during in-water seismic surveys. The Technical Report will include the following:

• Summaries of monitoring effort (e.g., total hours, total distances, and marine mammal distribution through the study period, accounting for sea state and other factors affecting visibility and detectability of marine mammals).

• Analyses of the effects of various factors influencing detectability of marine mammals (e.g., sea state, number of observers, and fog/glare).

• Species composition, occurrence, and distribution of marine mammal sightings, including date, water depth, numbers, age/size/gender categories (if determinable), group sizes, and ice cover.

• Analyses of the effects of survey operations.

• Sighting rates of marine mammals during periods with and without seismic survey activities (and other variables that could affect detectability), such as: (i) Initial sighting distances versus survey activity state; (ii) closest point of approach versus survey activity state; (iii) observed behaviors and types of movements versus survey activity state; (iv) numbers of sightings/individuals seen versus survey activity state; (v) distribution around the source vessels versus survey activity state; and (vi) estimates of take by Level B harassment based on presence in the 160 dB harassment zone.

4. Notification of Injured or Dead Marine Mammals

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury (Level A harassment), serious injury or mortality (e.g., ship-strike, gear interaction, and/or entanglement), Apache would immediately cease the specified activities and immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinators. The report would include the following information:

• Time, date, and location (latitude/longitude) of the incident;

• Name and type of vessel involved;

• Vessel's speed during and leading up to the incident;

• Description of the incident;

• Status of all sound source use in the 24 hours preceding the incident;

• Water depth;

• Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);

• Description of all marine mammal observations in the 24 hours preceding the incident;

• Species identification or description of the animal(s) involved;

• Fate of the animal(s); and

• Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the prohibited take. NMFS would work with Apache to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Apache would not be able to resume their activities until notified by NMFS via letter, email, or telephone.

In the event that Apache discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as described in the next paragraph), Apache would immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS Alaska Stranding Hotline and/or by email to the Alaska Regional Stranding Coordinators. The report would include the same information identified in the paragraph above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with Apache to determine whether modifications in the activities are appropriate.

In the event that Apache discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Apache would report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS Alaska Stranding Hotline and/or by email to the Alaska Regional Stranding Coordinators, within 24 hours of the discovery. Apache would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network.

Monitoring Results From Previously Authorized Activities

As noted earlier in this document, NMFS has issued two IHAs to Apache for this same proposed activity. No seismic surveys were conducted under the IHA issued in February 2013 (became effective March 1, 2013). Apache conducted seismic operations under the first IHA issued in April 2012. Below is a summary of the results from the monitoring conducted in accordance with the April 2012 IHA.

Marine mammal monitoring was conducted in central Cook Inlet between May 6 and September 30, 2012, which resulted in a total of 6,912 hours of observations. Monitoring was conducted from the two seismic survey vessels, a mitigation/monitoring vessel, four land platforms, and an aerial platform (either a helicopter or small fixed wing

aircraft). PSOs monitored from the seismic vessels, mitigation/monitoring vessel, and land platforms during all daytime seismic operations. Aerial overflights were conducted 1–2 times daily over the survey area and surrounding coastline, including the major river mouths, to monitor for larger concentrations of marine mammals in and around the survey site. Passive acoustic monitoring (PAM) took place from the mitigation/monitoring vessel during all nighttime seismic survey operations and most daytime seismic survey operations. During the entire 2012 survey season, Apache's PAM equipment yielded only six confirmed marine mammal detections, once of which was a Cook Inlet beluga whale.

Six identified species and three unidentified species of marine mammals were observed from the vessel, land, and aerial platforms between May 6 and September 30, 2012. The species observed included Cook Inlet beluga whales, harbor seals, harbor porpoises, Steller sea lions, gray whales, and California sea lions. PSOs also observed unidentified species, including a large cetacean, pinniped, and marine mammal. The gray whale and California sea lion were not included in the 2012 IHA, so mitigation measures were implemented for these species to prevent unauthorized takes. There were a total of 882 sightings and an estimated 5,232 individuals (the number or individuals is typically higher than the number of sightings because a single sighting may consist of multiple individuals). Harbor seals were the most frequently observed marine mammal at 563 sightings of approximately 3,471 individuals, followed by beluga whales with 151 sightings of approximately 1,463 individuals, harbor porpoises with 137 sightings of approximately 190 individuals, and gray whales with 9 sightings of 9 individuals. Steller sea lions were observed on three separate occasions (4 individuals), and two California sea lions were observed once. No killer whales were observed during seismic survey operations conducted under the 2012 IHA.

A total of 88 exclusion zone clearing delays, 154 shutdowns, 7 power downs, 23 shutdowns following a power down, and one speed and course alteration were implemented under the 2012 IHA. Exclusion zone clearing delays, shutdowns, and shutdowns following a power down occurred most frequently during harbor seal sightings (n=61, n=110, n=14, respectively), followed by harbor porpoise sightings (n=18, n=28, n=6, respectively), and then beluga whale sightings (n=5, n=6, n=3, respectively). Power downs occurred most frequently with harbor seal (n=3) and harbor porpoise (n=3) sightings. One speed and course alteration occurred in response to a beluga whale sighting. A total of 17 Level B harassment takes were detected from May 6 to September 30, 2012, including harbor porpoise (n=4) and harbor seals (n=13). No other marine mammal species were detected in the Level B harassment zone. There were no detected Level A harassment takes of either cetaceans or pinnipeds during the 2012 seismic survey operations.

Based on the information from the 2012 monitoring report, NMFS has determined that Apache complied with the conditions of the 2012 IHA, and we conclude that these results support our original findings that the mitigation measures set forth in the 2012 Authorization effected the least practicable impact on the species or stocks.

Although Apache did not conduct any seismic survey operations under the 2013 IHA, they still conducted marine mammal monitoring surveys between May and August 2013. During those aerial surveys, Apache detected a total of three marine mammal species: beluga whale; harbor porpoise; and harbor seal. A total of 718 individual belugas, three harbor porpoises, and 919 harbor seals were sighted. Of the 718 observed belugas, 61 were calves. All of the calf sightings occurred in the Susitna Delta area, with the exception of a couple south of the Beluga River and a couple in Turnagain Arm. More than 60 percent of the beluga calf sightings occurred in June (n=39).

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]. Only take by Level B behavioral harassment is anticipated as a result of the proposed marine survey program. Anticipated impacts to marine mammals are associated with noise propagation from the sound sources (e.g., airguns and pingers) used in the seismic survey; no take is expected to result from the detonation of explosives onshore, as supported by the SSV study, from vessel strikes because of the slow speed of the vessels (2–4 knots), or from aircraft overflights, as surveys will be flown at a minimum altitude of 305 m (1,000 ft) and at 457 m (1,500 ft) when marine mammals are detected.

Apache requests authorization to take five marine mammal species by Level B harassment. These five marine mammal species are: Cook Inlet beluga whale; killer whale; harbor porpoise; harbor seal; and Steller sea lion.

For impulse sounds, such as those produced by airgun(s) used in the seismic survey, NMFS uses the 160 dB re 1 μPa (rms) isopleth to indicate the onset of Level B harassment. The current Level A (injury) harassment threshold is 180 dB (rms) for cetaceans and 190 dB (rms) for pinnipeds. Section 7 of Apache's application contains a full description of the methodology used by Apache to estimate takes by harassment, including calculations for the 160 dB (rms) isopleths and marine mammal densities in the areas of operation (see **ADDRESSES**), which is also provided in the following sections. NMFS verified Apache's methods and used Apache's take estimates in its analyses.

Basis for Estimating ''Take by Harassment''

As stated previously, it is current NMFS policy to estimate take by Level B harassment for impulse sounds at a received level of 160 dB (rms). As described earlier in this notice, impulsive sounds would be generated by airgun arrays that would be used to obtain geological data during the surveys. To estimate potential takes by Level B harassment for this proposed IHA, as well as for mitigation radii to be implemented by PSOs, ranges to the 160 dB (rms) isopleths were estimated at three different water depths (5 m, 25 m, and 45 m) for nearshore surveys and at 80 m for channel surveys. The distances to this threshold for the nearshore survey locations are provided in Table 1 in this document and Table 2 in Apache's application and correspond to the three transects modeled at each site in the onshore, nearshore, and parallel to shore directions. To estimate take by Level B harassment, Apache used the most conservative (largest) value from each category presented in Table 1 in this document. The distances to the thresholds for the channel survey locations are provided in Table 2 in this document and Table 4 in Apache's application and correspond to the broadside and endfire directions. The areas ensonified to the 160 dB isopleth for the nearshore survey are provided in Table 3 in this document and Table 3 in Apache's application. The area

ensonifed to the 160 dB isopleth for the channel survey is 517 km².

TABLE 1—DISTANCES TO LEVEL B AND LEVEL A HARASSMENT SOUND LEVEL THRESHOLDS FOR THE NEARSHORE SURVEYS

Sound level threshold (dB re 1 μPa)	Water depth at source location (m)	Distance in the onshore direction (km)	Distance in the offshore direction (km)	Distance in the parallel to shore direction (km)
160	5	1.03	4.73	2.22
	25	5.69	7.77	9.5
	45	6.75	5.95	9.15
	5	0.46	0.6	0.54
180	25	1.06	1.07	1.42
	45	0.7	0.83	0.89
	5	0.28	0.33	0.33
190	25	0.35	0.36	0.44
	45	0.1	0.1	0.51

TABLE 2—DISTANCES TO LEVEL B AND LEVEL A HARASSMENT SOUND LEVEL THRESHOLDS FOR THE CHANNEL SURVEYS

Sound level threshold (dB re 1 μPa)	Water depth at source location (m)	Distance in the broadside direction (km)	Distance in the endfire direction (km)
160	80	5.14	7.33
180	80	0.91	0.98
190	80	0.15	0.18

TABLE 3—AREAS ENSONIFIED TO 160 dB (RMS) FOR NEARSHORE SURVEYS IN A 24 HOUR PERIOD

Nearshore survey depth classification	Depth range (m)	Area ensonified to 160 dB re 1 μPa (km²)
Shallow	5–21	462
Mid-depth	21–38	629
Deep	38–54	623

Compared to the airguns, the relevant isopleths for the positioning pinger is quite small. The distances to the 190, 180, and 160 dB (rms) isopleths are 1 m, 3 m, and 25 m (3.3, 10, and 82 ft), respectively.

Estimates of Marine Mammal Density

Apache used one method to estimate densities for Cook Inlet beluga whales and another method for the other marine mammals in the area expected to be taken by harassment. Both methods are described in Apache's application and in this document.

1. Beluga Whale Density Estimates

In consultation with staff from NMFS' National Marine Mammal Laboratory (NMML) during development of the second IHA in early 2013, Apache used a habitat-based model developed by Goetz *et al.* (2012a). Information from that model has once again been used to estimate densities of beluga whales in Cook Inlet. A summary of the model is provided here, and additional detail can be found in Goetz *et al.* (2012a). To develop NMML's estimated densities of belugas, Goetz et al. (2012a) developed a model based on aerial survey data, depth soundings, coastal substrate type, environmental sensitivity index, anthropogenic disturbance, and anadromous fish streams to predict beluga densities throughout Cook Inlet. The result of this work is a beluga density map of Cook Inlet, which easily sums the belugas predicted within a given geographic area. NMML developed its predictive habitat model from the distribution and group size of beluga whales observed between 1994 and 2008. A 2-part ''hurdle'' model (a hurdle model in which there are two processes, one generating the zeroes and one generating the positive values) was applied to describe the physical and anthropogenic factors that influence (1) beluga presence (mixed model logistic regression) and (2) beluga count data (mixed model Poisson regression). Beluga presence was negatively associated with sources of anthropogenic disturbance and positively associated with fish availability and access to tidal flats and sandy substrates. Beluga group size was positively associated with tidal flats and proxies for seasonally available fish. Using this analysis, Goetz *et al.* (2012) produced habitat maps for beluga presence, group size, and the expected number of belugas in each 1 km² cell of Cook Inlet. The habitat-based model developed by NMML uses a Geographic Information System (GIS). A GIS is a computer system capable of capturing, storing, analyzing, and displaying geographically reference information; that is, data identified according to location. However, the Goetz *et al.* (2012) model does not incorporate seasonality into the density estimates. Rather, Apache considers the seasonal considerations of beluga density into the prioritization of the seismic program (as discussion in more detail later in this

document) in addition to other factors such as weather, ice conditions, and seismic needs.

2. Non-Beluga Whale Species Density Estimates

Estimated densities of other marine mammals in the proposed project area were estimated from the annual aerial surveys conducted by NMFS for Cook Inlet beluga whale between 2000 and 2012 in June (Rugh *et al.,* 2000, 2001, 2002, 2003, 2004b, 2005b, 2006, 2007; Shelden *et al.,* 2008, 2009, 2010, 2012; Hobbs *et al.,* 2011). These surveys were flown in June to collect abundance data of beluga whales, but sightings of other marine mammals are also reported. Although these data are only collected in one month each year, these surveys provide the best available relatively long term data set for sighting information in the proposed project area. The general trend in marine mammal sighting is that beluga whales and harbor seals are seen most frequently in upper Cook Inlet, with higher concentrations of harbor seals near haul out sites on Kalgin Island and of beluga whales near river mouths, particularly the Susitna River. The other marine mammals of interest for this IHA (killer whales, harbor porpoises, Steller sea lions) are observed infrequently in upper Cook Inlet and more commonly in lower Cook Inlet. In addition, these densities are calculated based on a relatively large area that was surveyed, much larger than the proposed seismic area. Furthermore, these annual surveys are conducted only in June (numbers from August surveys were not used because the area surveyed was not provided), so it does not account for seasonal variations in distribution or habitat use of each species. Therefore, the use of these data to estimate density likely provides much higher estimates of the probability of observing these animals in the project area.

Table 5 in Apache's application provides a summary of the results of each annual NMFS survey conducted in June from 2000 to 2012. The total number of individuals sighted for each survey by year is reported, as well as total hours for the entire survey and total area surveyed. To estimate density of marine mammals, total number of individuals (other species) observed for the entire survey area by year (surveys usually last several days) was divided by the total number of hours for each aerial survey by the approximate total area surveyed for each year (density = individuals/hour/km^2). As noted previously, the total number of animals observed for the entire survey includes both lower and upper Cook Inlet, so the total number reported and used to calculate density is higher than the number of marine mammals anticipated to be observed in the project area. In particular, the total number of harbor seals observed on several surveys is very high due to several large haul outs in lower and middle Cook Inlet. Table 6 in Apache's application presents maximum and average density estimates for harbor seals, harbor porpoises, killer whales, and Steller sea lions. The maximum density estimate for each species is based on the highest density noted in Table 5 in Apache's application in a single year during the 2000 to 2012 time period. The average density estimate for each species is based on the average of the data presented in Table 5 in Apache's application from all 13 of these years combined.

Calculation of Takes by Harassment

1. Beluga Whales

As a result of discussions with NMFS, Apache has used the NMML model (Goetz *et al.,* 2012a) for the calculation of takes in this proposed IHA. Apache has established two zones (Zone 1 and Zone 2) and proposes to conduct seismic surveys within all, or part of these zones; to be determined as weather, ice, and priorities dictate. Apache has committed to limit the total number of beluga whale takes to no more than 30 during the effective period of this proposed IHA (March 1 through December 31, 2014). In order to estimate when that level is reached, Apache has developed a formula based on the total area of each seismic survey project zone (including the 160 dB buffer) and the average density of beluga whales for each zone (based on the NMML model. Table 7 in Apache's application and Table 4 in this document present the values of the total ensonified area for Zones 1 and 2 and the average density estimates. At this time the 160 dB buffer is 9.5 km (5.9 mi), if Apache conducts another SSV which has a different 160 dB buffer, the new buffer will be used with the same methodology outlined below.

TABLE 4—EXPECTED BELUGA WHALE TAKES, TOTAL AREA OF ZONE, AND AVERAGE BELUGA WHALE DENSITY ESTIMATES

	Expected beluga takes from NMML model (including the 160 dB buffer)	Total area of zone (km^2) (including the 160 dB buffer)	Average take density (d_x)
Zone 1	28	1319	d_1 = 0.0212
Zone 2	29	5160	d_2 = 0.0056

Apache will limit surveying in the proposed seismic survey area (Zones 1 and 2 presented in Figure 2 of Apache's application) to ensure a maximum of 30 beluga takes during the 2014 proposed program. In order to ensure that Apache does not exceed 30 beluga whale takes, Apache developed the following equation:

$$\text{Equation 1: } d_1A_1 + d_2A_2 \leq 30 \text{ Beluga Takes}$$

$$* \; d_x = \frac{\text{Expected Beluga Takes from the NMML model in Zone X}}{\text{Total Area of Zone X including 160 dB buffer}}$$

$$* \; A_x = \text{Actual Area Surveyed (km}^2\text{) including 160 dB buffer in Zone X}$$

This formula also allows Apache to have flexibility to prioritize survey locations in response to local weather, ice, and operational constraints. Apache may choose to survey portions of a zone or a zone in its entirety, and the analysis

in this proposed IHA notice takes this into account. Using this formula, if Apache surveys the entire area of Zone 1 (1,319 km²), then essentially none of Zone 2 will be surveyed because the input in the calculation denoted by d_2A_2 would essentially need to be zero to ensure that the total allotted proposed take of beluga whales is not exceeded. The use of this formula will ensure that Apache's proposed seismic program, including the 160 dB buffer, will not exceed 30 calculated beluga takes.

Apache proposes to initially limit actual survey areas, including 160 dB buffer zones, to satisfy the formula denoted here. Apache will operate in Zone 1 or Zone 2 until the 30 calculated takes of belugas has been met or the IHA expires, whichever occurs first. If Apache reaches the calculated 30 takes, Apache will initiate discussions with NMFS to continue seismic operations in lower Cook Inlet where beluga whales have been rarely documented in recent years (Hobbs *et al.,* 2000; Rugh *et al.,* 2003, 2004a, 2004b, 2005a, 2005b, 2005c, 2006, 2007; Hobbs *et al.,* 2011; Shelden *et al.,* 2012; Goetz *et al.,* 2012b). This may result in additional mitigation or monitoring requirements to ensure that no additional takes of beluga whales occur.

2. Other Marine Mammal Species

The estimated number of other Cook Inlet marine mammals that may be potentially harassed during the seismic surveys was calculated by multiplying the average density estimates (presented in Table 6 in Apache's application and Table 6 in this document) by the area ensonified by levels ≥160 dB re μPa rms (see Appendix C and Appendix D in Apache's application for more information) by the number of days estimated to be seismically surveyed.

Apache anticipates that a crew will collect seismic data for 10–12 hours per day over approximately 160 days over the course of 8 to 9 months. It is assumed that over the course of these 160 days, 100 days would be working in the offshore region and 60 days in the shallow, intermediate, and deep nearshore region. Of those 60 days in the nearshore region, 20 days would be in each depth. It is important to note that environmental conditions (such as ice, wind, fog) will play a significant role in the actual operating days; therefore, these estimates are conservative in order to provide a basis for probability of encountering these marine mammal species in the project area.

The number of estimated takes by harassment was calculated using the following assumptions:

- The number of nearshore and shallow water survey days is 20 and daily acoustic footprint is 462 km² (178 mi²).
- The number of nearshore and intermediate water depth survey days is 20 and daily acoustic footprint is 629 km² (243 mi²).
- The number of nearshore and deep water depth survey days is 20 and daily acoustic footprint is 623 km² (241 mi²).
- The number of offshore survey days is 100 and daily footprint is 517 km² (200 mi²).

Table 8 in Apache's application and Table 5 in this document show the estimated maximum and average takes by species for the program with the methods and assumptions outlined above.

TABLE 5—MAXIMUM AND AVERAGE ENCOUNTER PROBABILITY (MAXIMUM LEVEL B TAKE ESTIMATES) PER SPECIES

	Shallow		Intermediate		Deep		Offshore		Total	
Area Ensonified (km²)	462		629		623		517		2231	
Survey days	20		20		20		100		160	
Species	max	avg	max	avg	max	avg	max	avg	max	avg
Harbor seals	62.9	47.3	85.6	64.4	84.8	63.8	351.9	264.5	585.2	439.9
Harbor porpoises	3.5	0.8	4.8	1.1	4.7	1.1	19.6	4.5	32.5	7.6
Killer whales	1.0	0.1	1.4	0.2	1.4	0.2	5.8	0.8	9.6	1.3
Steller sea lions	3.2	1.5	4.4	2.0	4.3	2.0	17.9	8.4	29.8	13.9

Shallow water = 5–21 m
Intermediate water = 21–38 m
Deep water = 38–54 m
Take estimates = density (from Table 6 in Apache's application) * area ensonified ≥ 160 dB re 1 μPa rms from JASCO (Appendix C in Apache's application) * no. of days estimated to be seismically surveyed.

Table 5 here identifies the worst-case probability of encountering these marine mammal species within the 160 dB zone during the survey and does not account for seasonal distribution of these species, haul outs of harbor seals and Steller sea lions, or the rigorous mitigation and monitoring techniques implemented by Apache to reduce Level B takes to all species. The following text describes each point further.

3. Seasonal Distribution

Hobbs *et al.* (2005) was able to incorporate seasonality into their study, but it was not intended to provide density modeling. While Goetz *et al.* (2012) provide a more sophisticated approach to estimating density of beluga whales, based on the design of the model, Apache could not include seasonality as an input to the model for estimating density. Therefore, Apache considered seasonality of beluga whales qualitatively in planning its seismic survey rather than quantitatively. Apache has flown regular aerial surveys for Cook Inlet beluga whales in 2012 and 2013. Conducting these surveys has aided Apache in understanding the seasonal distribution of Cook Inlet beluga whales. These sources confirm that there are dramatic shifts in beluga distribution throughout the year; and that these shifts must be incorporated into operational planning. To accomplish Apache's goal of zero beluga takes, Apache will incorporate regular aerial surveys and seasonal considerations of beluga presence into the prioritization of their seismic program, in addition to other factors such as weather, ice conditions, and operations.

For other marine mammals, data used to estimate probability of sightings for Cook Inlet are based on a 3–4 day aerial survey conducted in one month (June) of each year. This aerial survey does not take into account that marine mammal species are not evenly distributed across Cook Inlet in these numbers and that animals seen in June at those levels may not be observed in that same area 2 months later. Because there are no other systematic surveys for Cook Inlet that provide the level of detail for these years, these surveys provide the best

available data for estimating takes. In particular, killer whales, harbor porpoises, and Steller sea lions are expected to be observed more frequently in lower and mid-Cook Inlet; while beluga whales and harbor seals are more likely to be following the salmon and eulachon fish runs throughout Cook Inlet. This is important because if Apache can begin conducting seismic surveys in lower Cook Inlet in the fall, when beluga whales are typically feeding in upper Cook Inlet, the likelihood of observing (and exposing) beluga whales to airguns is much lower.

4. Pinniped Haul-Outs

Seismic surveys in the Trading Bay region have resulted in numerous sightings of individual harbor seals. Apache does not anticipate encountering large haul-outs of seals or Steller sea lions in the project area but expects to continue to observe curious individual harbor seals; particularly during large fish runs in the various rivers draining into Cook Inlet. These density estimates are skewed by the numbers observed in large haul-outs during the aerial surveys; seals on land would not be exposed to in-water sounds during that time. Seals in the water usually travel in small groups or as singles.

For many of the same reasons discussed for harbor seals, the number of actual takes by harassment of Steller sea lions are expected to be much lower than calculated. In all of the NMFS aerial surveys, no Steller sea lions were observed in upper Cook Inlet. Less than five Steller sea lions have been observed by the Port of Anchorage monitoring program, and those observed have been single, juvenile animals (likely male). Apache anticipates less than five Steller sea lions in the project area.

5. Mitigation and Monitoring Measures

As described earlier in this document, Apache proposes to implement a monitoring and mitigation program to reduce Level B harassment, particularly to beluga whales. Apache will shut down airgun operations if any beluga whales are sighted within or approaching the 160 dB zone and has committed in its IHA application to take no more than 30 beluga whales by harassment in 1 year. Based on this mitigation program, lower levels of beluga takes are anticipated from those proposed to be taken by harassment. Given that belugas are usually transiting from one feeding area to another in lower concentrations, these estimates appear to be reasonable in assessing probability of beluga whales potentially observed. This includes conducting aerial overflights near larger river mouths where belugas are known to congregate so that Apache can adjust the operational schedule to avoid operating in areas of important feeding times when large numbers of whales are present.

Furthermore, the total number of days actually surveying near river mouths is much lower than the 160 days used to estimate takes in these different water depths, so this probability sighting table is an overestimate. Therefore, due to actual number of days and hours likely to be operating airguns near river mouths and the strict monitoring and mitigation measures to be used when operating near rivers, the actual number of takes by harassment estimated for beluga whales is expected to be much lower than the numbers presented in Table 8 in Apache's application and Table 5 in this document.

Summary of Proposed Level B Takes

Table 6 here outlines the density estimates used to estimate Level B takes, the proposed Level B harassment take levels, the abundance of each species in Cook Inlet, the percentage of each species or stock estimated to be taken, and current population trends. In some cases, the estimated Level B take estimates are lower than those presented earlier in this document. This is because of mitigation measures and requirements to cease operations once these proposed take levels are met.

TABLE 6—DENSITY ESTIMATES, PROPOSED LEVEL B HARASSMENT TAKE LEVELS, SPECIES OR STOCK ABUNDANCE, PERCENTAGE OF POPULATION PROPOSED TO BE TAKEN, AND SPECIES TREND STATUS

Species	Average density (#/hr/km^2)	Proposed level B take	Abundance	Percentage of population	Trend
Beluga Whale	Zone 1 = 0.0212 Zone 2 = 0.0056	30	283	10.6	Decreasing.
Harbor Seal	0.00512	200	22,900	0.87	Stable.
Harbor Porpoise	0.00009	20	25,987	0.08	No reliable information.
Killer Whale	0.00001	10	1,123 (resident) 552 (transient).	0.89 1.8	Resident stock possibly increasing transient stock stable.
Steller Sea Lion	0.00016	20	45,916	0.04	Decreasing but with regional variability (some stable).

Analysis and Preliminary Determinations

Negligible Impact

Negligible impact is ''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'' (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (i.e., population-level effects). An estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, feeding, migration, etc.), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and effects on habitat.

Given the proposed mitigation and related monitoring, no injuries or mortalities are anticipated to occur as a result of Apache's proposed seismic survey in Cook Inlet, and none are proposed to be authorized. Additionally, animals in the area are not expected to incur hearing impairment (i.e., TTS or PTS) or non-auditory physiological effects. The number of takes that are anticipated and proposed to be authorized are expected to be limited to short-term Level B behavioral

harassment. The seismic airguns do not operate continuously over a 24-hour period. Rather airguns are operational for a few hours at a time totaling about 12 hours a day.

Both Cook Inlet beluga whales and the western stock of Steller sea lions are listed as endangered under the ESA. Both stocks are also considered depleted under the MMPA, and both stocks are declining at a rate of about 1.1–1.5 percent per year. The other three species that may be taken by harassment during Apache's proposed seismic survey program are not listed as threatened or endangered under the ESA nor as depleted under the MMPA.

Odontocete (including Cook Inlet beluga whales, killer whales, and harbor porpoises) reactions to seismic energy pulses are usually assumed to be limited to shorter distances from the airgun(s) than are those of mysticetes, in part because odontocete low-frequency hearing is assumed to be less sensitive than that of mysticetes. When in the Canadian Beaufort Sea in summer, belugas appear to be fairly responsive to seismic energy, with few being sighted within 10–20 km (6–12 mi) of seismic vessels during aerial surveys (Miller *et al.,* 2005). However, as noted above, Cook Inlet belugas are more accustomed to anthropogenic sound than beluga whales in the Beaufort Sea. Therefore, the results from the Beaufort Sea surveys do not directly relate to potential reactions of Cook Inlet beluga whales. Also, due to the dispersed distribution of beluga whales in Cook Inlet during winter and the concentration of beluga whales in upper Cook Inlet from late April through early fall, belugas would likely occur in small numbers in the survey area designated as Zone 2 by Apache during the survey period. For the same reason, it is unlikely that animals would be exposed to received levels capable of causing injury.

Taking into account the mitigation measures that are planned, effects on cetaceans are generally expected to be restricted to avoidance of a limited area around the survey operation and short-term changes in behavior, falling within the MMPA definition of ''Level B harassment''. Animals are not expected to permanently abandon any area that is surveyed, and any behaviors that are interrupted during the activity are expected to resume once the activity ceases. Only a small portion of marine mammal habitat will be affected at any time, and other areas within Cook Inlet will be available for necessary biological functions. In addition, the area where the survey will take place is not known to be an important location where beluga whales congregate for feeding, calving, or nursing. The primary location for these biological life functions occur in the Susitna Delta region of upper Cook Inlet. NMFS proposes to implement a 16 km (10 mi) seasonal exclusion from seismic survey operations in this region from April 15-October 15. The highest concentrations of belugas are typically found in this area from early May through September each year. NMFS has incorporated a 2-week buffer on each end of this seasonal use timeframe to account for any anomalies in distribution and marine mammal usage.

Mitigation measures such as controlled vessel speed, dedicated marine mammal observers, non-pursuit, and shutdowns or power downs when marine mammals are seen within defined ranges will further reduce short-term reactions and minimize any effects on hearing sensitivity. In all cases, the effects of the seismic survey are expected to be short-term, with no lasting biological consequence. Therefore, the exposure of cetaceans to sounds produced by this phase of Apache's proposed seismic survey is not anticipated to have an effect on annual rates of recruitment or survival.

Some individual pinnipeds may be exposed to sound from the proposed seismic surveys more than once during the timeframe of the project. Taking into account the mitigation measures that are planned, effects on pinnipeds are generally expected to be restricted to avoidance of a limited area around the survey operation and short-term changes in behavior, falling within the MMPA definition of ''Level B harassment''. Animals are not expected to permanently abandon any area that is surveyed, and any behaviors that are interrupted during the activity are expected to resume once the activity ceases. Only a small portion of pinniped habitat will be affected at any time, and other areas within Cook Inlet will be available for necessary biological functions. In addition, the area where the survey will take place is not known to be an important location where pinnipeds haul out. The closest known haul-out site is located on Kalgin Island, which is about 22 km from the McArther River. Therefore, the exposure of pinnipeds to sounds produced by this phase of Apache's proposed seismic survey is not anticipated to have an effect on annual rates of recruitment or survival.

Potential impacts to marine mammal habitat were discussed previously in this document (see the ''Anticipated Effects on Habitat'' section). Although some disturbance is possible to food sources of marine mammals, the impacts are anticipated to be minor enough as to not affect annual rates of recruitment or survival of marine mammals in the area. Based on the size of Cook Inlet where feeding by marine mammals occurs versus the localized area of the marine survey activities, any missed feeding opportunities in the direct project area would be minor based on the fact that other feeding areas exist elsewhere. Additionally, seismic survey operations will not occur in the primary beluga feeding and calving habitat during times of high use.

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 monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from Apache's proposed seismic survey will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers

The requested takes proposed to be authorized represent 10.6 percent of the Cook Inlet beluga whale population of approximately 283 animals (Allen and Angliss, 2013), 0.89 percent of the Alaska resident stock and 1.8 percent of the Gulf of Alaska, Aleutian Island and Bering Sea stock of killer whales (1,123 residents and 552 transients), and 0.08 percent of the Gulf of Alaska stock of approximately 25,987 harbor porpoises. The take requests presented for harbor seals represent 0.87 percent of the Cook Inlet/Shelikof stock of approximately 29,175 animals. The requested takes proposed for Steller sea lions represent 0.04 percent of the western stock of approximately 45,916 animals. These take estimates represent the percentage of each species or stock that could be taken by Level B behavioral harassment if each animal is taken only once. The number of marine mammals taken is small relative to the affected species or stocks. In addition, the mitigation and monitoring measures (described previously in this document) proposed for inclusion in the IHA (if issued) are expected to reduce even further any potential disturbance to marine mammals.

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 mitigation and monitoring measures, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

Relevant Subsistence Uses

The subsistence harvest of marine mammals transcends the nutritional and economic values attributed to the animal and is an integral part of the cultural identity of the region's Alaska Native communities. Inedible parts of the whale provide Native artisans with materials for cultural handicrafts, and the hunting itself perpetuates Native traditions by transmitting traditional skills and knowledge to younger generations (NOAA, 2007).

The Cook Inlet beluga whale has traditionally been hunted by Alaska Natives for subsistence purposes. For several decades prior to the 1980s, the Native Village of Tyonek residents were the primary subsistence hunters of Cook Inlet beluga whales. During the 1980s and 1990s, Alaska Natives from villages in the western, northwestern, and North Slope regions of Alaska either moved to or visited the south central region and participated in the yearly subsistence harvest (Stanek, 1994). From 1994 to 1998, NMFS estimated 65 whales per year (range 21–123) were taken in this harvest, including those successfully taken for food and those struck and lost. NMFS has concluded that this number is high enough to account for the estimated 14 percent annual decline in the population during this time (Hobbs *et al.,* 2008). Actual mortality may have been higher, given the difficulty of estimating the number of whales struck and lost during the hunts. In 1999, a moratorium was enacted (Public Law 106–31) prohibiting the subsistence take of Cook Inlet beluga whales except through a cooperative agreement between NMFS and the affected Alaska Native organizations. Since the Cook Inlet beluga whale harvest was regulated in 1999 requiring cooperative agreements, five beluga whales have been struck and harvested. Those beluga whales were harvested in 2001 (one animal), 2002 (one animal), 2003 (one animal), and 2005 (two animals). The Native Village of Tyonek agreed not to hunt or request a hunt in 2007, when no co-management agreement was to be signed (NMFS, 2008a).

On October 15, 2008, NMFS published a final rule that established long-term harvest limits on the Cook Inlet beluga whales that may be taken by Alaska Natives for subsistence purposes (73 FR 60976). That rule prohibits harvest for a 5-year period (2008–2012), if the average abundance for the Cook Inlet beluga whales from the prior five years (2003–2007) is below 350 whales. The next 5-year period that could allow for a harvest (2013–2017), would require the previous five-year average (2008–2012) to be above 350 whales. The 2008 Cook Inlet Beluga Whale Subsistence Harvest Final Supplemental Environmental Impact Statement (NMFS, 2008a) authorizes how many beluga whales can be taken during a 5-year interval based on the 5-year population estimates and 10-year measure of the population growth rate. Based on the 2008–2012 5-year abundance estimates, no hunt occurred between 2008 and 2012 (NMFS, 2008a). The Cook Inlet Marine Mammal Council, which managed the Alaska Native Subsistence fishery with NMFS, was disbanded by a unanimous vote of the Tribes' representatives on June 20, 2012. At this time, no harvest is expected in 2013 or 2014. Residents of the Native Village of Tyonek are the primary subsistence users in Knik Arm area.

Data on the harvest of other marine mammals in Cook Inlet are lacking. Some data are available on the subsistence harvest of harbor seals, harbor porpoises, and killer whales in Alaska in the marine mammal stock assessments. However, these numbers are for the Gulf of Alaska including Cook Inlet, and they are not indicative of the harvest in Cook Inlet.

Some detailed information on the subsistence harvest of harbor seals is available from past studies conducted by the Alaska Department of Fish & Game (Wolfe *et al.,* 2009). In 2008, only 33 harbor seals were taken for harvest in the Upper Kenai-Cook Inlet area. In the same study, reports from hunters stated that harbor seal populations in the area were increasing (28.6%) or remaining stable (71.4%). The specific hunting regions identified were Anchorage, Homer, Kenai, and Tyonek, and hunting generally peaks in March, September, and November (Wolfe *et al.,* 2009).

Potential Impacts to Subsistence Uses

Section 101(a)(5)(D) also requires NMFS to determine that the authorization will not have an unmitigable adverse effect on the availability of marine mammal species or stocks for subsistence use. NMFS has defined ''unmitigable adverse impact'' in 50 CFR 216.103 as: an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

The primary concern is the disturbance of marine mammals through the introduction of anthropogenic sound into the marine environment during the proposed seismic survey. Marine mammals could be behaviorally harassed and either become more difficult to hunt or temporarily abandon traditional hunting grounds. However, the proposed seismic survey should not have any impacts to beluga harvests as none currently occur in Cook Inlet. Additionally, subsistence harvests of other marine mammal species are limited in Cook Inlet.

Plan of Cooperation or Measures To Minimize Impacts to Subsistence Hunts

Regulations at 50 CFR 216.104(a)(12) require IHA applicants for activities that take place in Arctic waters to provide a Plan of Cooperation or information that identifies what measures have been taken and/or will be taken to minimize adverse effects on the availability of marine mammals for subsistence purposes. NMFS regulations define Arctic waters as waters above 60° N. latitude. Consistent with NMFS' implementing regulations, Apache met with the Cook Inlet Marine Mammal Council (CIMMC)—a now dissolved Alaska Native Organization (ANO) that represented Cook Inlet tribes—on March 29, 2011, to discuss the proposed activities and discuss any subsistence concerns. Apache also met with the Tyonek Native Corporation on November 9, 2010 and the Salamatof Native Corporation on November 22, 2010. Additional meetings were held with the Native Village of Tyonek, the Kenaitze Indian Tribe, and Knik Tribal Council, and the Ninilchik Traditional Council. According to Apache, during these meetings, no concerns were raised regarding potential conflict with subsistence harvest of marine mammals. Apache has identified the following features that are intended to reduce impacts to subsistence users:

- In-water seismic activities will follow mitigation procedures to minimize effects on the behavior of marine mammals and, therefore, opportunities for harvest by Alaska Native communities; and
- Regional subsistence representatives may support recording marine mammal observations along with marine mammal biologists during the monitoring programs and will be provided with annual reports.

Since the issuance of the April 2012 IHA, Apache has maintained regular

and consistent communication with federally recognized Alaska Natives. The Alaska Natives, Native Corporations, and ANOs that Apache has communicated with include: the Native Village of Tyonek; Tyonek Native Corporation; Ninilchik Native Association; Ninilchik Traditional Council; Salamatof Native Association; Knikatnu; Knik Native Council; Alexander Creek; Cook Inlet Region, Inc.; the Native Village of Eklutna; Kenaitze Indian Tribe; and Seldovia Native Assocaition. Apache has shared information gathered during the seismic survey conducted under the April 2012 IHA and hosted an information exchange with Alaska Native Villages, Native Corporations, and other Non-Governmental Organizations in the spring of 2013 where data from the past year's monitoring operations would be presented.

Apache and NMFS recognize the importance of ensuring that ANOs and federally recognized tribes are informed, engaged, and involved during the permitting process and will continue to work with the ANOs and tribes to discuss operations and activities. On February 6, 2012, in response to requests for government-to-government consultations by the CIMMC and Native Village of Eklutna, NMFS met with representatives of these two groups and a representative from the Ninilchik. We engaged in a discussion about the proposed IHA for phase 1 of Apache's seismic program, the MMPA process for issuing an IHA, concerns regarding Cook Inlet beluga whales, and how to achieve greater coordination with NMFS on issues that impact tribal concerns. Following the publication of this proposed IHA, NMFS will contact the local Native Villages to inform them of the availability of the **Federal Register** notice and the opening of the public comment period and to invite their input. Apache has continued to meet with the Native Village of Tyonke, Tyonek Native Corporation, Cook Inlet Region Inc., and other recognized tribes and village corporations in the Cook Inlet Region throughout 2013.

Unmitigable Adverse Impact Analysis and Preliminary Determination

The project will not have any effect on current beluga whale harvests because no beluga harvest will take place in 2014. Additionally, the proposed seismic survey area is not an important native subsistence site for other subsistence species of marine mammals. Also, because of the relatively small proportion of marine mammals utilizing Cook Inlet, the number harvested is expected to be extremely low. Therefore, because the proposed program would result in only temporary disturbances, the seismic program would not impact the availability of these other marine mammal species for subsistence uses.

The timing and location of subsistence harvest of Cook Inlet harbor seals may coincide with Apache's project, but because this subsistence hunt is conducted opportunistically and at such a low level (NMFS, 2013c), Apache's program is not expected to have an impact on the subsistence use of harbor seals.

NMFS anticipates that any effects from Apache's proposed seismic survey on marine mammals, especially harbor seals and Cook Inlet beluga whales, which are or have been taken for subsistence uses, would be short-term, site specific, and limited to inconsequential changes in behavior and mild stress responses. NMFS does not anticipate that the authorized taking of affected species or stocks will reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (1) Causing the marine mammals to abandon or avoid hunting areas; (2) directly displacing subsistence users; or (3) placing physical barriers between the marine mammals and the subsistence hunters; and that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met. Based on the description of the specified activity, the measures described to minimize adverse effects on the availability of marine mammals for subsistence purposes, and the proposed mitigation and monitoring measures, NMFS has preliminarily determined that there will not be an unmitgable adverse impact on subsistence uses from Apache's proposed activities.

Endangered Species Act (ESA)

There are two marine mammal species listed as endangered under the ESA with confirmed or possible occurrence in the proposed project area: the Cook Inlet beluga whale and the western DPS of Steller sea lion. In addition, the proposed action would occur within designated critical habitat for the Cook Inlet beluga whale. NMFS' Permits and Conservation Division consulted with NMFS' Alaska Region Protected Resources Division under section 7 of the ESA on the issuance of the first IHA to Apache under section 101(a)(5)(D) of the MMPA, which analyzed the impacts in the other areas where Apache has proposed to conduct seismic surveys, including Area 2 (the area covered in the second IHA).

On May 21, 2012, NMFS' Alaska Region issued a revised Biological Opinion, which concluded that the IHA is not likely to jeopardize the continued existence of the marine mammal species (such as Cook Inlet beluga whales and Steller sea lions) affected by the seismic survey or destroy or adversely modify designated critical habitat for Cook Inlet beluga whales. Although the Biological Opinion considered the effects of multiple years of seismic surveying in the entire project area as a whole (see Figure 6 in the Biological Opinion), to be cautious, in light of the change in scope, NMFS' Permits and Conservation Division requested reinitiation of consultation under section 7 of the ESA to address these changes in the proposed action. A new Biological Opinion was issued on February 14, 2013. That Biological Opinion determined that the issuance of an IHA is not likely to jeopardize the continued existence of the Cook Inlet beluga whales or the western distinct population segment of Steller sea lions or destroy or adversely modify Cook Inlet beluga whale critical habitat. Finally, the Biological Opinion included an Incidental Take Statement (ITS) for Cook Inlet beluga whales and Steller sea lions. The ITS contains reasonable and prudent measures implemented by terms and conditions to minimize the effects of this take.

The Biological Opinion issued on February 14, 2013, is valid through December 31, 2014. NMFS' Permits and Conservation Division has discussed this third IHA request with NMFS' Alaska Region and determined that this proposed IHA falls within the scope and analysis of the current Biological Opinion. As proposed in this notice, this IHA request does not trigger any of the factors requiring a reinitiation of consultation. Therefore, a new section 7 consultation will not be conducted.

National Environmental Policy Act (NEPA)

In February 2013, NMFS prepared an Environmental Assessment (EA) and issued a Finding of No Significant Impact (FONSI) regarding the issuance of the second IHA to Apache for the take of marine mammals incidental to a seismic survey program in Cook Inlet, Alaska. NMFS is currently reviewing the February 2013 EA to determine if the scope of this IHA request falls within the analysis of that EA. If that review determines that this proposed action does not fall within the scope of the current analysis, then NMFS will, pursuant to NEPA, conduct a new analysis to determine if the proposed action will have a significant effect on

the human environment. This analysis will be completed prior to the issuance or denial of the IHA.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to Apache for the take of marine mammals incidental to conducting a seismic survey program in Cook Inlet, Alaska, from March 1 through December 31, 2014, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The proposed IHA language is provided next.

This section contains a draft of the IHA itself. The wording contained in this section is proposed for inclusion in the IHA (if issued).

(1) This Authorization is valid from March 1, 2014, through December 31, 2014.

(2) This Authorization is valid only for Apache's activities associated with seismic survey operations that shall occur within the areas denoted as Zone 1 and Zone 2 as depicted in Figure 2 of Apache's November 2013 application to NMFS.

(3) Species Authorized and Level of Take.

(a) The incidental taking of marine mammals, by Level B harassment only, is limited to the following species in the waters of Cook Inlet:

(i) Odontocetes: 30 beluga whales; 20 harbor porpoise; and 10 killer whales.

(ii) Pinnipeds: 200 harbor seals and 20 Steller sea lions.

(iii) If any marine mammal species are encountered during seismic activities that are not listed in conditions 3(a)(i) or (ii) for authorized taking and are likely to be exposed to sound pressure levels (SPLs) greater than or equal to 160 dB re 1 μPa (rms), then the Holder of this Authorization must alter speed or course, powerdown or shut-down the sound source to avoid take.

(b) The taking by injury (Level A harassment) serious injury, or death of any of the species listed in condition 3(a) or the taking of any kind of any other species of marine mammal is prohibited and may result in the modification, suspension or revocation of this Authorization.

(c) If the number of detected takes of any marine mammal species listed in condition 3(a) is met or exceeded, Apache shall immediately cease survey operations involving the use of active sound sources (e.g., airguns and pingers) and notify NMFS.

(4) The authorization for taking by harassment is limited to the following acoustic sources (or sources with comparable frequency and intensity):

(i) Two airgun arrays, each with a capacity of 2,400 in^3;

(ii) Two airgun arrays, each with a capacity of 1,200 in^3;

(iii) A 440 in^3 airgun array;

(iv) A 10 in^3 airgun;

(v) A Scott Ultra-Short Baseline (USBL) transceiver; and

(vi) A Lightweight Release USBL transponder.

(5) The taking of any marine mammal in a manner prohibited under this Authorization must be reported immediately to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS or his designee.

(6) The holder of this Authorization must notify the Chief of the Permits and Conservation Division, Office of Protected Resources, or his designee at least 48 hours prior to the start of seismic survey activities (unless constrained by the date of issuance of this Authorization in which case notification shall be made as soon as possible).

(7) Mitigation and Monitoring Requirements: The Holder of this Authorization is required to implement the following mitigation and monitoring requirements when conducting the specified activities to achieve the least practicable impact on affected marine mammal species or stocks:

(a) Utilize a sufficient number of NMFS-qualified, vessel-based Protected Species Visual Observers (PSVOs) (except during meal times and restroom breaks, when at least one PSVO shall be on watch) to visually watch for and monitor marine mammals near the seismic source vessels during daytime operations (from nautical twilight-dawn to nautical twilight-dusk) and before and during start-ups of sound sources day or night. Two PSVOs will be on each source vessel, and two PSVOs will be on the support vessel to observe the exclusion and disturbance zones. PSVOs shall have access to reticle binoculars (7 x 50 Fujinon), big-eye binoculars (25 x I50), and night vision devices. PSVO shifts shall last no longer than 4 hours at a time. PSVOs shall also make observations during daytime periods when the sound sources are not operating for comparison of animal abundance and behavior, when feasible. When practicable, as an additional means of visual observation, Apache's vessel crew may also assist in detecting marine mammals.

(b) In addition to the vessel-based PSVOs, utilize a shore-based station to visually monitor for marine mammals. The shore-based station will follow all safety procedures, including bear safety. The location of the shore-based station will need to be sufficiently high to observe marine mammals; the PSOs would be equipped with pedestal mounted ''big eye'' (20 x 110) binoculars. The shore-based PSOs would scan the area prior to, during, and after the survey operations involving the use of sound sources, and would be in contact with the vessel-based PSOs via radio to communicate sightings of marine mammals approaching or within the project area.

(c) Weather and safety permitting, aerial surveys shall be conducted on a daily basis. Surveys are to be flown even if the airguns are not being fired. If weather or safety conditions prevent Apache from conducting aerial surveys, seismic survey operations may proceed subject to the terms and conditions of the IHA.

(i) When survey operations occur near a river mouth, Apache shall conduct aerial surveys to identify large congregations of beluga whales and harbor seal haul-outs.

(ii) Aerial surveys shall be conducted on a daily basis (weather and safety permitting) when there are any seismic-related activities (including but not limited to node laying/retrieval or airgun operations) occurring north or east of a line from Tyonek across to the eastern side of Number 3 Bay of the Captain Cook State Recreation Area, Cook Inlet (roughly the southern-most point of the Army Corps of Engineers defined Region 9).

(iii) Aerial surveys may be conducted from either a helicopter or fixed-wing aircraft. A fixed-wing aircraft may be used in lieu of a helicopter. If flights are to be conducted with a fixed-wing aircraft, it must have adequate viewing capabilities, i.e., view not obstructed by wing or other part of the plane.

(iv) Weather and safety permitting, flight paths should encompass areas from Anchorage, along the coastline of the Susitna Delta to Tyonek, across the inlet to Point Possession, around the coastline of Chickaloon Bay to Burnt Island, and across to Anchorage (or in reverse order). Flights shall be conducted so that the PSO has the ''inside'' view while following the exterior boundary line of the coverage area, which reduces the need for flying tracklines back and forth across the coverage area. The information relevant to PSO recording is provided in Condition 7(e).

(v) Weather and safety permitting, aerial surveys will fly at an altitude of 305 m (1,000 ft). In the event of a marine mammal sighting, aircraft will attempt to maintain a radial distance of 457 m (1,500 ft) from the marine mammal(s). Aircraft will avoid approaching marine

mammals from head-on, flying over or passing the shadow of the aircraft over the marine mammal(s).

(d) PSVOs shall conduct monitoring while the air gun array and nodes are being deployed or recovered from the water.

(e) Record the following information when a marine mammal is sighted:

(i) Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to the airguns or vessel (e.g., none, avoidance, approach, paralleling, etc., and including responses to ramp-up), and behavioral pace;

(ii) Time, location, heading, speed, activity of the vessel (including number of airguns operating and whether in state of ramp-up or power-down), Beaufort sea state and wind force, visibility, and sun glare; and

(iii) The data listed under Condition 7(e)(ii) shall also be recorded at the start and end of each observation watch and during a watch whenever there is a change in one or more of the variables.

(f) Establish a 180 dB re 1 μPa (rms) and 190 dB re 1 μPa (rms) ''exclusion zone'' (EZ) for marine mammals before the full array (2400 in^3) is in operation; and a 180 dB re 1 μPa (rms) and 190 dB re 1 μPa (rms) EZ before a single airgun (10 in^3) is in operation, respectively.

(g) Visually observe the entire extent of the EZ (180 dB re 1 μPa [rms] for cetaceans and 190 dB re 1 μPa [rms] for pinnipeds) using NMFS-qualified PSVOs, for at least 30 minutes (min) prior to starting the airgun array (day or night). If the PSVO finds a marine mammal within the EZ, Apache must delay the seismic survey until the marine mammal(s) has left the area. If the PSVO sees a marine mammal that surfaces, then dives below the surface, the PSVO shall wait 30 min. If the PSVO sees no marine mammals during that time, they should assume that the animal has moved beyond the EZ. If for any reason the entire radius cannot be seen for the entire 30 min (i.e., rough seas, fog, darkness), or if marine mammals are near, approaching, or in the EZ, the airguns may not be ramped-up.

(h) Implement a ''ramp-up'' procedure when starting up at the beginning of seismic operations or any time after the entire array has been shut down for more than 10 min, which means start the smallest sound source first and add sound sources in a sequence such that the source level of the array shall increase in steps not exceeding approximately 6 dB per 5-min period. During ramp-up, the PSVOs shall monitor the EZ, and if marine mammals are sighted, a power-down, or shutdown shall be implemented as though the full array were operational. Therefore, initiation of ramp-up procedures from shutdown requires that the PSVOs be able to visually observe the full EZ as described in Condition 7(f) (above).

(i) Alter speed or course during seismic operations if a marine mammal, based on its position and relative motion, appears likely to enter the relevant EZ. If speed or course alteration is not safe or practicable, or if after alteration the marine mammal still appears likely to enter the EZ, further mitigation measures, such as a power-down or shutdown, shall be taken.

(j) Power-down or shutdown the sound source(s) if a marine mammal is detected within, approaches, or enters the relevant EZ. A shutdown means all operating sound sources are shut down (i.e., turned off). A power-down means reducing the number of operating sound sources to a single operating 10 in^3 airgun, which reduces the EZ to the degree that the animal(s) is no longer in or about to enter it.

(k) Following a power-down, if the marine mammal approaches the smaller designated EZ, the sound sources must then be completely shut down. Seismic survey activity shall not resume until the PSVO has visually observed the marine mammal(s) exiting the EZ and is not likely to return, or has not been seen within the EZ for 15 min for species with shorter dive durations (small odontocetes and pinnipeds) or 30 min for species with longer dive durations (large odontocetes, including killer whales and beluga whales).

(l) Following a power-down or shutdown and subsequent animal departure, survey operations may resume following ramp-up procedures described in Condition 7(h).

(m) Marine geophysical surveys may continue into night and low-light hours if such segment(s) of the survey is initiated when the entire relevant EZs can be effectively monitored visually (i.e., PSVO(s) must be able to see the extent of the entire relevant EZ).

(n) No initiation of survey operations involving the use of sound sources is permitted from a shutdown position at night or during low-light hours (such as in dense fog or heavy rain).

(o) If a beluga whale is visually sighted approaching or within the 160-dB disturbance zone, survey activity will not commence or the sound source(s) shall be shut down until the animals are no longer present within the 160-dB zone.

(p) Whenever aggregations or groups of killer whales and/or harbor porpoises are detected approaching or within the 160-dB disturbance zone, survey activity will not commence or the sound source(s) shall be shut-down until the animals are no longer present within the 160-dB zone. An aggregation or group of whales/porpoises shall consist of five or more individuals of any age/sex class.

(q) Apache must not operate airguns within 10 miles (16 km) of the mean higher high water (MHHW) line of the Susitna Delta (Beluga River to the Little Susitna River) between mid-April and mid-October (to avoid any effects to belugas in an important feeding and potential breeding area).

(r) Seismic survey operations involving the use of air guns and pingers must cease if takes of any marine mammal are met or exceeded.

(8) Reporting Requirements: The Holder of this Authorization is required to:

(a) Submit a weekly field report, no later than close of business (Alaska time) each Thursday during the weeks when in-water seismic survey activities take place. The field reports will summarize species detected, in-water activity occurring at the time of the sighting, behavioral reactions to in-water activities, and the number of marine mammals taken.

(b) Submit a monthly report, no later than the 15th of each month, to NMFS' Permits and Conservation Division for all months during which in-water seismic survey activities occur. These reports must contain and summarize the following information:

(i) Dates, times, locations, heading, speed, weather, sea conditions (including Beaufort sea state and wind force), and associated activities during all seismic operations and marine mammal sightings;

(ii) Species, number, location, distance from the vessel, and behavior of any marine mammals, as well as associated seismic activity (number of power-downs and shutdowns), observed throughout all monitoring activities;

(iii) An estimate of the number (by species) of: (A) Pinnipeds that have been exposed to the seismic activity (based on visual observation) at received levels greater than or equal to 160 dB re 1 μPa (rms) and/or 190 dB re 1 μPa (rms) with a discussion of any specific behaviors those individuals exhibited; and (B) cetaceans that have been exposed to the seismic activity (based on visual observation) at received levels greater than or equal to 160 dB re 1 μPa (rms) and/or 180 dB re 1 μPa (rms) with a discussion of any specific behaviors those individuals exhibited.

(iv) A description of the implementation and effectiveness of the: (A) Terms and conditions of the Biological Opinion's Incidental Take Statement (ITS); and (B) mitigation measures of the Incidental Harassment Authorization. For the Biological Opinion, the report shall confirm the implementation of each Term and Condition, as well as any conservation recommendations, and describe their effectiveness, for minimizing the adverse effects of the action on Endangered Species Act-listed marine mammals.

(c) Submit a draft Technical Report on all activities and monitoring results to NMFS' Permits and Conservation Division within 90 days of the completion of the Apache survey. The Technical Report will include:

(i) Summaries of monitoring effort (e.g., total hours, total distances, and marine mammal distribution through the study period, accounting for sea state and other factors affecting visibility and detectability of marine mammals);

(ii) Analyses of the effects of various factors influencing detectability of marine mammals (e.g., sea state, number of observers, and fog/glare);

(iii) Species composition, occurrence, and distribution of marine mammal sightings, including date, water depth, numbers, age/size/gender categories (if determinable), group sizes, and ice cover;

(iv) Analyses of the effects of survey operations;

(v) Sighting rates of marine mammals during periods with and without seismic survey activities (and other variables that could affect detectability), such as: (A) Initial sighting distances versus survey activity state; (B) closest point of approach versus survey activity state; (C) observed behaviors and types of movements versus survey activity state; (D) numbers of sightings/individuals seen versus survey activity state; (E) distribution around the source vessels versus survey activity state; and (F) estimates of take by Level B harassment based on presence in the 160 dB harassment zone.

(d) Submit a final report to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, within 30 days after receiving comments from NMFS on the draft report. If NMFS decides that the draft report needs no comments, the draft report shall be considered to be the final report.

(e) Apache must immediately report to NMFS if 25 belugas are detected within the 160 dB re 1 μPa (rms) disturbance zone during seismic survey operations to allow NMFS to consider making necessary adjustments to monitoring and mitigation.

(9)(a) In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this Authorization, such as an injury (Level A harassment), serious injury or mortality (e.g., ship-strike, gear interaction, and/or entanglement), Apache shall immediately cease the specified activities and immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, his designees, and the Alaska Regional Stranding Coordinators. The report must include the following information:

(i) Time, date, and location (latitude/longitude) of the incident;

(ii) The name and type of vessel involved;

(iii) The vessel's speed during and leading up to the incident;

(iv) Description of the incident;

(v) Status of all sound source use in the 24 hours preceding the incident;

(vi) Water depth;

(vii) Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);

(viii) Description of marine mammal observations in the 24 hours preceding the incident;

(ix) Species identification or description of the animal(s) involved;

(x) The fate of the animal(s); and

(xi) Photographs or video footage of the animal (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with Apache to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Apache may not resume their activities until notified by NMFS via letter or email, or telephone.

(b) In the event that Apache discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as described in the next paragraph), Apache will immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, his designees, and the NMFS Alaska Stranding Hotline. The report must include the same information identified in the Condition 9(a) above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with Apache to determine whether modifications in the activities are appropriate.

(c) In the event that Apache discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in Condition 2 of this Authorization (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Apache shall report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, his designees, the NMFS Alaska Stranding Hotline (1–877–925–7773), and the Alaska Regional Stranding Coordinators within 24 hours of the discovery. Apache shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. Activities may continue while NMFS reviews the circumstances of the incident.

(10) Apache is required to comply with the Reasonable and Prudent Measures and Terms and Conditions of the ITS corresponding to NMFS' Biological Opinion issued to both U.S. Army Corps of Engineers and NMFS' Office of Protected Resources.

(11) A copy of this Authorization and the ITS must be in the possession of all contractors and PSOs operating under the authority of this Incidental Harassment Authorization.

(12) Penalties and Permit Sanctions: Any person who violates any provision of this Incidental Harassment Authorization is subject to civil and criminal penalties, permit sanctions, and forfeiture as authorized under the MMPA.

(13) This Authorization may be modified, suspended or withdrawn if the Holder fails to abide by the conditions prescribed herein or if the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals, or if there is an unmitigable adverse impact on the availability of such species or stocks for subsistence uses.

Request for Public Comments

NMFS requests comments on our analysis, the draft authorization, and any other aspect of the Notice of Proposed IHA for Apache's 3D seismic survey in Cook Inlet, Alaska. Please include with your comments any supporting data or literature citations to help inform our final decision on Apache's request for an MMPA authorization.

Dated: December 24, 2013.

Perry Gayaldo,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–31333 Filed 12–30–13; 8:45 am]

BILLING CODE 3510–22–P

FEDERAL REGISTER

Vol. 78 Tuesday,

No. 251 December 31, 2013

Part V

The President

Proclamation 9072—To Take Certain Actions Under the African Growth and Opportunity Act and for Other Purposes

Federal Register
Vol. 78, No. 251
Tuesday, December 31, 2013

Presidential Documents

Title 3—

The President

Proclamation 9072 of December 23, 2013

To Take Certain Actions Under the African Growth and Opportunity Act and for Other Purposes

By the President of the United States of America

A Proclamation

1. In Proclamation 8921 of December 20, 2012, I determined that the Republic of Mali (Mali) was not making continual progress in meeting the requirements described in section 506A(a)(1) of the Trade Act of 1974, as amended (the ''1974 Act''), as added by section 111(a) of the African Growth and Opportunity Act (title I of Public Law 106–200) (AGOA). Thus, pursuant to section 506A(a)(3) of the 1974 Act (19 U.S.C. 2466a(a)(3)), I terminated the designation of Mali as a beneficiary sub-Saharan African country for purposes of section 506A of the 1974 Act.

2. Section 506A(a)(1) of the 1974 Act authorizes the President to designate a country listed in section 107 of the AGOA (19 U.S.C. 3706) as a ''beneficiary sub-Saharan African country'' if the President determines that the country meets the eligibility requirements set forth in section 104 of the AGOA (19 U.S.C. 3703), as well as the eligibility criteria set forth in section 502 of the 1974 Act (19 U.S.C. 2462).

3. Based on actions that the Government of Mali has taken over the past year, pursuant to section 506A(a)(1) of the 1974 Act, I have determined that Mali meets the eligibility requirements set forth in section 104 of the AGOA and section 502 of the 1974 Act, and I have decided to designate Mali as a beneficiary sub-Saharan African country.

4. On April 22, 1985, the United States and Israel entered into the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel (USIFTA), which the Congress approved in the United States-Israel Free Trade Area Implementation Act of 1985 (the ''USIFTA Act'') (19 U.S.C. 2112 note).

5. Section 4(b) of the USIFTA Act provides that, whenever the President determines that it is necessary to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the USIFTA, the President may proclaim such withdrawal, suspension, modification, or continuance of any duty, or such continuance of existing duty-free or excise treatment, or such additional duties, as the President determines to be required or appropriate to carry out the USIFTA.

6. In order to maintain the general level of reciprocal and mutually advantageous concessions with respect to agricultural trade with Israel, on July 27, 2004, the United States entered into an agreement with Israel concerning certain aspects of trade in agricultural products during the period January 1, 2004, through December 31, 2008 (the ''2004 Agreement'').

7. In Proclamation 7826 of October 4, 2004, consistent with the 2004 Agreement, the President determined, pursuant to section 4(b) of the USIFTA Act, that it was necessary in order to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the USIFTA, to provide duty-free access into the United States through December 31, 2008, for specified quantities of certain agricultural products of Israel.

8. Each year from 2008 through 2012, the United States and Israel entered into agreements to extend the period that the 2004 Agreement was in force for 1-year periods to allow additional time for the two governments to conclude an agreement to replace the 2004 Agreement.

9. To carry out the extension agreements, the President in Proclamation 8334 of December 31, 2008; Proclamation 8467 of December 23, 2009; Proclamation 8618 of December 21, 2010; Proclamation 8770 of December 29, 2011; and Proclamation 8921 of December 20, 2012, modified the Harmonized Tariff Schedule of the United States (HTS) to provide duty-free access into the United States for specified quantities of certain agricultural products of Israel, each time for an additional 1-year period.

10. On November 26, 2013, the United States entered into an agreement with Israel to extend the period that the 2004 Agreement is in force through December 31, 2014, to allow for further negotiations on an agreement to replace the 2004 Agreement.

11. Pursuant to section 4(b) of the USIFTA Act, I have determined that it is necessary, in order to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the USIFTA, to provide duty-free access into the United States through the close of December 31, 2014, for specified quantities of certain agricultural products of Israel.

12. Presidential Proclamation 8783 of March 6, 2012, implemented the United States-Korea Free Trade Agreement (USKFTA) with respect to the United States and, pursuant to the United States-Korea Free Trade Agreement Implementation Act (the ''Implementation Act'') (Public Law 112–41, 125 Stat. 428), incorporated into the HTS the schedule of duty reductions and rules of origin necessary or appropriate to carry out the USKFTA.

13. In Presidential Proclamation 8771 of December 29, 2011, pursuant to the authority provided in section 1206(a) of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3006(a)), I modified the HTS to reflect amendments to the International Convention on the Harmonized Commodity Description and Coding System (the ''Convention'').

14. Section 202 of the Implementation Act provides rules for determining whether goods imported into the United States originate in the territory of a Party to the USKFTA and thus are eligible for the tariff and other treatment contemplated under the Agreement. Section 202(o) of the Implementation Act authorizes the President to proclaim, as part of the HTS, the rules of origin set out in the USKFTA and to proclaim any modifications to such previously proclaimed rules of origin, subject to the exceptions stated in section 202(o)(2)(A) of the Implementation Act.

15. Because the USKFTA was negotiated under the 2002 HTS nomenclature, the United States and Korea agreed to modify certain specific rules of origin in the USKFTA to ensure that the tariff and certain other treatment accorded under the Agreement to originating goods will continue to be provided under the tariff categories that were modified in Proclamation 8783.

16. In order to implement the agreed modifications to the rules of origin in the USKFTA and ensure the continuation of such staged reductions in rates of duty for originating goods under tariff categories that have been modified to reflect the amendments to the Convention, I have determined that additional modifications to the HTS are necessary or appropriate to ensure that the duty reductions previously proclaimed are applied.

17. Section 212 of the Caribbean Basin Economic Recovery Act (CBERA) (19 U.S.C. 2702), as amended by the Caribbean Basin Trade Partnership Act (CBTPA) (Public Law 106–200), authorizes the President to designate certain countries, territories, or successor political entities as beneficiary countries for the purposes of the CBERA and CBTPA.

18. Section 211 of the CBTPA provides that certain preferential tariff treatment may be provided to eligible articles that are the product of any country that the President designates as a ''CBTPA beneficiary country'' pursuant to section 213(b)(5)(B) of the CBERA (19 U.S.C. 2703(b)(5)(B)), provided that the President determines that the country has satisfied the requirements of section 213(b)(4)(A)(ii) (19 U.S.C. 2703(b)(4)(A)(ii)) relating to the implementation of procedures and requirements similar to those in chapter 5 of the North American Free Trade Agreement (NAFTA).

19. In Proclamation 7351 of October 2, 2000, the President authorized the United States Trade Representative (USTR) to perform the functions specified in section 213(b)(4)(A)(ii) of the CBERA and certain functions under section 604 of the 1974 Act (19 U.S.C. 2483) for each beneficiary country designated in that proclamation pursuant to section 213(b)(5)(B) of the CBERA.

20. Curaçao is a successor political entity to The Netherlands Antilles and has expressed its desire to be designated as a beneficiary country under the CBERA and CBTPA. As a successor political entity, Curaçao was not included in Proclamation 7351.

21. Pursuant to section 212(b) and (c) and 213(b)(5)(B) of the CBERA (19 U.S.C. 2702(b) and (c) and 19 U.S.C. 2703(b)(5)(B)), I have determined that Curaçao meets the eligibility requirements set forth in those sections. Accordingly, pursuant to section 212(b) and 213(b) of the CBERA, and after taking into account the factors enumerated in section 212(b) and (c) of the CBERA (19 U.S.C. 2702(b) and (c)), I have decided to designate Curaçao as a beneficiary country for purposes of the CBERA and CBTPA. In addition, pursuant to section 212(a)(1)(A) of the CBERA, I am notifying the Congress of my intention to designate Curaçao as a beneficiary country under the CBERA and CBTPA, and communicating the considerations entering into my decision.

22. The preferential treatment extended pursuant to the Andean Trade Preference Act (ATPA) (19 U.S.C. 3201–3206, as amended) expired on July 31, 2013. As a result, I have determined that certain modifications to the HTS are required to reflect this status.

23. Presidential Proclamation 7746 of December 30, 2003, implemented the United States-Chile Free Trade Agreement (USCFTA) with respect to the United States and, pursuant to the United States-Chile Free Trade Agreement Implementation Act (19 U.S.C. 3805 note), incorporated in the HTS the schedule of duty reductions and rules of origin necessary or appropriate to carry out the USCFTA. Those modifications to the HTS were set out in Publication 3652 of the U.S. International Trade Commission, which was incorporated by reference into Proclamation 7746.

24. Annex II of Publication 3652 contained a typographical error that needs to be corrected. I have determined that a modification to the HTS is necessary to correct this typographical error and to provide the intended tariff treatment.

25. Section 604 of the 1974 Act (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions taken thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to section 301 of title 3, United States Code, title V and section 604 of the 1974 Act, section 104 of the AGOA, section 4 of the USIFTA Act, section 202 of the Implementation Act, and sections 212 and 213 of the CBERA, do proclaim that:

(1) Mali is designated as a beneficiary sub-Saharan African country.

(2) In order to reflect this designation in the HTS, general note 16(a) to the HTS is modified by inserting in alphabetical sequence in the list of beneficiary sub-Saharan African countries ''Republic of Mali (Mali).''

(3) In order to implement U.S. tariff commitments under the 2004 Agreement through December 31, 2014, the HTS is modified as provided in Annex I to this proclamation.

(4)(a) The modifications to the HTS set forth in Annex I to this proclamation shall be effective with respect to eligible agricultural products of Israel that are entered, or withdrawn from warehouse for consumption, on or after January 1, 2014.

(b) The provisions of subchapter VIII of chapter 99 of the HTS, as modified by Annex I to this proclamation, shall continue in effect through December 31, 2014.

(5) In order to reflect in the HTS the modifications to the rules of origin under the USKFTA, general note 33 to the HTS is modified as set forth in Annex II to this proclamation.

(6) The modifications to the HTS set forth in Annex II to this proclamation shall be effective with respect to goods that are entered or withdrawn from warehouse for consumption, on or after January 1, 2014.

(7) Curaçao is designated as an eligible beneficiary country for the purposes of the CBERA and CBTPA.

(8) In order to reflect Curaçao's designation as a beneficiary country for the purposes of the CBERA, general note 7(a) to the HTS is modified by inserting in alphabetical sequence ''Curaçao.''

(9) In order to implement Curaçao's designation as a CBTPA beneficiary country, the USTR is authorized to determine whether Curaçao has satisfied the requirements of section 213(b)(4)(A)(ii) of the CBERA relating to the implementation of procedures and requirements similar in all material respects to those in chapter 5 of the NAFTA. To implement such determination, the USTR is authorized to exercise the authority provided to the President under section 604 of the 1974 Act to embody modifications and technical and conforming changes in the HTS. The determination of the USTR under this paragraph shall be set forth in a notice that the USTR shall cause to be published in the *Federal Register.* Such notice shall modify general note 17 of the HTS by including Curaçao in the list of CBTPA beneficiary countries.

(10) In order to reflect the expiration of the ATPA, the HTS is modified as set forth in Annex III to this proclamation.

(11) The modifications to the HTS set forth in Annex III to this proclamation shall be effective with respect to goods that are entered, or withdrawn from warehouse for consumption, on or after July 31, 2013.

(12) In order to provide the intended tariff treatment to goods of Chile under the terms of general note 26, the HTS is modified as set forth in Annex IV to this proclamation.

(13) The modifications to the HTS set forth in Annex IV to this proclamation shall be effective with respect to goods that are entered or withdrawn from warehouse for consumption, on or after January 1, 2004.

(14) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of December, in the year of our Lord two thousand thirteen, and of the Independence of the United States of America the two hundred and thirty-eighth.

Billing code 3295–F4–P

ANNEX I

TO EXTEND TEMPORARILY CERTAIN PROVISIONS OF THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Effective with respect to eligible agricultural products of Israel which are entered, or withdrawn from warehouse for consumption, on or after January 1, 2014 and before the close of December 31, 2014, subchapter VIII of chapter 99 of the Harmonized Tariff Schedule of the United States is hereby modified as follows:

1. U.S. note 1 to such subchapter is modified by deleting "December 31, 2013" and by inserting in lieu thereof "December 31, 2014".

2. U.S. note 3 to such subchapter is modified by adding at the end of the tabulation the following material, in the two columns specified in such note: "Calendar year 2014 466,000".

3. U.S. note 4 to such subchapter is modified by adding at the end of the tabulation the following material, in the two columns specified in such note: "Calendar year 2014 1,304,000".

4. U.S. note 5 to such subchapter is modified by adding at the end of the tabulation the following material, in the two columns specified in such note: "Calendar year 2014 1,534,000".

5. U.S. note 6 to such subchapter is modified by adding at the end of the tabulation the following material, in the two columns specified in such note: "Calendar year 2014 131,000".

6. U.S. note 7 to such subchapter is modified by adding at the end of the tabulation the following material, in the two columns specified in such note: "Calendar year 2014 707,000".

ANNEX II

MODIFICATIONS TO THE RULES OF ORIGIN FOR THE U.S.-KOREA FREE TRADE AGREEMENT, AS REFLECTED IN THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Effective with respect to goods of Korea, under the terms of general note 33 of the Harmonized Tariff Schedule of the United States (HTS), that are entered, or withdrawn from warehouse for consumption, on or after January 1, 2014, general note 33 to the HTS is modified as follows:

1. Tariff classification rule (TCR) 1 to chapter 3 is deleted and the following new TCRs are inserted in lieu thereof:

"1. A change to headings 0301 through 0305 from any other chapter.

2. (A) A change to smoked goods of headings 0306 through 0308 from goods that are not smoked of headings 0306 through 0308 or from any other chapter; or

(B) A change to any other good of headings 0306 through 0308 from any other chapter."

2. TCRs 8 through 10, inclusive, to chapter 9 are deleted and the following new TCRs are inserted in lieu thereof:

"8. A change to subheadings 0904.21 through 0904.22 from any other chapter.

9. A change to subheadings 0905.10 through 0909.62 from any other subheading.

10. A change to subheadings 0910.11 through 0910.12 from any other chapter."

3. TCR 2 to chapter 13 is deleted and the following new TCR is inserted in lieu thereof:

"2. A change to subheadings 1302.11 through 1302.13 from any other chapter."

4. TCR 4 to chapter 16 is deleted and the following new TCR is inserted in lieu thereof:

"4. A change to subheadings 1604.14 through 1604.32 from any other chapter."

5. TCRs 1 through 3, inclusive, to chapter 19 are deleted and the following new TCRs are inserted in lieu thereof:

"1. A change to subheading 1901.10 from any other chapter, except from heading 1006, and rice products of subheadings 1102.90, 1103.19, 1103.20, 1104.19, 1104.29 and 1104.30, and provided that goods of subheading 1901.10 containing over 10 percent by weight of milk solids do not contain nonoriginating dairy goods of chapter 4.

2. A change to subheading 1901.20 from any other chapter, except from heading 1006, and rice products of subheadings 1102.90, 1103.19, 1103.20, 1104.19, 1104.29 and 1104.30, and provided

that goods of subheading 1901.20 containing over 25 percent by weight of butterfat, not put up for retail sale, do not contain nonoriginating dairy goods of chapter 4.

3. A change to subheading 1901.90 from any other chapter, except from heading 1006, and rice products of subheadings 1102.90, 1103.19, 1103.20, 1104.19, 1104.29 and 1104.30, and provided that goods of subheading 1901.90 containing over 10 percent by weight of milk solids do not contain nonoriginating dairy goods of chapter 4."

6. TCR 5 to chapter 19 is deleted and the following new TCR is inserted in lieu thereof:

"5. A change to subheading 1904.90 from any other chapter, except from heading 1006."

7. TCR 5 to chapter 20 is deleted and the following new TCR is inserted in lieu thereof:

"5. A change to subheadings 2009.41 through 2009.89 from any other chapter."

8. TCR 6 to chapter 20 is deleted and the following new TCR is inserted in lieu thereof:

"6. (A) A change to subheading 2009.90 from any other chapter; or

(B) A change to cranberry juice mixtures of subheading 2009.90 from any other subheading within chapter 20, except from subheadings 2009.11 through 2009.39 or from subheading 2009.81, whether or not there is also a change from any other chapter, provided there is a regional value content of not less than:

(i) 35 percent under the build-up method, or

(ii) 45 percent under the build-down method; or

(C) A change to any other good of subheading 2009.90 from any other subheading within chapter 20, whether or not there is also a change from any other chapter, provided that a single juice ingredient, or juice ingredients from Korea or the United States, constitute in single strength form not more than 60 percent by volume of the good."

9. TCR 3 to chapter 22 is deleted and the following new TCR is inserted in lieu thereof:

"3. (A) A change to juice of any single fruit or vegetable fortified with vitamins or minerals of subheading 2202.90 from any other chapter, except from headings 0805 or 2009, or from juice concentrates of subheading 2106.90;

(B) A change to mixtures of juices fortified with vitamins or minerals of subheading 2202.90:

(i) from any other chapter, except from headings 0805 or 2009 or from mixtures of juices of subheading 2106.90; or

(ii) from any other subheading within chapter 22, heading 2009 or from mixtures of juices of subheading 2106.90, whether or not there is also a change from any other chapter, provided that the juice of a single fruit or vegetable, or juice

ingredients from Korea or the United States, constitute in single strength form not more than 60 percent by volume of the good;

(C) A change to beverages containing milk of subheading 2202.90 from any other chapter, except from chapter 4 or from dairy preparations containing over 10 percent by weight of milk solids of subheading 1901.90; or

(D) A change to ginseng preparations of subheading 2202.90 from any other heading, except from subheadings 1211.20 and 1302.19."

10. TCR 3 to chapter 28 is deleted and the following new TCR is inserted in lieu thereof:

"3. A change to headings 2810 through 2853 from any other heading."

11. TCRs 3 and 4 to chapter 29 are deleted and the following new TCRs are inserted in lieu thereof:

"3. A change to subheadings 2936.21 through 2936.29 from any other subheading.

4. (A) A change to unmixed provitamins of subheading 2936.90 from any other good of subheading 2936.90 or from any other subheading; or

(B) A change to any other good of subheading 2936.90 from any other subheading.

5. A change to subheadings 2937.11 through 2941.90 from any other subheading.

6. A change to heading 2942 from any other heading."

12. TCR 1 to chapter 30 is deleted and the following new TCR is inserted in lieu thereof:

"1. A change to subheadings 3001.20 through 3002.90 from any other subheading."

13. TCR 4 to chapter 30 is deleted and the following new TCR is inserted in lieu thereof:

"4. A change to subheadings 3005.10 through 3006.92 from any other subheading."

14. TCR 5 to chapter 32 is deleted and the following new TCRs are inserted in lieu thereof:

"5. A change to subheadings 3206.11 through 3206.42 from any other subheading.

5A. (A) A change to pigments and preparations based on cadmium compounds of subheading 3206.49 from any other good of subheading 3206.49 or from any other subheading; or

(B) A change to pigments and preparations based on hexacyanoferrates (ferrocyanides and ferricyanides) of subheading 3206.49 from any other good of subheading 3206.49 or from any other subheading; or

(C) A change to any other good of subheading 3206.49 from any other subheading.

5B. A change to subheading 3206.50 from any other subheading."

15. TCRs 1 through 3, inclusive, to chapter 33 are deleted and the following new TCRs are inserted in lieu thereof:

"1. A change to subheadings 3301.12 through 3301.13 from any other subheading.

2. (A) A change to essential oils of bergamot or lime of subheading 3301.19 from any other good of subheading 3301.19 or from any other subheading; or

(B) A change to any other good of subheading 3301.19 from essential oils of bergamot or lime of subheading 3301.19 or from any other subheading.

3. A change to subheadings 3301.24 through 3301.30 from any other subheading.

4. A change to subheading 3301.90 from any other heading, except from subheading 1211.20 and 1302.19.

5. A change to headings 3302 through 3307 from any other heading."

16. TCR 2 to chapter 38 is deleted and the following new TCR is inserted in lieu thereof:

"2. A change to subheadings 3808.50 through 3808.99 from any other subheading, provided that not less than 50 percent by weight of the total active ingredient or ingredients is originating."

17. The following new TCR to chapter 38 is inserted in numerical sequence:

"5. A change to heading 3826 from any other heading."

18. TCR 1 for chapter 41 is modified by deleting "4103.10" and by inserting in lieu thereof "4102.29".

19. TCR 3 for chapter 51 is modified by deleting "5403.20,".

20. TCR 1 for chapter 52 is modified by deleting "5403.20,".

21. TCR 2 for chapter 52 is modified by deleting "5403.20,".

22. TCRs 2 and 3 to chapter 54 are deleted and the following new TCRs are inserted in lieu thereof:

"2. A change to tariff items 5407.61.11, 5407.61.21 or 5407.61.91 from tariff items 5402.44.40, 5402.47.10 or 5402.52.10, or from any other chapter, except from headings 5106 through 5110, 5205 through 5206 or 5509 through 5510.; or

3. A change to heading 5407 from any other chapter, except from headings 5106 through 5110, 5205 through 5206, or 5509 through 5510."

23. TCR 1 for chapter 55 is modified by deleting "5403.20,".

24. TCR 2 for chapter 55 is deleted and the following new TCR is inserted in lieu thereof:

"2. A change to headings 5508 through 5511 from any other heading outside that group, except from headings 5201 through 5203 or 5401 through 5402, subheadings 5403.33 through 5403.39, 5403.42 through heading 5405, 5501 through subheading 5503.20 or 5503.40 through 5503.90 or headings 5505 through 5516."

25. TCR 3 for chapter 55 is modified by deleting "5403.20,".

26. TCR 1 for chapter 60 is modified by deleting "5403.20,".

27. TCRs 1 through 8, inclusive, for chapter 61 are deleted and the following new TCRs are inserted in lieu thereof:

"1. A change to subheadings 6101.20 through 6101.30 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308, 5310 through 5311 or 5401 through 5402, subheadings 5403.33 through 5403.39 or 5403.42 through heading 5408 or headings 5508 through 5516 or 6001 through 6006, provided that:

(A) the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of Korea or of the United States, or both, and

(B) any visible lining material used in the apparel article satisfies the requirements of chapter rule 1 for chapter 61.

2. (A) A change to goods of wool or fine animal hair of subheading 6101.90 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308, 5310 through 5311 or 5401 through 5402, subheadings 5403.33 through 5403.39 or 5403.42 through heading 5408 or headings 5508 through 5516 or 6001 through 6006, provided that:

(i) the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of Korea or of the United States, or both, and

(ii) any visible lining material used in the apparel article satisfies the requirements of chapter rule 1 for chapter 61; or

(B) A change to any other good of subheading 6101.90 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308, 5310 through 5311 or 5401 through 5402, subheadings 5403.33 through 5403.39 or 5403.42 through heading 5408 or headings 5508 through 5516 or 6001 through 6006, provided that the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of Korea or of the United States, or both.

3. (A) A change to subheadings 6102.10 through 6102.30 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308, 5310 through 5311

or 5401 through 5402, subheadings 5403.33 through 5403.39 or 5403.42 through heading 5408 or headings 5508 through 5516 or 6001 through 6006, provided that:

(i) the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of Korea or of the United States, or both, and

(ii) any visible lining material used in the apparel article satisfies the requirements of chapter rule 1 for chapter 61.

4. A change to subheading 6102.90 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308, 5310 through 5311 or 5401 through 5402, subheadings 5403.33 through 5403.39 or 5403.42 through heading 5408 or headings 5508 through 5516 or 6001 through 6006, provided that the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of Korea or of the United States, or both.

5. (A) A change to tariff items 6103.10.70 or 6103.10.90 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308, 5310 through 5311 or 5401 through 5402, subheadings 5403.33 through 5403.39 or 5403.42 through heading 5408 or headings 5508 through 5516 or 6001 through 6006, provided that the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of Korea or of the United States, or both; or

(B) A change to any other good of subheading 6103.10 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308, 5310 through 5311 or 5401 through 5402, subheadings 5403.33 through 5403.39 or 5403.42 through heading 5408 or headings 5508 through 5516 or 6001 through 6006, provided that:

(i) the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of Korea or of the United States, or both, and

(ii) any visible lining material used in the apparel article satisfies the requirements of chapter rule 1 for chapter 61.

6. A change to subheadings 6103.22 through 6103.29 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308, 5310 through 5311 or 5401 through 5402, subheadings 5403.33 through 5403.39 or 5403.42 through heading 5408 or headings 5508 through 5516 or 6001 through 6006, provided that:

(A) the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of Korea or of the United States, or both, and

(B) with respect to a garment described in heading 6101 or a jacket or a blazer described in heading 6103, of wool, fine animal hair, cotton, or man-made fibers, imported as part of an ensemble of these subheadings, any visible lining material used in the apparel article satisfies the requirements of chapter rule 1 for chapter 61."

28. TCR 9 to chapter 61 is modified by deleting "5403.20,".

29. TCR 10 for chapter 61 is deleted and the following new TCR is inserted in lieu thereof:

"10. (A) A change to tariff items 6103.39.40 or 6103.39.80 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308, 5310 through 5311 or 5401 through 5402, subheadings 5403.33 through 5403.39 or 5403.42 through heading 5408 or headings 5508 through 5516 or 6001 through 6006, provided that the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of Korea or of the United States, or both; or

(B) A change to any other good of subheading 6103.39 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308, 5310 through 5311 or 5401 through 5402, subheadings 5403.33 through 5403.39 or 5403.42 through heading 5408 or headings 5508 through 5516 or 6001 through 6006, provided that:

(i) the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of Korea or of the United States, or both, and

(ii) any visible lining material used in the apparel article satisfies the requirements of chapter rule 1 for chapter 61."

30. TCR 12 to chapter 61 is modified by deleting "5403.20,".

31. TCR 13 through 18, inclusive, to chapter 61 are deleted and the following new TCRs are inserted in lieu thereof:

"13. A change to subheading 6104.13 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308, 5310 through 5311 or 5401 through 5402, subheadings 5403.33 through 5403.39 or 5403.42 through heading 5408 or headings 5508 through 5516 or 6001 through 6006, provided that:

(A) the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of Korea or of the United States, or both, and

(B) any visible lining material used in the apparel article satisfies the requirements of chapter rule 1 for chapter 61.

14. (A) A change to tariff items 6104.19.40 or 6104.19.80 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308, 5310 through 5311 or 5401 through 5402, subheadings 5403.33 through 5403.39 or 5403.42 through heading 5408 or headings 5508 through 5516 or 6001 through 6006, provided that the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of Korea or of the United States, or both; or

(B) A change to any other good of subheading 6104.19 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308, 5310 through 5311, or5401 through 5402, subheadings 5403.33 through 5403.39 or 5403.42 through heading 5408 or headings 5508 through 5516 or 6001 through 6006, provided that:

(i) the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of Korea or of the United States, or both, and

(ii) any visible lining material used in the apparel article satisfies the requirements of chapter rule 1 for chapter 61.

15. A change to subheadings 6104.22 through 6104.29 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308, 5310 through 5311 or 5401 through 5402, subheadings 5403.33 through 5403.39 or 5403.42 through heading 5408 or headings 5508 through 5516 or 6001 through 6006, provided that:

    (A) the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of Korea or of the United States, or both, and

    (B) with respect to a garment described in heading 6102, a jacket or a blazer described in heading 6104 or a skirt described in heading 6104, of wool, fine animal hair, cotton or man-made fibers, imported as part of an ensemble of these subheadings, any visible lining material used in the apparel article satisfies the requirements of chapter rule 1 for chapter 61.

16. A change to subheadings 6104.31 through 6104.32 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308, 5310 through 5311 or 5401 through 5402, subheadings 5403.33 through 5403.39 or 5403.42 through heading 5408 or headings 5508 through 5516 or 6001 through 6006, provided that:

    (A) the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of Korea or of the United States, or both, and

    (B) any visible lining material used in the apparel article satisfies the requirements of chapter rule 1 for chapter 61."

32. TCR 19 to chapter 61 is modified by deleting "5403.20,".

33. TCR 20 to chapter 61 is modified by deleting "5403.20,".

34. TCR 21 to chapter 61 is modified by deleting "5403.20,".

35. TCR 22 to chapter 61 is deleted and the following new TCR is inserted in lieu thereof:

"22. A change to any other good of subheading 6104.59 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308, 5310 through 5311 or 5401 through 5402, subheadings 5403.33 through 5403.39 or 5403.42 through heading 5408 or headings 5508 through 5516 or 6001 through 6006, provided that:

    (A) the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of Korea or of the United States, or both, and

    (B) any visible lining material used in the apparel article satisfies the requirements of chapter rule 1 for chapter 61."

36. TCR 23 to chapter 61 is modified by deleting "5403.20,".

37. TCR 24 to chapter 61 is modified by deleting "5403.20,".

38. TCR 25 to chapter 61 is modified by deleting "5403.20,".

39. TCR 26 to chapter 61 is modified by deleting "5403.20,".

40. TCR 27 to chapter 61 is modified by deleting "5403.20,".

41. TCR 28 to chapter 61 is modified by deleting "5403.20,".

42. TCR 29 to chapter 61 is modified by deleting "5403.20,".

43. TCR 30 to chapter 61 is modified by deleting "5403.20,".

44. TCR 31 to chapter 61 is modified by deleting "5403.20,".

45. TCR 32 to chapter 61 is modified by deleting "5403.20,".

46. TCR 33 to chapter 61 is modified by deleting "5403.20,".

47. TCR 34 to chapter 61 is modified by deleting "5403.20,".

48. TCR 35 to chapter 61 is modified by deleting "5403.20,".

49. TCR 36 to chapter 61 is modified by deleting "5403.20,".

50. TCR 37 to chapter 61 is modified by deleting "5403.20,".

51. TCR 1 to chapter 62 is modified by deleting "5403.20,".

52. TCR 2 to chapter 62 is modified by deleting "5403.20,".

53. TCR 3 to chapter 62 is modified by deleting "5403.20,".

54. TCR 4 to chapter 62 is modified by deleting "5403.20,".

55. TCR 5 to chapter 62 is modified by deleting "5403.20,".

56. TCR 6 to chapter 62 is modified by deleting "5403.20,".

57. TCR 7 to chapter 62 is modified by deleting "5403.20,".

58. TCR 8 to chapter 62 is modified by deleting "5403.20,".

59. TCR 9 to chapter 62 is modified by deleting "5403.20,".

60. TCR 10 to chapter 62 is modified by deleting "5403.20,".

61. TCR 11 to chapter 62 is deleted and the following new TCR is inserted in lieu thereof:

"11. A change to any other good of subheading 6203.19 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308, 5310 through 5311 or 5401 through 5402, subheadings 5403.33 through 5403.39 or 5403.42 through heading 5408 or headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that:

(A) the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of Korea or of the United States, or both, and

(B) any visible lining material used in the apparel article satisfies the requirements of chapter rule 1 for chapter 62."

62. TCR 12 to chapter 62 is deleted and the following new TCR is inserted in lieu thereof:

"12. A change to subheadings 6203.22 through 6203.29 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308, 5310 through 5311 or 5401 through 5402, subheadings 5403.33 through 5403.39 or 5403.42 through heading 5408 or headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that:

(A) the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of Korea or of the United States, or both, and

(B) with respect to a garment described in heading 6201 or a jacket or a blazer described in heading 6203, of wool, fine animal hair, cotton or man-made fibers, imported as part of an ensemble of these subheadings, any visible lining material used in the apparel article satisfies the requirements of chapter rule 1 for chapter 62."

63. TCR 13 to chapter 62 is modified by deleting "5403.20,".

64. TCR 14 to chapter 62 is modified by deleting "5403.20,".

65. TCR 15 to chapter 62 is deleted and the following new TCR is inserted in lieu thereof:

"15. A change to any other good of subheading 6203.39 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308, 5310 through 5311 or 5401 through 5402, subheadings 5403.33 through 5403.39 or 5403.42 through heading 5408 or headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that:

(A) the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of Korea or of the United States, or both, and

(B) any visible lining material used in the apparel article satisfies the requirements of chapter rule 1 for chapter 62."

66. TCR 16 to chapter 62 is modified by deleting "5403.20,".

67. TCR 17 to chapter 62 is modified by deleting "5403.20,".

68. TCR 18 to chapter 62 is modified by deleting "5403.20,".

69. TCR 19 to chapter 62 is deleted and the following new TCR is inserted in lieu thereof:

"15. A change to any other good of subheading 6204.19 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308, 5310 through 5311 or 5401 through 5402, subheadings 5403.33 through 5403.39 or 5403.42 through heading 5408 or headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that:

(A) the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of Korea or of the United States, or both, and

(B) any visible lining material used in the apparel article satisfies the requirements of chapter rule 1 for chapter 62."

70. TCR 20 to chapter 62 is modified by deleting "5403.20,".

71. TCR 21 to chapter 62 is modified by deleting "5403.20,".

72. TCR 22 to chapter 62 is modified by deleting "5403.20,".

73. TCR 23 to chapter 62 is deleted and the following new TCR is inserted in lieu thereof:

"23. A change to any other good of subheading 6204.39 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308, 5310 through 5311 or 5401 through 5402, subheadings 5403.33 through 5403.39 or 5403.42 through heading 5408 or headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that:

(A) the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of Korea or of the United States, or both, and

(B) any visible lining material used in the apparel article satisfies the requirements of chapter rule 1 for chapter 62."

74. TCR 24 to chapter 62 is modified by deleting "5403.20,".

75. TCR 25 to chapter 62 is modified by deleting "5403.20,".

76. TCR 26 to chapter 62 is modified by deleting "5403.20,".

77. TCR 27 to chapter 62 is deleted and the following new TCR is inserted in lieu thereof:

"27. A change to any other good of subheading 6204.59 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308, 5310 through 5311 or 5401 through

5402, subheadings 5403.33 through 5403.39 or 5403.42 through heading 5408 or headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that:

(A) the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of Korea or of the United States, or both, and

(B) any visible lining material used in the apparel article satisfies the requirements of chapter rule 1 for chapter 62."

78. TCR 28 to chapter 62 is deleted and the following new TCR is inserted in lieu thereof:

"28. A change to subheading 6204.61 through 6204.69 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308, 5310 through 5311 or 5401 through 5402, subheadings 5403.33 through 5403.39 or 5403.42 through heading 5408 or headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of Korea or of the United States, or both."

79. TCR 29 to chapter 62 is deleted.

80. TCR 30 to chapter 62 is modified by deleting "5403.20,".

81. TCRs 31 through 33, inclusive, to chapter 62 are deleted and the following new TCRs are inserted in lieu thereof:

"31. A change to subheading 6205.90 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308, 5310 through 5311 or 5401 through 5402, subheadings 5403.33 through 5403.39 or 5403.42 through heading 5408 or headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of Korea or of the United States, or both.

32. A change to headings 6206 through 6210 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308, 5310 through 5311 or 5401 through 5402, subheadings 5403.33 through 5403.39 or 5403.42 through heading 5408 or headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of Korea or of the United States, or both.

33. A change to subheadings 6211.11 through 6211.12 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308, 5310 through 5311 or 5401 through 5402, subheadings 5403.33 through 5403.39 or 5403.42 through heading 5408 or headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of Korea or of the United States, or both."

82. TCR 34 to chapter 62 is modified by deleting "5403.20,".

83. TCR 35 to chapter 62 is deleted and the following new TCR is inserted in lieu thereof:

"35. A change to subheadings 6211.32 through 6211.49 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308, 5310 through 5311 or 5401 through 5402, subheadings 5403.33 through 5403.39 or 5403.42 through heading 5408 or headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that the good is both cut and sewn or otherwise assembled in the territory of Korea or of the United States, or both."

84. TCR 36 to chapter 62 is modified by deleting "5403.20,".

85. TCR 37 to chapter 62 is modified by deleting "5403.20,".

86. TCR 1 to chapter 63 is modified by deleting "5403.20,".

87. TCRs 2 and 3 to chapter 63 are deleted and the following new TCRs are inserted in lieu thereof:

"2. A change to tariff item 6303.92.10 from tariff items 5402.44.40, 5402.47.10 or 5402.52.10 or any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308, 5310 through 5311 or 5401 through 5402, subheadings 5403.33 through 5403.39 or 5403.42 through heading 5408 or headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that the good is both cut and sewn or otherwise assembled in the territory of Korea or of the United States, or both.

3. A change to any other good of heading 6303 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308, 5310 through 5311 or 5401 through 5402, subheadings 5403.33 through 5403.39 or 5403.42 through heading 5408 or headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that the good is both cut and sewn or otherwise assembled in the territory of Korea or of the United States, or both."

88. TCR 4 to chapter 63 is modified by deleting "5403.20,".

89. TCR 6 to chapter 63 is modified by deleting "5403.20,".

90. TCR 1 to chapter 64 is deleted and the following new TCR is inserted in lieu thereof:

"1. A change to subheading 6401.10 or tariff items 6401.92.90, 6401.99.10, 6401.99.30, 6401.99.60, 6401.99.90, 6402.91.10, 6402.91.20, 6402.91.26, 6402.91.50, 6402.91.80, 6402.91.90, 6402.99.08, 6402.99.16, 6402.99.19, 6402.99.33, 6402.99.80, 6402.99.90, 6404.11.90 or 6404.19.20 from any other heading outside headings 6401 through 6405, except from subheading 6406.10, provided that there is a regional value content of not less than 55 percent under the build-up method; or"

91. TCR 2 to chapter 65 is deleted and the following new TCR is inserted in lieu thereof:

"2. A change to headings 6504 through 6506 from any other heading, except from headings 6504 through 6507."

92. TCRs 2 through 4, inclusive, to chapter 68 are deleted and the following new TCRs are inserted in lieu thereof:

"2. A change to subheading 6812.80 from any other heading.

3. A change to subheading 6812.91 from any other subheading.

4. A change to subheadings 6812.92 through 6812.99 from any other heading.

5. A change to headings 6813 through 6815 from any other heading."

93. TCR 4 to chapter 70 is deleted and the following new TCR is inserted in lieu thereof:

"4. A change to headings 7009 through 7018 from any other heading outside that group, except from glass inners for vacuum flasks or other vacuum vessels of heading 7020 or headings 7007 through 7008."

94. TCR 14 for chapter 73 is modified by deleting at each instance "7321.83" and by inserting in lieu thereof "7321.89".

95. TCR 1 to chapter 78 is deleted and the following new TCRs are inserted in lieu thereof:

"1. A change to heading 7801 through 7804 from any other heading.

2. (A) A change to lead bars, rods, profiles and wire of heading 7806 from any other good of heading 7806 or from any other heading; or

(B) A change to lead tubes, pipes and tube or pipe fittings of heading 7806 from any other good of heading 7806 or from any other heading; or

(C) A change to any other good of heading 7806 from lead bars, rods, profiles or wire of heading 7806, or from lead tubes, pipes or tube or pipe fittings of heading 7806 or from any other heading."

96. TCR 4 to chapter 79 is deleted and the following new TCRs are inserted in lieu thereof:

"4. A change to headings 7904 through 7905 from any other heading.

5. (A) A change to zinc tubes, pipes or tube or pipe fittings of heading 7907 from any other good of heading 7907 or any other heading; or

(B) A change to any other good of heading 7907 from zinc tubes, pipes or tube or pipe fittings of heading 7907 or any other heading."

97. TCRs 1 through 3, inclusive, to chapter 80 are deleted and the following new TCRs are inserted in lieu thereof:

"1. A change to headings 8001 through 8003 from any other heading.

2. (A) A change to tin plates, sheets or strip, of a thickness exceeding 0.2 mm, of heading 8007 from any other good of heading 8007 or from any other heading; or

(B) A change to tin foil, of a thickness not exceeding 0.2 mm, tin powders or flakes of heading 8007 from any other good of heading 8007 or from any other heading, except from plates, sheets or strip, of a thickness exceeding 0.2 mm, of heading 8007; or

(C) A change to tin tubes, pipes and tube or pipe fittings of heading 8007 from any other good of heading 8007 or from any other heading; or

(D) A change to any other good of heading 8007 from tin plates, sheets or strip, of a thickness exceeding 0.2 mm, tin foil of thickness not exceeding 0.2 mm, tin powders or flakes, tin tubes, pipes or tube or pipe fittings of heading 8007, or from any other heading."

98. TCRs 1 through 3, inclusive, to chapter 81 are deleted and the following new TCRs are inserted in lieu thereof:

"1. A change to subheadings 8101.10 through 8101.94 from any other subheading.

2. A change to subheading 8101.96 from any other subheading, except from bars, rods (other than those obtained simply by sintering), profiles, plates, sheets, strip or foil of subheading 8101.99.

3. A change to subheading 8101.97 from any other subheading.

3A. (A) A change to bars, rods (other than those obtained simply by sintering), profiles, plates, sheets, strip or foil of subheading 8101.99 from any other good of subheading 8101.99 or from any other subheading; or

(B) A change to any other good of subheading 8109.99 from bars, rods (other than those obtained simply by sintering), profiles, plates, sheets, strip or foil of subheading 8101.99 or from any other subheading."

99. TCR 15 for chapter 81 is modified by deleting "8113.19" and by inserting in lieu thereof "8112.19".

100. TCRs 17 and 18 to chapter 81 are deleted and the following new TCRs are inserted in lieu thereof:

"17. (A) A change to unwrought germanium or vanadium, germanium or vanadium waste, scrap or powders of subheading 8112.92 from any other chapter; or

(B) No change in tariff classification is required for articles of unwrought germanium or vanadium or germanium or vanadium waste, scrap or powders of subheading 8112.92, provided that there is a regional value content of not less than:

(i) 35 percent under the build-up method, or

(ii) 45 percent under the build-down method; or

(C) A change to other goods of subheading 8112.92 from any other chapter.

18. (A) A change to articles of vanadium or germanium of subheading 8112.99 from any other chapter; or

(B) No change in tariff classification is required for articles of germanium or vanadium, provided that there is a regional value content of not less than

(i) 35 percent under the build-up method, or

(ii) 45 percent under the build-down method; or

(C) A change to other goods of subheading 8112.99 from articles of germanium or vanadium of subheading 8112.99 or from any other subheading."

101. TCR 18 for chapter 84 is modified by deleting "though" and by inserting in lieu thereof "through".

102. TCR 44 for chapter 84 is modified by inserting "from" immediately after "8419.90".

103. TCR 62 for chapter 84 is deleted and the following new TCR is inserted in lieu thereof:

"62. A change to subheading 8442.30 from any other subheading."

104. TCRs 64 through 66, inclusive, to chapter 84 are deleted and the following new TCRs are inserted in lieu thereof:

"64. (A) A change to subheadings 8443.11 through 8443.39 from any other subheading outside that group, except from subheadings 8443.91 through 8443.99; or

(B) A change to subheadings 8443.11 through 8443.39 from subheadings 8443.91 through 8443.99, whether or not there is also a change from any other heading, provided that there is a regional value content of not less than:

(i) 35 percent under the build-up method, or

(ii) 45 percent under the build-down method.

65. (A) A change to machines for uses ancillary to printing of subheading 8443.91 from any other good of subheading 8443.91 or from any other subheading except from subheadings 8443.11 through 8443.39; or

(B) A change to any other good of subheading 8443.91 from any other heading.

66. (A) A change to subheading 8443.99 from any other subheading; or

(B) No change in tariff classification is required, provided that there is a regional value content of not less than:

(i) 35 percent under the build-up method, or

(ii) 45 percent under the build-down method."

105. TCR 72 for chapter 84 is deleted and the following new TCR is inserted in lieu thereof:

"72. A change to subheading 8450.30 from any other subheading."

106. TCRs 95 and 96 for chapter 84 are deleted and the following new TCR is inserted in lieu thereof:

"95. A change to heading 8469 from any other heading."

107. TCR 122 for chapter 84 is deleted and the following new TCRs are inserted in lieu thereof:

"122. (A) A change to subheadings 8486.10 through 8486.40 from any other subheading; or

(B) No change in tariff classification to such subheadings is required, provided that there is a regional value content of not less than:

(i) 35 percent under the build-up method, or

(ii) 45 percent under the build-down method.

123. (A) A change to subheading 8486.90 from any other heading; or

(B) No change in tariff classification to such subheading is required, provided that there is a regional value content of not less than:

(i) 35 percent under the build-up method, or

(ii) 45 percent under the build-down method.

124. A change to heading 8487 from any other heading."

108. TCRs 8 and 9 for chapter 85 are deleted and the following new TCRs are inserted in lieu thereof:

"8. A change to subheadings 8505.11 through 8505.20 from any other subheading.

9. (A) A change to electro-magnetic lifting heads of subheading 8505.90 from any other good of subheading 8505.90 or from any other subheading; or

(B) A change to any other good of subheading 8505.90 from any other heading."

109. TCR 16 for chapter 85 is deleted and the following new TCRs are inserted in lieu thereof:

"16. (A) A change to subheadings 8508.11 through 8508.60 from any other heading; or

(B) A change to subheadings 8508.11 through 8508.60 from any other subheading, provided that there is a regional value content of not less than:

(i) 35 percent under the build-up method, or

(ii) 45 percent under the build-down method.

16A. A change to subheading 8508.70 from any other heading.

16B. (A) A change to subheadings 8509.40 through 8509.80 from any other heading; or

(B) A change to subheadings 8509.40 through 8509.80 from any other subheading, provided that there is a regional value content of not less than:

(i) 35 percent under the build-up method, or

(ii) 45 percent under the build-down method."

110. TCR 23 for chapter 85 is modified by deleting "form" and by inserting in lieu thereof "from".

111. TCR 39 for chapter 85 is deleted and the following new TCRs are inserted in lieu thereof:

"39. A change to subheadings 8517.11 through 8517.69 from any other subheading.

39A. (A) A change to subheading 8517.70 from any other heading; or

(B) No change in tariff classification to such subheading is required, provided that there is a regional value content of not less than:

(i) 35 percent under the build-up method, or

(ii) 45 percent under the build-down method."

112. TCRs 44 through 61, inclusive, for chapter 85 are deleted and the following new TCRs are inserted in lieu thereof:

"44. A change to subheadings 8519.20 through 8519.89 from any other subheading.

45. A change to subheadings 8521.10 through 8522.90 from any other subheading.

46. (A) A change to subheadings 8523.21 through 8523.80 from any other subheading; or

(B) A change to recorded media of subheadings 8523.21 through 8523.80 from unrecorded media of subheadings 8523.21 through 8523.80.

47. A change to subheading 8525.50 from any other subheading, except from subheading 8525.60.

48. A change to subheadings 8525.60 through 8525.80 from any other subheading.

49. A change to subheadings 8526.10 through 8527.99 from any other subheading.

50. A change to subheading 8528.41 from any other heading, except from heading 8471.

51. (A) A change to subheading 8528.49 from any other heading, except from heading 8529; or

(B) A change to subheading 8528.49 from subheading 8529.90, whether or not there is also a change from any other heading, provided that there is a regional value content of not less than:

(i) 40 percent under the build-up method, or

(ii) 50 percent under the build-down method.

52. A change to subheading 8528.51 from any other heading, except from heading 8471.

53. (A) A change to subheading 8528.59 from flat panel screen assemblies of subheading 8529.90 containing a digital micromirror device, or from any other heading, except from subheading 9013.80 or any other good of heading 8529; or

(B) A change to subheading 8528.59 from subheading 8529.90, whether or not there is also a change from any other heading, provided that there is a regional value content of not less than:

(i) 40 percent under the build-up method, or

(ii) 50 percent under the build-down method.

54. A change to subheading 8528.61 from any other heading, except from heading 8471.

55. (A) A change to subheading 8528.69 from flat panel screen assemblies of subheading 8529.90 containing a digital micromirror device, or from any other heading, except from subheading 9013.80 or any other good of heading 8529; or

(B) A change to subheading 8528.69 from subheadings 8529.90 or 9013.80, whether or not there is also a change from any other heading, provided that there is a regional value content of not less than:

(i) 40 percent under the build-up method, or

(ii) 50 percent under the build-down method.

56. A change to subheading 8528.71 from any other heading.

57. (A) A change to subheading 8528.72 from flat panel screen assemblies of subheading 8529.90 containing a digital micromirror device, or from any other heading, except from subheading 9013.80 or any other good of heading 8529; or

(B) A change to subheading 8528.72 from subheadings 8529.90 or 9013.80, whether or not there is also a change from any other heading, provided that there is a regional value content of not less than:

(i) 40 percent under the build-up method, or

(ii) 50 percent under the build-down method.

58. A change to subheading 8528.73 from any other heading."

113. TCR 84 for chapter 85 is deleted and the following new TCR is inserted in lieu thereof:

"84. A change to subheading 8543.10 from any other subheading except from ion implanters for doping semiconductor materials of subheading 8486.20."

114. TCR 87 for chapter 85 is deleted and the following new TCR is inserted in lieu thereof:

"87. A change to subheading 8543.70 from any other subheading."

115. TCR 93 for chapter 85 is deleted.

116. TCR 7 to chapter 87 is modified by inserting "that" after "provided".

117. TCR 8 for chapter 87 is modified by deleting "8714.11" at each instance and by inserting in lieu thereof "8714.10".

118. TCRs 1 and 2 for chapter 88 are deleted and the following new TCRs are inserted in lieu thereof:

"1. (A) A change to subheading 8543.70 from any other subheading.

(B) A change to gliders and hang gliders of heading 8801 from any other good of heading 8801 or from any other heading; or

(C) A change to any other good of heading 8801 from gliders and hang gliders of heading 8801 or from any other heading.

2. A change to subheadings 8802.11 through 8803.90 from any other subheading."

119. TCR 13 for chapter 90 is modified by deleting "9007.11" at each instance and by inserting in lieu thereof "9007.10".

120. TCR 15 for chapter 90 is deleted and the following new TCR is inserted in lieu thereof:

"15. (A) A change to subheading 9008.50 from any other heading, or

(B) A change to subheading 9008.50 from any other subheading, provided that there is a regional value content of not less than:

(i) 35 percent under the build-up method, or

(ii) 45 percent under the build-down method."

121. TCRs 17 through 19, inclusive, for chapter 90 are deleted.

122. TCR 51 for chapter 90 is deleted and the following new TCRs are inserted in lieu thereof:

"51. A change to subheadings 9030.10 through 9030.20 from any other subheading.

51A. A change to subheading 9030.31 from any other subheading.

51B. A change to subheading 9030.32 from any other subheading, except from subheadings 9030.20, 9030.39 or 9030.84.

51C. A change to subheadings 9030.33 through 9030.82 from any other subheading.

51D. A change to subheading 9030.84 from any other subheading, except from subheadings 9030.20, 9030.32 or 9030.39.

51E. A change to subheading 9030.89 from any other subheading."

123. TCR 2 for chapter 91 is deleted.

124. TCR 1 for chapter 95 is modified by deleting "9501.00" and by inserting in lieu thereof "9503.00".

125. TCR 8 for chapter 96 is modified by deleting "9608.31" at each instance and by inserting in lieu thereof "9608.30".

126. TCRs 16 and 17 for chapter 96 are deleted and the following new TCR is inserted in lieu thereof:

"16. A change to heading 9614 from any other heading."

127. The following new heading rule is inserted for chapter 96 immediately below TCR 22 to such chapter:

"**Heading Rule**: For the purposes of determining the origin of a good of textile materials of this heading, the rule applicable to that good shall only apply to the component that determines the tariff classification of the good and such component must satisfy the change of tariff classification requirements set out in the rule for that good."

128. The following new TCR to chapter 96 is inserted in numerical sequence:

"23. (A) A change to goods of textile wadding of heading 9619 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311 or chapters 54 through 56; or

(B) A change to a good of textile materials other than wadding of heading 9619 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308, 5310 through 5311 or 5401 through 5402, subheadings 5403.33 through 5403.39 or 5403.42 through heading 5408 or headings 5508 through 5516 or 6001

through 6006, provided that the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of Korea or of the United States, or both; or

(C) A change to any other good of heading 9619 from any other heading."

ANNEX III

Modifications to the Harmonized Tariff Schedule of the United States

Effective with respect to goods which are entered, or withdrawn from warehouse for consumption, on or after July 31, 2013, the Harmonized Tariff Schedule of the United States is hereby modified as provided below:

1. General note 3(a)(iv)(E) is deleted.

2. General note 3(c) modified by deleting the following language:

"Andean Trade Preference Act or
Andean Trade Promotion and Drug Eradication Act. . . . . J, J* or J+"

3. General note 11 is deleted in its entirety.

4. Chapter 98, subchapter II, U.S. note 7(c) is deleted.

5. Chapter 98, subchapter XXI is deleted in its entirety.

6. (a) In chapters 1 through 99 of the HTS, all instances of the symbol "J,", "J+," and "J*,"are deleted from the "Rates of Duty 1-Special subcolumn" for all headings and subheadings.

(b) In headings 9901.00.50 and 9901.00.52, the symbol ", J" is deleted from the "Rates of Duty 1-Special" subcolumn.

ANNEX IV

To Modify the Harmonized Tariff Schedule of the United States Concerning Certain Goods of Chile

Effective with respect to goods of Chile, under the terms of general note 26 to the Harmonized Tariff Schedule of the United States (HTS), entered, or withdrawn from warehouse for consumption, on or after the date of signature of this proclamation, the HTS is hereby modified as follows:

1. Subheadings 4011.10.10 and 4011.20.10 are each modified by deleting, from the Rates of Duty 1-Special subcolumn, the rates of duty followed by the symbol "CL" in parentheses and by inserting in alphabetical sequence in the parenthetical reference after the Special duty rate of "Free" the symbol "CL,".

2. Subchapter XI of chapter 99 of the HTS is modified by deleting U.S. notes 15 and 16.

3. Such subchapter XI of chapter 99 is further modified by deleting subheadings 9911.40.05 through 9911.40.25, inclusive, and the superior text thereto.

[FR Doc. 2013–31373
Filed 12–30–13; 8:45 am]
Billing code 7020–02–C

FEDERAL REGISTER

Vol. 78 Tuesday,

No. 251 December 31, 2013

Part VI

The President

Presidential Determination No. 2014–06 of December 20, 2013—Proposed Agreement for Cooperation Between the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office in the United States Concerning Peaceful Uses of Nuclear Energy

Executive Order 13655—Adjustments of Certain Rates of Pay

Federal Register
Vol. 78, No. 251
Tuesday, December 31, 2013

Presidential Documents

Title3—

The President

Presidential Determination No. 2014–06 of December 20, 2013

Proposed Agreement for Cooperation Between the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office in the United States Concerning Peaceful Uses of Nuclear Energy

I have considered the proposed Agreement for Cooperation Between the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office in the United States Concerning Peaceful Uses of Nuclear Energy, along with the views, recommendations, and statements of the interested agencies.

I have determined that the performance of the Agreement will promote, and will not constitute an unreasonable risk to, the common defense and security. Pursuant to section 123 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153(b)), I hereby approve the proposed Agreement and authorize the Secretary of State to arrange for its execution.

The Secretary of State is authorized to publish this determination in the *Federal Register.*

THE WHITE HOUSE,
Washington, December 20, 2013

[FR Doc. 2013–31444
Filed 12–30–13; 11:15 am]
Billing code 4710–10

Presidential Documents

Executive Order 13655 of December 23, 2013

Adjustments of Certain Rates of Pay

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Statutory Pay Systems.* The rates of basic pay or salaries of the statutory pay systems (as defined in 5 U.S.C. 5302(1)), as adjusted under 5 U.S.C. 5303, are set forth on the schedules attached hereto and made a part hereof:

(a) The General Schedule (5 U.S.C. 5332(a)) at Schedule 1;

(b) The Foreign Service Schedule (22 U.S.C. 3963) at Schedule 2; and

(c) The schedules for the Veterans Health Administration of the Department of Veterans Affairs (38 U.S.C. 7306, 7404; section 301(a) of Public Law 102–40) at Schedule 3.

Sec. 2. *Senior Executive Service.* The ranges of rates of basic pay for senior executives in the Senior Executive Service, as established pursuant to 5 U.S.C. 5382, are set forth on Schedule 4 attached hereto and made a part hereof.

Sec. 3. *Certain Executive, Legislative, and Judicial Salaries.* The rates of basic pay or salaries for the following offices and positions are set forth on the schedules attached hereto and made a part hereof:

(a) The Executive Schedule (5 U.S.C. 5312–5318) at Schedule 5;

(b) The Vice President (3 U.S.C. 104) and the Congress (2 U.S.C. 31) at Schedule 6; and

(c) Justices and judges (28 U.S.C. 5, 44(d), 135, 252, and 461(a)) at Schedule 7.

Sec. 4. *Uniformed Services.* The rates of monthly basic pay (37 U.S.C. 203(a)) for members of the uniformed services, as adjusted under 37 U.S.C. 1009, and the rate of monthly cadet or midshipman pay (37 U.S.C. 203(c)) are set forth on Schedule 8 attached hereto and made a part hereof.

Sec. 5. *Locality-Based Comparability Payments.* (a) Pursuant to section 5304 of title 5, United States Code, and my authority to implement an alternative level of comparability payments under section 5304a of title 5, United States Code, locality-based comparability payments shall be paid in accordance with Schedule 9 attached hereto and made a part hereof.

(b) The Director of the Office of Personnel Management shall take such actions as may be necessary to implement these payments and to publish appropriate notice of such payments in the *Federal Register.*

Sec. 6. *Administrative Law Judges.* Pursuant to section 5372 of title 5, United States Code, the rates of basic pay for administrative law judges are set forth on Schedule 10 attached hereto and made a part hereof.

Sec. 7. *Effective Dates.* Schedule 8 is effective January 1, 2014. The other schedules contained herein are effective on the first day of the first applicable pay period beginning on or after January 1, 2014.

Sec. 8. *Prior Order Superseded.* Executive Order 13641 of April 5, 2013, is superseded as of the effective dates specified in section 7 of this order.

THE WHITE HOUSE,

December 23, 2013.

Billing code 3295–F2–P

SCHEDULE 1--GENERAL SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2014)

	1	2	3	4	5	6	7	8	9	10
GS-1	$17,981	$18,582	$19,180	$19,775	$20,373	$20,724	$21,315	$21,911	$21,934	$22,494
GS-2	20,217	20,698	21,367	21,934	22,179	22,831	23,483	24,135	24,787	25,439
GS-3	22,058	22,793	23,528	24,263	24,998	25,733	26,468	27,203	27,938	28,673
GS-4	24,763	25,588	26,413	27,238	28,063	28,888	29,713	30,538	31,363	32,188
GS-5	27,705	28,629	29,553	30,477	31,401	32,325	33,249	34,173	35,097	36,021
GS-6	30,883	31,912	32,941	33,970	34,999	36,028	37,057	38,086	39,115	40,144
GS-7	34,319	35,463	36,607	37,751	38,895	40,039	41,183	42,327	43,471	44,615
GS-8	38,007	39,274	40,541	41,808	43,075	44,342	45,609	46,876	48,143	49,410
GS-9	41,979	43,378	44,777	46,176	47,575	48,974	50,373	51,772	53,171	54,570
GS-10	46,229	47,770	49,311	50,852	52,393	53,934	55,475	57,016	58,557	60,098
GS-11	50,790	52,483	54,176	55,869	57,562	59,255	60,948	62,641	64,334	66,027
GS-12	60,877	62,906	64,935	66,964	68,993	71,022	73,051	75,080	77,109	79,138
GS-13	72,391	74,804	77,217	79,630	82,043	84,456	86,869	89,282	91,695	94,108
GS-14	85,544	88,395	91,246	94,097	96,948	99,799	102,650	105,501	108,352	111,203
GS-15	100,624	103,978	107,332	110,686	114,040	117,394	120,748	124,102	127,456	130,810

SCHEDULE 2--FOREIGN SERVICE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2014)

Step	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6	Class 7	Class 8	Class 9
1	$100,624	$81,535	$66,067	$53,534	$43,378	$38,779	$34,667	$30,991	$27,705
2	103,643	83,981	68,049	55,140	44,679	39,942	35,707	31,921	28,536
3	106,752	86,500	70,090	56,794	46,020	41,141	36,778	32,878	29,392
4	109,955	89,095	72,193	58,498	47,400	42,375	37,882	33,865	30,274
5	113,253	91,768	74,359	60,253	48,822	43,646	39,018	34,881	31,182
6	116,651	94,521	76,590	62,061	50,287	44,955	40,189	35,927	32,118
7	120,150	97,357	78,887	63,922	51,796	46,304	41,394	37,005	33,081
8	123,755	100,278	81,254	65,840	53,349	47,693	42,636	38,115	34,074
9	127,467	103,286	83,692	67,815	54,950	49,124	43,915	39,258	35,096
10	130,810	106,385	86,202	69,850	56,598	50,598	45,233	40,436	36,149
11	130,810	109,576	88,789	71,945	58,296	52,116	46,590	41,649	37,233
12	130,810	112,864	91,452	74,104	60,045	53,679	47,987	42,899	38,350
13	130,810	116,249	94,196	76,327	61,847	55,290	49,427	44,186	39,501
14	130,810	119,737	97,022	78,616	63,702	56,948	50,910	45,511	40,686

SCHEDULE 3--VETERANS HEALTH ADMINISTRATION SCHEDULES
DEPARTMENT OF VETERANS AFFAIRS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2014)

Schedule for the Office of the Under Secretary for Health
(38 U.S.C. 7306)*

Assistant Under Secretaries for Health (Only applies to incumbents who are not physicians or dentists)	$158,852**

	Minimum	Maximum
Service Directors	$118,012	$146,564
Director, National Center for Preventive Health	100,624	146,564

Physician and Dentist Base and Longevity Schedule***

Physician Grade	$98,967	$145,153
Dentist Grade	98,967	145,153

Clinical Podiatrist, Chiropractor, and Optometrist Schedule

Chief Grade	$100,624	$130,810
Senior Grade	85,544	111,203
Intermediate Grade	72,391	94,108
Full Grade	60,877	79,138
Associate Grade	50,790	66,027

Physician Assistant and Expanded-Function Dental Auxiliary Schedule****

Director Grade	$100,624	$130,810
Assistant Director Grade	85,544	111,203
Chief Grade	72,391	94,108
Senior Grade	60,877	79,138
Intermediate Grade	50,790	66,027
Full Grade	41,979	54,570
Associate Grade	36,124	46,960
Junior Grade	30,883	40,144

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* This schedule does not apply to the Deputy Under Secretary for Health, the Associate Deputy Under Secretary for Health, Assistant Under Secretaries for Health who are physicians or dentists, Medical Directors, the Assistant Under Secretary for Nursing Programs, or the Director of Nursing Services.

** Pursuant to 38 U.S.C. 7404(d), the rate of basic pay payable to these employees is limited to the rate for level V of the Executive Schedule, which is $147,200.

*** Pursuant to section 3 of Public Law 108-445 and 38 U.S.C. 7431, Veterans Health Administration physicians and dentists may also be paid market pay and performance pay.

**** Pursuant to section 301(a) of Public Law 102-40, these positions are paid according to the Nurse Schedule in 38 U.S.C. 4107(b), as in effect on August 14, 1990, with subsequent adjustments.

SCHEDULE 4--SENIOR EXECUTIVE SERVICE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2014)

	Minimum	Maximum
Agencies with a Certified SES Performance Appraisal System	$120,749	$181,500
Agencies without a Certified SES Performance Appraisal System	$120,749	$167,000

SCHEDULE 5--EXECUTIVE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2014)

Level I	$201,700
Level II	181,500
Level III	167,000
Level IV	157,100
Level V	147,200

SCHEDULE 6--VICE PRESIDENT AND MEMBERS OF CONGRESS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2014)

Vice President	$233,000
Senators	174,000
Members of the House of Representatives	174,000
Delegates to the House of Representatives	174,000
Resident Commissioner from Puerto Rico	174,000
President pro tempore of the Senate	193,400
Majority leader and minority leader of the Senate	193,400
Majority leader and minority leader of the House of Representatives	193,400
Speaker of the House of Representatives	223,500

SCHEDULE 7--JUDICIAL SALARIES

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2014)

Chief Justice of the United States	$255,500
Associate Justices of the Supreme Court	244,400
Circuit Judges	211,200
District Judges	199,100
Judges of the Court of International Trade	199,100

SCHEDULE 8--PAY OF THE UNIFORMED SERVICES
(Effective January 1, 2014)

Part I--MONTHLY BASIC PAY
YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18
COMMISSIONED OFFICERS											
O-10**	-	-	-	-	-	-	-	-	-	-	-
O-9	-	-	-	-	-	-	-	-	-	-	-
O-8	$9,946.20	$10,272.00	$10,488.30	$10,548.60	$10,818.60	$11,269.20	$11,373.90	$11,802.00	$11,924.70	$12,293.40	$12,827.10
O-7	8,264.40	8,648.40	8,826.00	8,967.30	9,222.90	9,475.80	9,767.70	10,059.00	10,351.20	11,269.20	12,043.80
O-6	6,125.40	6,729.60	7,171.20	7,171.20	7,198.50	7,507.20	7,547.70	7,547.70	7,976.70	8,735.10	9,180.30
O-5	5,106.60	5,752.50	6,150.60	6,225.60	6,474.30	6,622.80	6,949.50	7,189.50	7,499.70	7,974.00	8,199.30
O-4	4,405.80	5,100.30	5,440.80	5,516.40	5,832.30	6,171.00	6,593.10	6,921.30	7,149.60	7,280.70	7,356.60
O-3***	3,873.90	4,391.40	4,739.70	5,167.80	5,415.30	5,687.10	5,862.60	6,151.50	6,302.40	6,302.40	6,302.40
O-2***	3,347.10	3,812.10	4,390.50	4,538.70	4,632.30	4,632.30	4,632.30	4,632.30	4,632.30	4,632.30	4,632.30
O-1***	2,905.20	3,024.00	3,655.50	3,655.50	3,655.50	3,655.50	3,655.50	3,655.50	3,655.50	3,655.50	3,655.50
COMMISSIONED OFFICERS WITH OVER 4 YEARS ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER****											
O-3E	-	-	-	$5,167.80	$5,415.30	$5,687.10	$5,862.60	$6,151.50	$6,395.40	$6,535.50	$6,726.00
O-2E	-	-	-	4,538.70	4,632.30	4,779.90	5,028.60	5,220.90	5,364.30	5,364.30	5,364.30
O-1E	-	-	-	3,655.50	3,903.30	4,047.90	4,195.20	4,340.10	4,538.70	4,538.70	4,538.70
WARRANT OFFICERS											
W-5	-	-	-	-	-	-	-	-	-	-	-
W-4	$4,003.50	$4,306.50	$4,429.80	$4,551.60	$4,761.00	$4,968.30	$5,178.00	$5,493.90	$5,770.50	$6,033.90	$6,249.30
W-3	3,655.80	3,808.20	3,964.50	4,015.80	4,179.60	4,501.80	4,837.20	4,995.00	5,177.70	5,366.10	5,704.50
W-2	3,234.90	3,540.90	3,635.40	3,699.90	3,909.90	4,236.00	4,397.40	4,556.40	4,751.10	4,902.90	5,040.60
W-1	2,839.80	3,145.20	3,227.40	3,401.10	3,606.60	3,909.30	4,050.60	4,247.70	4,442.40	4,595.40	4,735.80

* For officers at pay grades O-7 through O-10, basic pay is limited to the rate of basic pay for level II of the Executive Schedule, which is $15,125.10 per month. For officers at O-6 and below, basic pay is limited to the rate of basic pay for level V of the Executive Schedule, which is $12,266.70 per month.

** For officers serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, Commandant of the Coast Guard, or commander of a unified or specified combatant command (as defined in 10 U.S.C. 161(c)), basic pay for this grade is calculated to be $21,147.30 per month, regardless of cumulative years of service computed under 37 U.S.C. 205. Nevertheless, actual basic pay for these officers is limited to the rate of basic pay for level II of the Executive Schedule, which is $15,125.10 per month.

*** Does not apply to commissioned officers who have been credited with over 4 years of active duty service as an enlisted member or warrant officer.

**** Reservists with at least 1,460 points as an enlisted member and/or warrant officer which are creditable toward reserve retirement also qualify for these rates.

SCHEDULE 8--PAY OF THE UNIFORMED SERVICES (PAGE 2)
(Effective January 1, 2014)

Part I--MONTHLY BASIC PAY
YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	Over 20	Over 22	Over 24	Over 26	Over 28	Over 30	Over 32	Over 34	Over 36	Over 38	Over 40
COMMISSIONED OFFICERS											
O-10**	$16,072.20*	$16,150.50*	$16,486.80*	$17,071.50*	$17,071.50*	$17,925.30*	$17,925.30*	$18,821.10*	$18,821.10*	$19,762.50*	$19,762.50*
O-9	14,056.80	14,259.90	14,552.10	15,062.40	15,062.40	15,816.00*	15,816.00*	16,606.80*	16,606.80*	17,436.90*	17,436.90*
O-8	13,319.10	13,647.30	13,647.30	13,647.30	13,647.30	13,989.00	13,989.00	14,338.50	14,338.50	14,338.50	14,338.50
O-7	12,043.80	12,043.80	12,043.80	12,105.60	12,105.60	12,347.70	12,347.70	12,347.70	12,347.70	12,347.70	12,347.70
O-6	9,625.20	9,878.40	10,134.60	10,632.00	10,632.00	10,844.10	10,844.10	10,844.10	10,844.10	10,844.10	10,844.10
O-5	8,422.20	8,675.70	8,675.70	8,675.70	8,675.70	8,675.70	8,675.70	8,675.70	8,675.70	8,675.70	8,675.70
O-4	7,356.60	7,356.60	7,356.60	7,356.60	7,356.60	7,356.60	7,356.60	7,356.60	7,356.60	7,356.60	7,356.60
O-3***	6,302.40	6,302.40	6,302.40	6,302.40	6,302.40	6,302.40	6,302.40	6,302.40	6,302.40	6,302.40	6,302.40
O-2***	4,632.30	4,632.30	4,632.30	4,632.30	4,632.30	4,632.30	4,632.30	4,632.30	4,632.30	4,632.30	4,632.30
O-1***	3,655.50	3,655.50	3,655.50	3,655.50	3,655.50	3,655.50	3,655.50	3,655.50	3,655.50	3,655.50	3,655.50
COMMISSIONED OFFICERS WITH OVER 4 YEARS ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER****											
O-3E	$6,726.00	$6,726.00	$6,726.00	$6,726.00	$6,726.00	$6,726.00	$6,726.00	$6,726.00	$6,726.00	$6,726.00	$6,726.00
O-2E	5,364.30	5,364.30	5,364.30	5,364.30	5,364.30	5,364.30	5,364.30	5,364.30	5,364.30	5,364.30	5,364.30
O-1E	4,538.70	4,538.70	4,538.70	4,538.70	4,538.70	4,538.70	4,538.70	4,538.70	4,538.70	4,538.70	4,538.70
WARRANT OFFICERS											
W-5	$7,118.40	$7,479.60	$7,748.40	$8,046.30	$8,046.30	$8,448.90	$8,448.90	$8,871.00	$8,871.00	$9,315.00	$9,315.00
W-4	6,459.30	6,768.00	7,021.80	7,311.00	7,311.00	7,457.10	7,457.10	7,457.10	7,457.10	7,457.10	7,457.10
W-3	5,933.10	6,069.90	6,215.40	6,413.10	6,413.10	6,413.10	6,413.10	6,413.10	6,413.10	6,413.10	6,413.10
W-2	5,205.30	5,313.60	5,399.70	5,399.70	5,399.70	5,399.70	5,399.70	5,399.70	5,399.70	5,399.70	5,399.70
W-1	4,906.80	4,906.80	4,906.80	4,906.80	4,906.80	4,906.80	4,906.80	4,906.80	4,906.80	4,906.80	4,906.80

* For officers at pay grades O-7 through O-10, basic pay is limited to the rate of basic pay for level II of the Executive Schedule, which is $15,125.10 per month. For officers at O-6 and below, basic pay is limited to the rate of basic pay for level V of the Executive Schedule, which is $12,266.70 per month.

** For officers serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, Commandant of the Coast Guard, or commander of a unified or specified combatant command (as defined in 10 U.S.C. 161(c)), basic pay for this grade is calculated to be $21,147.30 per month, regardless of cumulative years of service computed under 37 U.S.C. 205. Nevertheless, actual basic pay for these officers is limited to the rate of basic pay for level II of the Executive Schedule, which is $15,125.10 per month.

*** Does not apply to commissioned officers who have been credited with over 4 years of active duty service as an enlisted member or warrant officer.

**** Reservists with at least 1,460 points as an enlisted member and/or warrant officer which are creditable toward reserve retirement also qualify for these rates.

SCHEDULE 8--PAY OF THE UNIFORMED SERVICES (PAGE 3)
(Effective January 1, 2014)

Part I--MONTHLY BASIC PAY

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18
ENLISTED MEMBERS											
E-9*	-	-	-	-	-	-	$4,836.90	$4,946.40	$5,084.70	$5,246.70	$5,411.10
E-8	-	-	-	-	-	$3,959.40	4,134.30	4,242.90	4,372.80	4,513.80	4,767.60
E-7	$2,752.50	$3,004.20	$3,119.10	$3,271.50	$3,390.60	3,594.90	3,709.80	3,914.40	4,084.20	4,200.30	4,323.90
E-6	2,380.80	2,619.60	2,735.10	2,847.60	2,964.90	3,228.60	3,331.50	3,530.40	3,591.30	3,635.70	3,687.30
E-5	2,181.00	2,327.40	2,440.20	2,555.10	2,734.50	2,922.30	3,076.20	3,094.80	3,094.80	3,094.80	3,094.80
E-4	1,999.50	2,101.80	2,215.80	2,328.00	2,427.30	2,427.30	2,427.30	2,427.30	2,427.30	2,427.30	2,427.30
E-3	1,805.40	1,918.80	2,034.90	2,034.90	2,034.90	2,034.90	2,034.90	2,034.90	2,034.90	2,034.90	2,034.90
E-2	1,716.90	1,716.90	1,716.90	1,716.90	1,716.90	1,716.90	1,716.90	1,716.90	1,716.90	1,716.90	1,716.90
E-1**	1,531.50	1,531.50	1,531.50	1,531.50	1,531.50	1,531.50	1,531.50	1,531.50	1,531.50	1,531.50	1,531.50
E-1***	1,416.30	-	-	-	-	-	-	-	-	-	-

* For noncommissioned officers serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, Sergeant Major of the Marine Corps, or Senior Enlisted Advisor to the Chairman of the Joint Chiefs of Staff, basic pay for this grade is $7,816.20 per month, regardless of cumulative years of service under 37 U.S.C. 205.

** Applies to personnel who have served 4 months or more on active duty.

*** Applies to personnel who have served less than 4 months on active duty.

SCHEDULE 8--PAY OF THE UNIFORMED SERVICES (PAGE 4)
(Effective January 1, 2014)

Part I--MONTHLY BASIC PAY

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	Over 20	Over 22	Over 24	Over 26	Over 28	Over 30	Over 32	Over 34	Over 36	Over 38	Over 40
ENLISTED MEMBERS											
E-9*	$5,673.60	$5,895.60	$6,129.30	$6,486.90	$6,486.90	$6,810.90	$6,810.90	$7,151.70	$7,151.70	$7,509.60	$7,509.60
E-8	4,896.30	5,115.30	5,236.80	5,535.90	5,535.90	5,647.20	5,647.20	5,647.20	5,647.20	5,647.20	5,647.20
E-7	4,371.60	4,532.40	4,618.50	4,946.70	4,946.70	4,946.70	4,946.70	4,946.70	4,946.70	4,946.70	4,946.70
E-6	3,687.30	3,687.30	3,687.30	3,687.30	3,687.30	3,687.30	3,687.30	3,687.30	3,687.30	3,687.30	3,687.30
E-5	3,094.80	3,094.80	3,094.80	3,094.80	3,094.80	3,094.80	3,094.80	3,094.80	3,094.80	3,094.80	3,094.80
E-4	2,427.30	2,427.30	2,427.30	2,427.30	2,427.30	2,427.30	2,427.30	2,427.30	2,427.30	2,427.30	2,427.30
E-3	2,034.90	2,034.90	2,034.90	2,034.90	2,034.90	2,034.90	2,034.90	2,034.90	2,034.90	2,034.90	2,034.90
E-2	1,716.90	1,716.90	1,716.90	1,716.90	1,716.90	1,716.90	1,716.90	1,716.90	1,716.90	1,716.90	1,716.90
E-1**	1,531.50	1,531.50	1,531.50	1,531.50	1,531.50	1,531.50	1,531.50	1,531.50	1,531.50	1,531.50	1,531.50
E-1***	-	-	-	-	-	-	-	-	-	-	-

* For noncommissioned officers serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, Sergeant Major of the Marine Corps, or Senior Enlisted Advisor to the Chairman of the Joint Chiefs of Staff, basic pay for this grade is $7,816.20 per month, regardless of cumulative years of service under 37 U.S.C. 205.

** Applies to personnel who have served 4 months or more on active duty.

*** Applies to personnel who have served less than 4 months on active duty.

SCHEDULE 8--PAY OF THE UNIFORMED SERVICES (PAGE 5)

Part II--RATE OF MONTHLY CADET OR MIDSHIPMAN PAY

The rate of monthly cadet or midshipman pay authorized by 37 U.S.C. 203(c) is $1,017.00.

Note: As a result of the enactment of sections 602-604 of Public Law 105-85, the National Defense Authorization Act for Fiscal Year 1998, the Secretary of Defense now has the authority to adjust the rates of basic allowances for subsistence and housing. Therefore, these allowances are no longer adjusted by the President in conjunction with the adjustment of basic pay for members of the uniformed services. Accordingly, the tables of allowances included in previous orders are not included here.

SCHEDULE 9--LOCALITY-BASED COMPARABILITY PAYMENTS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2014)

Locality Pay Area*	Rate
Alaska	24.69%
Atlanta-Sandy Springs-Gainesville, GA-AL	19.29%
Boston-Worcester-Manchester, MA-NH-RI-ME	24.80%
Buffalo-Niagara-Cattaraugus, NY	16.98%
Chicago-Naperville-Michigan City, IL-IN-WI	25.10%
Cincinnati-Middletown-Wilmington, OH-KY-IN	18.55%
Cleveland-Akron-Elyria, OH	18.68%
Columbus-Marion-Chillicothe, OH	17.16%
Dallas-Fort Worth, TX	20.67%
Dayton-Springfield-Greenville, OH	16.24%
Denver-Aurora-Boulder, CO	22.52%
Detroit-Warren-Flint, MI	24.09%
Hartford-West Hartford-Willimantic, CT-MA	25.82%
Hawaii	16.51%
Houston-Baytown-Huntsville, TX	28.71%
Huntsville-Decatur, AL	16.02%
Indianapolis-Anderson-Columbus, IN	14.68%
Los Angeles-Long Beach-Riverside, CA	27.16%
Miami-Fort Lauderdale-Pompano Beach, FL	20.79%
Milwaukee-Racine-Waukesha, WI	18.10%
Minneapolis-St. Paul-St. Cloud, MN-WI	20.96%
New York-Newark-Bridgeport, NY-NJ-CT-PA	28.72%
Philadelphia-Camden-Vineland, PA-NJ-DE-MD	21.79%
Phoenix-Mesa-Scottsdale, AZ	16.76%
Pittsburgh-New Castle, PA	16.37%
Portland-Vancouver-Hillsboro, OR-WA	20.35%
Raleigh-Durham-Cary, NC	17.64%
Richmond, VA	16.47%
Sacramento—Arden-Arcade—Yuba City, CA-NV	22.20%
San Diego-Carlsbad-San Marcos, CA	24.19%
San Jose-San Francisco-Oakland, CA	35.15%
Seattle-Tacoma-Olympia, WA	21.81%
Washington-Baltimore-Northern Virginia, DC-MD-VA-WV-PA	24.22%
Rest of U.S	14.16%

* Locality Pay Areas are defined in 5 CFR 531.603.

SCHEDULE 10--ADMINISTRATIVE LAW JUDGES

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2014)

AL-3/A	$104,900
AL-3/B	112,900
AL-3/C	121,100
AL-3/D	129,100
AL-3/E	137,300
AL-3/F	145,100
AL-2	153,300
AL-1	157,100

[FR Doc. 2013–31445

Filed 12–30–13; 11:15 a.m.]

Billing code 6325–01–C

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Federal Register

Vol. 78, No. 251

Tuesday, December 31, 2013

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FEDERAL REGISTER PAGES AND DATE, DECEMBER

71987–72532 2
72533–72788 3
72789–73078 4
73079–73376 5
73377–73686 6
73687–73992 9
73993–75214 10
75215–75448 11
75449–75896 12
75897–76028 13
76029–76194 16
76195–76520 17
76521–76720 18
76721–76972 19
76973–77326 20
77327–77556 23
77557–78164 24
78165–78692 26
78693–79282 27
79283–79566 30
79567–80462 31

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

Ch. I 78590
Ch. II 78590
200 78590
215 78590
220 78590
225 78590
230 78590

3 CFR

Proclamations:
9062 72529
9063 72531
9064 73077
9065 73375
9066 73685
9067 75205
9068 75207
9069 76029
9070 76719
9071 76971
9072 80417

Executive Orders:
13641 (superseded by 13655) 80451
13655 80451

Administrative Orders:
Memorandums:
Memorandum of December 10, 2013 78161
Memorandum of August 2, 2013 72789
Memorandum of December 5, 2013 75209
Presidential Determinations:
No. 2013–12 of August 9, 2013 (Correction) 73377
No. 2014-06 of December 20, 2013 80449
No. 2014–05 of December 16, 2013 78163
No. 2014–04 of December 3, 2013 75203
No. 2014–03 of November 29, 2013 76717

5 CFR

930 71987

Proposed Rules:
870 77365
894 77366

7 CFR

42 77327
210 79567
220 79567
253 79567
271 79567
274 79567
319 .....79568, 79573
923 76031
984 77327
1217 77329
1710 73356
1717 73356
1721 73356
1724 73356
1730 73356
1980 73928
3555 73928

Proposed Rules:
15d 78788
319 .....79568, 79573
340 79636
966 77604
970 73111
981 77367
1216 77368
1493 79254
1784 77009

9 CFR

92 .....72980, 73993
93 .....72980, 73993
94 .....72980, 73993
95 .....72980, 73993
96 .....72980, 73993
98 .....72980, 73993

Proposed Rules:
94 77370
317 72597

10 CFR

40 75449
50 75449
52 75449
70 75449
72 .....73379, 78165, 78693
429 79579
430 72533
431 .....75962, 79579

Proposed Rules:
40 79328
70 79328
72 .....73456, 77606, 78285, 79328
73 77606
74 79328
150 79328
429 .....77607, 79637
430 .....73737, 77019, 77607, 79633, 79638, 79643, 79649
431 73590

11 CFR

100 76032

12 CFR

25 79283

34 78520
195 79283
208 ....76521, 76973
217 76973
225 ....76521, 76973
226 78520
228 79283
234 76973
325 72534
344 76721
345 79283
390 76721
602 77557
618 77557
621 77557
700 77563
701 77563
703 76728
704 77563
712 72537
721 76728
741 72537
1003 79285
1024 79280
1026 ....76033, 78520, 79286, 79280
1090 73383
1238 ....78165, 78694
1260 ....73407, 73415

Proposed Rules:
210 74041
346 76768
390 76768
701 77608

13 CFR
121 ....77334, 77343

Proposed Rules:
107 77377

14 CFR
25 ....73993, 73995, 75451, 75453, 76731, 76734, 76736, 76980
39 ....71989, 71992, 71996, 71998, 72550, 72552, 72554, 72558, 72561, 72564, 72567, 72568, 72791, 73687, 73689, 73997, 76035, 76040, 76045, 76047, 76050, 76984, 77565, 77567, 77569, 78694, 78699, 78701, 78703, 78705, 78710, 79287, 79289, 79292, 79295, 79599
61 ....77571, 77572
71 ....72001, 72002, 72003, 72004, 72005, 72006, 72007, 72008, 72009, 72010, 72011, 74004, 74005, 74006, 74007, 74008, 76052, 76053, 76054, 76055, 76056, 77351
97 ....75455, 75456, 78713, 78714
121 77572
135 77572
460 72011
1204 ....76057, 77352
1230 76057
1232 76057

Proposed Rules:
25 ....75284, 75285, 75287, 75511, 76248, 76249, 76251, 76252, 76254, 76772, 76775, 77611
39 ....72598, 72834, 72831, 73457, 73460, 73462, 73739, 73744, 73749, 75289, 75291, 75512, 76572, 77380, 77382, 77614, 77615, 77618, 78285, 78290, 78292, 78294, 79329, 79333, 79338
71 ....72056, 73465, 73750, 73751, 73752, 76779, 76781, 76784, 77023, 78296, 78298, 78299, 78300, 78302, 78303, 78794
1260 78305
1274 78305

15 CFR
301 72570
303 72570
730 ....76738, 76741
732 76738
734 76738
736 76738
738 76738
740 ....76738, 76741
742 76738
743 76738
744 ....75458, 76738, 76741, 79600
745 76738
746 76738
747 76738
748 76738
750 76738
752 76738
754 76738
756 ....76738, 76741
758 ....76738, 76741
760 76738
762 ....76738, 76741
764 76738
766 76738
768 76738
770 76738
772 76738
774 76738
902 75844

Proposed Rules:
922 ....73112, 74046

16 CFR
312 76986
1112 73415
1215 73692
1217 73692
1218 77574
1219 73692
1225 73415

Proposed Rules:
300 72057
305 78305
310 77024
312 77026

17 CFR
39 72476
140 72476
190 72476
230 79298
270 79298

Proposed Rules:
1 ....75680, 76787
15 ....75680, 76787
17 ....75680, 76787
19 ....75680, 76787
32 ....75680, 76787
37 ....75680, 76787
38 ....75680, 76787
140 ....75680, 76787
150 ....75680, 76787

18 CFR
2 72794
35 73240
40 ....72756, 73424, 76986, 77574
157 72794
380 72794

Proposed Rules:
40 73112

19 CFR
148 76529
358 77353

20 CFR
404 ....72571, 73696

Proposed Rules:
404 76508

21 CFR
10 76748
172 73434
510 73697
520 78716
522 73697
524 73697
529 73697
558 ....76059, 79299
870 ....79300, 79304
872 79308
1308 72013

Proposed Rules:
Ch. I 72838, 72840, 72841
16 ....78014, 78064, 78068
121 ....78014, 78064, 78068
310 76444
314 78796
333 76444
514 75515
558 75515
573 77384
601 78796

22 CFR

Proposed Rules:
706 72843
707 73466
713 72850

24 CFR
50 74009
55 74009
58 74009
Ch. II 75238
201 75215
203 75215
985 79310
1005 75215
1007 75215
3280 73966

26 CFR
1 ....72394, 73079, 78255, 78256, 79602
31 75471
300 72016
602 ....72394, 78256

Proposed Rules:
1 ....72451, 73128, 73471, 73753, 75905, 76092, 79650, 79652
54 77632

28 CFR
16 77585
571 73083

29 CFR
2700 77354
4022 75897
4044 ....72018, 75897

Proposed Rules:
1910 73756
2590 77632

30 CFR

Proposed Rules:
7 73471
75 73471

31 CFR
1010 72813

Proposed Rules:
210 75528

32 CFR
158 72572
199 75245
211 73085

Proposed Rules:
57 75998

33 CFR
3 73438
64 77587
100 ....72019, 73438
117 ....72020, 72022, 72023, 72817, 76195, 76750, 77590, 77591, 79312
165 ....72025, 73438, 74009, 74010, 75248, 75249, 75898, 75899, 76751, 77359, 77592, 77594, 77597, 79312
207 78717
334 76060

Proposed Rules:
1 79242
100 77385
117 ....76255, 77027
161 77027
164 77027
165 ....74048, 77385
208 77397

34 CFR
Ch. II 79613

Proposed Rules:
Ch. I 72851
Ch. II 72851
200 79222
Ch. III 72851
Ch. IV 72851
Ch. V 72851
Ch. VI 72851, 73143

36 CFR
7 ....72028, 73092

Proposed Rules:
7 72605
242 73144
1192 74056

37 CFR
1 75251
201 78257
385 76987

Proposed Rules:
1 77621
3 77621
5 77621

11 77621
201 78309
210 78309

38 CFR

3 ....72573, 76196
17 ....72576, 76061, 76064, 78258, 79315
59 73441

Proposed Rules:

3 76574

39 CFR

111 ....76533, 76548, 78720

40 CFR

51 73698
52 ....72032, 72033, 72036, 72040, 72579, 73442, 73445, 73698, 74012, 75253, 75902, 76064, 76209, 77599, 78263, 78266, 78272, 78720, 78726
60 76753
62 72581
63 79317
81 ....72036, 72040
180 ....75254, 75257, 75262, 76561, 76567, 76987, 78727, 78731, 78738, 78740, 78746, 78748
228 73097
271 79615
300 ....73449, 75475
312 79319
712 72818
716 72818
720 72818
721 72818
723 72818
725 72818
766 72818
790 72818
799 72818

Proposed Rules:

52 ....72608, 73472, 73769, 74057, 75293, 77621, 77628, 78310, 78311, 78315, 78797, 79340, 79344, 79652
60 76788
62 ....72609, 72611
81 73769
82 78072
180 ....76589, 79359
194 72612
271 79654
300 75534
372 73787

41 CFR

102–117 75484
300–90 73702
302–7 75483
303–70 73104

42 CFR

405 74230
410 74230
411 ....74684, 75304, 78751
412 74826
413 72156
414 ....72156, 74230
419 74826
423 74230
425 74230
431 72256
475 74826
476 74826
486 74826
495 74826
1001 79202

Proposed Rules:

403 79082
405 78802
416 79082
418 79082
441 79082
460 79082
482 79082
483 79082
484 79082
485 79082
486 79082
491 79082
494 79082
600 77399
1001 78807

44 CFR

64 ....75485, 79324

Proposed Rules:

67 ....75542, 78808, 79362

45 CFR

147 76212
155 ....76212, 79619
156 76212

Proposed Rules:

144 72322
146 77632
147 72322
153 72322
155 72322
156 72322

46 CFR

1 77796
10 77796
11 77796
12 77796
13 77796
14 77796
15 77796

Proposed Rules:

4 77027

47 CFR

64 76218
73 73109
79 77210
95 78769

Proposed Rules:

1 73144
17 73144
27 77029
54 ....76789, 76791
64 ....76096, 76097, 76257, 78809, 79362
69 79363
73 ....73793, 75306, 78318
79 ....77074, 78319
95 ....72851, 73794

48 CFR

Ch. 1 ....80368, 80381
1 80369
4 80369
7 80376
8 ....80369, 80376
9 80369
12 80382
13 80382
17 80369
22 80379
25 80379
32 80382
37 80369
43 80382
52 ....80369, 80376, 80379, 80382
App. F to Ch. 2 76067
201 73450
204 73450
211 76067
212 ....73450, 76067
216 73450
218 76067
225 ....73450, 79620
227 73450
231 73451
246 76067
252 ....73450, 76067, 76993, 79620
645 76064
652 76064

Proposed Rules:

44 72620
46 72620
52 72620
211 73472
212 73472
225 73474
232 73472
235 73475
252 73475

49 CFR

219 78275
225 77601
369 76241
395 76757

Proposed Rules:

171 79363
173 79363
178 79363
180 79363
381 76590
529 76265
530 76265
531 76265
532 76265
533 76265
534 76265
535 76265
536 76265
537 76265
538 76265
539 76265
540 76265
541 76265
542 76265
543 76265
544 76265
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546 76265
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552 76265
553 76265
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560 76265
561 76265
562 76265
563 76265
564 76265
565 76265
566 76265
567 76265
568 76265
569 76265
570 76265
572 76265
573 ....76265, 78321
574 76265
576 76265
577 ....76265, 78321
578 76265
579 78321
592 73169
Ch. X 76098

50 CFR

13 73704
17 ....76995, 77290
20 78275
21 72830
22 73704
216 ....73010, 78106
217 75488
218 ....73010, 78106
223 79622
224 73726
300 75844
622 ....72583, 76758, 78770, 78776, 78779
635 ....72584, 77362
648 ....72585, 75267, 76077, 76759, 76765, 76766, 77005, 78783, 78786
660 ....72586, 75268, 76570
679 ....73110, 73454, 75844, 76245, 76246
697 76077

Proposed Rules:

17 ....72058, 72622, 73173, 75306, 75313, 76795, 77087, 78321
92 75321
100 73144
217 73794
229 73477
622 76807
635 ....75327, 78322
640 76807
660 77413
665 ....77089, 79388
679 ....74063, 74079

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List December 27, 2013

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