Note: *We are providing a version of our Notice of Proposed Rulemaking for Integrated Mortgage Disclosures under the Real Estate Settlement Procedures Act and the Truth in Lending Act (as submitted to the Federal Register) in separate parts. These partial documents will download and open more quickly than the full Notice. If you do not need the full notice, you may find these partial versions easier to use.*

This document contains the preamble.

The proposed amendments to regulations and the guidance regarding compliance with the amended regulations, as well as the full submitted notice, are available for download at: http://www.consumerfinance.gov/knowbeforeyouowe/#rule

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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Parts 1024 and 1026

[Docket No. CFPB-2012-0028]

RIN 3170-AA19

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

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Proposed rule with request for public comment.

SUMMARY: Sections 1032(f), 1098, and 1100A of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) direct the Bureau to issue proposed rules and forms that combine certain disclosures that consumers receive in connection with applying for and closing on a mortgage loan under the Truth in Lending Act and the Real Estate Settlement Procedures Act. Consistent with this requirement, the Bureau is proposing to amend Regulation X (Real Estate Settlement Procedures Act) and Regulation Z (Truth in Lending) to establish new disclosure requirements and forms in Regulation Z for most closed-end consumer

credit transactions secured by real property. In addition to combining the existing disclosure requirements and implementing new requirements in the Dodd-Frank Act, the proposed rule provides extensive guidance regarding compliance with those requirements.

DATES: Comments regarding the proposed amendments to 12 CFR §§ 1026.1(c) and 1026.4 must be received on or before September 7, 2012. For all other sections including proposed amendments, comments must be received on or before November 6, 2012.

ADDRESSES: You may submit comments, identified by Docket No. CFPB-2012-0028 or RIN 3170-AA19, by any of the following methods:

- *Electronic*: http://www.regulations.gov. Follow the instructions for submitting comments.
- *Mail/Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street, NW, Washington, DC 20552.

Instructions: All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to http://www.regulations.gov. In addition, comments will be available for public inspection and copying at 1700 G Street, NW, Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435-7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: David Friend, Michael G. Silver and Priscilla Walton-Fein, Counsels; Andrea Pruitt Edmonds, Richard B. Horn, Joan Kayagil, and Thomas J. Kearney, Senior Counsels; Paul Mondor, Senior Counsel & Special Advisor; and Benjamin K. Olson, Managing Counsel, Office of Regulations, at (202) 435-7700.

SUPPLEMENTARY INFORMATION:

I. Summary of Proposed Rule

A. Background

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

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) directs the Bureau to combine the forms. To accomplish this, the Bureau has engaged in extensive consumer and industry research and public outreach for more than a year.[1] Based on this input, the Bureau is now proposing a rule with new, combined forms. The proposed rule also provides a detailed explanation of how the forms should be filled out and used.

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[1] See part III below for a discussion of the Bureau's testing of the forms with more than 100 consumers, lenders, mortgage brokers, and settlement agents. This part also describes the Bureau's outreach efforts, including the panel convened by the Bureau to examine ways to minimize the burden of the proposed rule on small businesses.

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

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

In developing the new Loan Estimate form and Closing Disclosure form, the Bureau has reconciled the differences between the existing forms and combined several other mandated disclosures. The Bureau also has responded to industry complaints of uncertainty about how to fill out the existing forms by providing detailed instructions on how to complete the new forms.[2] This should reduce the burden on lenders and others in preparing forms in the future.

B. Scope of the Proposed Rule

The proposed rule applies to most closed-end consumer mortgages. The proposed rule does not apply to home-equity lines of credit, reverse mortgages, or mortgages secured by a mobile home or by a dwelling that is not attached to real property (in other words, land). The

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

proposed rule also does not apply to loans made by a creditor who makes five or fewer mortgages in a year.[3]

C. The Loan Estimate

The Loan Estimate form would replace two current Federal forms. It would replace the Good Faith Estimate designed by the Department of Housing and Urban Development (HUD) under RESPA and the "early" Truth in Lending disclosure designed by the Board of Governors of the Federal Reserve System (the Board) under TILA.[4] The proposed rule and the Official Interpretations (on which lenders can rely) contain detailed instructions as to how each line on the Loan Estimate form would be completed.[5] There are sample forms for different types of loan products.[6] The Loan Estimate form also incorporates new disclosures required by Congress under the Dodd-Frank Act.[7]

Provision by mortgage broker. The lender may rely on a mortgage broker to provide the Loan Estimate form. However, the lender also remains responsible for the accuracy of the form.[8]

Timing. The lender or broker must give the form to the consumer within three business days after the consumer applies for a mortgage loan.[9] The proposed rule contains a specific definition of what constitutes an "application" for these purposes.[10]

Limitation on fees. Consistent with current law, the lender generally cannot charge consumers any fees until after the consumers have been given the Loan Estimate form and the

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[3] For additional discussion of the scope of the proposed rule, see part VI below regarding section 1026.19, Coverage of Integrated Disclosure Requirements.
[4] These disclosures are available at http://www.hud.gov/offices/hsg/rmra/res/gfestimate.pdf and http://ecfr.gpoaccess.gov/graphics/pdfs/ec27se91.024.pdf.
[5] The requirements for the Loan Estimate are in proposed § 1026.37. Additional discussion of this and other sections of the proposed rule is provided in the relevant portion of part VI below.
[6] Appendix H to the proposed rule provides examples of how to fill out these forms for a variety of different loans, including loans with fixed or adjustable rates or features such as balloon payments and prepayment penalties.
[7] For a discussion of these disclosures, see part V.B below.
[8] This provision is in proposed § 1026.19(e)(1)(ii).
[9] This provision is in proposed § 1026.19(e)(1)(iii).
[10] The definition of "application" is in proposed § 1026.2(a)(3).

consumers have communicated their intent to proceed with the transaction. There is an exception that allows lenders to charge fees to obtain consumers' credit reports.[11]

Disclaimer on early estimates. Lenders and brokers may provide consumers with written estimates prior to application. The proposed rule requires that any such written estimates contain a disclaimer to prevent confusion with the Loan Estimate form. This disclaimer would not be required for advertisements.[12]

D. The Closing Disclosure

The Closing Disclosure form would replace the current form used to close a loan, the HUD-1, which was designed by HUD under RESPA. It would also replace the revised Truth in Lending disclosure designed by the Board under TILA.[13] The proposed rule and the Official Interpretations (on which lenders can rely) contain detailed instructions as to how each line on the Closing Disclosure form would be completed.[14] The Closing Disclosure form contains additional new disclosures required by the Dodd-Frank Act and a detailed accounting of the settlement transaction.

Timing. The lender must give consumers this Closing Disclosure form at least three business days before the consumer closes on the loan. Generally, if changes occur between the time the Closing Disclosure form is given and the closing, the consumer must be provided a new form. When that happens, the consumer must be given three additional business days to review that form before closing.[15] However, the proposed rule contains an exception from the three-day requirement for some common changes. These include changes resulting from negotiations

[11] This provision is in proposed § 1026.19(e)(2)(i).
[12] This provision is in proposed § 1026.19(e)(2)(ii).
[13] These disclosures are available at http://www.hud.gov/offices/adm/hudclips/forms/files/1.pdf and http://ecfr.gpoaccess.gov/graphics/pdfs/ec27se91.024.pdf.
[14] The requirements for the Closing Disclosure are in proposed § 1026.38.
[15] This provision is in proposed § 1026.19(f)(1)(ii).

between buyer and seller after the final walk-through. There also is an exception for minor changes which result in less than $100 in increased costs.[16] The Bureau seeks comment on whether to permit additional changes without requiring a new three-day period before closing.

Provision. Currently, settlement agents are required to provide the HUD-1, while lenders are required to provide the revised Truth in Lending disclosure. The Bureau is proposing two alternatives for who is required to provide consumers with the new Closing Disclosure form. Under the first option, the lender would be responsible for delivering the Closing Disclosure form to the consumer. Under the second option, the lender may rely on the settlement agent to provide the form. However, under the second option, the lender would also remain responsible for the accuracy of the form.[17] The Bureau seeks comment as to which alternative is preferable.

E. Limits on Closing Cost Increases

Similar to existing law, the proposed rule would restrict the circumstances in which consumers can be required to pay more for settlement services – the various services required to complete a loan, such as appraisals, inspections, etc. – than the amount stated on their Loan Estimate form. Unless an exception applies, charges for the following services could not increase: (1) the lender's or mortgage broker's charges for its own services; (2) charges for services provided by an affiliate of the lender or mortgage broker; and (3) charges for services for which the lender or mortgage broker does not permit the consumer to shop. Also unless an exception applies, charges for other services generally could not increase by more than 10 percent.[18]

The rule would provide exceptions, for example, when: (1) the consumer asks for a change; (2) the consumer chooses a service provider that was not identified by the lender;

[16] These exceptions are in proposed § 1026.19(f)(2).
[17] These alternatives are set forth in proposed § 1026.19(f)(1).
[18] The limitations and the exceptions discussed below are in proposed § 1026.19(e)(3).

(3) information provided at application was inaccurate or becomes inaccurate; or (4) the Loan Estimate expires. When an exception applies, the lender generally must provide an updated Loan Estimate form within three business days.

F. Changes to APR

The proposed rule redefines the way the Annual Percentage Rate or "APR" is calculated. Under the rule, the APR will encompass almost all of the up-front costs of the loan.[19] This will make it easier for consumers to use the APR to compare loans and easier for industry to calculate the APR.

G. Recordkeeping

The proposed rule requires lenders to keep records of the Loan Estimate and Closing Disclosure forms provided to consumers in a standard electronic format.[20] This will make it easier for regulators to monitor compliance. The Bureau seeks comment on whether smaller lenders should be exempt from this requirement.

H. Effective Date

The Bureau is seeking comment on when this final rule should be effective. Because the final rule will provide important benefits to consumers, the Bureau seeks to make it effective as soon as possible. However, the Bureau understands that the final rule will require lenders, mortgage brokers, and settlement agents to make extensive revisions to their software and to retrain their staff. In addition, some entities will be required to implement other Dodd-Frank Act provisions, which are subject to separate rulemaking deadlines under the statute and will have separate effective dates. Therefore, the Bureau is seeking comment on how much time industry needs to make these changes. The Bureau is proposing to delay compliance with certain new

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[19] These revisions are in proposed § 1026.4.
[20] This provision is in proposed § 1026.25.

disclosure requirements contained in the Dodd-Frank Act until the Bureau's final rule takes effect.[21]

II. Background

A. The Mortgage Market

Overview of the Market and the Mortgage Crisis

The mortgage market is the single largest market for consumer financial products and services in the United States, with approximately $10.3 trillion in loans outstanding.[22] During the last decade, the market went through an unprecedented cycle of expansion and contraction that was fueled in part by the securitization of mortgages and creation of increasingly sophisticated derivative products designed to mitigate accompanying risks. So many other parts of the American financial system were drawn into mortgage-related activities that when the bubble collapsed in 2008, it sparked the most severe recession in the United States since the Great Depression.

The expansion in this market is commonly attributed to both particular economic conditions and by changes within the industry. Interest rates dropped significantly – by more than 20 percent – from 2000 through 2003.[23] Housing prices increased dramatically – about 152 percent – between 1997 and 2006.[24] Driven by the decrease in interest rates and the increase in

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[21] For additional discussion, see part V below.

[22] Inside Mortgage Finance, Outstanding 1-4 Family Mortgage Securities, Mortgage Market Statistical Annual (2012).

[23] *See* U.S. Dep't. of Hous. and Urban Dev., *An Analysis of Mortgage Refinancing, 2001-2003* (Nov. 2004), available at www.huduser.org/Publications/pdf/MortgageRefinance03.pdf; Souphala Chomsisengphet and Anthony Pennington-Cross, *The Evolution of the Subprime Mortgage Market*, Federal Reserve Bank of St. Louis Review, 88(1), 31, 48 (Jan./Feb. 2006), available at http://research.stlouisfed.org/publications/review/article/5019.

[24] The Financial Crisis Inquiry Commission, *The Financial Crisis Inquiry Report* (Feb. 25, 2011) (FCIC Report) at 156, available at http://www.gpo.gov/fdsys/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf.

housing prices, the volume of refinances increased from about 2.5 million loans in 2000 to more than 15 million in 2003.[25]

At the same time, advances in the securitization of mortgages attracted increasing involvement from financial institutions that were not directly involved in the extension of credit to consumers and from investors worldwide. Securitization of mortgages allows originating lenders to sell off their loans (and reinvest the funds earned in making new ones) to investors who want an income stream over time. Securitization had been pioneered by what are now called government sponsored enterprises (GSEs), such as the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac). But by the early 2000s, large numbers of private financial institutions were deeply involved in creating increasingly sophisticated investment mortgage-related vehicles through securities and derivative products.

Growth in the mortgage loan market was particularly pronounced in what are known as "subprime" and "Alt-A" products. Subprime products were sold both to borrowers with poor or no credit history, as well as to borrowers with good credit. The Alt-A category of loans permitted borrowers to provide little or no documentation of income or other repayment ability. Because these loans involved additional risk, they were typically more expensive to borrowers than so-called "prime" mortgages, though many offered low introductory rates. In 2003, subprime and Alt-A origination volume was about $400 billion. In 2006, it had reached $830 billion.[26]

So long as housing prices were continuing to increase, it was relatively easy for borrowers to refinance their loans to avoid interest rate resets and other adjustments. However,

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[25] *An Analysis of Mortgage Refinancing, 2001-2003*, at 1.
[26] Inside Mortgage Finance: Mortgage Market Statistical Annual 2011.

housing prices began to decline as early as 2005, slowing the growth in refinances.[27] At the same time, as the economy worsened the rates of serious delinquency (90 or more days past due or in foreclosure) for these subprime and Alt-A products began a steep increase from approximately 10 percent in 2006, to 20 percent in 2007, to over 40 percent in 2010.[28]

The impact of this level of delinquencies on the private investors who purchased these loans from the mortgage originators was severe. Private securitizations of subprime loans peaked at $465 billion in 2005, but were virtually eliminated in 2008. Private securitizations of Alt-A loans followed a similar trajectory.[29] This effect was even felt by Fannie Mae and Freddie Mac, which were large purchasers of these securitizations, and it resulted in the Federal government in late 2008 placing the GSEs into conservatorship in order to support the collapsing mortgage market.

Four years later, the United States continues to grapple with the fallout. Home prices are down 35 percent from peak to trough on a national basis, and it is not clear whether the national market has reached bottom.[30] The fall in housing prices is estimated to have resulted in about $7 trillion in household wealth losses.[31] Moreover, mortgage markets continue to rely on extraordinary U.S government support. In addition, distressed homeownership and foreclosure rates remain at unprecedented levels. Approximately 5.8 million homeowners were somewhere between 30 days late on their mortgage and in the foreclosure process as of April 2012.[32]

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[27] FCIC Report at 215.
[28] *Id.* at 217.
[29] *Id.* at 124.
[30] S&P/Case-Shiller 20-City Composite accessed from Bloomberg, LP on June 6, 2012.
[31] Board of Governors of the Federal Reserve System, *The U.S. Housing Market: Current Conditions and Policy Considerations* (Jan. 4 2012), available at http://www.federalreserve.gov/publications/other-reports/files/housing-white-paper-20120104.pdf.
[32] Lender Processing Services April 2012 Mortgage Monitor.

Finally, the U.S. continues to face a stubbornly high unemployment rate, which was at 8.2 percent at the end of May 2012.[33]

While there remains debate about which market issues definitively sparked this crisis, there were several mortgage origination issues that pervaded the mortgage lending system prior to the crisis and are generally accepted as having contributed to its collapse. First, the market experienced a steady deterioration of credit standards in mortgage lending, particularly evidenced by the growth of subprime and Alt-A loans, which consumers were often unable or unwilling to repay.[34]

Second, the mortgage market saw a proliferation of more complex mortgage products with terms that were often difficult for consumers to understand. These products included most notably 2/28 and 3/27 Hybrid Adjustable Rate Mortgages and Option ARM products.[35] These products were often marketed to subprime and Alt-A customers. The appetite on the part of mortgage investors for such products often created inappropriate incentives for mortgage originators to originate these more expensive and profitable mortgage products.[36]

Third, responsibility for the regulation of consumer financial protection laws was spread across seven regulators including the Board, HUD, the Office of Thrift Supervision, the Federal Trade Commission, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the National Credit Union Administration. Such a spread in responsibility

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[33] Bureau of Labor Statistics, accessed from Bloomberg, LP on June 6, 2012.
[34] FCIC Report at 88.
[35] *Id.* at 106. "Hybrid Adjustable Rate Mortgage" is a term frequently used to describe adjustable rate mortgage loans that have a low fixed introductory rate for a certain period of time. "Option ARM" is a term frequently used to describe adjustable rate mortgage loans that have a scheduled loan payment that may result in negative amortization for a certain period of time, but that expressly permit specified larger payments in the contract or servicing documents, such as an interest-only payment or a fully amortizing payment. For these loans, the scheduled negatively amortizing payment was typically described in marketing and servicing materials as the "optional payment."
[36] *Id.* at 109.

may have hampered the government's ability to coordinate regulatory monitoring and response to such issues.[37]

In the wake of this financial crisis, Congress passed the Dodd-Frank Act to address many of these concerns. In this Act, Congress created the Bureau and consolidated the rulemaking authority for many consumer financial protection statutes, including the two primary Federal consumer protection statutes governing mortgage origination, TILA and RESPA, in the Bureau.[38] Congress also provided the Bureau with supervision authority for certain consumer financial protection statutes over certain entities, including insured depository institutions with total assets over $10 billion and their affiliates, and certain other non-depository entities.[39]

At the same time, Congress significantly amended the statutory requirements governing mortgage practices with the intent to restrict the practices that contributed to the crisis. For example, in response to concerns that some lenders made loans to consumers without sufficiently determining their ability to repay, section 1411 of the Dodd-Frank Act amended TILA to require that creditors make a reasonable and good faith determination, based on verified and documented information, that the consumer will have a reasonable ability to repay the loan.[40] Sections 1032(f), 1098, and 1100A of the Dodd-Frank Act address concerns that Federal mortgage disclosures did not adequately explain to consumers the terms of their loans (particularly complex adjustable rate or optional payment loans) by requiring new disclosure forms that will improve consumer understanding of mortgage transactions (which is the subject of this

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[37] *Id.* at 111.
[38] Sections 1011 and 1021 of title X of the Dodd-Frank Act, the "Consumer Financial Protection Act," Pub. L. 111-203, sections 1001-1100H, codified at 12 U.S.C. 5491, 5511. The Consumer Financial Protection Act is substantially codified at 12 U.S.C. 5481-5603.
[39] Sections 1024 through 1026 of title X of the Dodd-Frank Act, codified at 12 U.S.C. 5514-5516.
[40] Section 1411 of the Dodd-Frank Act, codified at 15 U.S.C. 1639c.

proposal).[41] In addition, the Dodd-Frank Act established other new standards concerning a wide range of mortgage lending practices, including compensation for mortgage originators[42] and mortgage servicing.[43] For additional information, see the discussion below in part II.F.

Size of the Current Mortgage Origination Market

Even with the economic downturn, approximately $1.28 trillion in mortgage loans were originated in 2011.[44] In exchange for a mortgage loan, borrowers promise to make regular mortgage payments and provide their home or real property as collateral. The overwhelming majority of homebuyers use mortgage loans to pay for at least some of their property. In 2011, 93 percent of all new home purchases were financed with a mortgage loan.[45]

Borrowers may take out mortgage loans in order to purchase a new home, to refinance an existing mortgage, or to access home equity. Purchase loans and refinances produced 6.3 million new mortgage loan originations in 2011 alone.[46] The proportion of loans that are for purchases as opposed to refinances varies with the interest rate environment. In 2011, 65 percent of the market was refinance transactions and 35 percent was purchase loans, by volume.[47] Historically the distribution has been more even. In 2000, refinances accounted for 44 percent of the market while purchase loans comprised 56 percent, and in 2005 the two products were split evenly.[48]

Using a home equity loan, a homeowner can use their equity as collateral in exchange for a loan. The loan proceeds can be used, for example, to pay for home improvements or to pay off

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[41] 1032(f) of the Dodd-Frank Act, codified at 12 U.S.C. 5532(f). Sections 1098 and 1100A of the Dodd-Frank Act amend RESPA and TILA, respectively.
[42] Sections 1402 through 1405 of the Dodd-Frank Act, codified at 15 U.S.C. 1639b.
[43] Sections 1418, 1420, 1463, and 1464 of the Dodd-Frank Act, codified at 12 U.S.C. 2605; 15 U.S.C. 1638, 1638a, 1639f, and 1639g.
[44] Moody's Analytics, Credit Forecast (2012). Reflects first-lien mortgage loans.
[45] Inside Mortgage Finance, New Homes Sold by Financing, Mortgage Market Statistical Annual (2012).
[46] Moody's Analytics, Credit Forecast (2012). Reflects first-lien mortgage loans.
[47] Inside Mortgage Finance, Mortgage Originations by Product, Mortgage Market Statistical Annual (2012). These percentages are based on the dollar amount of the loans.
[48] Inside Mortgage Finance, Mortgage Originations by Product, Mortgage Market Statistical Annual (2012). These percentages are based on the dollar amount of the loans.

other debts. These home equity loans resulted in an additional 1.3 million mortgage loan originations in 2011.[49]

Shopping for Mortgage Loans

When shopping for a mortgage loan, research has shown that consumers are most concerned about the interest rate and their monthly payment.[50] Consumers may underestimate the possibility that interest rates and payments can increase later on, or they may not fully understand that this possibility exists. They also may not appreciate other costs that could arise later, such as prepayment penalties.[51] This focus on short term costs while underestimating long term costs may result in consumers taking out mortgage loans that are more costly than they realize.[52]

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

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[49] Moody's Analytics, Credit Forecast (2012). Reflects open-end and closed-end home equity loans.

[50] Bd. of Governors of the Fed. Reserve Sys., *Summary of Findings: Design and Testing of Truth in Lending Disclosures for Closed-End Mortgages*, prepared by Macro International, Inc. (July 16, 2009), p. 6, available at http://www.federalreserve.gov/boarddocs/meetings/2009/20090723/Full%20Macro%20CE%20Report.pdf.; *see also* Kleimann Communication Group, Inc., *Know Before You Owe: Evolution of the Integrated TILA-RESPA Disclosures* (July 2012), available at http://files.consumerfinance.gov/f/201207_cfpb_report_tila-respa-testing.pdf.

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

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

change.[53] These findings are consistent with a 2006 Government Accountability Office study, which raised concerns that mortgage loan disclosure laws did not require specific disclosures for adjustable rate loans.[54] This evidence suggests that borrowers who are not presented with clear, understandable information about their mortgage loan offer may lack an accurate understanding of the loan costs and risks.

The Mortgage Origination Process

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

Loan Terms. The loan terms affect how the loan is to be repaid, including the type of loan product,[55] the interest rate, the payment amount, and the length of the loan term.

Among other things, the type of loan product determines whether the interest rate can change and, if so, when and by how much. A fixed rate loan sets the interest rate at origination,

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

[54] U.S. Government Accountability Office, *Alternative Mortgage Products: Impact on Default Remains Unclear, but Disclosure of Risks to Borrowers Could Be Improved* (Sept. 20, 2006), available at http://www.gao.gov/new.items/d061112t.pdf.

[55] Types of loan products include a fixed rate loan, adjustable rate loan, and interest-only loan.

and the rate stays the same until the borrower pays off the loan. However, the interest rate on an adjustable rate loan is periodically reset based on an interest rate index. This shifting rate could change the borrower's monthly payment. Typically, an adjustable rate loan will combine both types of rates, so that the interest rate is fixed for a certain period of time before adjusting. For example, a 5/1 adjustable rate loan would have a fixed interest rate for five years, and then adjust every year until the loan ends. Any changes in the interest rate after the first five years would change the borrower's payments. Today, fixed rate mortgages are the most common mortgage product, accounting for 87 percent of the mortgage loan market in 2011.[56] Adjustable rate mortgages accounted for only 13 percent of the mortgage loan market in 2011, although they have been more popular in the past.[57] Adjustable-rate mortgages accounted for 30 percent of mortgage loan volume in 2000, and reached a recent high of 50 percent in 2004.[58]

Borrowers are usually required to make payments on a monthly basis. These payments typically are calculated to pay off the entire loan balance by the time the loan term ends.[59] The way a borrower's payments affect the amount of the loan balance over time is called amortization. Most borrowers take out fully amortizing loans, meaning that their payments are applied to both principal and interest so that the loan's principal balance will gradually decrease until it is completely paid off. The typical 30-year fixed rate loan has fully amortizing monthly payments that are calculated to pay off the loan in full over 30 years. However, loan amortization can take other forms. An interest-only loan would require the borrower to make regular payments that cover interest but not principal. In some cases, these interest-only

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[56] Inside Mortgage Finance, Mortgage Originations by Product, Mortgage Market Statistical Annual (2012). These percentages are based on the dollar amount of the loans.
[57] Inside Mortgage Finance, Mortgage Originations by Product, Mortgage Market Statistical Annual (2012). These percentages are based on the dollar amount of the loans.
[58] Inside Mortgage Finance, Mortgage Originations by Product, Mortgage Market Statistical Annual (2012). These percentages are based on the dollar amount of the loans.
[59] Some loans may require a large final payment (or "balloon" payment) in addition to monthly payments.

payments end after a period of time (such as five years) and the borrower must begin making significantly higher payments that cover both interest and principal to amortize the loan over the remaining loan term. In other cases, the entire principal balance must be paid when the loan becomes due.

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

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

Application. In order to obtain a mortgage loan, borrowers must first apply through a loan originator. There are two different kinds of loan originators. A retail originator works directly for a mortgage lender. A mortgage lender that employs retail originators could be a bank or credit union, or it could be a specialized mortgage finance company. The other kind of loan originator is a mortgage broker. Mortgage brokers work with many different lenders and facilitate the transaction for the borrower.

A loan originator may help borrowers determine what kind of loan best suits their needs, and will collect their completed loan application. The application includes borrower credit and income information, along with information about the home to be purchased.

Borrowers can apply to multiple loan originators in order to compare the loans that they are being offered. Once they have decided to move forward with the loan, the borrower must notify the loan originator. The loan originator will typically wait to receive this notification before taking more information from the borrower and giving the borrower's application to a loan underwriter.

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

Depending on the loan terms, as discussed above, lenders may require borrowers to retain title insurance, homeowner's insurance, private mortgage insurance, and other services. The lender may allow the borrower to shop for certain closing services on their own.

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

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

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

B. RESPA and Regulation X

Congress enacted the Real Estate Settlement Procedures Act of 1974 based on findings that significant reforms in the real estate settlement process were needed to ensure that consumers are provided with greater and more timely information on the nature and costs of the residential real estate settlement process and are protected from unnecessarily high settlement charges caused by certain abusive practices that Congress found to have developed. 12 U.S.C. 2601(a). With respect to RESPA's disclosure requirements, the Act's purpose is to provide "more effective advance disclosure to home buyers and sellers of settlement costs." *Id.* 2601(b)(1). In addition to providing consumers with appropriate disclosures, the purposes of RESPA include effecting certain changes in the settlement process for residential real estate that will result in (1) the elimination of kickbacks or referral fees that Congress found to increase unnecessarily the costs of certain settlement services; and (2) a reduction in the amounts home buyers are required to place in escrow accounts established to insure the payment of real estate taxes and insurance. *Id.* 2601. In 1990, Congress amended RESPA by adding a new section 6 covering persons responsible for servicing mortgage loans and amending statutory provisions related to mortgage servicers' administration of borrowers' escrow accounts.[60]

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

Section 4 of RESPA requires that, in connection with a "mortgage loan transaction," a disclosure form that includes a "real estate settlement cost statement" be prepared and made available to the borrower for inspection at or before settlement.[61] *Id.* 2603. The law further

[60] Pub. L. 101-625, 104 Stat. 4079 (1990), sections 941-42.

[61] Prior to the Dodd-Frank Act, section 4 of RESPA applied to "all transactions in the United States which involve federally related mortgage loans." 12 U.S.C. 2603 (2009). However, section 1098 of the Dodd-Frank Act deleted the reference to "federally related mortgage loan" in this section and replaced it with "mortgage loan transactions."

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

Historically, Regulation X of the Department of Housing and Urban Development (HUD), 24 CFR part 3500, has implemented RESPA. On March 14, 2008, after a 10-year investigatory process, HUD proposed extensive revisions to the good faith estimate and settlement forms required under Regulation X, as well as new accuracy standards with respect to the estimates provided to consumers. 73 FR 14030 (Mar. 14, 2008) (HUD’s 2008 RESPA Proposal).[62] In November 2008, HUD finalized the proposed revisions in substantially the same form, including new standard good faith estimate and settlement forms, which lenders, mortgage brokers, and settlement agents were required to use beginning on January 1, 2010. 73 FR 68204 (Nov. 17, 2008) (HUD’s 2008 RESPA Final Rule). HUD’s 2008 RESPA Final Rule implemented significant changes to the rules regarding the accuracy of the estimates provided to consumers. The final rule required re-disclosure of the good faith estimate form when the actual

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

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

costs increased beyond a certain percentage of the estimated amounts, and permitted such increases only under certain specified circumstances. *Id.* at 68240 (amending 24 CFR 3500.7). HUD's 2008 RESPA Final Rule also included significant changes to the RESPA disclosure requirements, including prohibiting itemization of certain amounts and instead requiring the disclosure of aggregate settlement costs; adding loan terms, such as whether there is a prepayment penalty and the borrower's interest rate and monthly payment; and requiring use of a standard form for the good faith estimate. *Id.* The standard form was developed through consumer testing conducted by HUD, which included qualitative testing consisting of one-on-one cognitive interviews.[63] HUD issued informal guidance regarding the final rule on its website, in the form of frequently asked questions[64] (HUD RESPA FAQs) and bulletins[65] (HUD RESPA Roundups).

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

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[63] U.S. Dep't. of Hous. and Urban Dev., *Summary Report: Consumer Testing of the Good Faith Estimate Form (GFE)*, prepared by Kleimann Communication Group, Inc. (2008), available at http://www.huduser.org/publications/pdf/Summary_Report_GFE.pdf.

[64] *New RESPA Rule FAQs*, available at http://portal.hud.gov/hudportal/documents/huddoc?id=resparulefaqs422010.pdf.

[65] *RESPA Roundup Archive*, available at http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/rmra/res/resroundup.

implemented in Regulation X by §§ 1024.6 and 1024.7, respectively. RESPA section 4's requirement of a real estate settlement statement (RESPA settlement statement) is implemented by § 1024.8.

C. TILA and Regulation Z

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

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

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

Historically, Regulation Z of the Board of Governors of the Federal Reserve System, 12 CFR part 226, has implemented TILA. TILA section 128's requirement that the disclosure statement be provided before the credit is extended (final TILA disclosure) is implemented in Regulation Z by § 1026.17(b). The requirements that a good faith estimate of the disclosure be provided within three business days after application and at least seven business days prior to consummation (early TILA disclosure) and that a corrected disclosure be provided at least three business days before consummation (corrected TILA disclosure), as applicable, are implemented by § 1026.19(a). The contents of the TILA disclosures, as required by TILA section 128, are implemented by § 1026.18.

On July 30, 2008, Congress enacted the Mortgage Disclosure Improvement Act of 2008 (MDIA).[66] MDIA, in part, amended the timing requirements for the early TILA disclosures, requiring that these TILA disclosures be provided within three business days after an application for a dwelling-secured closed-end mortgage loan also subject to RESPA is received and before

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[66] MDIA is contained in sections 2501 through 2503 of the Housing and Economic Recovery Act of 2008, Pub. L. 110-289, enacted on July 30, 2008. MDIA was later amended by the Emergency Economic Stabilization Act of 2008, Pub. L. 110-343, enacted on October 3, 2008.

the consumer has paid any fee (other than a fee for obtaining the consumer's credit history).[67] Creditors also must mail or deliver these early TILA disclosures at least seven business days before consummation and provide corrected disclosures if the disclosed APR changes in excess of a specified tolerance. The consumer must receive the corrected disclosures no later than three business days before consummation. The Board implemented these MDIA requirements in final rules published May 19, 2009, which became effective July 30, 2009, as required by the statute. 74 FR 23289 (May 19, 2009) (MDIA Final Rule).

MDIA also requires disclosure of payment examples if the loan's interest rate or payments can change, along with a statement that there is no guarantee the consumer will be able to refinance the transaction in the future. Under the statute, these provisions of MDIA became effective on January 30, 2011. The Board worked to implement these provisions of MDIA at the same time that it was completing work on a several 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

[67] MDIA codified some requirements previously adopted by the Board in a July 2008 final rule. 73 FR 44522 (July 30, 2008) (HOEPA Final Rule). To ease discussion, the description of MDIA's disclosure requirements includes the requirements of the 2008 HOEPA Final Rule.

interviews.[68] In addition, the 2009 Closed-End Proposal proposed an extensive revision to the definition of "finance charge" that would replace the "some fees in, some fees out" approach for determining the finance charge with a simpler, more inclusive "all-in" approach. The proposed definition of "finance charge" would include a fee or charge if it is (1) "payable directly or indirectly by the consumer" to whom credit is extended, and (2) "imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit." The finance charge would continue to exclude fees or charges paid in comparable cash transactions.[69]

On September 24, 2010, the Board published an interim final rule to implement MDIA's payment example and refinance statement requirements. 75 FR 58470 (Sept. 24, 2010) (MDIA Interim Rule). The Board's MDIA Interim Rule effectively adopted those aspects of the 2009 Closed-End Proposal that implemented these MDIA requirements, without adopting that proposal's other provisions, which were not subject to the same January 30, 2011 statutory effective date. The Board later issued another interim final rule to make certain clarifying changes to the provisions of the MDIA Interim Rule. 75 FR 81836 (Dec. 29, 2010).

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

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

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

The Board also began, on September 24, 2010, issuing proposals implementing the Dodd-Frank Act, which had been signed on July 21, 2010. The Board issued a proposed rule implementing section 1461 of the Dodd-Frank Act, which, in part, adjusts the rate threshold for determining whether escrow accounts are required for "jumbo loans," whose principal amounts exceed the maximum eligible for purchase by Freddie Mac.[70] 75 FR 58505 (Sept. 24, 2010). On March 2, 2011, the Board proposed amendments to Regulation Z implementing other requirements of sections 1461 and 1462 of the Dodd-Frank Act, which added new substantive and disclosure requirements regarding escrow accounts to TILA. 76 FR 11598 (March 2, 2011) (2011 Escrows Proposal). Sections 1461 and 1462 of the Dodd-Frank Act create new TILA section 129D, which substantially codifies requirements that the Board had previously adopted in Regulation Z regarding escrow requirements for higher-priced mortgage loans (including the revised rate threshold for "jumbo loans" described above), but also adds disclosure requirements, and lengthens the period for which escrow accounts are required.

On May 11, 2011, the Board proposed amendments to Regulation Z to implement section 1411 of the Dodd-Frank Act, which amends TILA to prohibit creditors from making mortgage loans without regard to the consumer's repayment ability. 76 FR 27390 (May 11, 2011) (2011 ATR Proposal). Section 1411 of the Dodd-Frank Act adds section 129C to TILA, codified at 15 U.S.C. 1639c, which prohibits a creditor from making a mortgage loan unless the creditor makes a reasonable and good faith determination, based on verified and documented information, that the consumer will have a reasonable ability to repay the loan, including any mortgage-related obligations (such as property taxes).

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

Effective July 21, 2011, the Dodd-Frank Act transferred rulemaking authority for TILA to the Bureau.[71] *See* sections 1061 and 1100A of the Dodd-Frank Act. Along with this authority, the Bureau assumed responsibility for the proposed rules discussed above. Pursuant to the Dodd-Frank Act and TILA, as amended, the Bureau published for public comment an interim final rule establishing a new Regulation Z, 12 CFR part 1026, implementing TILA (except with respect to persons excluded from the Bureau's rulemaking authority by section 1029 of the Dodd-Frank Act). 76 FR 79768 (Dec. 22, 2011). This rule did not impose any new substantive obligations but did make certain technical, conforming, and stylistic changes to reflect the transfer of authority and certain other changes made by the Dodd-Frank Act. The Bureau's Regulation Z took effect on December 30, 2011.

D. The History of Integration Efforts

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

Previous efforts to develop a combined TILA and RESPA disclosure form were fueled by the amount, complexity, and overlap of information in the disclosures. On September 30, 1996, Congress enacted the Economic Growth and Regulatory Paperwork Reduction Act of 1996,[72] which required the Board and HUD to "simplify and improve the disclosures applicable to the transactions under [TILA and RESPA], including the timing of the disclosures; and to provide a single format for such disclosures which will satisfy the requirements of each such Act with

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

[72] Pub. L. 104-208, 110 Stat. 3009 (1996).

respect to such transactions."[73] If the agencies found that legislative action might be necessary or appropriate to simplify and unify the disclosures, they were to submit a report to Congress containing recommendations for such action. In the same legislation, Congress added exemption authority in TILA section 105(f) for classes of transactions for which, in the determination of the Board (now the Bureau), coverage under all or part of TILA does not provide a meaningful benefit to consumers in the form of useful information or protection.[74]

The Board and HUD did not propose an integrated disclosure pursuant to this legislation. Instead, in July 1998, the Board and HUD issued a "Joint Report to the Congress Concerning Reform to the Truth in Lending Act and the Real Estate Settlement Procedures Act" (Board-HUD Joint Report).[75] The Board-HUD Joint Report concluded that "meaningful change could come only through legislation" and provided Congress with the Board's and HUD's recommendations for revising TILA and RESPA.

The agencies recommended a number of amendments to TILA and RESPA in the report, such as amendment of TILA's definition of "finance charge" to eliminate the "some fees in, some fees out" approach and instead include "all costs the consumer is required to pay in order to close the loan, with limited exceptions"; the amendment of RESPA to require either the guaranteeing of closing costs on the GFE or estimates that are subject to an accuracy standard; and provision of the final TILA disclosure and settlement statement three days before closing, so that consumers would be able to study the disclosures in an unpressured environment.

The Board-HUD Joint Report also recommended several additional changes to the TILA disclosures. In particular, the report recommended significant revisions to the "Fed Box," which

[73] *Id.*, section 2101.
[74] *Id.*, section 2102(b).
[75] Bd. of Governors of the Fed. Reserve Sys. And U.S. Dep't of Hous. and Urban Dev., *Joint Report to the Congress Concerning Reform to the Truth in Lending Act and the Real Estate Settlement Procedures Act* (1998), available at http://www.federalreserve.gov/boarddocs/rptcongress/tila.pdf.

is the tabular disclosure provided to consumers in the early and final TILA disclosures under Regulation Z containing the APR, the finance charge (which is intended to be the cost of credit expressed as a dollar amount), the amount financed (which is intended to reflect the loan proceeds available to the consumer), and the total of payments (which is the dollar amount of the transaction over the loan term, including principal and finance charges).[76] The report recommended, among other things, eliminating the amount financed from the disclosure for mortgage loans because it probably was not useful to consumers in understanding mortgage loans. The report also recommended adding disclosure of the total closing costs in the Fed Box, citing focus groups conducted by the Board in which participants stated that disclosure of the amount needed to close the loan would be useful.

The Board-HUD Joint Report did not result in legislative action. Eleven years later, and four months before the revised RESPA disclosures under HUD's 2008 RESPA Final Rule were to become mandatory, the Board published the 2009 Closed-End Proposal, which proposed significant revisions to the TILA disclosures and stated that the Board would work with HUD towards integrating the two disclosure regimes. The proposal stated that "the Board anticipates working with [HUD] to ensure that TILA and [RESPA] disclosures are compatible and complementary, including potentially developing a single disclosure form that creditors could use to combine the initial disclosures required under TILA and RESPA."[77] The proposal stated that consumer testing would be used to ensure consumers could understand and use the combined disclosures. However, only ten months later in July 2010, the Dodd-Frank Act was enacted by Congress, which transferred rulemaking authority under both TILA and RESPA to the Bureau and mandated that the Bureau establish a single disclosure scheme under TILA and

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[76] *See, e.g.*, Regulation Z, 12 CFR part 1026 app. H-2 Loan Model Form.
[77] 74 FR 43232, 43233.

RESPA. Now, nearly 16 years after Congress first directed the Board and HUD to integrate the disclosures under TILA and RESPA, the Bureau publishes this proposed rule.

E. The Dodd-Frank Act

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

The amendments to RESPA and TILA mandating a "single, integrated disclosure" are among numerous conforming amendments to existing Federal laws found in subtitle H of the Consumer Financial Protection Act of 2010.[78] Subtitle C of the Consumer Financial Protection

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

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

F. Other Rulemakings

In addition to this proposal, the Bureau currently is engaged in six other rulemakings relating to mortgage credit to implement requirements of the Dodd-Frank Act:

- *HOEPA*: On the same day that this proposal is released by the Bureau, the Bureau is releasing a proposal to implement Dodd-Frank Act requirements expanding protections for "high-cost" mortgage loans under HOEPA, pursuant to TILA sections 103(bb) and 129, as amended by Dodd-Frank Act sections 1431 through 1433 (2012 HOEPA Proposal). 15 U.S.C. 1602(bb) and 1639.[79]
- *Servicing*: The Bureau is in the process of developing a proposal to implement Dodd-Frank Act requirements regarding force-placed insurance, error resolution, and payment crediting, as well as forms for mortgage loan periodic statements and "hybrid" adjustable-rate mortgage

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.

[79] Available at http://www.consumerfinance.gov/notice-and-comment/.

reset disclosures, pursuant to sections 6 of RESPA and 128, 128A, 129F, and 129G of TILA, as amended or established by Dodd-Frank Act sections 1418, 1420, 1463, and 1464. The Bureau has publicly stated that in connection with the servicing rulemaking the Bureau is considering proposing rules on reasonable information management, early intervention for troubled and delinquent borrowers, and continuity of contact, pursuant to the Bureau's authority to carry out the consumer protection purposes of RESPA in section 6 of RESPA, as amended by Dodd-Frank Act section 1463. 12 U.S.C. 2605; 15 U.S.C. 1638, 1638a, 1639f, and 1639g.

- *Loan Originator Compensation*: The Bureau is in the process of developing a proposal to implement provisions of the Dodd-Frank Act requiring certain creditors and mortgage loan originators to meet duty of care qualifications and prohibiting mortgage loan originators, creditors, and the affiliates of both from receiving compensation in various forms (including based on the terms of the transaction) and from sources other than the consumer, with specified exceptions, pursuant to TILA section 129B as established by Dodd-Frank Act sections 1402 and 1403. 15 U.S.C. 1639b.
- *Appraisals*: The Bureau, jointly with Federal prudential regulators and other Federal agencies, is in the process of developing a proposal to implement Dodd-Frank Act requirements concerning appraisals for higher-risk mortgages, appraisal management companies, and automated valuation models, pursuant to TILA section 129H as established by Dodd-Frank Act section 1471, 15 U.S.C. 1639h, and sections 1124 and 1125 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) as established by Dodd-Frank Act sections 1473(f), 12 U.S.C. 3353, and 1473(q), 12 U.S.C. 3354, respectively. In addition, the Bureau is developing rules to implement section 701(e)

of the Equal Credit Opportunity Act (ECOA), as amended by Dodd-Frank Act section 1474, to require that creditors provide applicants with a free copy of written appraisals and valuations developed in connection with applications for loans secured by a first lien on a dwelling (collectively, Appraisals Rulemaking). 15 U.S.C. 1691(e).

- *Ability to Repay*: The Bureau is in the process of finalizing a proposal issued by the Board to implement provisions of the Dodd-Frank Act requiring creditors to determine that a consumer can repay a mortgage loan and establishing standards for compliance, such as by making a "qualified mortgage," pursuant to TILA section 129C as established by Dodd-Frank Act sections 1411 and 1412 (Ability to Repay Rulemaking). 15 U.S.C. 1639c.
- *Escrows*: The Bureau is in the process of finalizing a proposal issued by the Board to implement provisions of the Dodd-Frank Act requiring certain escrow account disclosures and exempting from the higher-priced mortgage loan escrow requirement loans made by certain small creditors, among other provisions, pursuant to TILA section 129D as established by Dodd-Frank Act sections 1461 and 1462 (Escrows Rulemaking). 15 U.S.C. 1639d.

With the exception of the requirements being implemented in this rulemaking, the Dodd-Frank Act requirements referenced above generally will take effect on January 21, 2013 unless final rules implementing those requirements are issued on or before that date and provide for a different effective date. To provide an orderly, coordinated, and efficient comment process, the Bureau is generally setting the deadlines for comments on this and other proposed mortgage rules based on the date the proposal is issued, instead of the date this notice is published in the Federal Register. Specifically, as discussed below, it may be appropriate to finalize proposed §§ 1026.1(c) and 1026.4 in conjunction with the final rules adopted on or before January 21,

2013. Therefore, the Bureau is providing 60 days for comment on those proposals (until September 7, 2012), which will ensure that the Bureau receives comments with sufficient time remaining to issue final rules by that date. For the other portions of this proposed rule (including the Paperwork Reduction Analysis in part IX below), the Bureau is providing 120 days (until November 6, 2012). Because the precise date this notice will be published cannot be predicted in advance, setting the deadlines based on the date of issuance will allow interested parties that intend to comment on multiple proposals to plan accordingly.

The Bureau regards the foregoing rulemakings as components of a larger undertaking; many of them intersect with one or more of the others. Accordingly, the Bureau is coordinating carefully the development of the proposals and final rules identified above. Each rulemaking will adopt new regulatory provisions to implement the various Dodd-Frank Act mandates described above. In addition, each of them may include other provisions the Bureau considers necessary or appropriate to ensure that the overall undertaking is accomplished efficiently and that it ultimately yields a regulatory scheme for mortgage credit that achieves the statutory purposes set forth by Congress, while avoiding unnecessary burdens on industry.

Thus, many of the rulemakings listed above involve issues that extend across two or more rulemakings. In this context, each rulemaking may raise concerns that might appear unaddressed if that rulemaking were viewed in isolation. For efficiency's sake, however, the Bureau is publishing and soliciting comment on proposed answers to certain issues raised by two or more of its mortgage rulemakings in whichever rulemaking is most appropriate, in the Bureau's judgment, for addressing each specific issue. Accordingly, the Bureau urges the public to review this and the other mortgage proposals identified above, including those previously published by the Board, together. Such a review will ensure a more complete understanding of the Bureau's overall approach and will foster more comprehensive and informed public comment on the Bureau's several proposals, including provisions that may have some relation to more than one rulemaking but are being proposed for comment in only one of them.

For example, as discussed in detail in the section-by-section analysis under proposed § 1026.4 below, this proposal includes a simpler, more inclusive definition of the finance charge, similar to what the Board proposed in its 2009 Closed-End Proposal. *See* 74 FR 43232, 43241-45 (Aug. 26, 2009). The Board recognized at that time that the more inclusive finance charge would cause more loans to be considered higher-priced mortgage loans under § 1026.35 and would expand the coverage of HOEPA and similar State laws. *Id.* at 43244-45. For these reasons, in its 2010 Mortgage Proposal, the Board proposed to retain the existing treatment of third-party charges in the points and fees definition, notwithstanding the proposed expansion of the finance charge for disclosure purposes. 75 FR 58539, 58637-38 (Sept. 24, 2010). Similarly, the Board's 2010 Mortgage Proposal introduced a new metric for determining coverage of the higher-priced mortgage loan protections to be used in place of a transaction's APR, known as the "transaction coverage rate" (TCR), which does not reflect the additional charges that are reflected in the disclosed APR under the more inclusive finance charge definition. *Id.* at 58660-62.

The Bureau recognizes, as did the Board, that the proposed more inclusive finance charge could affect the coverage of the higher-priced mortgage loan and HOEPA protections. The Bureau also is aware that, consequently, a more inclusive finance charge has implications for the HOEPA, Appraisals, Ability to Repay, and Escrows rulemakings identified above. Those impacts are analyzed below, but the Bureau believes that it is also helpful to analyze potential mitigation measures on a rule-by-rule basis. Accordingly, the Bureau expects to seek comment in the HOEPA and Appraisals rulemakings on whether and how to account for the implications of the more inclusive finance charge on those specific regulatory regimes, for instance by adopting the TCR as previously proposed by the Board.[80]

III. Outreach and Consumer Testing

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

[80] The Board already sought comment on this issue in its proposals to implement the ability to repay and escrow requirements.

A. Early Stakeholder Outreach & Prototype Form Design

In September 2010, the Bureau began meeting with consumer advocates, other banking agencies, community banks, credit unions, settlement agents, and other industry representatives. This outreach helped the Bureau better understand the issues that consumers and industry face when they use the current TILA and RESPA disclosures.

At the same time, the Bureau began to research how consumers interact with and understand information. Given the complexities and variability of mortgage loan transactions and their underlying real estate transactions, the Bureau understood that the integrated disclosures would have to convey a large amount of complex and technical information to consumers in a manner that they could use and understand. Considering that, in January 2011, the Bureau contracted with a communication, design, consumer testing, and research firm, Kleimann Communication Group, Inc. (Kleimann), which specializes in consumer financial disclosures. Kleimann has been hired by other Federal agencies to perform such design and qualitative testing work in connection with other financial disclosure forms. For example, the Federal Trade Commission and the Federal banking agencies contracted with Kleimann to design and conduct consumer testing for revised model privacy disclosures.[81] Also, HUD contracted with Kleimann to assist in the design and consumer testing for its revised good faith estimate and settlement statement forms.[82]

The Bureau and Kleimann reviewed relevant research and the work of other Federal financial services regulatory agencies to inform the Bureau's design of the prototype integrated disclosures. One of the findings of this research was that there is a significant risk to consumers of experiencing "information overload" when the volume or complexity of information detracts

[81] 72 FR 14940, 14944 (Mar. 29, 2007); 74 FR 62890, 62893 (Dec. 1, 2009).
[82] 73 FR 14030, 14043; 73 FR 68204, 68265.

from the consumer decision-making processes. "Information overload" has often been cited as a problem with financial disclosures.[83] Researchers suggest that there should be a balance between the types and amount of information in the disclosures, because too much information has the potential to detract from consumers' decision-making processes.[84] In its 2009 Closed-End Proposal, the Board cited a reduction in "information overload" as one of the potential benefits of its plan to harmonize the TILA and RESPA disclosures in collaboration with HUD.[85] The Board's consumer testing in connection with its 2009 Closed-End Proposal found that when participants were asked what was most difficult about their mortgage experience, the most frequent answer was the amount of paperwork.[86] HUD also stated that one of its guiding principles for HUD's 2008 RESPA Proposal was that "the [mortgage loan settlement process] can be improved with simplification of disclosures and better borrower information," the complexity of which caused many problems with the process.[87]

The potential for "information overload" was also cited by Congress as one of the reasons it amended the TILA disclosures in the Truth-in-Lending Simplification and Reform Act of

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[83] *See e.g.*, Debra Pogrund Stark and Jessica M. Choplin, *A Cognitive and Social Psychological Analysis of Disclosure Laws and Call for Mortgage Counseling to Prevent Predatory Lending*, 16 Psych. Pub. Pol. and L. 85, 96 (2010); Paula J. Dalley, *The Use and Misuse of Disclosure as a Regulatory System*, 34 Fla. St. U.L. Rev. 1089, 1115 (2007); Patricia A. McCoy, *The Middle-Class Crunch: Rethinking Disclosure in a World of Risk-Based Pricing*, 44 Harv. J. on Legis. 123, 133 (2007); Lauren E. Willis, *Decisionmaking and The Limits of Disclosure: The Problem of Predatory Lending: Price*, 65 Md. L. Rev. 707, 766 (2006); Troy A. Paredes, *After the Sarbanes-Oxley Act: The Future Disclosure System: Blinded by the Light: Information Overload and its Consequences for Securities Regulation*, 81 Wash. U. L. Q. 417 (2003); William N. Eskridge, Jr., *One Hundred Years of Ineptitude: The Need for Mortgage Rules Consonant with the Economic and Psychological Dynamics of the Home Sale and Loan Transaction*, 70 Va. L. Rev. 1083, 1133 (1984).
[84] John Kozup & Jeanne M. Hogarth, *Financial Literacy, Public Policy, and Consumers' Self-Protection—More Questions, Fewer Answers*, 42 Journal of Consumer Affairs 2, 127 (2008).
[85] 74 FR 43232, 43234.
[86] *See* Macro 2009 Closed-End Report at 19. For additional discussion regarding information overload, see the section-by-section analysis to proposed § 1026.37(l).
[87] 73 FR 14030, 14031.

1980.[88] According to the Senate Committee on Banking, Housing and Urban Affairs, this legislation arose in part because:

> During its hearings the Consumer Affairs Subcommittee heard testimony from a leading psychologist who has studied the problem of 'informational overload.' The Subcommittee learned that judging from consumer tests in other areas, the typical disclosure statement utilized today by creditors is not an effective communication device. Most disclosure statements are lengthy, written in legalistic fine print, and have essential Truth in Lending disclosures scattered among various contractual terms. The result is a piece of paper which appears to be 'just another legal document' instead of the simple, concise disclosure form Congress intended.[89]

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

The Bureau began development of the integrated disclosures with certain design objectives. Considering that the quantity of information both on the disclosures and in other paperwork throughout the mortgage loan and real estate transaction may increase the risk of information overload, the Bureau began development of the integrated disclosures with the objective of creating a graphic design that used as few words as possible when presenting the key loan and cost information. The Bureau's purpose for such a design was to make the information readily visible so that consumers could quickly and easily find the information they were looking for, without being confronted with large amounts of text. Accordingly, the Bureau decided to

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[88] Pub. L. 96-221, 94 Stat 132 (1980).

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

limit the content of the disclosures to loan terms, cost information, and certain textual disclosures and to exclude educational material. The Bureau understood that consumers would receive educational materials under applicable law, such as the Special Information Booklet required by section 5 of RESPA, or through other means. In addition, the Bureau understood that it would provide additional educational information and tools on its website and place a website link on the integrated disclosures directing consumers to that site, which would obviate the need to place educational material directly on the disclosures.

The Bureau also believed the design should highlight on the first page the most important loan information that consumers readily understand and use to evaluate and compare loans, placing more detailed and technical information later in the disclosure. In addition, the Bureau believed the design should use plain language and limit the use of technical, statutory, or complex financial terms wherever possible.

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

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

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

In May 2011, the Bureau selected two initial prototype designs of the Loan Estimate, which were used in qualitative testing interviews in Baltimore, Maryland. In these interviews, consumers were asked to work through the prototype forms while conveying their impressions, and also asked a series of questions designed to assess whether the forms presented information in a format that enabled them to understand and compare the mortgage loans presented to them. These questions ranged from the highly specific (*e.g.*, asking whether the consumer could identify the loan payment in year 10 of a 30-year, adjustable-rate loan) to the highly general (*e.g.*, asking consumers to choose the loan that best met their needs).[90] Industry participants were asked to use the prototype forms to explain mortgage loans as they would to a consumer and to identify implementation issues and areas for improvement.

At the same time, to supplement its qualitative testing, the Bureau launched an initiative, which it titled "Know Before You Owe," to obtain public feedback on the prototype disclosure forms.[91] The Bureau believed this would provide an opportunity to obtain a large amount of feedback from a broad base of consumers and industry respondents around the country. This

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

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

initiative consisted of either publishing and obtaining feedback on the prototype designs through an interactive tool on the Bureau's website or posting the prototypes to the Bureau's blog on its website and providing an opportunity for the public to email feedback directly to the Bureau. Individual consumers, loan officers, mortgage brokers, settlement agents, and others provided feedback based on their own experiences with the mortgage loan process by commenting on specific sections of the form, prioritizing information presented on the form, and identifying additional information that should be included.[92]

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

After each round of testing, Kleimann analyzed and reported to the Bureau on the results of the testing. Based on these results and supplemental feedback received through the KBYO process, the Bureau revised the prototype disclosure forms for the next round of testing. This iterative process helped the Bureau develop forms that enable consumers to understand and compare mortgage loans and that assist industry in complying with the law. For a detailed discussion of this testing, see the report prepared by Kleimann, *Know Before You Owe:*

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

Evolution of the Integrated TILA-RESPA Disclosures (Kleimann Testing Report), which the Bureau is publishing on its website in conjunction with this proposed rule.[93]

After completion of the qualitative testing that focused solely on the Loan Estimate, the Bureau and Kleimann began work on the prototype designs for the Closing Disclosure (*i.e.*, the disclosure provided in connection the closing of the mortgage loan that integrates the RESPA settlement statement and the final TILA disclosure). From November 2011 through March 2012, the Bureau and Kleimann conducted five rounds of qualitative testing of different iterations of the Closing Disclosure with consumer and industry participants. This testing was conducted in five different cities across the country: Des Moines, Iowa; Birmingham, Alabama; Philadelphia, Pennsylvania; Austin, Texas; and Baltimore, Maryland.

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

Overall, the Bureau performed qualitative testing with 92 consumer participants and 22 industry participants, for a total of 114 participants. In addition, through the Bureau's KBYO

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

initiative, the Bureau received over 150,000 visits to the KBYO website and over 27,000 public comments and emails about the prototype disclosures.

C. Ongoing Stakeholder Outreach

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

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

D. Small Business Review Panel

In February 2012, the Bureau convened a Small Business Review Panel with the Chief Counsel for Advocacy of the Small Business Administration (SBA) and the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB).[94] As part of this process, the Bureau prepared an outline of the proposals then under consideration and the alternatives considered (Small Business Review Panel Outline), which it posted on its website for review by the general public as well as the small entities participating in the panel process.[95] The Small Business Review Panel gathered information from representatives of small lenders, mortgage brokers, settlement agents, and not-for-profit organizations and made findings and recommendations regarding the potential compliance costs and other impacts of the proposed rule on those entities. These findings and recommendations are set forth in the Small Business Review Panel Report, which will be made part of the administrative record in this rulemaking.[96] The Bureau has carefully considered these findings and recommendations in preparing this proposal and has addressed certain specific examples below.

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

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

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

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. At the Bureau's request, many of the participants provided feedback, which the Bureau has used in preparing this proposal.

E. Next Steps

The public may submit comments on the proposed rule for 120 days after issuance (with the exception of the proposed amendments to §§ 1026.1(c) and 1026.4 that have a shorter 60-day comment period as discussed below). These comments will be available to the public, as will summaries of written or oral presentations in accordance with the Bureau's ex parte policy.[97] During the comment period and after it closes, the Bureau will carefully review and analyze the comments.

Once the Bureau has completed its review and analysis of the comments, it will consult with other Federal agencies and determine whether changes should be made to the proposed forms or rules. If changes are contemplated to the forms, the Bureau may conduct additional qualitative testing to evaluate the effectiveness of those changes. Whether or not changes are made, the Bureau may conduct large-scale quantitative testing of the forms to confirm that the forms aid consumers' understanding of mortgage transactions, if appropriate. On March 28, 2012, the Bureau published a notice for comment under the Paperwork Reduction Act in connection with this quantitative testing, specifically inviting comment on whether the information collected will have practical utility, the accuracy of the Bureau's burden hour

[97] CFPB Bulletin 11-3 (August 16, 2011), available at http://files.consumerfinance.gov/f/2011/08/Bulletin_20110819_ExPartePresentationsRulemakingProceedings.pdf.

estimates, and ways to enhance the quality of the information collected and minimize the burden on respondents.[98] The Bureau received no comments to this notice.

During the Small Business Review Panel, several small business representatives requested that the Bureau explore the feasibility of conducting testing of the disclosure forms on actual loans before issuing a final rule. *See* Small Business Review Panel Report at 28. Based on this feedback and consistent with the Small Business Review Panel's recommendation, the Bureau is considering testing the forms on actual loans after reviewing comments received in connection with this proposal, and making any appropriate revisions to the proposed forms.

After the Bureau has completed the appropriate steps, it will prepare and issue a final rule. However, as discussed below in part V.A, the Bureau understands from the Small Business Review Panel process and from other outreach that lenders, settlement agents, and others will need a period of time to update their systems and processes to comply with the final rule and to train their employees. Accordingly, the Bureau is asking for comment on a time period that strikes the appropriate balance between providing consumers with improved disclosures as soon as possible and providing industry with the necessary time to come into compliance.

In addition, during the Small Business Review Panel, several small business representatives requested that the Bureau provide detailed guidance on how to complete the integrated forms, including, as appropriate, samples of completed forms for a variety of loan transactions. *See* Small Business Review Panel Report at 28. Similar feedback was also submitted by several industry trade associations in response to the Small Business Review Panel Outline. The Bureau also understands from its other outreach efforts that industry has experienced difficulties in complying with HUD's 2008 RESPA Final Rule, in part because of a lack of detailed guidance in HUD's 2008 RESPA Final Rule, and the many informal

[98] 77 FR 18793 (Mar. 28, 2012).

interpretations of the rule issued by HUD in the HUD RESPA FAQs and HUD RESPA Roundups. Based on this feedback and consistent with the Small Business Review Panel's recommendation, the proposed rule contains detailed provisions regarding the completion of the integrated disclosures, multiple examples of completed disclosures forms in appendix H to Regulation Z, and additional guidance and clarification in the Bureau's official commentary to Regulation Z. Such detailed guidance has, of course, added significant length to the proposed rule. The Bureau solicits comment on whether the level of detail in the proposed regulations and guidance (including the number of examples illustrating what is and is not permitted) will make compliance more, rather than less, burdensome and whether the Bureau should adopt a less prescriptive approach in the final rule.

IV. Legal Authority

The Bureau is issuing this proposed rule pursuant to its authority under TILA, RESPA, and the Dodd-Frank Act. On July 21, 2011, section 1061 of the Dodd-Frank Act transferred to the Bureau all of the HUD Secretary's consumer protection functions relating to RESPA.[99] Accordingly, effective July 21, 2011, the authority of HUD to issue regulations pursuant to RESPA transferred to the Bureau. Section 1061 of the Dodd-Frank Act also transferred to the Bureau the "consumer financial protection functions" previously vested in certain other Federal agencies, including the Board. The term "consumer financial protection function" is defined to include "all authority to prescribe rules or issue orders or guidelines pursuant to any Federal consumer financial law, including performing appropriate functions to promulgate and review such rules, orders, and guidelines."[100] TILA, RESPA, and title X of the Dodd-Frank Act are

[99] Pub. L. 111-203, 124 Stat. 1376, section 1061(b)(7); 12 U.S.C. 5581(b)(7).
[100] 12 U.S.C. 5581(a)(1).

Federal consumer financial laws.[101] Accordingly, the Bureau has authority to issue regulations pursuant to TILA and RESPA, including the disclosure requirements added to those statutes by title XIV of the Dodd-Frank Act, as well as title X of the Dodd-Frank Act.

A. The Integrated Disclosure Mandate

Section 1032(f) of the Dodd-Frank Act requires that, "[n]ot later than one year after the designated transfer date [of July 21, 2011], the Bureau shall propose for public comment rules and model disclosures that combine the disclosures required under [TILA] and sections 4 and 5 of [RESPA], into a single, integrated disclosure for mortgage loan transactions covered by those laws, unless the Bureau determines that any proposal issued by the [Board] and [HUD] carries out the same purpose." 12 U.S.C. 5532(f). In addition, the Dodd-Frank Act amended section 105(b) of TILA and section 4(a) of RESPA to require the integration of the TILA disclosures and the disclosures required by sections 4 and 5 of RESPA.[102] The purpose of the integrated disclosure is to facilitate compliance with the disclosure requirements of TILA and RESPA, and to help the borrower understand the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures. Dodd-Frank Act sections 1098, 1100A.

Although Congress imposed this integrated disclosure requirement, it did not fully harmonize the underlying statutes. In particular, TILA and RESPA establish different timing requirements for disclosing mortgage credit terms and costs to consumers and require that those

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[101] Dodd-Frank Act section 1002(14), 12 U.S.C. 5481(14) (defining "Federal consumer financial law" to include the "enumerated consumer laws" and the provisions of title X of the Dodd-Frank Act); Dodd-Frank Act section 1002(12), 12 U.S.C. 5481(12) (defining "enumerated consumer laws" to include TILA and RESPA).

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

disclosures be provided by different parties. TILA generally requires that, within three business days of receiving the consumer's application and at least seven business days before consummation of certain mortgage transactions, creditors must provide consumers a good faith estimate of the costs of credit.[103] TILA section 128(b)(2)(A); 15 U.S.C. 1638(b)(2)(A). If the annual percentage rate that was initially disclosed becomes inaccurate, TILA requires creditors to redisclose the information at least three business days before consummation. TILA section 128(b)(2)(D); 15 U.S.C. 1638(b)(2)(D). These disclosures must be provided in final form at consummation. TILA section 128(b)(2)(B)(ii); 15 U.S.C. 1638(b)(2)(B)(ii). RESPA also requires that the creditor or broker provide consumers with a good faith estimate of settlement charges no later than three business days after receiving the consumer's application. However, unlike TILA, RESPA requires that, at or before settlement, "the person conducting the settlement" (which may or may not be the creditor) provide the consumer with a statement that records all charges imposed upon the consumer in connection with the settlement. RESPA sections 4(b), 5(c); 12 U.S.C. 2603(b), 2604(c).

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

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

B. Other Rulemaking and Exception Authorities

The proposed rule also relies on the rulemaking and exception authorities specifically granted to the Bureau by TILA, RESPA, and the Dodd-Frank Act, including the authorities discussed below.[104]

Truth in Lending Act

TILA section 105(a). As amended by the Dodd-Frank Act, TILA section 105(a), 15 U.S.C. 1604(a), directs the Bureau to prescribe regulations to carry out the purposes of TILA, and provides that such regulations may contain additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions, that the Bureau judges are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance. A purpose of TILA is "to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit." TILA section 102(a); 15 U.S.C. 1601(a). This stated purpose is tied to Congress' finding that "economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit[.]" TILA section 102(a). Thus, strengthened competition among financial institutions is a goal of TILA, achieved through the effectuation of TILA's purposes.

Historically, TILA section 105(a) has served as a broad source of authority for rules that promote the informed use of credit through required disclosures and substantive regulation of

[104] As discussed in part II above, prior to the Dodd-Frank Act, rulemaking authority over TILA was vested in the Board and rulemaking authority over RESPA was vested in HUD. The Dodd-Frank Act transferred rulemaking authority for TILA and RESPA to the Bureau, effective July 21, 2011. *See* Dodd-Frank Act sections 1061, 1098, and 1100A. The Bureau implements the proposed rule pursuant to its authorities in section 1061 of the Dodd-Frank Act.

certain practices. However, Dodd-Frank Act section 1100A clarified the Bureau's section 105(a) authority by amending that section to provide express authority to prescribe regulations that contain "additional requirements" that the Bureau finds are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance. This amendment clarified the authority to exercise TILA section 105(a) to prescribe requirements beyond those specifically listed in the statute that meet the standards outlined in section 105(a). The Dodd-Frank Act also clarified the Bureau's rulemaking authority over certain high-cost mortgages pursuant to section 105(a). As amended by the Dodd-Frank Act, TILA section 105(a) authority to make adjustments and exceptions to the requirements of TILA applies to all transactions subject to TILA, except with respect to the provisions of TILA section 129[105] that apply to the high-cost mortgages referred to in TILA section 103(bb), 15 U.S.C. 1602(bb). For the reasons discussed in this notice, the Bureau is proposing regulations to carry out TILA's purposes and is proposing such additional requirements, adjustments, and exceptions as, in the Bureau's judgment, are necessary and proper to carry out the purposes of TILA, prevent circumvention or evasion thereof, or to facilitate compliance. In developing these aspects of the proposal pursuant to its authority under TILA section 105(a), the Bureau has considered the purposes of TILA, including ensuring meaningful disclosures, facilitating consumers' ability to compare credit terms, and helping consumers avoid the uninformed use of credit, and the findings of TILA, including strengthening competition among financial institutions and promoting economic stabilization.

TILA section 105(f). Section 105(f) of TILA, 15 U.S.C. 1604(f), authorizes the Bureau to exempt from all or part of TILA any class of transactions if the Bureau determines that TILA

[105] 15 U.S.C. 1639. TILA section 129 contains requirements for certain high-cost mortgages, established by the Home Ownership and Equity Protection Act (HOEPA), which are commonly called HOEPA loans.

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

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

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

(c) The status of the borrower, including—

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

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

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

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

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

For the reasons discussed in this notice, the Bureau is proposing to exempt certain transactions from the requirements of TILA pursuant to its authority under TILA section 105(f). In developing this proposal under TILA section 105(f), the Bureau has considered the relevant factors and determined that the proposed exemptions may be appropriate.

TILA section 129B(e). Dodd-Frank Act section 1405(a) amended TILA to add new section 129B(e), 15 U.S.C. 1639B(e). That section authorizes the Bureau to prohibit or condition terms, acts, or practices relating to residential mortgage loans on a variety of bases, including when the Bureau finds the terms, acts, or practices are not in the interest of the borrower. In developing proposed rules under TILA section 129B(e), the Bureau has considered whether the proposed rules are in the interest of the borrower, as required by the statute. For the reasons discussed in this notice, the Bureau is proposing portions of this rule pursuant to its authority under TILA section 129B(e).

Real Estate Settlement Procedures Act

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

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

Dodd-Frank Act

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

Accordingly, this proposal is consistent with the purposes of Dodd-Frank Act section 1021(a) and with the objectives of Dodd-Frank Act section 1021(b), specifically including Dodd-Frank Act section 1021(b)(1) and (3).

Dodd-Frank Act section 1022(b). Section 1022(b)(1) of the Dodd-Frank Act authorizes the Bureau to prescribe rules "as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof[.]" 12 U.S.C. 5512(b)(1). Section 1022(b)(2) of the Dodd-Frank Act prescribes certain standards for rulemaking that the Bureau must follow in exercising its authority under section 1022(b)(1). 12 U.S.C. 5512(b)(2). As discussed above, TILA and RESPA are Federal consumer financial laws. Accordingly, the Bureau proposes to exercise its authority under Dodd-Frank Act section 1022(b) to prescribe rules under TILA and RESPA that carry out the purposes and prevent evasion of those laws. See part VII for a discussion of the Bureau's standards for rulemaking under Dodd-Frank Act section 1022(b)(2).

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

Dodd-Frank Act section 1032(c) provides that, in prescribing rules pursuant to section 1032, the Bureau "shall consider available evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services." 12 U.S.C. 5532(c). Accordingly, in developing proposed rules under Dodd-Frank Act section 1032(a) for this proposal, the Bureau has considered available studies, reports, and other evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services. *See* parts II and III, above. Moreover, the

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

In addition, Dodd-Frank Act section 1032(b)(1) provides that "any final rule prescribed by the Bureau under this [section 1032] requiring disclosures may include a model form that may be used at the option of the covered person for provision of the required disclosures." 12 U.S.C. 5532(b)(1). Any model form issued pursuant to that authority shall contain a clear and conspicuous disclosure that, at a minimum, uses plain language that is comprehensible to consumers, using a clear format and design, such as readable type font, and succinctly explains the information that must be communicated to the consumer. Dodd-Frank Act 1032(b)(2); 12 U.S.C. 5532(b)(2). As discussed in the section-by-section analysis for proposed §§ 1026.37(o) and 1026.38(t), the Bureau is proposing certain model disclosures for transactions subject to TILA, and standard forms for transactions subject to both TILA and RESPA. For the reasons discussed in this notice, the Bureau is proposing these model disclosures pursuant to its authority under Dodd-Frank Act section 1032(b).

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

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

V. Mandatory Compliance

A. Implementation Period

As discussed in part II.E above, the Bureau is proposing rules and disclosures that combine the pre-consummation disclosure requirements of TILA and sections 4 and 5 of RESPA, not later than July 21, 2012, consistent with the requirements of sections 1032(f), 1098, and 1100A of the Dodd-Frank Act. 12 U.S.C. 2603(a); 5532(f); 15 U.S.C. 1604(b). The Dodd-Frank Act does not impose a deadline for issuing final rules and disclosures in connection with this mandate to integrate disclosure requirements or provide a specific amount of time for entities subject to those rules to come into compliance.

As discussed in part II, above, the Dodd-Frank Act establishes two goals for the TILA-RESPA mortgage disclosure integration: to improve consumer understanding of mortgage loan transactions; and to facilitate industry compliance with TILA and RESPA. Dodd-Frank Act sections 1098 and 1100A. The Bureau must balance these statutory objectives in considering the length of the implementation period. The Bureau believes requiring industry to implement the requirements of the final rule as soon as practicable after its issuance will benefit consumers by expediting the use of the integrated disclosure forms, which will improve consumer understanding of mortgage loan transactions. At the same time, the Bureau recognizes that the creditors, mortgage brokers, settlement agents, and other entities affected by the proposed rule will incur one-time compliance costs, such as software upgrades to generate the integrated disclosure forms, training staff and related parties to use the new disclosure forms, updating compliance systems and processes, and obtaining legal guidance.[106] Consequently, the Bureau believes that a reasonable implementation period would help facilitate compliance and potentially reduce the one-time costs that may be incurred by the entities affected by the rule.

The Bureau is mindful that small entities[107] may face unique challenges in complying with the rule. During the SBREFA Small Business Review Panel process,[108] the Small Business Review Panel received feedback from small entity representatives requesting that the Bureau provide a substantial compliance period after issuance of the final rule. The small entity representatives reported that they anticipated significant one-time software upgrade and training costs, though their estimates varied greatly, and they generally stated that these costs would be

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[106] These one-time costs are discussed in the section 1022 analysis in part VII, below, with respect to covered persons as defined for purposes of the Dodd-Frank Act, and the initial regulatory flexibility analysis in part VIII, below, with respect to small entities as defined for purposes of the Regulatory Flexibility Act (RFA).

[107] The term "small entities" means those entities defined as small entities for purposes of the RFA, as discussed further in part VIII, below. The terms "large entities" or "larger entities" refer to all entities that are not small entities as defined for purposes of the RFA.

[108] *See* part VIII.A, below, for a discussion of the Bureau's Small Business Review Panel process.

less burdensome if the Bureau provided a substantial compliance period to upgrade systems and to train staff. The small entity representatives requested a variety of implementation periods, however.[109] As detailed in the Panel Report, the Panel recommended that the Bureau provide a compliance period that permits sufficient time for small entities to make necessary system upgrades and provide training, and that the Bureau solicit public comment on the amount of time needed for such upgrades and training.[110] Moreover, industry feedback generally in response to the Bureau's Small Business Review Panel process stated that an implementation period for the final rule should provide sufficient time for training, systems development, and the operational changes that the rule will necessitate.

In feedback provided during the SBREFA process and through other industry outreach, lenders, mortgage brokers, settlement agents, and forms vendors, as well as several trade associations representing lenders, brokers, and settlement agents, requested an implementation period of at least 12 months. Because the TILA-RESPA final rule will provide important benefits to consumers, the Bureau wishes to make the rule effective as soon as possible. However, the Bureau understands that the final rule will require lenders, mortgage brokers, and settlement agents to make extensive revisions to their software and to retrain their staff. In addition, some entities will be required to implement other Dodd-Frank Act provisions, which are subject to separate rulemaking deadlines under the statute and will have separate effective dates. Therefore, the Bureau is seeking comment on how much time industry needs to make these changes, and specifically requests details on the required updates and changes to systems and other measures that would be required to implement the rule and the amount of time needed to make those changes.

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[109] *Small Business Review Panel Report*, at 19. As noted in chapter 8.1 of the Panel Report, the small entity representatives generally asked for an implementation period ranging from 12 to 18 months.
[110] *See id.* at p. 27.

Furthermore, in light of the feedback provided by small entity representatives during the SBREFA process, as reflected in the Panel Report of the Small Business Review Panel, the Bureau solicits comment on whether small entities affected by the rule should have more time to comply with the final rule than larger entities. In soliciting comment on this issue, however, the Bureau notes its concern that a bifurcated implementation period could be detrimental to consumers. During any period where only larger entities must comply with the final rule, consumers potentially would receive different disclosures and be subject to different sets of consumer protections depending on their choice of creditor, mortgage broker, or settlement agent. In addition, larger entities that are subject to the final rule and that purchase loans from small entities may nevertheless insist that small entities comply with the final rules. *See, e.g.,* Small Business Review Panel Report at 30 (discussing recordkeeping requirements). Accordingly, based on the Small Business Review Panel recommendation, the Bureau solicits comment on whether any separate compliance period for larger entities should take into account the relationship between larger and smaller entities.

B. Delayed Effective Dates of Certain Disclosure Requirements Established by Title XIV of the Dodd-Frank Act

As discussed above, the Bureau is proposing rules and disclosures that combine the pre-consummation disclosure requirements of TILA and sections 4 and 5 of RESPA, not later than July 21, 2012, consistent with the requirements of section 1032(f) of the Dodd-Frank Act. 12 U.S.C. 5532(f). The Dodd-Frank Act does not impose a deadline for issuing final rules and disclosures.

In addition to this integrated disclosure requirement in title X, various provisions of title XIV of the Dodd-Frank Act amend TILA, RESPA, and other consumer financial laws to impose new pre-consummation disclosure requirements for mortgage transactions. These provisions generally require disclosure of certain information when a consumer applies for a mortgage loan or shortly before consummation of the loan, around the same time that consumers will receive the integrated TILA-RESPA disclosures required by section 1032(f) of the Dodd-Frank Act. If regulations that are required to implement the disclosure requirements in title XIV are not prescribed in final form within eighteen months after the designated transfer date (*i.e.*, by January 21, 2013), institutions must comply with the statutory requirements on that date. Dodd-Frank Act section 1400(c)(3); 15 U.S.C. 1601 note.

The Bureau believes that implementing a single, consolidated disclosure that satisfies section 1032(f) and certain of the disclosure requirements in title XIV of the Dodd-Frank Act will benefit consumers and facilitate compliance with TILA and RESPA. That is, the Bureau believes that both consumers and industry will benefit by incorporating many of the disclosure requirements in title XIV into this proposal (collectively, the "Affected Title XIV Disclosures"). Consumers will benefit from a consolidated disclosure that conveys loan terms and costs to consumers in a coordinated way. Lenders and settlement agents will benefit by integrating two sets of overlapping disclosures into a single form and by avoiding regulatory burden associated with revising systems and practices multiple times. However, given the broad scope and complexity of this rulemaking and the 120-day comment period provided by this proposal, a final rule will not be issued by January 21, 2013. Absent a final implementing rule, institutions would have to comply with the Affected Title XIV Disclosures on that date due to the statutory requirement that any section of title XIV for which regulations have not been issued by January 21, 2013 shall take effect on that date. This likely would result in widely varying approaches to compliance in the absence of regulatory guidance, creating confusion for consumers, and would impose a significant burden on industry. For example, this could result in a consumer who shops for a mortgage loan receiving different disclosures from different creditors. Such disclosures would not only be unhelpful to consumers, but likely would be confusing since the same disclosures would be provided in widely different ways. Moreover, implementing the title XIV disclosures separately from the integrated TILA-RESPA disclosure would increase compliance costs and burdens on industry. Nothing in the Dodd-Frank Act itself or its legislative history suggests that Congress contemplated how the separate requirements in titles X and XIV would work together.[111]

Accordingly, and for the further reasons set forth below, the Bureau proposes to implement the Affected Title XIV Disclosures by delaying those requirements by temporarily exempting entities from the requirement to comply on January 21, 2013, until a final rule implementing the integrated TILA-RESPA disclosures take effect, pursuant to the Bureau's authority under TILA section 105(a), RESPA section 19(a), Dodd-Frank Act section 1032(a) and, for residential mortgage loans, Dodd-Frank Act section 1405(b). 15 U.S.C. 1604(a); 12 U.S.C. 2617(a); 12 U.S.C. 5532(a); 15 U.S.C. 1601 note. Implementing the Affected Title XIV Disclosures as part of the broader integrated TILA-RESPA rulemaking, rather than issuing rules implementing each requirement individually or allowing those statutory provisions to take effect by operation of law, will improve the overall effectiveness of the integrated disclosure for consumers and reduce burden on industry. The Bureau will issue a final rule finalizing the proposed delay prior to January 21, 2013.

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

Specifically, as set forth in the section-by-section analysis to proposed § 1026.1(c), the Bureau proposes to delay those requirements by temporarily exempting entities from the requirement to comply on January 21, 2013. This is, in effect, a delay of the effective date of the following statutory provisions:

- Warning regarding negative amortization features. Dodd-Frank Act section 1414(a); TILA section 129C(f)(1).[112]
- Disclosure of State law anti-deficiency protections. Dodd-Frank Act section 1414(c); TILA section 129C(g)(2) and (3).
- Disclosure regarding creditor's partial payment policy. Dodd-Frank Act section 1414(d); TILA section 129C(h).
- Disclosure regarding mandatory escrow accounts. Dodd-Frank Act section 1461(a); TILA section 129D(h).
- Disclosure regarding waiver of escrow at consummation. Dodd-Frank Act section 1462; TILA section 129D(j)(1)(A).
- Disclosure of monthly payment, including escrow, at initial and fully-indexed rate for variable-rate transactions. Dodd-Frank Act section 1419; TILA section 128(a)(16).
- Repayment analysis disclosure to include amount of escrow payments for taxes and insurance. Dodd-Frank Act section 1465; TILA 128(b)(4).
- Disclosure of settlement charges and fees and the approximate amount of the wholesale rate of funds. Dodd-Frank Act section 1419; TILA section 128(a)(17).

[112] Dodd-Frank Act section 1414(a) also added to TILA new section 129C(f)(2), which requires first-time borrowers for certain residential mortgage loans that could result in negative amortization to provide the creditor with documentation to demonstrate that the consumer received homeownership counseling from organizations or counselors certified by HUD. That provision is implemented in the Bureau's 2012 HOEPA Proposal, which also implements the requirement of RESPA section 5(c), added by section 1450 of the Dodd-Frank Act, that lenders provide borrowers with a list of certified homeownership counselors.

- Disclosure of mortgage originator fees. Dodd-Frank Act section 1419; TILA section 128(a)(18).
- Disclosure of total interest as a percentage of principal. Dodd-Frank Act section 1419; TILA section 128(a)(19).
- Optional disclosure of appraisal management company fee. Dodd-Frank Act section 1475; RESPA section 4(c).

The Bureau is not proposing to delay the effective date for the following disclosure requirements found in title XIV of the Dodd-Frank Act, and therefore these provisions are not Affected Title XIV Disclosures for purposes of this discussion. These provisions will be implemented in separate rulemakings, which are expected to be proposed in summer 2012 and finalized by January 21, 2013, with the specific effective dates set out in the final rules for those specific rulemakings.

- Disclosure regarding notice of reset of hybrid adjustable rate mortgage. Dodd-Frank Act section 1418(a); TILA section 128A(a). The Bureau does not propose to delay this requirement because it applies, for the most part, to the period after consummation.
- Loan originator identifier requirement. Dodd-Frank section 1402(a)(2); TILA section 129B(b)(1)(B). The Bureau does not propose to delay this requirement because it applies broadly to "loan documents." In the integrated TILA-RESPA final rule, the Bureau will harmonize the loan originator identifier provisions of this proposal with the separate rulemaking implementing TILA section 129B(b)(1)(B).
- Disclosure regarding waiver of escrow after consummation. Dodd-Frank Act section 1462; TILA section 129D(j)(1)(B). The Bureau does not propose to delay this requirement because it applies to the period after consummation and because it will be implemented by final rule pursuant to an outstanding proposal published by the Board. 76 FR 11598 (Mar. 2, 2011).

- Consumer notification regarding appraisals for higher-risk mortgages. Dodd-Frank Act section 1471; TILA section 129H(d). The Bureau does not propose to delay this requirement because it overlaps substantially with an existing disclosure requirement under ECOA (see below) and must be implemented through an interagency rulemaking. In the integrated TILA-RESPA final rule, the Bureau plans to harmonize the appraisal notification provisions of this proposal with the separate rulemaking implementing TILA section 129H(d), so that once the integrated form is finalized creditors will be able to use the integrated forms to satisfy the 129H(d) requirement.
- Consumer notification regarding the right to receive an appraisal copy. Dodd-Frank Act section 1474; ECOA section 701(e)(5). The Bureau does not propose to delay this requirement because it replaces an existing disclosure requirement under ECOA that is typically provided separately from other disclosures. In the integrated TILA-RESPA final rule, the Bureau will harmonize the provisions with the separate rulemaking implementing ECOA section 701(e)(5), so that once the integrated form is finalized creditors will be able to use it to satisfy the ECOA requirement.

- As discussed in the section-by-section analysis to proposed § 1026.19, the integrated disclosure provisions of this proposal apply to closed-end transactions secured by real property, other than reverse mortgages as defined in § 1026.33(a). However, under the statute, the Affected Title XIV Disclosures vary in scope and are in some cases broader than the scope of the proposed integrated disclosure provisions.[113] For example, certain of the Affected Title XIV

[113] Except as described below, the Affected Title XIV Disclosures apply to "residential mortgage loans," which are defined in TILA section 103(cc)(5). 15 U.S.C. 1602(cc)(5). TILA section 129C(f)(1) (requiring a negative amortization warning) applies to open- or closed-end consumer credit plans secured by a dwelling. 15 U.S.C. 1639c(f)(1). TILA section 129D(h) (disclosure regarding mandatory escrow accounts) applies to consumer credit transactions secured by a first lien on the principal dwelling of the consumer, other than open-end credit plans and reverse mortgages. 15 U.S.C. 1639d(h). TILA section 129D(j)(1)(A) applies to consumer credit transactions

Disclosures apply to open-end credit plans,[114] transactions secured by dwellings that are not real property,[115] and/or reverse mortgages,[116] which are not the subject this rulemaking. However, because the final scope of the integrated disclosure provisions is not yet known, the Bureau is proposing to delay the Affected Title XIV Disclosures to the fullest extent those requirements could apply under the statutory provisions. However, the Bureau also solicits comment on whether the final rule implementing the integrated disclosures should implement the Affected Title XIV Disclosures for open-end credit plans, transactions secured by dwellings that are not real property, and reverse mortgages, as applicable, by requiring creditors to comply with the proposed provisions that implement those disclosure requirements.

Improving Overall Effectiveness of Disclosures

Issuing final rules implementing the Affected Title XIV Disclosures at the same time as the integrated TILA-RESPA final rule will improve the overall effectiveness of the integrated disclosure. One of TILA's primary purposes is to "assure a meaningful disclosure of credit terms . . . and avoid the uninformed use of credit." TILA section 102(a); 15 U.S.C. 1601(a). Similarly, one purpose of RESPA is to improve advance disclosure of settlement costs. RESPA section 2(b)(1); 12 U.S.C. 2601(b)(1). As discussed above, however, TILA, RESPA, and current

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secured by real property. 15 U.S.C. 1639d(j)(1)(A). TILA section 128(b)(4) (requiring escrow amounts to be included in the repayment analysis disclosure) applies to consumer credit transactions secured by a first lien on the consumer's principal dwelling, other than open-end plans or reverse mortgages. 15 U.S.C. 1638(b)(4). RESPA section 4(c) (permitting an appraisal management fee disclosure) applies to "federally related mortgage loans." 12 U.S.C. 2603(c). To the extent these statutory provisions do not cover transactions that are within the scope of the integrated disclosure provisions of this proposal (*e.g.*, vacant land), the Bureau is proposing to modify the statutory requirements to cover those transactions. See the section-by-section analysis to proposed § 1026.19.

[114] The following Affected Title XIV Disclosures apply to open-end credit plans: TILA section 129C(f) (negative amortization warning); TILA section 129D(j)(1)(A) (disclosure regarding waiver of escrow at consummation); RESPA section 4(c) (appraisal management company fee disclosure).

[115] All of the Affected Title XIV Disclosures, other than TILA section 129D(j)(1)(A) (disclosure regarding waiver of escrow at consummation) and RESPA section 4(c) (appraisal management company fee disclosure), apply to transactions secured by dwellings that are not real property.

[116] All of the Affected Title XIV Disclosures, other than TILA section 128(b)(4) (requiring repayment analysis to include escrow) and TILA section 12D(h) (mandatory escrow or impound account disclosure), apply to reverse mortgages.

Regulations Z and X generally require that consumers receive two separate disclosures after applying for a mortgage loan, and then receive two additional separate disclosures prior to closing on that loan. Concerns have been raised that duplicative disclosures may reduce consumer understanding of mortgage loan transactions and increase burden on industry. Thus, when viewed together, the duplicative disclosures required by TILA and RESPA may inhibit consumers' understanding of their loans. Section 1032(f) of the Dodd-Frank Act addresses these concerns by directing the Bureau to integrate these disclosure requirements to improve consumer understanding of mortgage disclosures.

This same rationale supports delaying the requirements of the Affected Title XIV Disclosures until such time as the Bureau issues a final rule implementing the broader TILA-RESPA integration. Incorporating the Affected Title XIV Disclosures will enable the Bureau to use the results of its consumer testing and public feedback to develop forms that include these pre-consummation disclosures in a way that could improve overall consumer understanding of mortgage loan transactions. Implementing the Affected Title XIV Disclosures in isolation could have the opposite effect, by multiplying the number of individual disclosures that consumers receive, thereby reducing the likelihood that consumers will focus on any of them.

Through consumer testing, the Bureau has specifically examined how the required disclosures should work together on the integrated disclosure to maximize consumer understanding. For example, in its consumer testing of the integrated disclosures, the Bureau tested and solicited public feedback on clauses related to the Affected Title XIV Disclosures to determine how the language will be understood by consumers, both separately and in the context of the overall form.

The Bureau estimates that, by incorporating Affected Title XIV Disclosures that would otherwise be provided separately, the total page count for pre-consummation TILA and RESPA disclosures would be reduced by as much as 50 percent. The Bureau believes that this reduction will not only improve consumer understanding of mortgage transactions, but also facilitate compliance as discussed below. Consumer testing also indicates that some disclosures are either not helpful or are detrimental to consumer understanding; as discussed in the section-by-section analysis below, the Bureau proposes to use its authority to modify these disclosures to enhance consumer understanding.

Facilitating Compliance by Reducing Regulatory Burden

As noted above, another purpose of the integrated TILA-RESPA disclosure is to facilitate compliance with the requirements and purposes of those statutes. TILA section 105(b); 15 U.S.C. 1604(b); RESPA section 4(a); 12 U.S.C. 2603(a). Delaying the effective date of the Affected Title XIV Disclosures until a rule implementing the integrated TILA-RESPA disclosure is final will further this purpose by reducing regulatory burden. A substantial burden would be imposed if entities were required to revise their systems and practices twice—once to comply with the Affected Title XIV Disclosures and again to comply with the final rule integrating the TILA and RESPA disclosures. Implementing the changes twice would be particularly burdensome because compliance with the Affected Title XIV Disclosures will involve modifying forms and systems, updating compliance manuals, and training staff regarding the new disclosures.

Implementing the Affected Title XIV Disclosures as part of the integrated TILA-RESPA rulemaking will reduce regulatory burden by allowing entities to adopt all the necessary changes at one time. Implementing a single, consolidated disclosure will also reduce ongoing regulatory burden because an integrated disclosure is less costly to provide than a series of disclosures.

Legal Authority

For the reasons discussed above, the Bureau proposes to exercise its authority under TILA section 105(a) and (f), RESPA section 19(a), Dodd-Frank section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b) to, in effect, delay the effective date of the Affected Title XIV Disclosures by exempting regulated entities from these provisions until a final rule implementing Dodd-Frank Act section 1032(f) takes effect. 15 U.S.C. 1604(a); 12 U.S.C. 2617(a); 12 U.S.C. 5532(a); 15 U.S.C. 1601 note. TILA section 105(a) gives the Bureau authority to adjust or except from the disclosure requirements of TILA all or any class of transactions to effectuate the purposes of TILA or facilitate compliance. As set forth above, delaying the Affected Title XIV Disclosures until such time as a final rule implementing the integrated TILA-RESPA disclosures takes effect achieves the purpose of TILA to promote the informed use of credit through a more effective, consolidated disclosure, and facilitates compliance by reducing regulatory burden associated with revising systems and practices multiple times and providing multiple disclosures to consumers.

The Bureau also proposes the exemption pursuant to TILA section 105(f). The Bureau has considered the factors in TILA section 105(f) and believes that an exemption is appropriate under that provision. Specifically, the Bureau believes that the proposed exemption is appropriate for all affected borrowers, regardless of their other financial arrangements and financial sophistication and the importance of the loan to them. Similarly, the Bureau believes that the proposed exemption is appropriate for all affected loans, regardless of the amount of the loan and whether the loan is secured by the principal residence of the consumer. Furthermore, the Bureau believes that, on balance, the proposed exemption will simplify the credit process without undermining the goal of consumer protection or denying important benefits to consumers.

As discussed above, the Bureau believes that the exemption provides a benefit to consumers through a more effective, consolidated disclosure. Absent an exemption, the Affected Title XIV Disclosures would complicate and hinder the mortgage lending process because consumers would receive inconsistent disclosures and, likely, numerous additional pages of Federal disclosures that do not work together in a meaningful way. The Bureau also believes that the cost of credit would be increased if the Affected Title XIV Disclosures take effect independent of the larger TILA-RESPA integration because industry would be required to revise systems and practices multiple times. The Bureau has also considered the status of mortgage borrowers in issuing the proposed exemptions, and believes the exemption is appropriate to improve the informed use of credit. The Bureau does not believe that the goal of consumer protection would be undermined by the exemption, because of the risk that layering the Affected Title XIV Disclosures on top of existing mandated disclosures would lead to consumer confusion. The exemption allows the Bureau to coordinate the changes in a way that improves overall consumer understanding of the disclosures.

RESPA section 19(a) provides the Bureau with authority to grant exemptions from the requirements of RESPA as necessary to achieve the purposes of RESPA. As discussed above, one purpose of RESPA is to achieve more effective advance disclosure to home buyers and sellers of settlement costs. RESPA section 2(b)(1); 12 U.S.C. 2601(b). Delaying the Affected Title XIV Disclosures until such time as a final rule implementing the integrated TILA-RESPA disclosures takes effect will result in a more effective disclosure and improve consumer understanding and will facilitate compliance by reducing regulatory burden, as discussed above.

In addition, section 1405(b) of the Dodd-Frank Act gives the Bureau authority to exempt from or modify disclosure requirements for any class of residential mortgage loans if the Bureau determines that the exemption or modification is in the interest of consumers and the public. As discussed above, implementing the Affected Title XIV Disclosures with the integrated TILA-RESPA disclosure is in the interest of consumers because it allows the Bureau to coordinate the changes in a way that improves overall consumer understanding of the disclosures. Further, implementing the Affected Title XIV Disclosures as part of the integrated disclosure rulemaking is in the public interest because it produces a more efficient regulatory scheme by incorporating multiple, potentially confusing disclosures into clear and understandable forms through consumer testing.

Finally, consistent with section 1032(a) of the Dodd-Frank Act, implementing the Affected Title XIV Disclosures together with the integrated disclosure would ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances. The Bureau believes that implementing a single, consolidated disclosure will benefit consumers and facilitate compliance with TILA and RESPA. For these reasons, the Bureau is proposing to delay the Affected Title XIV Disclosures until the Bureau issues a final rule implementing the integrated TILA-RESPA disclosure required by section 1032(f) of the Dodd-Frank Act.

The Bureau is proposing to implement the Affected Title XIV Disclosures in § 1026.1(c), which is discussed further in the section-by-section analysis below. This proposal, therefore, incorporates the Affected Title XIV Disclosures as part of the integrated disclosure. The Bureau views proposed § 1026.1(c) as prescribing the required rules in final form pursuant to Dodd-Frank Act section 1400(c)(1)(A) and the effective date of the final rule implementing the delay of the Affected Title XIV Disclosures as satisfying Dodd-Frank Act section 1400(c)(1)(B).

The Bureau plans to issue a final rule implementing this exemption before the statutory provisions take effect in January 2013. For this reason, the Bureau is providing a comment period of 60 days for the proposed amendments to § 1026.1(c), rather than the 120-day comment period provided for all other aspects of this proposed rule other than § 1026.4, to permit the Bureau to evaluate comments received in response to this aspect of the proposal before issuing a final rule. The Bureau plans to issue a final notice that would remove this regulatory exemption at the time a final rule implementing the integrated TILA-RESPA disclosure takes effect, but solicits comment on whether the regulatory exemption should sunset on a specific date

C. Potential Exemptions from Disclosure Requirements

As discussed in part III, above, one of the Bureau's primary considerations in developing the integrated disclosures was to minimize the risk of information overload and enhance consumers' overall understanding of mortgage loan and real estate transactions. To that end, the integrated disclosures highlight information that is important to consumers in comparing and evaluating mortgage loans and deemphasize information that is secondary to consumer understanding. In addition, as discussed in the section-by-section analysis, below, the Bureau is proposing to use its exemption and modification authority to exempt transactions subject to proposed § 1026.19(e) and (f) from certain disclosure requirements that consumer testing and research indicate are confusing and unhelpful to consumers. Specifically, the Bureau is proposing to use its authority under TILA section 105(a) and (f), Dodd-Frank Act section

1032(a) and, for residential mortgage loans, Dodd-Frank Act section 1405(b) to omit from the Loan Estimate provided three business days after receipt of the consumer's application: the amount financed (TILA section 128(a)(2)), the finance charge (TILA section 128(a)(3)), a statement that the creditor is taking a security interest in the consumer's property (TILA section 128(a)(9)), a statement that the consumer should refer to the appropriate contract document for information about their loan (TILA section 128(a)(12)), a statement regarding certain tax implications (TILA section 128(a)(15)), and the creditor's cost of funds (TILA section 128(a)(17)). See the section-by-section analysis to proposed § 1026.37(l). Although the Bureau is generally proposing to require these disclosures on the Closing Disclosure provided three business days prior to consummation, the Bureau is alternatively proposing to use its exemption and modification authority to omit the creditor's cost of funds disclosure (TILA section 128(a)(17)) and the total interest percentage disclosure (TILA section 128(a)(19)) from both the Loan Estimate and the Closing Disclosure. See the section-by-section analysis to proposed §§ 1026.37(l) and 1026.38(o).

For these same reasons, the Bureau solicits comment on additional disclosures that appear on the integrated disclosures that are unhelpful or potentially confusing to consumers and whether the Bureau should use its authority under TILA section 105(a) and (f), Dodd-Frank Act section 1032(a) and, for residential mortgage loans, Dodd-Frank Act section 1405(b) to exempt transactions subject to proposed § 1026.19(e) and (f) from any such disclosure requirements. The Bureau believes exempting transactions from those disclosure requirements would promote the informed use of credit and facilitate compliance, consistent with TILA section 105(a). For the same reasons, the Bureau believes such exemptions would be appropriate under TILA section 105(f) for all affected borrowers, regardless of their other financial arrangements and financial sophistication and the importance of the loan to them, and for all affected loans, regardless of the amount of the loan and whether the loan is secured by the principal residence of the consumer and would simplify the credit process without undermining the goal of consumer protection or denying important benefits to consumers. Any such exemption would also ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to better understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a), and would improve consumer awareness and understanding of residential mortgage loans, which is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

VI. Section-by-Section Analysis

As discussed above, TILA's mortgage disclosure requirements are currently implemented in Regulation Z, whereas RESPA's mortgage disclosure requirements are currently implemented in Regulation X. Regulation Z contains detailed regulations and guidance regarding disclosures for mortgage transactions, whereas Regulation X largely relies on the GFE and HUD-1 forms. The Bureau understands that the additional detail in Regulation Z facilitates compliance by industry, which is one of the goals of this rulemaking.[117] Accordingly, the Bureau is proposing to establish the integrated disclosure requirements in Regulation Z, while making conforming and other amendments to Regulation X.[118] However, as discussed above, the Bureau solicits comment on whether the level of detail in the proposed regulations and guidance (including the number of examples illustrating what is and is not permitted) will make compliance more, rather than less, burdensome and whether the Bureau should adopt a less prescriptive approach in the final rule.

As discussed in detail below with respect to proposed § 1026.19, certain mortgage transactions that are subject to TILA are not subject to RESPA and vice versa. As proposed, the integrated mortgage disclosures would apply to most closed-end consumer credit transactions secured by real property. Certain types of loans that are currently subject to TILA but not RESPA (construction-only loans and loans secured by vacant land or 25 or more acres) would be subject to the proposed integrated disclosure requirements, whereas others (such as mobile home loans and other loans that are secured by a dwelling but not real property) would remain solely

[117] For example, the small financial service providers who advised the Small Business Review Panel stated that ambiguity in the application or interpretation of the current RESPA disclosure requirements produces substantial costs in the form of legal fees, staff training, and, for settlement agents, preparing forms differently for different lenders. To address this concern, these providers generally requested that the Bureau provide clear guidance on how to fill out the forms, similar to that currently provided in Regulation Z. *See* Small Business Review Panel Report at 19-20.

[118] The Bureau is proposing to retain established regulatory terminology in Regulations X and Z for consistency.

subject to the existing Regulation Z disclosure requirements. Reverse mortgages are excluded from coverage of the proposed integrated disclosures and would therefore remain subject to the current Regulation X and Z disclosure requirements until the Bureau addresses those unique transactions in a separate, future rulemaking. Finally, consistent with the current rules under TILA, the integrated mortgage disclosures would not apply to mortgage loans made by persons who are not "creditors" as defined by Regulation Z (such as persons who make five or fewer mortgage loans in a year), although such loans would continue to be subject to RESPA.

A. Regulation X

Section 1024.5 Coverage of RESPA

5(a) Applicability

For the reasons discussed below under proposed § 1024.5(c), the Bureau is proposing to use its authority under RESPA section 19(a) and, for residential mortgage loans, Dodd-Frank Act section 1405(b) to exempt certain transactions from the existing RESPA GFE and RESPA settlement statement requirements of Regulation X. The Bureau therefore is proposing a conforming amendment to § 1024.5(a) to reflect these partial exemptions pursuant to the same authority.

5(b) Exemptions

5(b)(1)

Section 1024.5(b)(1) currently exempts from the coverage of RESPA and Regulation X loans on property of 25 acres or more. The Bureau believes that most loans that fall into this category are separately exempt under a provision excluding extensions of credit primarily for business, commercial, or agricultural purposes, set forth in § 1024.5(b)(2). Accordingly, the Bureau proposes to exercise its authority under RESPA section 19(a) and, for residential mortgage loans, Dodd-Frank Act section 1405(b) to eliminate the Regulation X exemption. This amendment will render the TILA and RESPA regimes more consistent, which promotes more effective advance disclosure of settlement costs (which is a purpose of RESPA). In addition, this consistency will improve consumer awareness and understanding of transactions involving residential mortgage loans and is therefore in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b). Because it is unclear whether any mortgages are exempt based solely on § 1024.5(b)(1), the Bureau solicits comment on the number of loans that may be affected by this aspect of the proposal and any reasons for any continued exemption of loans on property of 25 acres or more.

5(c) Partial Exemptions for Certain Mortgage Loans

As discussed further below, the Bureau proposes to exercise its authority under RESPA section 19(a), Dodd-Frank Act section 1032(a) and, for residential mortgage loans, Dodd-Frank Act section 1405(b) to add new § 1024.5(c), which would exempt two types of federally related mortgage loans from coverage of the RESPA settlement cost booklet, GFE, and settlement statement requirements of §§ 1024.6, 1024.7, 1024.8, and 1024.10. This partial exemption would apply to: (1) federally related mortgage loans that are subject to the integrated disclosures the Bureau is proposing in Regulation Z § 1026.19(e) and (f) and (2) federally related mortgage loans that satisfy specified criteria associated with certain housing assistance loan programs for low- and moderate-income persons. As described further below, these exemptions are designed to create consistency with the integrated disclosures under Regulation Z and to codify a disclosure exemption previously granted by HUD. However, the exemptions would retain coverage of affected loans for all other requirements of Regulation X, such as the servicing requirements in RESPA section 6, prohibitions on referral fees and kickbacks in RESPA section 8, and limits on amounts to be deposited in escrow accounts in RESPA section 10.

5(c)(1)

Pursuant to the authority discussed above, proposed § 1024.5(c)(1) exempts from the RESPA settlement cost booklet, GFE, and settlement statement requirements of §§ 1024.6, 1024.7, 1024.8, and 1024.10 federally related mortgage loans that are subject to the special disclosure requirements for certain consumer credit transactions secured by real property set forth in Regulation Z, under proposed § 1026.19(e) and (f). As discussed in detail below, proposed § 1026.19(e) and (f) establishes the integrated disclosures for compliance both with sections 4 and 5 of RESPA and with TILA disclosures required for mortgage transactions, as mandated by section 1032(f) of the Dodd-Frank Act. Accordingly, compliance with §§ 1024.6, 1024.7, 1024.8, and 1024.10 is unnecessary for transactions that are subject to § 1026.19(e), (f) and (g) of Regulation Z. Because proposed § 1026.19(e) and (f) governs all closed-end transactions secured by real property other than reverse mortgages, the only federally related mortgage loans that will continue to comply with the Regulation X GFE and settlement statement requirements are reverse mortgages. The Bureau plans to address the disclosure requirements for reverse mortgages in a separate later rulemaking, at which time the Bureau may revise or eliminate the remaining disclosure provisions in Regulation X.

5(c)(2)

Proposed § 1024.5(c)(2) exempts from the RESPA settlement cost booklet, GFE, and settlement statement requirements of §§ 1024.6, 1024.7, 1024.8, and 1024.10 federally related mortgage loans that satisfy several criteria associated with certain housing assistance loan programs for low- and moderate-income persons. This provision cross-references proposed 12

CFR § 1026.3(h), which codifies an exemption issued by HUD on October 6, 2010.[119] Under the HUD exemption, lenders need not provide the GFE and settlement statement when six prerequisites are satisfied: (1) the loan is secured by a subordinate lien; (2) the loan's purpose is to finance downpayment, closing costs, or similar homebuyer assistance, such as principal or interest subsidies, property rehabilitation assistance, energy efficiency assistance, or foreclosure avoidance or prevention; (3) interest is not charged on the loan; (4) repayment of the loan is forgiven or deferred subject to specified conditions; (5) total settlement costs do not exceed one percent of the loan amount and are limited to fees for recordation, application, and housing counseling; and (6) the loan recipient is provided at or before settlement with a written disclosure of the loan terms, repayment conditions, and costs of the loan.

In granting this partial exemption, HUD invoked its authority under RESPA section 19(a) to grant "reasonable exemptions for classes of transactions, as may be necessary to achieve the purposes of [RESPA]." HUD determined that, for transactions meeting the criteria listed above, the RESPA GFE and settlement statement forms would be difficult to complete in a meaningful way and would be likely to confuse consumers who received them. Moreover, because of the limited, fixed fees involved with such transactions, the comparison shopping purpose of the GFE would not be achieved. Finally, the alternative written disclosure required as a prerequisite of the exemption would ensure that consumers understand the loan terms and settlement costs charged. To facilitate compliance, the Bureau is proposing to codify this exemption in Regulations X and Z for the same reasons and under the same authority as cited by HUD. In addition, the Bureau relies on its authority under Dodd-Frank Act section 1405(b) because the proposed exemption will improve consumer awareness and understanding of transactions due to

[119] *See* http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_14574.pdf.

these same concerns discussed involving residential mortgage loans in the identified class of transactions and is therefore in the interest of consumers and the public.

The Bureau is proposing to adopt this exemption with the same prerequisites established by HUD. The Bureau seeks comment, however, on whether the same rationale for the exemption still would exist regardless of lien position and, therefore, the subordinate lien position should be eliminated as a requirement for the exemption. The Bureau also seeks comment concerning the prerequisite that the loan contract not "require the payment of interest." As noted above, the exemption as issued by HUD requires that the loan "carr[y] an interest rate of -0- percent." This wording may be interpreted narrowly to refer only to the rate of interest stated in the note or loan contract but not to other requirements or features that may serve as interest substitutes. For example, such a narrow reading would mean that loans requiring private mortgage insurance or loans having shared-equity or shared-appreciation features could qualify for this exemption, provided the note recites an interest rate of zero percent. The Bureau's wording, on the other hand, could be interpreted as disallowing such requirements and features because they are essentially interest substitutes. The Bureau therefore seeks comment on whether such requirements and features should be considered "interest" and, therefore, should be impermissible for loans seeking to qualify for this partial exemption. In addition, the Bureau seeks comment on other types of loan requirements and features that should be similarly deemed "interest" for purposes of this partial exemption. Alternatively, the Bureau seeks comment on whether this provision should be eliminated.

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

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

The Bureau believes that adopting this guidance will improve the effectiveness of the disclosures when used for reverse mortgages, thereby reducing industry confusion and advancing the purpose of RESPA to provide more effective advanced disclosure of settlement costs to both the consumer and the seller in the real estate transaction, consistent with RESPA section 19(a).

Appendix B—Illustrations of Requirements of RESPA

Appendix B to part 1024 contains illustrations of requirements under RESPA. Illustration 12 provides a factual situation where a mortgage broker provides origination services to submit a loan to a lender for approval. The mortgage broker charges the borrower a uniform fee for the total origination services, as well as a direct up-front charge for reimbursement of credit reporting, appraisal services, or similar charges. To address this factual situation, illustration 12 provides a comment that: the mortgage broker's fee must be itemized in the Good

Faith Estimate and on the HUD-1 Settlement Statement; other charges that are paid for by the borrower and paid in advance of consummation are listed as paid outside closing on the HUD-1 Settlement Statement, and reflect the actual provider charge for such services; and any other fee or payment received by the mortgage broker from either the lender or the borrower arising from the initial funding transaction, including a servicing release premium or yield spread premium, is to be noted on the Good Faith Estimate and listed in the 800 series of the HUD-1 Settlement Statement.

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

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

The last sentence in illustration 12 clearly contemplates the loan originator, a mortgage broker, receiving compensation from the lender as well as the borrower, which therefore describes a factual situation prohibited by § 1026.36(d)(2). Accordingly, for consistency with § 1026.36(d)(2), the Bureau proposes to exercise its authority under RESPA section 19(a) to delete the last sentence of the comment provided in illustration 12 in Appendix B to part 1024.

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

As previously discussed, the Bureau proposes to require creditors to use the integrated loan estimate required by §§ 1026.19(e) and 1026.37 to satisfy the disclosure requirements under RESPA section 5 for most closed-end transactions covered by RESPA, except for reverse mortgage transactions. Currently, the manner in which reverse mortgage transactions are disclosed on the RESPA GFE under appendix C of Regulation X is a source of confusion for creditors. HUD clarified the use of the RESPA GFE in reverse mortgage transactions in the HUD RESPA FAQs. The Bureau proposes to exercise its authority under RESPA section 19(a) to modify appendix C of Regulation X to incorporate the guidance provided by the HUD RESPA FAQs because, under the proposed rule, reverse mortgage transactions will continue to be disclosed using the RESPA GFE. The proposed revisions can be found in the instructions for the "Summary of your loan" and "Escrow account information" sections. The Bureau believes that these revisions satisfy the purpose of RESPA to provide more effective advanced disclosure of settlement costs to both the consumer and the seller in the real estate transaction.

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

The Bureau is proposing conforming amendments to § 1026.1 to reflect the fact that, under this proposal, Regulation Z implements not only TILA, but also certain provisions of RESPA. The details of the regulatory implementation of these statutory requirements are discussed below, under the applicable sections of Regulation Z. To reflect the expanded statutory scope of Regulation Z, the proposed conforming amendments revise § 1026.1(a) (authority), (b) (purpose), (d)(5) (organization of subpart E), and (e) (enforcement and liability) to include references to the relevant provisions of RESPA.

1(c) Coverage

As discussed in part V.B, the Bureau is proposing to exempt persons temporarily from the disclosure requirements of sections 128(a)(16) through (19), 128(b)(4), 129C(f)(1), 129C(g)(2) and (3), 129C(h), 129D(h), and 129D(j)(1)(A) of TILA and section 4(c) of RESPA, until regulations implementing the integrated disclosures required by section 1032(f) of the Dodd-Frank Act take effect. 15 U.S.C. 1638(a)(16)-(19), 1638(b)(4), 1639c(f)(1), 1639c(g), 1639c(h), 1639d(h), and 1639d(j)(1)(A); 12 U.S.C. 2604(c); 12 U.S.C. 5532(f). Proposed § 1026.1(c)(5) implements this exemption by stating that no person is required to provide the disclosures required by the statutory provisions listed above. Proposed comment 1(c)(5)-1 explains that § 1026.1(c)(5) implements the above-listed provisions of TILA and RESPA added by the Dodd-Frank Act by exempting persons from the disclosure requirements of those sections. The comment clarifies that the exemptions provided in proposed § 1026.1(c)(5) are intended to be temporary and will apply only until compliance with the regulations implementing the integrated disclosures required by section 1032(f) of the Dodd-Frank Act become mandatory. Proposed comment 1(c)(5)-1 also clarifies that the exemption in proposed § 1026.1(c)(5) does not exempt any person from any other requirement of Regulation Z, Regulation X, or of TILA or RESPA. For the reasons discussed in part V.B, the Bureau is providing a comment period of 60 days for the proposed amendments to § 1026.1(c). In addition, as discussed above in part V.B, the Bureau requests comment on whether the exemptions provided in proposed § 1026.1(c)(5) should expire after a specified period of time.

Section 1026.2 Definitions and Rules of Construction

2(a) Definitions

2(a)(3) Application

Background

Neither TILA nor RESPA defines the term "application." Although Regulation Z does not define this term, for the good faith estimate disclosures currently required by § 1026.19(a), Regulation Z incorporates the Regulation X definition. *See* comment 19(a)(1)(i)-3. Section 1024.2(b) of Regulation X defines application as "the submission of a borrower's financial information in anticipation of a credit decision relating to a federally related mortgage loan, which shall include the borrower's name, the borrower's monthly income, the borrower's social security number to obtain a credit report, the property address, an estimate of the value of the property, the mortgage loan amount sought, and any other information deemed necessary by the loan originator." 12 CFR 1024.2(b). This definition, adopted as part of HUD's 2008 RESPA Final Rule, was intended to ensure that consumers received a RESPA GFE containing reliable estimates of settlement costs early in the process of shopping for a mortgage loan.

However, in response to concerns that a narrow definition of application might inhibit preliminary underwriting, the definition adopted by HUD includes seven elements, one of which is "any other information deemed necessary by the loan originator." HUD added this "catch-all" element to enable creditors to collect any additional information deemed necessary to underwrite a loan.

Concerns with the Current Definition Under Regulation X

While the Bureau believes that creditors should be able to collect information in addition to the six elements, the Bureau is concerned that the seventh catch-all element may permit creditors to delay providing consumers with the integrated Loan Estimate. One primary purpose of the integrated Loan Estimate is to inform consumers of the cost of credit when they have bargaining power to negotiate for better terms and time to compare other financing options. It is vital, however, that creditors be able to collect the information necessary to originate loans in a safe and sound manner. The Bureau does not believe that these principles conflict. The definition of application does not define or limit underwriting; it instead establishes a point in time at which disclosure obligations begin.

Based on this premise, the definition of "application" should facilitate consumers' ability to receive reliable estimates early in the loan process, but should not restrict a creditor's ability to determine which information is necessary for sound underwriting. Removing the catch-all element from the definition under Regulation X may ensure that the disclosures are received both early in the loan process and based on the information most critical to providing reliable estimates. Consumers would be able to receive the disclosures as soon as consumers provide creditors with the information needed for reliable estimation. Creditors would be able to collect whatever information is, in the creditor's view, necessary for a reasonably reliable estimate, provided that it collects the additional information prior to collecting the six pieces of information specified in proposed § 1026.2(a)(3)(ii), which are the consumer's name, income, and social security number to obtain a credit report, as well as the property address, an estimate of the value of the property, and the mortgage loan amount sought. For example, if a creditor believes that a reliable estimate cannot be provided without information related to the consumer's combined current liabilities, the creditor may collect this information, provided that it does so prior to, or at the same time as, collecting the six pieces of information specified in § 1026.2(a)(3)(ii). The Bureau acknowledges that creditors could strategically order information collection in a manner that best suits the needs of the creditor. Even if the creditor did so, the Bureau believes that the definition would enable the consumers to receive the disclosures early in the loan process. This approach may also ensure that consumers are not required to disclose sensitive information, such as the consumer's social security number or income, until after the creditor collects less sensitive information. Thus, removing the seventh catch-all element, while preserving creditors' ability to collect any additional necessary information, may strike the appropriate balance between the needs of consumers and the needs of industry.

This approach also dovetails with the requirements of proposed § 1026.19(e) establishing limitations on fee increases for the purposes of determining good faith, but which are subject to several exceptions, including exceptions based on the information the creditor relied on in disclosing the estimated loan costs. Thus, the proposed definition of application, by requiring creditors to collect any additional information prior to collecting the six pieces of information specified in § 1026.2(a)(3)(ii), maintains creditors' current flexibility in deciding which additional information is necessary for providing estimates. For example, if a creditor chooses to collect a consumer's combined liability information prior to collecting the six pieces of information specified in § 1026.2(a)(3)(ii), the disclosures provided pursuant to § 1026.19(e) may reflect such information. If the consumer's combined liabilities subsequently increase, the creditor may issue a revised disclosure reflecting the change in information relied upon in providing the original disclosure. If a different creditor chooses to rely on only the six pieces of information specified in § 1026.2(a)(3)(ii) in providing the disclosures, but during underwriting information related to the consumer's combined liabilities is discovered, and such information requires a revision in loan terms, the creditor may issue a revised disclosure reflecting such new information not previously relied on in providing the disclosures. But neither creditor may delay providing consumers with the disclosures in the first instance by claiming that additional information related to the consumer's combined liabilities is required after the consumer has provided the six pieces of information specified in § 1026.2(a)(3)(ii). Thus, removal of the seventh catch-all element may achieve the same outcome from the creditor's perspective as under the current Regulation X definition, while inhibiting the ability of creditors to delay providing consumers with the disclosures. This approach has the added benefit of being a uniform standard for disclosure obligations across all creditors, which facilitates compliance and supervision.

Accordingly, pursuant to its authority under section 105(a) of TILA and 19(a) of RESPA, the Bureau is proposing to add § 1026.2(a)(3)(i) to define "application" as the submission of a consumer's financial information for the purposes of obtaining an extension of credit. Proposed § 1026.2(a)(3)(ii) provides that, except for purposes of subpart B, subpart F, and subpart G, the term consists of the consumer's name, income, and social security number to obtain a credit report, and the property address, an estimate of the value of the property, and the mortgage loan amount sought. For the reasons discussed above, removal of the seventh catch-all element from the definition of application may help carry out the purposes of TILA by promoting the informed use of credit and achieve the purposes of RESPA by promoting more effective advance disclosure of settlement costs by encouraging creditors to provide consumers with good faith estimates of loan terms and costs earlier in the process.

The Bureau has received feedback, including a comment received in response to the 2011 Streamlining Proposal, requesting a single definition of "application" under Regulation Z, Regulation B (which implements the Equal Credit Opportunity Act), and Regulation C (which implements the Home Mortgage Disclosure Act). The Bureau recognizes the potential consistency benefits of a single definition. However, for the reasons discussed above, the Bureau believes that the proposed definition provides important benefits to consumers in this context.

During the Small Business Panel Review process, several small entity representatives expressed concern about eliminating the seventh prong of the definition of application currently under Regulation X. *See* Small Business Review Panel Report at 33-34, 49, and 67. Based on this feedback and consistent with the recommendation of the Small Business Review Panel, the Bureau solicits comment on what, if any, additional specific information beyond the six items included under the proposed definition of application is needed to provide a reasonably accurate Loan Estimate. *See id.* at 29.

The proposed definition of application consists of two parts. The first part establishes a broad definition for all of Regulation Z. The second part provides that an application consists of six elements of data. These elements, which are currently set forth in the definition of application in Regulation X, have an established significance in the context of closed-end loans secured by real property, but may be less significant or even inapplicable to other types of credit. Thus, these six elements do not apply to Subpart B (open-end loans), Subpart F (student loans), and Subpart G (special rules for credit card accounts and open-end credit offered to college students).

Proposed comment 2(a)(3)-1 explains that a consumer's submission of financial information is for purposes of obtaining an extension of credit. A creditor is free to collect information in addition to that listed in § 1026.2(a)(3)(ii) that it deems necessary in connection with the request for the extension of credit. However, once a creditor has received the six listed pieces of information, it has an application for purposes of § 1026.2(a)(3). The proposed comment also contains illustrative examples of this provision.

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

Proposed comment 2(a)(3)-3 clarifies that the creditor’s receipt of a credit report fee does not affect whether an application has been received. Section 1026.19(a)(1)(iii) permits the imposition of a fee to obtain the consumer’s credit history prior to the delivery of the disclosures required under § 1026.19(a)(1)(i). Section 1026.19(e)(2)(i)(B) permits the imposition of a fee to obtain the consumer’s credit report prior to the delivery of the disclosures required under § 1026.19(e)(1)(i). Whether, or when, such fees are received is irrelevant for the purposes of the definition in § 1026.2(a)(3) and the timing requirements in § 1026.19(a)(1)(i) and (e)(1)(iii). For example, if, in a transaction subject to § 1026.19(e)(1)(i), a creditor receives the six pieces of information identified under § 1026.2(a)(3)(ii) on Monday, June 1, but does not receive a credit report fee from the consumer until Tuesday, June 2, the creditor does not comply with § 1026.19(e)(1)(iii) if it provides the disclosures required under § 1026.19(e)(1)(i) after Thursday, June 4. The three-business-day period beings on Monday, June 1, the date the creditor received the six pieces of information. The waiting period does not begin on Tuesday, June 2, the date the creditor received the credit report fee.

2(a)(6) Business Day

Although neither RESPA nor TILA defines “business day,” that term is defined in Regulations X and Z. Both Regulation X § 1024.2(b) and Regulation Z § 1026.2(a)(6) generally define “business day” to mean a day on which the offices of the creditor or other business entity are open to the public for carrying on substantially all of the entity's business functions. For certain provisions of Regulation Z, however, an alternative definition applies. Under this definition, "business day" means all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a), *i.e.*, New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

The alternative definition of business day applies to, among other things, the three-business-day limitation on the imposition of fees in § 1026.19(a)(1)(ii) and the three- and seven-business-day waiting periods in § 1026.19(a)(2). As discussed below, the Bureau is proposing to amend § 1026.19 to implement the integrated disclosure requirement in section 1032(f) of the Dodd-Frank Act by adding new paragraphs (e) and (f). Accordingly, for consistency and to facilitate compliance with TILA, the Bureau is proposing to use its authority under TILA section 105(a) to amend § 1026.2(a)(6) to apply the alternative definition of business day to the provisions of paragraphs (e) and (f) that are analogous to § 1026.19(a)(1)(i), (a)(1)(ii), and (a)(2). The Bureau also proposes conforming amendments to comment 2(a)(6)-2.

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

2(a)(17) Creditor

Under current Regulation Z, a person who extended consumer credit 25 or fewer times in the past calendar year, or five or fewer times for transactions secured by a dwelling, is exempt from the definition of "creditor." *See* § 1026.2(a)(17)(v). The Bureau's 2011 Streamlining Proposal specifically requested comment on whether these thresholds should be raised and, if so, to what number of transactions. In addition, the proposal solicited comment on whether a similar exemption should be applied to the pre-consummation disclosure requirements under RESPA that will be integrated with the TILA requirements pursuant to Dodd-Frank Act section 1032(f). In response, trade association commenters suggested raising the threshold number of transactions in order to reduce regulatory burden on more small lenders. For example, one trade association commenter suggested raising the threshold number of transactions to 50, regardless of transaction type. In light of this feedback, the Bureau requests comment on whether the five-loan exemption threshold is appropriate for transactions subject to this proposed rule and, if not, what number of transactions would be appropriate. The Bureau also solicits comment on whether any transaction-based exemption adopted in this rulemaking should be applied to the pre-consummation disclosure requirements of sections 4 and 5 of RESPA.

2(a)(25) Security Interest

Pursuant to its authority under TILA section 105(a), the Bureau proposes a conforming amendment to the definition of "security interest" in current § 1026.2(a)(25). Under the current definition of security interest, for purposes of the disclosure requirements in §§ 1026.6 and

1026.18, the term does not include an interest that arises solely by operation of law. For consistency and to facilitate compliance with TILA, the Bureau's proposed amendment extends that exemption to disclosures required under proposed §§ 1026.19(e) and (f) and 1026.38(l)(6). The same conforming amendment would be made to comment 2(a)(25)-2.

Section 1026.3 Exempt Transactions

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

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

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

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

3(h) Partial Exemption for Certain Mortgage Loans

The Bureau is proposing a new § 1026.3(h) to provide an exemption from proposed § 1026.19(e), (f), and (g) for transactions that satisfy several criteria associated with certain housing assistance loan programs for low- and moderate-income persons. As discussed below, proposed § 1026.19(e) and (f) establishes the requirement to provide the new integrated disclosures for transactions secured by real property, other than reverse mortgages, and proposed § 1026.19(g) establishes the requirement to provide a special information booklet for those transactions. The partial exemption in proposed § 1026.3(h) parallels § 1024.5(c)(3), discussed above. The exemptions are designed to create consistency with Regulation X and to codify a disclosure exemption previously granted by HUD. Thus, under the two proposed exemptions, lenders would be exempt from providing the RESPA-mandated closing cost disclosures for federally related mortgage loans that satisfy the exemption's conditions, even if the transaction otherwise would be subject to RESPA.

The Bureau proposes this exemption pursuant to its authority under TILA section 105(a) and (f), RESPA section 19(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). The Bureau believes that the proposed exemption will create consistency with Regulation X and therefore facilitate compliance with TILA and RESPA. In addition, the Bureau believes the special disclosure requirements that covered persons must meet to qualify for the proposed exemption will help ensure that the features of these mortgage transactions are fully, accurately. and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with these mortgage transactions, consistent with Dodd-Frank Act section 1032(a). The proposed exemption will also improve consumer awareness and understanding of transactions involving residential mortgage loans, which is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b). The Bureau has considered the factors in TILA section 105(f) and believes that, for the reasons discussed above, an exception is appropriate under that provision. Specifically, the Bureau believes that the proposed exemption is appropriate for all affected borrowers, regardless of their other financial arrangements and financial sophistication and the importance of the loan to them. Similarly, the Bureau believes that the proposed exemption is appropriate for all affected loans, regardless of the amount of the loan and whether the loan is secured by the principal residence of the consumer. Furthermore, the Bureau believes that, on balance, the proposed exemption will simplify the credit process without undermining the goal of consumer protection or denying important benefits to consumers.

The proposed exemption applies only to transactions secured by a subordinate lien. For the same reasons discussed in the section-by-section analysis to proposed § 1024.5(c)(3), the Bureau requests comment on whether the exemption in proposed § 1026.3(h) should extend to first liens. In addition, for the reasons discussed above, the Bureau seeks comment on whether requirements and features that may serve as interest substitutes should be considered "interest" and, therefore, should be impermissible for loans seeking to qualify for this partial exemption. The Bureau also seeks comment on the types of loan requirements and features that should be similarly deemed "interest" for purposes of this partial exemption. Alternatively, the Bureau seeks comment on whether such requirements and features should be permissible within the exemption on the grounds that the disclosure required by proposed § 1026.3(h)(6) is sufficient to inform consumers of such loan terms.

Proposed comments provide additional guidance. Proposed comment 3(h)-1 notes that transactions that meet the requirements of § 1026.3(h) are exempt from only the integrated disclosure requirements and not from any other applicable requirement of Regulation Z. The comment further clarifies that § 1026.3(h)(6) requires the creditor to comply with the disclosure requirements of § 1026.18, even if the creditor would not otherwise be subject to that section because of proposed § 1026.19(e), (f), and (g). In addition, the comment notes that the consumer also has the right to rescind the transaction under § 1026.23, to the extent that provision is applicable.

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

Section 1026.4 Finance Charge

TILA's Approach to the Finance Charge

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

Current Regulatory Approach to the Finance Charge

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

There are longstanding concerns about the "some fees in, some fees out" approach to the finance charge in TILA and Regulation Z. Early concerns about the problems with this approach to the finance charge are outlined in the Board-HUD Joint Report. Board-HUD Joint Report at 10. The Board-HUD Joint Report states that a fundamental problem with the finance charge is that the "cost of credit" has different meanings from the perspective of the consumer and the creditor. *Id.* From the creditor's perspective, the cost of credit may mean the interest and fee income that the creditor receives in exchange for providing credit to the consumer. *Id.* However, the consumer views the cost of credit as what the consumer pays for the credit, regardless of the persons to whom such amounts are paid. *Id.* The current "some fees in, some fees out" approach to the finance charge largely reflects the creditor's perspective, not the consumer's.

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

In light of these concerns about the finance charge, for closed-end credit transactions secured by real property or a dwelling, the Board's 2009 Closed-End Proposal would have replaced the "some fees in, some fees out" approach to the finance charge with a more inclusive approach to ensure that the finance charge and corresponding APR disclosed to consumers provides a more complete and useful measure of the cost of credit. The Board did not finalize its proposal prior to the transfer of its TILA rulemaking authority to the Bureau.

The Bureau's Proposal

For the reasons set forth in the Board's 2009 Closed-End Proposal, discussed above, proposed § 1026.4 revises the test for determining the finance charge. Except where otherwise noted, the Bureau's proposal generally mirrors the Board's 2009 Closed-End Proposal. Pursuant to its authority under TILA section 105(a) and (f), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b), the Bureau is proposing to amend § 1026.4 to replace the current "some fees in, some fees out" approach to the finance charge with a simpler, more inclusive test based on the general definition of finance charge in TILA section 106(a). 15 U.S.C. 1601 note; 1604(a), (f); 12 U.S.C. 5532(a). The proposed changes to § 1026.4 apply to closed-end transactions secured by real property or a dwelling, and are not limited to transactions subject to proposed § 1026.19(e) and (f).

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

The Bureau proposes § 1026.4 pursuant to its authority under TILA section 105(a) and (f), Dodd-Frank-Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). The Bureau has considered the purposes for which it may exercise its authority under TILA section 105(a) and, based on that review, believes that the proposed adjustments and exceptions are appropriate. The proposal would effectuate TILA's purpose by better informing consumers of the total cost of credit and prevent circumvention or evasion of the statute through the unbundling or shifting of the cost of credit from items that are included in the finance charge to fees or charges that are currently excluded from the finance charge. The Bureau has considered the factors in TILA section 105(f) and believes that, for the reasons discussed above, an exception is appropriate under that provision. Specifically, the Bureau believes that the proposed exemption is appropriate for all affected borrowers, regardless of their other financial arrangements and financial sophistication and the importance of the loan to them. Similarly, the Bureau believes that the proposed exemption is appropriate for all affected loans, regardless of the amount of the loan and whether the loan is secured by the principal residence of the consumer. Furthermore, the Bureau believes that, on balance, the proposed exemption will simplify the credit process without undermining the goal of consumer protection or denying important benefits to consumers. A more inclusive approach to the finance charge may improve the process of mortgage lending by enhancing consumer understanding of the finance charge and

APR, and will also reduce compliance costs. The Bureau does not believe that the proposed exemptions undermine the goal of consumer protection; rather they promote and are more consistent with the overall purposes of TILA. Based on that review, the Bureau believes that treating the fees that are currently exempt as part of the finance charge, for closed-end transactions secured by real property or a dwelling, is appropriate.

In addition, for the reasons set forth above, the proposed changes to the finance charge will ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances, consistent with section 1032(a) of the Dodd-Frank Act. Finally, for closed-end transactions secured by real property or a dwelling that are also residential mortgage loans as defined in TILA section 103(cc)(5), the Bureau proposes § 1026.4 pursuant to its authority under Dodd-Frank Act section 1405(b). For the reasons set forth above, including avoiding consumer confusion and preventing the unbundling of the cost of credit, the Bureau believes this proposed modification may improve consumer understanding, and therefore is in the interest of consumers and the public.

Industry feedback in response to the Bureau's Small Business Review Panel Outline raised concerns about the usefulness of the proposed expansion of the finance charge in light of the Bureau's proposal to deemphasize the finance charge and APR in the disclosures provided to consumers within three days of the consumers' application and prior to consummation, as discussed below in the section-by-section analysis for proposed §§ 1026.37(l) and 1026.38(o). The Bureau has considered this feedback in developing the proposed rule, but nevertheless believes that, in addition to benefiting industry by simplifying the finance charge and APR calculation, the proposed approach could provide important benefits to consumers in the form of an APR that better reflects the true cost of credit. The Bureau intends to develop supplemental educational materials to further explain how to use the finance charge and APR in comparing loan costs over the long term. Accordingly, the Bureau's proposal to remove exclusions from the finance charge is one of several ways the Bureau intends to improve the disclosure as a useful measure for consumers.

The Bureau recognizes that the proposed more inclusive finance charge could affect coverage under other laws, such as higher-priced mortgage loan and HOEPA protections, and that a more inclusive finance charge has implications for the HOEPA, Escrow, Appraisals, and Ability to Repay rulemakings identified in part II.F above. Absent further action by the Bureau, the more inclusive finance charge would:

- Cause more closed-end loans to trigger HOEPA protections for high-cost loans.[120] The protections include special disclosures, restrictions on certain loan features and lender practices, and strengthened consumer remedies. The more inclusive finance charge would affect both the points and fees test (which currently uses the

[120]Under the Dodd-Frank Act, a loan is defined as a high-cost mortgage, subject to HOEPA protections, if the total points and fees payable in connection with the transaction exceed specified thresholds (points and fees coverage test); the transaction's APR exceeds the applicable APOR by a specified threshold (APR coverage test); or the transaction has certain prepayment penalties. First, under the points and fees coverage test, the definition of points and fees includes, as its starting point, all items included in the finance charge. Therefore, a potential consequence of the more inclusive finance charge is that more loans might exceed HOEPA's points and fees threshold because new categories of charges would be included in the calculation of total points and fees for purposes of that coverage test. In addition, under the APR coverage test, the more inclusive finance charge could result in some additional loans being covered as high-cost mortgages because closed-end loans would have higher APRs. There are currently some differences between APR and the average prime offer rate, which is generally calculated using data that includes only contract interest rate and points but not other origination fees. *See* 75 FR 58660-58662. The current APR includes not only discount points and origination fees but also other charges the creditor retains and certain third-party charges. The more inclusive finance charge, which would also include most third-party charges, would widen the disparity between the APR and APOR and cause more closed-end loans to qualify as a high-cost mortgage. The Bureau notes that substantially similar implications would apply to each respective rulemaking in which coverage depends on comparing a transaction's APR to the applicable APOR. In addition, the Bureau notes that the Dodd-Frank Act expands HOEPA to apply to more types of mortgage transactions, including purchase money mortgage loans and open-end credit plans secured by a consumer's principal dwelling. However, the proposed more inclusive finance charge applies only to closed-end loans. Therefore, the Bureau notes that the more inclusive finance charge would not affect the potential coverage of open-end credit plans under HOEPA.

finance charge as its starting point) and the APR test (which under Dodd-Frank will depend on comparisons to APOR) for defining what constitutes a high-cost loan.

- Cause more loans to trigger Dodd-Frank Act requirements to maintain escrow accounts for first-lien higher-priced mortgage loans. Coverage depends on comparing a transaction's APR to the applicable APOR.
- Cause more loans to trigger Dodd-Frank Act requirements to obtain one or more interior appraisals for "higher-risk" mortgage loans. Coverage depends on comparing a transaction's APR to the applicable APOR.
- Reduce the number of loans that would otherwise be "qualified mortgages" under the Dodd-Frank Act Ability to Repay requirements, given that qualified mortgages cannot have points and fees in excess of three percent of the loan amount. Also, more loans could be required to comply with separate underwriting requirements applicable to higher-priced balloon loans, and could be ineligible for certain exceptions authorizing creditors to offer prepayment penalties on fixed-rate, non-higher-priced qualified mortgage loans.[121] Again, status as a higher-priced mortgage loan depends on comparing APR to APOR.

During the Small Business Review Panel and in industry feedback provided in response to the Small Business Review Panel Outline, concerns were expressed that one unintended consequence of a more inclusive definition of finance charge could be that more loans would

[121] Specifically, the Dodd-Frank Act generally prohibits prepayment penalties on closed-end, dwelling-secured mortgage loans, except on fixed-rate qualified mortgages that are not higher-priced mortgage loans. For balloon loans, the Dodd-Frank Act generally requires creditors to assess consumers' ability to repay a higher-priced loan with a balloon payment using the scheduled payments required under the terms of the loan including any balloon payment, and based on income and assets other than the dwelling itself. Only consumers with substantial income or assets would likely qualify for such a loan. A separate Dodd-Frank Act provision authorizing balloon loans made by creditors that operate predominantly in rural or underserved areas is not affected by the finance charge issue.

qualify as high-cost loans subject to additional requirements under TILA section 129 and under similar State laws. *See* Small Business Review Panel Report at 25. Industry feedback generally suggests that the proposed revisions to the finance charge be viewed in the context of other rulemakings implementing the Dodd-Frank Act revisions to the thresholds for high-cost mortgages and qualified mortgage determinations, because of the relationship between the APR and those thresholds and because any changes to the APR calculation could be costly to implement and should be done in conjunction with other related changes.

Based on this feedback and consistent with the Small Business Review Panel's recommendation, the Bureau has considered the requirements of TILA section 129 (high-cost mortgages) and TILA section 129C (qualified mortgages), including the Dodd-Frank Act amendments to those provisions, as well as State predatory lending laws, in proposing the amendments to § 1026.4. For example, the Board previously proposed two means of reconciling an expanded definition of the finance charge with existing thresholds for loan APR and points and fees, and the Bureau expects to seek comment on potential trigger modifications in each proposal it issues as discussed below. The Bureau will consider any final or proposed rules implementing those provisions prior to issuing a final rule on this issue. *See* Small Business Review Panel Report at 30.

As described in the § 1022 analysis below, the Bureau is seeking data that will allow it to perform a quantitative analysis to determine the impacts of a broader finance charge definition on APR thresholds for HOEPA and various other regimes.[122] The Bureau seeks comment on its

[122] In its 2009 Closed-End Proposal, the Board relied on a 2008 survey of closing costs conducted by Bankrate.com that contains data for hypothetical $200,000 loans in urban areas. Based on that data, the Board estimated that the share of first-lien refinance and home improvement loans that are subject to HOEPA would increase by .6 percent if the definition of finance charge was expanded. The Bureau is considering the 2010 version of that survey, but as described below the Bureau is also seeking additional data that would provide more representative information regarding closing and settlement costs that would allow for a more refined analysis of the proposals.

plans for data analysis, as well as additional data and comment on the potential impacts of a broader finance charge definition and potential modifications to the triggers.

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

For example, the Board previously proposed two means of reconciling an expanded definition of the finance charge with existing APR-based thresholds. On several occasions, the Board proposed to replace the APR with a "transaction coverage rate" as a transaction-specific metric a creditor compares to the average prime offer rate to determine whether the transaction meets the higher-priced loan threshold in § 1026.35(a). *See* 76 FR 27390, 27411-12 (May 11, 2011); 76 FR 11598, 11608-09 (Mar. 2, 2011); 75 FR 58539, 58660-61 (Sept. 24, 2010).[123] Although adopting the TCR would mean that lenders would have to calculate one metric for

[123] The transaction coverage rate would be determined in accordance with the applicable rules of Regulation Z for the calculation of the annual percentage rate for a closed-end transaction, except that the prepaid finance charge for purposes of calculating the transaction coverage rate includes only charges that will be retained by the creditor, mortgage broker, or affiliates of either. The wording of the Board's proposed definition of "transaction coverage rate" varied slightly between the 2010 Mortgage Proposal and the 2011 Escrows Proposal as to treatment of charges retained by mortgage broker affiliates. In its 2012 HOEPA Proposal, the Bureau proposes to use the 2011 Escrows Proposal version, which would include charges retained by broker affiliates. The Bureau believes that this approach is consistent with the rationale articulated by the Board in its earlier proposals and with certain other parts of the Dodd-Frank Act that distinguish between charges retained by the creditor, mortgage broker, or affiliates of either company. See, *e.g.*, Dodd-Frank Act sections 1403, 1411(a).

purposes of disclosure and another for purposes of regulatory coverage, both metrics would be simpler to compute than APR today using the current definition of finance charge.[124] In addition, the Board proposed to amend § 1026.32 to retain the existing treatment of certain charges in the definition of points and fees for purposes of determining HOEPA coverage. 75 FR at 58539, 58636-38 (Sept. 24, 2010). The Bureau has proposed language to adopt the transaction coverage rate and to exclude the additional charges from the HOEPA points and fees test in its 2012 HOEPA Proposal. The Bureau has proposed language to adopt the transaction coverage rate and to exclude the additional charges from the HOEPA points and fees test in its 2012 HOEPA Proposal. The Bureau seeks comment on these prior proposals and other potential methods of addressing the impact of a more inclusive approach to the finance charge on other regimes.

The Bureau also seeks comment on the potential advantages and disadvantages to both consumers and creditors of using different metrics for purposes of disclosures and for purposes of determining coverage of various regulatory regimes. With regard to the transaction coverage rate, the Bureau believes that the potential compliance burden is mitigated by the fact that both TCR and APR would be easier to compute than the APR today using the current definition of finance charge. However, the Bureau seeks comment on the issue generally and in particular on whether use of the TCR or other trigger modifications should be optional, so that creditors could use the broader definition of finance charge to calculate APR and points and fees triggers if they would prefer. The Board's 2010 Mortgage Proposal structured TCR as a mandatory requirement out of concern that identical transactions extended by two different creditors could have

[124] To the extent that lenders believe that it is burdensome to calculate two metrics, they could continue to use APR for both purposes.

inconsistent coverage under regulations governing higher-priced mortgage loans, but similarly sought comment on the issue.

Finally, the Bureau also seeks comment on the timing of implementation. There is no statutory deadline for issuing final rules to integrate the mortgage disclosures under TILA and RESPA, and the Bureau expects that it may take some time to conduct quantitative testing of the forms prior to issuing final rules. However, the Bureau expects to issue several final rules to implement provisions of title XIV of the Dodd-Frank Act by January 21, 2013, that address thresholds for compliance with various substantive requirements under HOEPA and other Dodd-Frank Act provisions. In some cases the Dodd-Frank Act requires that regulations implementing title XIV take effect within one year of issuance.

The Bureau believes that it would be preferable to make any change to the definition of finance charge and any related adjustments in regulatory triggers take effect at the same time, in order to provide for consistency and efficient systems modification. The Bureau also believes that it may be advantageous to consumers and creditors to make any such changes at the same time that creditors are implementing new title XIV requirements involving APR and points and fees thresholds, rather than waiting until the Bureau finalizes other aspects of this rulemaking relating to disclosures. If the Bureau expands the definition of finance charge, this approach would likely provide the benefits to consumers of the final rule at an earlier date as well as avoid requiring creditors to make two sets of systems and procedures changes focused on determining which loans trigger particular regulatory requirements. However, given that implementation of the disclosure-related elements of this proposal will also require systems and procedures changes, there may be advantages to delaying any change in the definition of finance charge and any related adjustments to regulatory triggers until those changes occur. The Bureau therefore seeks comment on whether to sequence any change in the proposed n the benefits and costs to both consumers and industry of both approaches.

In light of these implementation issues, the Bureau wishes to evaluate comments on the cumulative effect of an expanded definition of the finance charge simultaneously with comments on the rules to implement title XIV. The Bureau therefore is providing a comment period of 60 days for the proposed amendments to § 1026.4, rather than the 120-day comment period provided for all other aspects of this proposed rule other than § 1026.1(c). The Bureau believes a shorter comment period is particularly appropriate given that this aspect of the proposal largely mirrors the proposed changes to § 1026.4 in the Board’s 2009 Closed-End Proposal.

4(a) Definition

Section 1026.4 states the basic test for the finance charge, as set forth in TILA section 106(a), and specifies that it does not include types of charges payable in a comparable cash transaction. Consistent with the Board’s 2009 Closed-End Proposal, the Bureau is proposing new comment 4(a)-6 to clarify that, in a transaction where there is no seller, such as a refinancing of an existing extension of credit described in § 1026.20(a), there is no comparable cash transaction and, therefore, the exclusion from the finance charge in proposed § 1026.4(a) for types of charges payable in a comparable cash transaction does not apply to such transactions. The Bureau solicits comment on this proposed clarification.

4(a)(2) Special Rule; Closing Agent Charges

Section 1026.4(a)(2) provides a special rule for the treatment of closing agent charges in determining the finance charge. That section excludes from the finance charge fees charged by a third party that conducts a loan closing unless the creditor (1) requires the particular service for which the consumer is charged; (2) requires the imposition of the charge; or (3) retains a portion of the third-party charge. Under proposed § 1026.4(a)(2), this exclusion is inapplicable to closed-end transactions secured by real property or a dwelling. Under the basic test for the finance charge in TILA section 106(a), many closing agent charges described in § 1026.4(a)(2) would typically be part of the finance charge because creditors generally require closing agents to conduct closings who, in turn, impose various fees on the consumer. As the Board described in its 2009 Closed-End Proposal, in some cases, the creditor clearly requires the particular fee charged by the closing agent but that, in other cases, it is not clear whether a charge is specifically required by the creditor. A case-by-case determination as to whether the creditor requires the particular service charged by a closing agent would result in significant burden and risk for consumers and, likely, inconsistent treatment of such fees, which would undermine the purpose of disclosing the finance charge to consumers. 74 FR at 43246. For these reasons, proposed § 1026.4(a)(2) adopts a bright-line rule that includes in the finance charge fees charged by closing agents, including fees of other third parties hired by closing agents to perform particular services, assuming those fees meet the general definition of finance charge and that no other exclusion applies. Proposed comment 4(a)(2)-3 clarifies that comments 4(a)(2)-1 and 4(a)(2)-2 do not apply to closed-end transactions secured by real property or a dwelling.

As the Board noted in its 2009 Closed-End Proposal, the inclusion of third-party charges in the finance charge may create some risk that creditors will understate the finance charge if the creditor does not know that a charge is imposed by a third party or the particular amount of such charge. 74 FR at 43246. Some industry commenters in response to the 2009 Closed-End Proposal supported the inclusion of all closing agent charges in the finance charge as a means of simplifying compliance. Other industry commenters opposed the inclusion of all closing agent charges in the finance charge due to the creditor’s lack of control over these charges, and also because including these amounts in the finance charge makes creditors responsible for settlement fees under TILA. The Bureau has considered these comments in developing the proposed rule, but believes that a determination of whether a creditor requires the particular service for which the consumer is charged results in significant confusion for consumers and inconsistent treatment of such fees. In addition, as discussed below, the Dodd-Frank Act added to TILA a requirement that creditors disclose aggregate settlement charges, so that creditors now have a statutory disclosure responsibility for such charges under TILA. Furthermore, creditors are responsible for disclosing settlement charges subject to certain estimation requirements and limitations on increases in settlement costs pursuant to HUD's 2008 RESPA Final Rule and proposed § 1026.19(e), discussed below. The Bureau also notes that the risk of understating the finance charge is lessened by TILA section 106(f), 15 U.S.C. 1605(f), current § 1026.18(d)(1), and proposed § 1026.38(o)(2), which provide that a disclosed finance charge is treated as accurate if it does not vary from the actual finance charge by more than $100 or is greater than the amount required to be disclosed. The Bureau requests comment on the extent to which settlement costs increase from the good faith estimate to closing and whether the Bureau should increase the finance charge tolerance for closed-end transactions secured by real property or a dwelling in light of the proposal to include third-party charges in the finance charge, and the amount of any such increase.

In addition, the Board's 2009 Closed-End Proposal stated that excluding certain fees from the finance charge because they are voluntary or optional is inconsistent with the statutory objective of disclosing the "cost of credit," including charges imposed "as an incident to the extension of credit." 74 FR at 43246. As the Board noted, an assumption underlying the exclusion from the finance charge for certain voluntary or optional charges is that they are not "imposed directly or indirectly by the creditor." *Id.* However, some charges may be imposed by the creditor even if the services for which the fee is imposed are not specifically required by the creditor. *Id.* For example, a creditor may require the use of a closing agent, but may not impose or require certain fees or services imposed by that closing agent for which the consumer is charged, such as administration fees for voluntary escrow accounts. Excluding such charges from the finance charge conflicts with the statutory purpose of including charges that are imposed "as an incident to the extension of credit."

The Board historically interpreted the definition of "finance charge" as not dependent on whether a charge is voluntary or required. *See, e.g.*, 61 FR 49237, 49239 (Sept. 19, 1996) ("The Board has generally taken a case by case approach in determining whether particular fees are 'finance charges' and does not interpret Regulation Z to automatically exclude all 'voluntary' charges from the finance charge."). This approach is reflected in current Regulation Z's treatment of voluntary credit insurance premiums and debt cancellation fees, which are by definition voluntary, as excluded from the finance charge only under certain circumstances. This special rule presupposes that voluntary credit insurance and debt cancellation charges would be include in the finance charge under the general definition.

Furthermore, excluding certain fees from the finance charge because they are voluntary or optional requires a factual determination, which is not practical in all cases since it may be difficult to determine whether a fee or charge is truly voluntary. The Board's 2009 Closed-End Proposal cited the current provisions addressing whether a charge for credit insurance is optional as an example of an approach to defining a voluntariness test that has proven unsatisfactory. *Id.* For this reason, the Bureau proposes a bright-line rule to include in the finance charge both voluntary and required charges that are imposed by the creditor to avoid fact-based analysis and improve consistency in disclosure of the finance charge and APR.

The Board cited as another basis for the current exclusions from the finance charge the assumption that creditors cannot know the amounts of voluntary or optional charges at the time the finance charge and APR disclosures must be provided to consumers. *Id.* However, like the Board, the Bureau believes that creditors know the amounts of their own voluntary charges, if any, and that creditors know or can readily determine voluntary charges when disclosing the finance charge and APR to consumers at least three business days prior to consummation. As a practical matter, most voluntary fees would be excluded from the finance charge because they are also payable in a comparable cash transaction (*e.g.*, home warranty fees). The Board cited voluntary credit insurance premiums as the primary voluntary third-party charge in connection with a mortgage transaction that is not otherwise excluded from the finance charge, noting that creditors generally solicit consumers for this insurance and that, historically, creditors had to disclose the premium for voluntary credit insurance to exclude such amounts from the finance charge. However, the Bureau solicits comment on whether there are voluntary third-party charges that would be included in the finance charge under the proposed more-inclusive approach the amounts of which cannot be determined three business days before consummation.

The Bureau also recognizes that, within three business days of receiving the consumer's application, creditors may not know what voluntary or optional charges the consumer will incur. Regulation Z generally permits creditors to rely on reasonable assumptions regarding voluntary or optional charges and label those disclosures as estimates pursuant to § 1026.17(c) and its commentary. The Bureau requests comment on whether further guidance is required regarding reasonable assumptions for the voluntary or optional charges.

4(b) Examples of Finance Charges

The Bureau proposes to amend comment 4(b)-1 to be consistent with proposed § 1026.4(g), which provides that the exclusions from the finance charge under § 1026.4(a)(2) and (c) through (e), other than § 1026.4(c)(2), (c)(5), (c)(7)(v), and (d)(2), do not apply to closed-end transactions secured by real property or a dwelling, as discussed below.

4(c) Charges Excluded From the Finance Charge

The Bureau proposes to amend § 1026.4(c), which lists specific exclusions from the finance charge, to be consistent with proposed § 1026.4(g). Pursuant to proposed § 1026.4(g), the exclusions in § 1026.4(c), other than the exclusion for late fees, exceeding a credit limit, and default, delinquency, or similar charges, seller's points, and escrowed items that are otherwise not included in the finance charge, would not apply to closed-end transactions secured by real property or a dwelling. The Bureau also proposes to amend the commentary to § 1026.4(c) to be consistent with § 1026.4(g).

4(c)(2)

The Bureau proposes to retain the exclusion from the finance charge under § 1026.4(c)(2) of fees for actual unanticipated late payment, exceeding a credit limit, or for delinquency, default, or a similar occurrence. Although the Bureau is generally proposing a more inclusive approach to the finance charge through proposed § 1026.4, the charges described in § 1026.4(c)(2) should be excluded from the finance charge because they are incurred, if at all, only after consummation of the transaction. At the time a creditor must disclose the finance charge and other items affected by the finance charge, the creditor cannot know whether or how many times such charges may be imposed.

4(c)(5)

The Bureau proposes to retain the exclusion from the finance charge under § 1026.4(c)(5) of seller's points. Seller's points include any charges imposed by the creditor upon the non-creditor seller of property for providing credit to the buyer or for providing credit on certain terms. Although the Bureau is generally proposing a more inclusive approach to the finance charge, the Bureau believes that it is appropriate to continue to exclude seller's points from the finance charge because seller's points are not payable by the consumer and because the extent to which seller's points are passed on to the consumer in the form of a higher sales price is unknown. However, the Bureau requests comment on whether seller's points should be included in the finance charge for closed-end transactions secured by real property or a dwelling. In particular, the Bureau requests comment on the frequency with which seller's points are passed on to the borrower through a higher sales price. In addition, although the scope of the changes to § 1026.4 under this proposal is limited to closed-end transactions secured by real property or a dwelling, the Bureau solicits comment on the potential ramifications of including seller's points in the finance charge for other types of credit.

4(c)(7) Real-Estate Related Fees

Section 106(e) of TILA, 15 U.S.C. 1605(e), excludes certain charges from the finance charge for credit secured by an interest in real property. This provision is implemented in current § 1026.4(c)(7), which contains exclusions from the finance charge that generally mirror the statute, for transactions secured by real property or in residential mortgage transactions, provided that the fees for such charges are bona fide and reasonable in amount. Specifically, § 1026.4(c)(7) excludes from the finance charge those fees for: title examination, abstract of title, title insurance, property survey, and similar purposes; preparing loan-related documents, such as deeds, mortgages, and reconveyance or settlement documents; notary and credit report fees;

property appraisal or inspections to assess the value or condition of the property prior to closing, including pest-infestation or flood-hazard determination; and amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the finance charge. These fees fall squarely within the general statutory definition of the finance charge, and their exclusion from the finance charge significantly undermines the purpose of the finance charge as a reflection of the cost of credit since the charges comprise a significant portion of the up-front costs paid by consumers. As noted by some industry commenters to the 2009 Closed-End Proposal, the inclusion of real-estate related fees such as application, appraisal, and credit report fees in the finance would reduce the possibility that a creditor can manipulate the APR by shifting some costs of credit to fees that are currently excluded from the finance charge. Some commenters also noted that these charges are generally known to the creditor early in the loan process. Accordingly, proposed § 1026.4 includes these charges in the finance charge.

However, proposed § 1026.4 retains the exclusion from the finance charge in current § 1026.4(c)(7)(v) for amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the finance charge. For example, homeowner's insurance premiums that are excluded from the finance charge pursuant to § 1026.4(d)(2) would not be included in the finance charge simply because such premiums will be paid into an escrow account.

Under the Board's 2009 Closed-End Proposal, § 1026.4(c)(7) would have applied only to open-end credit plans secured by real property or open-end residential mortgage transactions. Some commenters interpreted that proposal to mean that amounts required to be paid into escrow or trustee accounts should be included in the finance charge calculation, even if such amounts would not otherwise be included in the finance charge if not paid into an escrow or trustee account. Concerns about including escrowed taxes and insurance in the finance charge were raised during the Small Business Review Panel (*see* Small Business Review Panel Report at 30), in industry feedback provided in response to the Small Business Review Panel Outline, and in comment letters provided to the Board in response to the 2009 Closed-End Proposal. The Small Business Review Panel specifically recommended that escrowed taxes and insurance remain excluded from the finance charge, unless those amounts would otherwise be considered finance charges under the expanded definition. Small Business Review Panel Report at 30. Commenters to the 2009 Closed-End Proposal noted that including escrowed taxes and insurance in the finance charge while excluding those paid outside of escrow may mislead consumers who try to compare escrowed and non-escrowed loans. Commenters also noted that the APR for identical loans could be vastly different because the escrow deposit is calculated based on the date the loan closes and when the next tax payment is due. Based on this feedback and consistent with the Small Business Review Panel's recommendation, the Bureau is proposing to exclude escrowed taxes and insurance from the finance charge, unless those amounts would otherwise be considered finance charges under the expanded definition. In short, a fee or charge that is not part of the finance charge does not become part of the finance charge merely because it is paid to an escrow account.

Accordingly, proposed comment 4(c)(7)-1 clarifies that the exclusion of escrowed amounts under § 1026.4(c)(7)(v) applies to all residential mortgage transactions and to other transactions secured by real estate. The Bureau also proposes other amendments to the commentary to § 1026.4(c)(7) to be consistent with proposed § 1026.4(g).

4(d) Insurance and Debt Cancellation and Debt Suspension Coverage

The Bureau proposes to amend § 1026.4(d), which currently excludes from the finance charge, under certain circumstances, voluntary credit insurance premiums, property insurance premiums, and voluntary debt cancellation or debt suspension fees. Consistent with proposed § 1026.4(g), proposed § 1026.4(d) would not exclude from the finance charge credit insurance premiums and debt cancellation or debt suspension fees, for closed-end mortgage transactions. The Bureau also proposes to amend the commentary to § 1026.4(d) to be consistent with § 1026.4(g).

4(d)(1) Voluntary Credit Insurance Premiums

4(d)(3) Voluntary Debt Cancellation or Debt Suspension Fees

TILA section 106(b)(7), 15 U.S.C. 1605(b)(7), provides that premiums for credit life, accident, or health insurance written in connection with any consumer credit transaction are part of the finance charge unless (1) the coverage is not a factor in the approval by the creditor of the extension of credit, and this fact is clearly disclosed in writing to the consumer; and (2) to obtain the insurance, the consumer specifically requests the insurance after getting the disclosures. Current § 1026.4(d)(1) and (d)(3) implement this provision by providing that the creditor may exclude from the finance charge any premium for credit life, accident, health or loss-of-income insurance; any charge or premium paid for debt cancellation coverage for amounts exceeding the value of the collateral securing the obligation; or any charge or premium for debt cancellation or debt suspension coverage in the event of loss of life, health, or income or in case of accident, whether or not the coverage is insurance, if (1) the insurance or coverage is not required by the creditor and the creditor discloses this fact in writing, (2) the creditor discloses the premium or charge for the initial term of the insurance or coverage, (3) the creditor discloses the term of insurance or coverage, if the term is less than the term of the credit transaction, and (4) the consumer signs or initials an affirmative written request for the insurance or coverage after receiving the required disclosures. In addition, under § 1026.4(d)(3)(iii), the creditor must disclose, for debt suspension coverage, the fact that the obligation to pay loan principal and interest is only suspended, and that interest will continue to accrue during the period of suspension.

Proposed § 1026.4(d)(1) and (3) includes credit insurance and debt cancellation charges in the finance charge for closed-end transactions secured by real property or a dwelling to be consistent with § 1026.4(g). Proposed § 1026.4(d) is consistent with the overall proposed changes to § 1026.4, which remove exclusions from the finance charge, to make the finance charge and APR more accurately reflect the cost of credit. As discussed above, the Bureau does not believe that a rule that excludes fees from the finance charge simply because they are "voluntary" is consistent with the statute, which says that the finance charge include charges "imposed as an incident to the extension of credit," and that a determination of whether a fee is, in fact, voluntary simply has not been effective. As discussed above and as the Board noted in its 2009 Closed-End Proposal, the current test for defining whether a charge for credit insurance and debt cancellation or suspension coverage is "voluntary" has proven unsatisfactory. *See* 74 FR at 43246-50. Instead, the Bureau proposes a bright-line rule to include in the finance charge premiums for credit insurance and debt suspension fees. The Bureau also proposes to amend the commentary to § 1026.4(d) to be consistent with § 1026.4(g).

Concerns were raised in industry feedback in response to the Small Business Review Panel Outline and in comment letters in response to the 2009 Closed-End Proposal that voluntary charges such as credit insurance and debt cancellation fees should not be part of the finance charge because they are not "imposed" by the creditor. Commenters to the 2009 Closed-End

Proposal also noted that the products are often sold after consummation of the transaction and that including fees for these products in the finance charge may confuse consumers into believing they are mandatory. The Bureau has considered this feedback in developing the proposed rule, but, as discussed above, believes that whether or not a fee is "voluntary" is not determinative of whether it is imposed as an "incident to the extension of credit." Concerns that consumers might mistake voluntary charges for mandatory ones due to their inclusion in the finance charge are mitigated by the fact that (1) the TILA disclosures do not itemize the components of the finance charge or APR, and (2) for transactions secured by real property other than reverse mortgages, creditors must indicate that voluntary credit insurance or debt suspension, or cancellation fees are "optional" on the Loan Estimate provided to consumers within three business days of application and the Closing Disclosure provided three business days before consummation pursuant to proposed § 1026.37(g)(4)(ii). Furthermore, existing commentary makes clear that credit insurance and debt cancellation and suspension products requested by the consumer after consummation are not considered written in connection with the credit transaction and therefore do not meet the basic test for inclusion in the finance charge. *See* comments 4(b)(7) and (b)(8)-2 and 4(b)(1)-2.

4(d)(2) Property Insurance Premiums

Section 106(c) of TILA, 15 U.S.C. 1605(c), provides that premiums for insurance, written in connection with any consumer credit transaction, against loss of or damage to property or against liability arising out of the ownership or use of property, should be included in the finance charge unless the creditor provides the consumer with a clear written statement that discloses the cost of such insurance if obtained from or through the creditor, and informs the consumer that he may choose his own insurance provider. Current § 1026.4(d)(2) implements

TILA section 106(c), and generally provides that such premiums may be excluded from the finance charge if (1) the insurance may be obtained from a person of the consumer's choice, and that fact is disclosed to the consumer, and (2) if the coverage is obtained from or through the creditor, the premium for the initial term of insurance coverage is disclosed.

The Bureau proposes to retain the current exclusion from the finance charge under § 1026.4(d)(2) for premiums for insurance against loss of or damage to property, or against liability arising out of the ownership or use of property. As the Board noted in its 2009 Closed-End Proposal, property insurance is generally a hybrid product that protects both the value of the creditor's collateral and the consumer's equity in the property, such that it is impossible to segregate the premium into the portion that protects the creditor and the portion that protects the consumer. 74 FR at 43250. Although creditors generally require property insurance as a condition to extending credit secured by real property or a dwelling, consumers who do not have mortgages also regularly purchase property insurance to protect themselves from the risk of loss of or damage to property. *Id.* For these reasons, the Bureau proposes to retain the current exclusion from the finance charge under § 1026.4(d)(2).

The Bureau proposes to revise comment 4(d)-8 to conform it to the statutory language providing that, to be excluded from the finance charge, premiums for property insurance obtained "from *or through* the creditor" must be disclosed to the consumer. 15 U.S.C. 1605(c). Current § 1026.4(d)(2) also provides that if coverage is obtained "from or through the creditor," the premium for the initial term must be disclosed. However, current comment 4(d)-8 states, in relevant part, that "[t]he premium or charge must be disclosed only if the consumer elects to purchase the insurance *from the creditor*; in such a case, the creditor must also disclose the term of the property insurance coverage if it is less than the term of the obligation." (Emphasis added.) Accordingly, the Bureau proposes to amend comment 4(d)-8 to conform to the statutory language. In addition, proposed § 1026.4(d)(2) and comment 4(d)-8 clarify that insurance is available "from or through a creditor" only if it is available from the creditor or the creditor's "affiliate," as that term is defined under the Bank Holding Company Act, 12 U.S.C. 1841(k). The Bank Holding Company Act defines an "affiliate" as "any company that controls, is controlled by, or is under common control with another company." Thus, if the consumer elects to purchase property insurance from a company that controls, is controlled by, or is under common control with the creditor, then the creditor is required to disclose the cost of the insurance and its term, if it is less than the term of the obligation, for the charge to be excluded from the finance charge.

4(e) Certain Security Interest Charges

TILA section 106(d), 15 U.S.C. 1605(d), provides exclusions from the finance charge for certain government recording taxes and related fees and the premiums for any insurance in lieu of perfecting a security interest, provided those amounts are disclosed to the consumer. This provision is implemented in current § 1026.4(e). Consistent with the overall approach to largely eliminate the specific exclusions from the finance charge for closed-end transactions secured by real property or a dwelling, the Bureau proposes to amend § 1026.4(e) to eliminate those exclusions, consistent with proposed § 1026.4(g). The Bureau believes this approach will better inform consumers of the total cost of credit and prevent circumvention or evasion of the statute through the unbundling of the cost of credit to fees or charges that are currently excluded from the finance charge. The Bureau also proposes to amend the commentary to § 1026.4(e) to be consistent with § 1026.4(g).

4(g) Special Rule for Closed-End Mortgage Transactions

The Bureau proposes new § 1026.4(g), which treats certain fees as part of the finance charge, for closed-end transactions secured by real property or a dwelling. Specifically, proposed § 1026.4(g) provides that the exclusions from the finance charge in § 1026.4(a)(2) (closing agent charges) and (c) (fees for actual unanticipated late payment, exceeding a credit limit, or for delinquency, default, or similar occurrence), (d) (premiums for credit insurance and debt cancellation coverage), and (e) (certain security-interest charges), other than § 1026.4(c)(2) (late, over-limit, delinquency, default, and similar fees), (5) (seller's points), (7)(v) (escrowed items that are not included in the finance charge), and (d)(2) (property and liability insurance premiums), do not apply to closed-end transactions secured by real property or a dwelling.

As discussed above, the Bureau proposes to retain the exclusion from the finance charge for late, over-limit, delinquency, default and similar fees in § 1026.4(c)(2), seller's points described in § 1026.4(c)(5), amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the finance charge described in § 1026.4(c)(7)(v), and property and liability insurance described in § 1026.4(d)(2).

Proposed comments 1026.4(g)-1 through -3 provide guidance to creditors on compliance with the special rule for closed-end mortgage transactions provided in proposed § 1026.4(g). Proposed comment 4(g)–1 clarifies that the commentary under the exclusions identified above no longer applies to closed-end credit transactions secured by real property or a dwelling. Proposed comment 4(g)–2 clarifies that third-party charges that meet the definition under § 1026.4(a) and are not otherwise excluded from the finance charge generally are included in the finance charge, whether or not the creditor requires the services for which they are imposed. Proposed comment 4(g)–3 clarifies that charges payable in a comparable cash transaction, such as property taxes and fees or taxes imposed to record the deed evidencing transfer of title to the property from the seller to the buyer, are not part of the finance charge because they would have to be paid even if no credit were extended to finance the purchase.

Section 1026.17 General Disclosure Requirements

The Bureau is proposing conforming amendments to current § 1026.17 to reflect the proposed rules regarding the format, content, and timing of disclosures for closed-end transactions secured by real property, other than reverse mortgages subject to § 1026.33.

17(a) Form of Disclosures

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

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

17(b) Time of Disclosures

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

17(c) Basis of Disclosures and Use of Estimates

17(c)(1)

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

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

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

The Bureau also proposes new comment 17(c)(1)-19, regarding disclosure of rebates and loan premiums offered by a creditor. In its 2009 Closed-End Proposal, the Board proposed to revise comment 18(b)-2, which provides guidance regarding the treatment of rebates and loan premiums for the amount financed calculation required by § 1026.18(b). 74 FR at 43385. Comment 18(b)-2 primarily addresses credit sales, such as automobile financing, and provides that creditors may choose whether to reflect creditor-paid premiums and seller- or manufacturer-paid rebates in the disclosures required by § 1026.18. The Board stated its belief that such premiums and rebates are analogous to buy-downs because they may or may not be funded by the creditor and reduce costs that otherwise would be borne by the consumer. 2009 Closed-End Proposal, 74 FR at 43256. Accordingly, their impact on the § 1026.18 disclosures properly depends on whether they are part of the legal obligation, in accordance with § 1026.17(c)(1) and its commentary. The Board therefore proposed to revise comment 18(b)-2 to clarify that the disclosures, including the amount financed, must reflect loan premiums and rebates regardless of their source, but only if they are part of the legal obligation between the creditor and the consumer. The Board also proposed a parallel comment under the section requiring disclosure of the amount financed for transactions subject to the proposed, separate disclosure scheme for transactions secured by real property or a dwelling. 2009 Closed-End Proposal, 74 FR at 43417 (proposed comment 38(e)(5)(iii)-2).

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

17(c)(2)

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

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

17(c)(4)

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

17(c)(5)

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

17(d) Multiple Creditors; Multiple Consumers

Current § 1026.17(d) addresses transactions that involve multiple creditors or consumers. The proposed rule revises comment 17(d)-2, regarding multiple consumers, to clarify that the early disclosures required by § 1026.19(a), (e), or (g), as applicable, need be provided to only one consumer who will have primary liability on the obligation. Material disclosures, as defined in § 1026.23(a)(3)(ii), under § 1026.23(a) and the notice of the right to rescind required by § 1026.23(b), however, must be given before consummation to each consumer who has the right to rescind, including any such consumer who is not an obligor. As the Board stated in its 2010 Mortgage Proposal, the purpose of the TILA section 128 requirement that creditors provide early and final disclosures is to ensure that consumers have information specific to their loan to use while shopping and evaluating their loan. *See* 75 FR at 58585. On the other hand, the purpose of the TILA section 121(a) requirement that each consumer with a right to rescind receive disclosures regarding that right is to ensure that each such consumer has the necessary information to decide whether to exercise that right. *Id*. For this reason, the proposed rule requires creditors to provide all consumers who have the right to rescind with the material disclosures under §§ 1026.18 and 1026.38 and the notice of the right to rescind required by § 1026.23(b), even if such consumer is not an obligor.

17(e) Effect of Subsequent Events

Current § 1026.17(e) provides rules regarding when a subsequent event makes a disclosure inaccurate and requires a new disclosure. The proposed rule revises comment 17(e)-1 to clarify that special rules apply to transactions subject to proposed § 1026.19(e) and (f).

17(f) Early Disclosures

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

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

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

17(h) Series of Sales—Delay in Disclosures

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

1026.18 Content of Disclosures

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

The Bureau is also proposing revisions to § 1026.18(k), which provides for disclosure of whether, if the obligation is prepaid in full, a penalty will be imposed or a consumer will be entitled to a rebate of any finance charge. The proposed revisions conform to the definition of "prepayment penalty" in proposed § 1026.37(b)(4) and associated commentary. As explained in more detail in the section-by-section analysis for proposed § 1026.37(b)(4), the Bureau is coordinating the definition of "prepayment penalty" across its pending mortgage-related rulemakings, and proposed revisions to § 1026.18(k) are part of that comprehensive approach.

The Bureau also is proposing to add a new comment 18-3 clarifying that, because of the exclusion of transactions subject to § 1026.19(e) and (f), the disclosures required by § 1026.18 apply only to closed-end transactions that are unsecured or secured by personal property (including dwellings that are not also secured by real property) and to reverse mortgages. The comment would also clarify that, for unsecured transactions and transactions secured by personal property that is not a dwelling, creditors must disclose a payment schedule under § 1026.18(g), and for other transactions that are subject to § 1026.18, creditors must disclose an interest rate and payment summary table under § 1016.18(s), as adopted by the Board's MDIA Interim Rule. 75 FR at 58482-84. Finally, the comment would clarify that, because § 1026.18 does not apply to most transactions secured by real property, references in the section and its commentary to "mortgages" refer only to transactions secured by personal property that is not a dwelling and reverse mortgages, as applicable.

18(b) Amount Financed

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

18(b)(2)

The Bureau is proposing certain conforming changes to comment 18(b)(2)-1, which addresses amounts included in the amount financed calculation that are not otherwise included in the finance charge. As discussed more fully under proposed § 1026.4, above, the Bureau proposes to adopt a simpler and more inclusive definition of the finance charge. Therefore, references to real estate settlement charges in comment 18(b)(2)-1 are inappropriate. Proposed comment 18(b)(2)-1 removes those references and substitutes appropriate examples.

18(c) Itemization of Amount Financed

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

18(f) Variable Rate

18(f)(1)

18(f)(1)(iv)

Section 1026.18(f)(1)(iv) requires that, for variable-rate transactions not secured by a consumer's principal dwelling and variable-rate transactions secured by a consumer's principal dwelling where the loan term is one year or less, creditors disclose an example of the payment terms that would result from an interest rate increase. The Bureau proposes to revise comment 18(f)(1)(iv)-2 by removing paragraph 2.iii, which provides that such an example is not required in a multiple-advance construction loan disclosed pursuant to appendix D, part I. Appendix D, part I provides guidance for disclosing the construction phase of a construction-to-permanent loan as a separate transaction pursuant to § 1026.17(c)(6)(ii) (or for disclosing a construction-only loan). The Bureau's proposal to remove comment 18(f)(1)(iv)-2.iii is intended solely as a conforming amendment, to reflect the fact that multiple-advance construction loans would no longer be subject to the § 1026.18 disclosure requirements under this proposal. The Bureau believes that multiple-advance construction loans are limited to transactions with real property as collateral, and are not used for dwellings that are personal property or in reverse mortgages. Therefore, all construction loans would be subject instead to the new disclosure content requirements of §§ 1026.37 and 1026.38. The Bureau seeks comment, however, on whether any reason remains to preserve comment 18(f)(1)(iv)-2.iii.

18(g) Payment Schedule

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

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

18(k) Prepayment

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

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

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

The Bureau recognizes that, with such conforming revisions to § 1026.18(k) and associated commentary, the revised definition of "prepayment penalty" will apply to both closed-end mortgage and non-mortgage transactions. In particular, the proposed conforming revisions to § 1026.18(k) define "prepayment penalty" with reference to a prepayment of "all or part of" the principal balance of a loan covered by the provision, while TILA section 128(a)(11) and current § 1026.18(k) and its associated commentary refer to prepayment "in full." This revision may lead to an expansion of the set of instances that trigger disclosure under § 1026.18 of a prepayment penalty for closed-end transactions. The Bureau believes that consumers entering into closed-end mortgage and non-mortgage transactions alike will benefit from the transparency associated with more frequent and consistent disclosure of prepayment penalties. Therefore, the Bureau is using its authority under TILA section 105(a) to make the proposed conforming revisions to § 1026.18(k) because they will effectuate the purposes of TILA by promoting the informed use of credit. Similarly, these revisions will help ensure that the features of these mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand better the costs, benefits, and risks associated with mortgage transactions, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). The revisions will also improve consumer awareness and understanding of residential mortgage loans, and are in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b). The Bureau solicits comment on this approach to the definition of prepayment penalty.

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

Proposed revised comments 18(k)-1 through -3 insert the word "prepayment" before the words "penalty" and "rebate" when used, to standardize the terminology across Regulation Z (*i.e.*, § 1026.32(d)(6) currently refers to "prepayment penalty," and proposed § 1026.37(b)(4) uses the same phrase). Proposed revised comment 18(k)(1)-1 replaces the existing commentary text with the language from proposed comments 37(b)(4)-2 and -3. For further background on proposed comments 37(b)(4)-2 and -3, see the section-by-section analysis for proposed § 1026.37(b)(4), below.

18(r) Required Deposit

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

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

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

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

18(s)(3) Payments for Amortizing Loans

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

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

For these reasons, pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b), the Bureau proposes to revise § 1026.18(s)(3)(i)(C) to provide that mortgage insurance or any functional equivalent must be included in the estimate of the amount of taxes and insurance, payable with each periodic payment. Proposed comment 18(s)(3)(i)(C)-2 is revised to conform to § 1026.18(s)(3)(i)(C). Specifically, the proposed comment clarifies that, for purposes of the interest rate and payment summary disclosure required by § 1026.18(s), "mortgage insurance or any functional equivalent" includes "mortgage guarantees" (such as a United States Department of Veterans Affairs or United States Department of Agriculture guarantee) that provide coverage similar to mortgage insurance, even if not technically considered insurance under State or other applicable law. Since mortgage insurance and mortgage guarantee fees are functionally very similar, the Bureau believes that including both amounts in the estimate of taxes and insurance on the table required by § 1026.18(s) will promote the informed use of credit, thereby carrying out the purposes of TILA, consistent with TILA section 105(a). In addition, the proposed disclosure will ensure that more of the features of the mortgage transaction are fully, accurately, and effectively disclosed to consumers in a manner that will permit consumers to understand the costs, benefits, and risks associated with the mortgage transaction, consistent with Dodd-Frank Act section 1032(a), and will improve consumer awareness and understanding of residential mortgage loans and will be in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b). Proposed comment 18(s)(3)(i)(C)-2 is consistent with the treatment of mortgage guarantee fees on the projected payments table required by proposed §§ 1026.37(c) and 1026.38(c). *See* proposed comment 37(c)(1)(i)(C)-1.

Section 1026.19 Certain Mortgage and Variable-Rate Transactions

As discussed below, the Bureau proposes to amend § 1026.19 to define the scope of the proposed integrated disclosures and to establish the requirements for provision of those disclosures.

Coverage of Integrated Disclosure Requirements

For the reasons discussed in detail below, the Bureau proposes to require delivery of the integrated disclosures for closed-end consumer credit transactions secured by real property, other than reverse mortgages. As discussed above in part IV, section 1032(f) of the Dodd-Frank Act requires that "the Bureau shall propose for public comment rules and model disclosures that combine the disclosures required under [TILA] and sections 4 and 5 of [RESPA], into a single, integrated disclosure for mortgage loan transactions covered by those laws." 12 U.S.C. 5532(f). In addition, sections 1098 and 1100A of the Dodd-Frank Act amended RESPA section 4(a) and TILA section 105(b), respectively, to require the Bureau to publish a "single, integrated disclosure for mortgage loan transactions (including real estate settlement cost statements) which includes the disclosure requirements of [TILA and sections 4 and 5 of RESPA] that, taken together, may apply to a transaction that is subject to both or either provisions of law." 12 U.S.C. 2604(a); 15 U.S.C. 1604(b). Accordingly, the Bureau is directed to establish the integrated disclosure requirements for "mortgage loan transactions" that are "subject to both or either provisions of" RESPA sections 4 and 5 (the statutory GFE and settlement statement requirements) and TILA.[125]

The Legal Authority discussion in part IV also notes that, notwithstanding this integrated disclosure mandate, the Dodd-Frank Act did not reconcile important differences between RESPA and TILA relating to the timing of delivery of the RESPA settlement statement and the TILA disclosure, as well as the persons and transactions on whom those disclosure requirements are imposed. Accordingly, to meet the integrated disclosure mandate, the Bureau believes that it must reconcile such statutory differences. In addition to those differences already noted, RESPA and TILA have certain differences in the types of transactions to which their respective

[125] In addition to, and at the same times as, provision of the GFE under RESPA section 5(c), section 5(d) also requires lenders to provide to mortgage applicants the home buying information booklet prepared by the Bureau pursuant to section 5(a). Although the Bureau is not proposing to integrate the booklet with the RESPA GFE and TILA disclosures, in the sense of building all of their contents into a single form, the Bureau is proposing to implement the booklet requirement in proposed § 1026.19(g), discussed below. The same considerations of coverage discussed here with respect to the integrated disclosures also apply for purposes of the booklet requirement.

disclosure requirements apply. The Bureau also recognizes that application of the integrated disclosure requirements to certain transaction types may be inappropriate, even though those transaction types are within the scopes of one or both statutes. These issues and the Bureau's proposal for addressing them are discussed below.

Differences in coverage of RESPA and TILA. RESPA applies generally to "federally related mortgage loans," which means loans (other than temporary financing such as construction loans) secured by a lien on residential real property designed principally for occupancy by one to four families and that are (1) made by a lender with Federal deposit insurance; (2) made, insured, guaranteed, supplemented, or assisted in any way by any officer or agency of the Federal government; (3) intended to be sold to Fannie Mae, Ginnie Mae, or (directly or through an intervening purchaser) Freddie Mac; or (4) made by a "creditor," as defined under TILA, that makes or invests in real estate loans aggregating more than $1,000,000 per year, other than a State agency. 12 U.S.C. 2602(1), 2604.[126] RESPA section 7(a) provides that RESPA does not apply to credit for business, commercial, or agricultural purposes or to credit extended to government agencies. *Id.* 2606(a). Thus, RESPA disclosures essentially are required for consumer-purpose loans that have some Federal nexus (or are made by a TILA creditor with sufficient volume) and that are secured by real property improved by single-family housing.

Regulation X § 1024.5 implements these statutory provisions. Section 1024.5(a) provides that RESPA and Regulation X apply to federally related mortgage loans, which are defined by § 1024.2(b) to parallel the statutory definition described above. Section 1024.5(b)

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

establishes certain exemptions from coverage, including loans on property of 25 acres or more; loans for a business, commercial, or agricultural purpose; temporary financing, such as construction loans, unless the loan is used to finance transfer of title or may be converted to permanent financing by the same lender; and loans on unimproved property, unless within two years from settlement the loan proceeds will be used to construct or place a residence on the land. 12 CFR 1024.5(b)(1) through (4). Unlike the others, the exemption for loans secured by properties of 25 acres or more is not statutory and is established by Regulation X only.

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

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

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

As described above, five types of loans are currently covered by TILA or RESPA, but not both. Under the foregoing provisions, loans to finance home construction that do not finance transfer of title and for which the creditor will not extend permanent financing (construction-only loans), loans secured by unimproved land already owned by the consumer and on which a residence will not be constructed within two years (vacant-land loans), and loans secured by land of 25 acres or more (25-acre loans) all are subject to TILA but are currently exempt from RESPA coverage. In addition, loans secured by dwellings that are not real property, such as mobile homes, houseboats, recreational vehicles, and similar dwellings that are not deemed real property under State law, (chattel-dwelling loans) could be considered "mortgage loan transactions," and they also are subject to TILA but not RESPA. Meanwhile, federally related mortgage loans made by persons who are not creditors under TILA, because they make five or fewer such loans per year, are subject to RESPA but not TILA. In addition, some types of mortgage loan transactions are covered by both statutes, but may warrant uniquely tailored disclosures because they involve terms or features that are so different from standard closed-end transactions that use of the same form may cause significant consumer confusion and compliance burden for industry.

For the reasons discussed in detail below, the Bureau proposes to use its authority under TILA section 105(a), (b), and (f), RESPA sections 4(a) and 19(a), and Dodd-Frank Act sections 1032(a) and (f) and, for residential mortgage loans, 1405(b) to tailor the scope of this proposed rule so that the integrated disclosure requirements apply to all closed-end consumer credit transactions secured by real property, other than reverse mortgages. Doing so will ensure that, in most mortgage transactions, consumers receive integrated disclosure forms developed by the Bureau through extensive testing that will improve consumers' understanding of the transaction. Furthermore, applying a consistent set of disclosure requirements to most mortgage transactions will facilitate compliance by industry. However, for a subset of mortgage transactions, the Bureau believes that application of the integrated disclosure requirements would not improve consumer understanding or facilitate compliance and that these transactions should therefore be exempted from those requirements.

In some cases, the Bureau is proposing to exempt transactions that could arguably fall within Dodd-Frank Act sections 1032(f), 1098, and 1100A but are sufficiently different from other mortgage transactions that application of the integrated disclosure forms would neither improve consumer understanding nor facilitate compliance by industry (*e.g.*, reverse mortgages, open-end transactions secured by real property or a dwelling, and closed-end transactions secured by a dwelling but not real property)). These transactions will remains subject to the existing disclosure requirements under Regulations X and Z, as applicable, until the Bureau adopts integrated disclosures specifically tailored to their distinct features.[127]

In other cases, the Bureau is proposing to expand the scope of certain mortgage disclosure requirements in order to ensure that, in most mortgage transactions, consumers receive a consistent set of disclosures, which the Bureau believes will improve consumer understanding and facilitate compliance. In particular, the proposed rule applies to certain transactions that are currently subject to Regulation Z but not Regulation X (construction-only loans, vacant-land loans, and 25-acre loans). In addition, many of the new Dodd-Frank Act mortgage disclosure requirements apply to "residential mortgage loans," which – as noted above – are defined in section 1401 of the Dodd-Frank Act as any consumer credit transaction that is secured by a mortgage on a dwelling or on residential real property that includes a dwelling other than an open-end credit plan or an extension of credit secured by a consumer's interest in a timeshare plan.[128] Thus, in addition to narrowing the application of these disclosures to exempt temporarily reverse mortgages and transactions that are not secured by real property, the proposed rule expands the application of these disclosure requirements to apply to transactions secured by real property that does not contain a dwelling. Similarly, the proposed rule both

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[127] As discussed below, certain new mortgage disclosure requirements in the Dodd-Frank Act apply to these transactions, among others. Accordingly, transactions that are not subject to the proposed rule would be temporarily exempt from those requirements until the Bureau adopts a new disclosure scheme specific to those transactions.

[128] *See, e.g.*, Dodd-Frank Act § 1402(a)(2) (requires disclosure of loan originator identifier) (codified at TILA § 129B(b)(1)(B)); Dodd-Frank Act § 1414(c) (requires disclosure of anti-deficiency protections) (codified at TILA § 129C(g)); Dodd-Frank Act § 1414(d) (requires disclosure of partial payment policy) (codified at TILA § 129C(h)); Dodd-Frank Act § 1419 (requires disclosure of certain aggregate amounts and wholesale rate of funds) (codified at TILA § 128(a)(17)); Dodd-Frank Act § 1419 (requires disclosure of loan originator compensation) (codified at TILA § 128(a)(18)); Dodd-Frank Act § 1419 (requires disclosure of total interest) (codified at TILA § 128(a)(19)).

narrows and expands the application of other Dodd-Frank Act mortgage disclosure requirements to improve consumer understanding and facilitate compliance.[129]

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

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

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

Dodd-Frank Act section 1032(a), and will improve consumer awareness and understanding of residential mortgage loans, consistent with Dodd-Frank Act section 1405(b).

Finally, the Bureau also proposes the exemption pursuant to TILA section 105(f). The Bureau has considered the factors in TILA section 105(f) and believes that an exemption is appropriate under that provision. Specifically, the Bureau believes that the proposed exemption is appropriate for all affected borrowers, regardless of their other financial arrangements and financial sophistication and the importance of the loan to them. Similarly, the Bureau believes that the proposed exemption is appropriate for all affected loans, regardless of the amount of the loan and whether the loan is secured by the principal residence of the consumer. Furthermore, the Bureau believes that, on balance, the proposed exemption will simplify the credit process without undermining the goal of consumer protection or denying important benefits to consumers. Based on these considerations, the results of the Bureau's consumer testing, and the analysis discussed elsewhere in this proposal, the Bureau believes that the proposed exemptions are appropriate.

Coverage issues with HELOCs. Open-end transactions secured by real property or a dwelling (home-equity lines of credit, or HELOCs) and reverse mortgages are within the statutory scope of both TILA and RESPA and also reasonably could be considered "mortgage loan transactions." Nevertheless, both types of transaction are by their natures fundamentally different from other forms of mortgage credit. For the reasons discussed below, the Bureau is proposing to exclude these types of transaction from the coverage of the integrated disclosure requirement.

HELOCs are open-end credit plans and therefore are appropriately subject to the open-end disclosure requirements in subpart B of Regulation Z. The Bureau looked to the closed-end content requirements under TILA section 128 in developing the integrated disclosures. It did so because the Dodd-Frank Act mandate to propose integrated disclosures includes section 5 of RESPA, which requires the GFE, and only closed-end transactions are subject to the parallel, early disclosure requirement under TILA section 128(b)(2)(A). Subjecting open-end transactions to the integrated disclosure requirements thus would result in consumers who are obtaining open-end credit receiving closed-end disclosures, many of which would be inapposite and therefore potentially confusing or even misleading. Further, in recognition of the distinct nature of open-end credit, Regulation X effectively exempts such plans from the RESPA disclosure requirements. Sections 1024.6(a)(2) and 1024.7(h) of Regulation X state that, for HELOCs, the requirements to provide the "special information booklet" regarding settlement costs and the GFE, respectively, are satisfied by delivery of the open-end disclosures required by Regulation Z. And Regulation X § 1024.8(a) exempts HELOCs from the settlement statement requirement altogether. The Bureau expects to address HELOCs through a separate, future rulemaking that will establish a distinct disclosure scheme tailored to their unique features, which will achieve more effectively the purposes of both RESPA and TILA.[130]

Coverage issues with reverse mortgages. The Bureau is aware that lenders and creditors face significant difficulties applying the disclosure requirements of RESPA and TILA to reverse mortgages, in light of those transactions' unusual terms and features. The difficulties appear to stem from the fact that a number of the disclosed items under existing Regulations X and Z are not relevant to such transactions and therefore have no meaning. Moreover, the Bureau developed the proposed integrated disclosure forms for use in "forward" mortgage transactions and did not subject those forms, which implement essentially the same statutory disclosure

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

requirements as do the current regulations, to any consumer testing using reverse mortgage transactions. The Bureau therefore is concerned that the use of the integrated disclosures for reverse mortgages may result in numerous disclosures of items that are not applicable, difficult to apply, or potentially even misleading or confusing for consumers.[131] As with HELOCs, the Bureau expects to address reverse mortgages through a separate, future rulemaking process that will establish a distinct disclosure scheme.[132]

Coverage issues with chattel-dwelling loans. Chattel-dwelling loans (such as loans secured by mobile homes) do not involve real property, by definition. The Bureau estimates that approximately one-half of the closing-cost content of the integrated disclosures is not applicable to such transactions because they more closely resemble motor vehicle transactions than true mortgage transactions. Such transactions currently are not subject to RESPA and, unlike the transactions above that involve real property, generally are not consummated with "real estate settlements," which are the basis of RESPA's coverage. Thus, were these transactions subject to the integrated disclosures under this proposal, a significant portion of the disclosures' content would be inapplicable. The Bureau believes that permitting those items to be omitted altogether could compromise the overall integrity of the disclosures, which were developed through consumer testing that never contemplated such extensive omissions, and the Bureau therefore has no basis for expecting that they would necessarily be as informative to consumers if so

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

[132] The Board's 2010 Mortgage Proposal included several provisions relating to reverse mortgages. *See* 75 FR 58539, 58638-59. Specifically, the Board proposed requiring creditors to use new forms of disclosures designed specifically for reverse mortgages, rather than the standard TILA disclosures. The 2010 Mortgage Proposal also proposed significant protections for reverse mortgage consumers, including with respect to advertising of reverse mortgages and cross-selling of reverse mortgages with other financial and insurance products. In addition, section 1076 of the Dodd-Frank Act required the Bureau to engage in a study of reverse mortgage transactions and instructed the Bureau to consider protections with respect to obtaining reverse mortgages for the purpose of funding investments, annuities, and other investment products and the suitability of a borrower in obtaining a reverse mortgage. The Bureau intends that its future rulemaking for reverse mortgages will address the issues identified in the Board's 2010 Mortgage Proposal and the findings of the Bureau's reverse mortgage study.

dramatically altered. The Bureau has similar concerns about keeping the overall forms intact but directing creditors to complete the inapplicable portions with “N/A” or simply to leave them blank. Moreover, the Bureau believes that such an approach would risk undermining consumers’ understanding of their transactions, which would be inconsistent with the purpose of this rulemaking, because they could be distracted by extensive blank or “N/A” disclosures from the relevant disclosures present on the form.

Although chattel-dwelling loans are subject to TILA, excluding them from coverage of the integrated disclosures would not excuse them from TILA’s disclosure requirements. Rather, they would remain subject to the existing closed-end TILA disclosure requirements as implemented in § 1026.18. Thus, this approach preserves the current treatment of chattel-dwelling loans under both RESPA and TILA. The Bureau expects that it will undertake improvements to the § 1026.18 disclosures in the future, through a process similar to the one used in this proposal. The Bureau believes that the TILA disclosures resulting from that process would be more appropriate and more beneficial to consumers than the integrated disclosures under this proposal. Excluding chattel-dwellings from the integrated disclosure requirements means they would not be subjected by this rulemaking to certain new disclosure requirements added to TILA section 128(a) by the Dodd-Frank Act. As discussed under § 1026.1(c) above, certain new mortgage disclosure requirements established by the Dodd-Frank Act are being deferred until such requirements are implemented by regulations. Such regulations include, but are not limited to, the final rule that will be adopted under this proposal. As noted above, the Bureau plans to address chattel-dwellings, as well as reverse mortgages and HELOCs, in future rulemakings. Accordingly, pursuant to the authority discussed above, those transactions also are subject to the temporary exemption in proposed § 1026.1(c) until those rulemakings are completed.

The Bureau's proposal. For the reasons discussed above, proposed § 1026.19(e) and (f), discussed further below, requires that the integrated disclosures be provided for closed-end consumer credit transactions secured by real property, other than a reverse mortgage subject to § 1026.33. Similarly, proposed § 1026.19(g) requires provision of the home buying information booklet for closed-end consumer credit transactions secured by real property and states in § 1026.19(g)(1)(iii)(C) that the requirement does not apply to reverse mortgages. Accordingly, construction-only loans and vacant-land loans are subject to the proposed integrated disclosure and booklet requirements. On the other hand, chattel-dwelling loans are not subject to the proposed integrated disclosure or booklet requirements and, instead, remain subject to the existing disclosure requirements in § 1026.18. Finally, federally related mortgage loans extended by a person that is not a creditor, as defined in Regulation Z § 1026.2(a)(17), are not subject to the proposed integrated disclosure or booklet requirements because such transactions are not subject to Regulation Z at all.

The Bureau believes that, although construction-only loans, vacant-land loans, and 25-acre loans all currently are exempt from RESPA coverage either by statute or regulation, consumers may benefit from the integrated disclosures in such transactions. If such transactions were not subjected to the integrated disclosure requirements, they would remain subject to the existing TILA disclosures under § 1026.18. The Bureau believes this treatment would deprive consumers in such transactions of the benefits of the enhanced disclosures developed for this proposal. Moreover, these types of transactions involve real property and, therefore, are amenable to disclosure of the information currently disclosed through the RESPA GFE and settlement statement requirements. Thus, the Bureau expects that creditors should be able to use existing systems to provide the integrated disclosures for such transactions. The Bureau solicits comment, however, on whether application of the integrated disclosures to these transactions will impose significant burdens on creditors.

The Bureau also believes that, if a lender extends five or fewer consumer credit transactions secured by a consumer's dwelling in a year, it should not be subject to TILA or Regulation Z. This treatment preserves the status of such transactions under existing Regulation Z. That is, currently, consumers do not receive Regulation Z disclosures from such lenders because they are not considered "creditors" pursuant to § 1026.2(a)(17)(v). The Bureau believes that eliminating this exemption could represent a significant expansion of TILA coverage and is unaware of any significant problems encountered by consumers obtaining credit from such small lenders that might justify such an expansion. Further, because such small creditors may lack the systems to comply with TILA, they may cease to extend credit if forced to establish compliance systems. Although preserving this exemption means that the integrated disclosures would not be received by consumers in such transactions, the Bureau expects the impact of such an exemption to be limited. Based on data reported for 2010 under the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. 2801 *et. seq.*, the Bureau notes that 569 creditors (seven percent of all HMDA reporters) reported five or fewer originations and, more significantly, that their combined originations of 1399 loans equaled only 0.02 percent of all originations reported under HMDA for that year. These transactions would remain subject to the RESPA disclosure requirements under Regulation X.

Provision of Current Disclosures Under TILA and RESPA

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

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

RESPA. Section 5(c) of RESPA states that lenders shall provide, within three days of receiving the consumer's application, a good faith estimate of the amount or range of charges for specific settlement services the borrower is likely to incur in connection with the settlement as prescribed by the Bureau.[133] 12 U.S.C. 2604(c). Section 3(3) of RESPA defines "settlement services" as:

[133] RESPA section 5(d) provides that "Each lender referred to in subsection (a) of this section shall provide the booklet described in such subsection to each person from whom it receives or for whom it prepares a written application to borrow money to finance the purchase of residential real estate. Such booklet shall be provided by delivering it or placing it in the mail not later than 3 business days after the lender receives the application, but no

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

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

Section 1024.7(a)(1) of Regulation X currently provides that, not later than three business days after a lender receives an application, or information sufficient to complete an application, the lender must provide the applicant with the GFE.

In contrast to the TILA and RESPA good faith estimate requirements, which apply to creditors, the RESPA settlement statement requirement generally applies to settlement agents. Specifically, section 4 of RESPA provides that the settlement statement must be completed and made available for inspection by the borrower at or before settlement by the person conducting the settlement. 12 U.S.C. 2603(b). Section 4 also provides that, upon the request of the borrower, the person who will conduct the settlement shall permit the borrower to inspect those items which are known to such person on the settlement statement during the business day immediately preceding the day of settlement. *Id.* These requirements are implemented in Regulation X § 1024.10(a).

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booklet need be provided if the lender denies the application for credit before the end of the 3-day period." RESPA section 5(c) provides that "Each lender shall include with the booklet a good faith estimate of the amount or range of charges for specific settlement services the borrower is likely to incur in connection with the settlement as prescribed by the Bureau." Thus, the lender must deliver the good faith estimate not later than three business days after receiving the consumer's application.

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

19(a) Reverse Mortgage Transactions Subject to RESPA

As discussed above, the proposal narrows the scope of § 1026.19(a) so that all loans currently subject to § 1026.19(a), other than reverse mortgages, are instead subject to proposed § 1026.19(e) and (f). Pursuant to its authority under section 105(a) of TILA, the Bureau proposes to amend § 1026.19(a)(1)(i) to apply only to reverse mortgage transactions subject to both § 1026.33 and RESPA. This proposed amendment is consistent with TILA's purpose in that it seeks to ensure meaningful disclosure of credit terms by requiring the integrated disclosures only with respect to the loans for which they were designed - mortgage loans secured by real property other than reverse mortgages. This modification will also be in the interest of consumers and the public because consumer understanding will be improved if consumers of reverse mortgages are not provided with inapplicable disclosures, consistent with Dodd-Frank Act section 1405(b). The Bureau also proposes to make conforming changes to § 1026.19(a)(1)(ii), to delete § 1026.19(a)(5), to delete comments 19(a)(5)(ii)-1 through -5, and to delete comments 19(a)(5)(iii)-1 and -2.

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

19(e)(1) Provision

19(e)(1)(i) Creditor

As discussed above, the Bureau is proposing to integrate the good faith estimate requirements in TILA section 128 and RESPA section 5 in § 1026.19(e)(1)(i), which provides that in a closed-end consumer credit transaction secured by real property, other than a reverse mortgage subject to § 1026.33, the creditor shall make good faith estimates of the disclosures listed in § 1026.37. Proposed comment 19(e)(1)(i)-1 explains that § 1026.19(e)(1)(i) requires early disclosure of credit terms in closed-end credit transactions that are secured by real property, other than reverse mortgages. These disclosures must be provided in good faith. Except as otherwise provided in § 1026.19(e), a disclosure is in good faith if it is consistent with the best information reasonably available to the creditor at the time the disclosure is provided.

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

Currently, neither TILA's nor RESPA's disclosure requirements apply to mortgage brokers. The disclosure requirements of Regulation Z also do not apply to mortgage brokers. Section 1024.7(b) of Regulation X, however, currently *permits* mortgage brokers to deliver the GFE, provided that the mortgage broker otherwise complies with the relevant requirements of Regulation X, and provided that the lender remains responsible for ensuring that the mortgage broker does so.

The Bureau recognizes that, in some cases, permitting mortgage brokers to deliver the integrated disclosure may benefit consumers. Some consumers may have better relationships with mortgage brokers than with creditors, which may enable mortgage brokers to assist those consumers with understanding the GFE more effectively and efficiently. However, there are concerns regarding the ability of mortgage brokers to provide the information required by the integrated Loan Estimate accurately and reliably. For example, it is not clear that mortgage brokers have the ability to inform the consumer whether the lender intends to service the consumer's loan, or whether the lender will permit a person to assume the consumer's loan on the original terms. Similarly, it is uncertain that mortgage brokers have the ability to estimate taxes and insurance, which is a new disclosure on the Loan Estimate that is not included on the current RESPA GFE, to the level of specificity required for the Loan Estimate under proposed § 1026.19(e)(3). There is an additional concern that mortgage brokers do not have the technology necessary to comply with TILA's requirements regarding delivery of estimates, delivery of revised disclosures, and recordkeeping.

The Bureau proposes to exercise its authority under TILA section 105(a) and, with respect to residential mortgage loans, Dodd-Frank Act section 1405(b) to preserve the flexibility in current Regulation X by permitting the mortgage broker to provide the integrated Loan Estimate under § 1026.19(e)(1)(ii), subject to certain limitations. This proposed provision is consistent with TILA's purpose in that consumers will be able to compare more readily the credit terms available if mortgage brokers and creditors are able to disclose available credit terms by use of the Loan Estimate. In addition, this modification will be in the interest of consumers and the public because consumer understanding and awareness will be improved if consumers can rely on the Loan Estimate regardless of whether it is provided by a creditor or mortgage broker, consistent with Dodd-Frank Act section 1405(b). Specifically, proposed § 1026.19(e)(1)(ii) provides that, in providing the Loan Estimate, the mortgage broker must act as the creditor in every respect, including complying with all of the requirements of proposed § 1026.19(e) and assuming all related responsibilities and obligations. The Bureau also seeks comment on the ability of mortgage brokers to comply with the requirements of TILA. In addition, the Bureau seeks comment on the ability of creditors to coordinate their operations with mortgage brokers in a manner that provides the same or better information to consumers than if the creditor alone were permitted to provide the disclosures.

Proposed comment 19(e)(1)(ii)-1 explains that a mortgage broker may provide the disclosures required under § 1026.19(e)(1)(i) instead of the creditor. By assuming this responsibility, the mortgage broker becomes responsible for complying with all of the relevant requirements as if it were the creditor, meaning that "mortgage broker" should be read in the place of "creditor" for all the relevant provisions of § 1026.19(e), except where the context indicates otherwise. The creditor and mortgage broker must effectively communicate to ensure timely and accurate compliance with the requirements of § 1026.19(e). Proposed comment 19(e)(1)(ii)-2 provides further guidance on the mortgage broker's responsibilities in the event that the mortgage broker provides the disclosures required under § 1026.19(e), explaining that if a mortgage broker issues any disclosure under § 1026.19(e), the mortgage broker must comply with the requirements of § 1026.19(e). For example, if the mortgage broker receives sufficient information to complete an application, the mortgage broker must issue the disclosures required under § 1026.19(e)(1)(i) within three business days in accordance with § 1026.19(e)(1)(iii). If the broker subsequently receives information sufficient to establish that a disclosure provided under § 1026.19(e)(1)(i) must be reissued under § 1026.19(e)(3)(iv), then the mortgage broker is responsible for ensuring that a revised disclosure is provided.

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

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

19(e)(1)(iii) Timing

Section 128(b)(2)(A) of TILA provides that good faith estimates of the disclosures under section 128(a) shall be delivered or placed in the mail not later than three business days after the creditor receives the consumer's written application. 15 U.S.C. 1638(b)(2)(A). Section

128(b)(2)(A) also requires these disclosures to be delivered at least seven business days before consummation. RESPA requires lenders to provide the GFE not later than three business days after receiving the consumer's application, but does not require provision at least seven business days before consummation. These requirements are implemented in § 1026.19(a)(1)(i) and (a)(2)(i) of Regulation Z and § 1024.7(a)(2) of Regulation X, respectively.

The Bureau believes that, for the proposed rule to be consistent with the requirements of both statutes, both the three-business-day delivery requirement and the seven-business-day waiting period should apply to the integrated Loan Estimate. Although RESPA does not contain a seven-business-day waiting period, this waiting period is consistent with the purposes of RESPA, and adopting it for the integrated disclosures may best effectuate the purposes of both TILA and RESPA by enabling the informed use of credit and ensuring effective advance disclosure of settlement charges. Accordingly, pursuant to its authority under TILA section 105(a), RESPA section 19(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, section 1405(b) of the Dodd-Frank Act, the Bureau proposes § 1026.19(e)(1)(iii), which provides that the creditor shall deliver the disclosures required by § 1026.19(e)(1)(i) not later than the third business day after the creditor receives the consumer's application, as defined in proposed § 1026.2(a)(3)(ii), and that the creditor shall deliver these disclosures not later than the seventh business day before consummation of the transaction. This proposed provision is consistent with TILA's purposes in that consumers will be able to compare more readily the various credit terms available and avoid the uninformed use of credit, thereby assuring a meaningful disclosure of credit terms. This proposed regulation is consistent with section 19(a) of RESPA because it achieves the purposes of RESPA by requiring more effective advance disclosure to consumers of settlement costs. In addition, the Bureau is proposing this provision pursuant to its authority under Dodd-Frank Act section 1032(a) because the proposal ensures that the features of the credit transaction are fully, accurately, and effectively disclosed to the consumer in a manner that permits consumers to understand the costs, benefits, and risks associates with the mortgage loan by providing sufficient time to review, question, and understand the entire cost of the transaction, which is also in the best interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

Proposed comment 19(e)(1)(iii)-1 further clarifies this provision and provides illustrative examples. Proposed comment 19(e)(1)(iii)-2 discusses the waiting period, providing that the seven-business-day waiting period begins when the creditor delivers the disclosures or places them in the mail, not when the consumer receives or is presumed to have received the disclosures. For example, if a creditor delivers the early disclosures to the consumer in person or places them in the mail on Monday, June 1, consummation may occur on or after Tuesday, June 9, the seventh business day following delivery or mailing of the early disclosures, because, for the purposes of § 1026.19(e)(1)(iii), Saturday is a business day, pursuant to § 1026.2(a)(6).

Proposed comment 19(e)(1)(iii)-3 relates to denied or withdrawn applications, explaining that the creditor may determine within the three-business-day period that the application will not or cannot be approved on the terms requested, such as when a consumer’s credit score is lower than the minimum score required for the terms the consumer applied for, or the consumer applies for a type or amount of credit that the creditor does not offer. In that case, or if the consumer withdraws the application within the three-business-day period, the creditor need not make the disclosures required under § 1026.19(e)(1)(i). If the creditor fails to provide early disclosures and the transaction is later consummated on the terms originally applied for, then the creditor violates § 1026.19(e)(1)(i). If, however, the consumer amends the application because of the creditor’s unwillingness to approve it on the terms originally applied for, no violation occurs for not providing disclosures based on those original terms. But the amended application is a new application subject to § 1026.19(e)(1)(i).

19(e)(1)(iv) Delivery

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

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

Proposed comment 19(e)(1)(iv)-1 explains that if any disclosures required under § 1026.19(e)(1)(i) are not provided to the consumer in person, the consumer is presumed to have received the disclosures three business days after they are mailed or delivered. This is a presumption which may be rebutted by providing evidence that the consumer received the disclosures earlier than three business days. The proposed comment also contains illustrative examples. Proposed comment 19(e)(1)(iv)-2 clarifies that the presumption established in § 1026.19(e)(1)(iv) applies to methods of electronic delivery, such as email. However, creditors using electronic delivery methods, such as email, must also comply with § 1026.17(a)(1). The proposed comment also contains illustrative examples.

19(e)(1)(v) Consumer's Waiver of Waiting Period Before Consummation

Section 128(b)(2)(F) of TILA provides that the consumer may waive or modify the timing requirements for disclosures to expedite consummation of a transaction, if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency. Section 128(b)(2)(F) further provides that: (1) the term "bona fide personal financial emergency" may be further defined in regulations issued by the Bureau; (2) the consumer must provide the creditor with a dated, written statement describing the emergency and specifically waiving or modifying the timing requirements, which bears the signature of all consumers entitled to receive the disclosures; and (3) the creditor must provide, at or before the time of waiver or modification, the final disclosures. 15 U.S.C. 1638(b)(2)(F). This provision is implemented in § 1026.19(a)(3) of Regulation Z. Neither RESPA nor Regulation X contains a similar provision.

Although the Bureau understands that waivers based on a bona fide personal financial emergency are rare, this exception serves an important purpose: consumers should be able to waive the protection afforded by the waiting period if, in the face of a financial emergency, the waiting period does more harm than good. Accordingly, pursuant to its authority under TILA section 105(a) and RESPA section 19(a) the Bureau is proposing § 1026.19(e)(1)(v), which allows a consumer to waive the seven-business-day waiting period in the event of a bona fide personal financial emergency. In addition, the Bureau seeks comment on the nature of waivers based on bona fide personal financial emergencies. The Bureau also seeks comment on whether the bona fide personal financial emergency exception is needed more in some contexts than in others (*e.g.*, in refinance transactions or purchase money transactions).

Proposed comment 19(e)(1)(v)-1 explains that a consumer may modify or waive the right to the seven-business-day waiting period required by § 1026.19(e)(1)(iii) only after the creditor makes the disclosures required by § 1026.19(e)(1)(i). The consumer must have a bona fide personal financial emergency that necessitates consummating the credit transaction before the end of the waiting period. Whether these conditions are met is determined by the individual facts and circumstances. The imminent sale of the consumer's home at foreclosure, where the foreclosure sale will proceed unless loan proceeds are made available to the consumer during the waiting period, is one example of a bona fide personal financial emergency. Each consumer who is primarily liable on the legal obligation must sign the written statement for the waiver to be effective. Proposed comment 19(e)(1)(v)-2 provides illustrative examples of this requirement.

19(e)(1)(vi) Shopping for Settlement Service Providers

Neither TILA nor RESPA nor Regulation Z requires creditors to inform consumers about settlement service providers for whom the consumer may shop. However, as explained above, Regulation X provides that where a lender or mortgage broker permits a borrower to shop for third party settlement services, the lender or broker must provide the borrower with a written list of settlement services providers at the time the GFE is provided on a separate sheet of paper. 12 CFR 1024 app. C. HUD intended this requirement to enable consumers to shop for settlement service providers, thereby enhancing market competition and lowering settlement service costs for consumers. *See* 73 FR at 14030. The Bureau agrees that the written list of settlement service providers may benefit consumers by fostering settlement service shopping.

Therefore, the Bureau proposes § 1026.19(e)(1)(vi). As an initial matter, proposed § 1026.19(e)(1)(vi)(A) provides that a creditor permits a consumer to shop for a settlement service if the creditor permits the consumer to select the provider of that service, subject to reasonable minimum requirements regarding the qualifications of the provider. Comment 19(e)(1)(vi)-1 provides examples of minimum requirements that are and are not reasonable. For example, the creditor may require that a settlement agent chosen by the consumer must be appropriately licensed in the relevant jurisdiction. In contrast, a creditor may not require the consumer to choose a provider from a list provided by creditor. This comment also clarifies that the requirements of § 1026.19(e)(1)(vi)(B) and (C) do not apply if the creditor does not permit the consumer to shop.

Proposed § 1026.19(e)(1)(vi)(B) provides that the creditor shall identify the services for which the consumer is permitted to shop in the Loan Estimate. Comment 19(e)(1)(vi)-2 clarifies that § 1026.37(f)(3) contains the content and format requirements for this disclosure.

Proposed § 1026.19(e)(1)(vi)(C) provides that, if the creditor permits a consumer to shop for a settlement service, the creditor shall provide the consumer with a written list identifying available providers of that service and stating that the consumer may choose a different provider for that service. It further requires that the list be provided separately from the Loan Estimate but in accordance with the timing requirements for that disclosure (*i.e.*, within three days after application).

Comment 19(e)(1)(vi)-3 explains that the settlement service providers identified on the written list must correspond to the settlement services for which the consumer may shop, as disclosed on the Loan Estimate pursuant to § 1026.37(f)(3). It also refers to the model list provided in form H-27.

Comment 19(e)(1)(vi)-4 clarifies that a creditor does not comply with the requirement in § 1026.19(e)(1)(vi)(C) to "identify" providers unless it provides sufficient information to allow the consumer to contact the provider, such as the name under which the provider does business and the provider's address and telephone number. It also clarifies that a creditor does not comply with the availability requirement in § 1026.19(e)(1)(vi)(C) if it provides a written list consisting of only settlement service providers that are no longer in business or that do not provide services where the consumer or property is located. However, if the creditor determines that there is only one available settlement service provider, the comment clarifies that the creditor need only identify that provider on the written list of providers. The guidance regarding availability is consistent with guidance provided by HUD in the HUD RESPA FAQs p. 15, # 7 ("GFE - Written list of providers").

Comment 19(e)(1)(vi)-5 refers to form H-27 for an example of a statement that the consumer may choose a provider that is not included on that list. Comment 19(e)(1)(vi)-6 clarifies that the creditor may include a statement on the written list that the listing of a settlement service provider does not constitute an endorsement of that service provider. It further clarifies that the creditor may also identify in the written list providers of services for which the consumer is not permitted to shop, provided that the creditor expressly and clearly distinguishes those services from the services for which the consumer is permitted to shop. This may be accomplished by placing the services under different headings.

Finally, comment 19(e)(1)(vi)-7 discusses how proposed § 1026.19(e)(1)(vi) relates to the requirements of RESPA and Regulation X. The proposed comment explains that § 1026.19 does not prohibit creditors from including affiliates on the written list under § 1026.19(e)(1)(vi). However, a creditor that includes affiliates on the written list must also comply with § 1024.15 of

Regulation X. This comment is consistent with guidance provided by HUD in its RESPA FAQs p. 16, # 9 ("GFE - Written list of providers"). The proposed comment also explains that the written list is a "referral" under § 1024.14(f). This comment is consistent with guidance provided by HUD in the HUD RESPA FAQs p. 14, # 4 ("GFE - Written list of providers").

In addition to these proposed regulations and comments, the Bureau solicits comment regarding whether the final rule should provide more detailed requirements for the written list of providers. The Bureau also solicits comment regarding whether the final rule should include additional guidance regarding the content and format of the provider list.

This proposal is made pursuant to the Bureau's authority under sections 105(a) of TILA, 19(a) of RESPA, and, for residential mortgage loans, sections 129B(e) of TILA and 1405(b) of the Dodd-Frank Act. This proposed provision is consistent with TILA's purposes in that it will increase consumer awareness of the costs of the transaction by informing consumers that settlement costs can be influenced by shopping, thereby promoting the informed use of credit. This provision is consistent with section 129B(e) of TILA because failing to inform borrowers of available settlement service providers increases the difficulty of shopping for those services, which is not in the interest of the borrower. It achieves the purposes of RESPA because disclosure of available settlement service providers encourages consumer shopping and settlement service provider competition, which will result in the elimination of kickbacks, referral fees, and other practices that tend to increase unnecessarily the costs of certain settlement services. In addition, the requirements in proposed § 1026.19(e)(1)(vi) are in the interest of consumers and in the public interest because they will improve consumer understanding and awareness of the mortgage loan transaction through the use of disclosure by informing consumers about shopping for settlement service providers and making consumers aware of different settlement service providers available for the transaction, consistent with Dodd-Frank Act section 1405(b).

19(e)(2) Pre-disclosure Activity

19(e)(2)(i) Imposition of Fees on Consumer

19(e)(2)(i)(A) Fee Restriction

Section 128(b)(2)(E) of TILA provides that the "consumer shall receive the disclosures required under [TILA section 128(b)] before paying any fee to the creditor or other person in connection with the consumer's application for an extension of credit that is secured by the dwelling of a consumer." 15 U.S.C. 1638(b)(2)(E). This provision is implemented in § 1026.19(a)(1)(ii). Although RESPA does not expressly contain a similar provision, Regulation X does. *See* § 1024.7(a)(4). However, unlike Regulation Z, Regulation X prohibits a consumer from paying a fee until the consumer indicates an intent to proceed with the transaction after receiving the disclosures. *Id.* As discussed below, both Regulation Z and Regulation X provide an exception only for the cost of obtaining a credit report.

Thus, Regulation X requires consumers to take an additional affirmative step before new fees may be charged. The Bureau believes that the goals of the integrated disclosure are best served by adopting the approach under Regulation X. The Bureau intends for consumers to use the integrated disclosure to make informed financial decisions. This goal may also be inhibited if fees are imposed on consumers before a consumer indicates intent to proceed. For example, after reviewing the Loan Estimate a consumer may be uncertain that the disclosed terms are in the consumer's best interest or that the disclosed terms are those for which the consumer originally asked. If fees may be imposed before the consumer decides to proceed with a particular loan, consumers may not take additional time to understand the costs and evaluate the risks of the disclosed loan. The Bureau also intends for consumers to use the integrated disclosure to compare loan products from different creditors. If creditors can impose fees on consumers once the Loan Estimate is delivered, but before the consumer indicates intent to proceed, shopping may be inhibited. For example, after reviewing the Loan Estimate a consumer may be uncertain that the disclosed terms are the most favorable terms the consumer could receive in the market. If fees may be imposed before the consumer decides to proceed with a particular loan, consumers may determine that too much cost has been expended on a particular Loan Estimate to continue shopping, even though the consumer believes more favorable terms could be obtained from another creditor. Or, consumers may determine that obtaining a Loan Estimate from multiple creditors is too costly if each creditor can impose fees for each Loan Estimate.

Accordingly, pursuant to its authority under TILA section 105(a) and RESPA section 19(a), the Bureau proposes § 1026.19(e)(2)(i)(A), which provides that no person may impose a fee on a consumer in connection with the consumer's application before the consumer has received the disclosures required by § 1026.19(e)(1)(i) and indicated to the creditor an intent to proceed with the transaction described by those disclosures. This proposed regulation carries out the purposes of TILA because requiring the specific identification of the fee imposed assures meaningful disclosures of credit terms, consistent with section 105(a) of TILA, and it achieves the purposes of RESPA because the more specific identification of the fee is a more effective method of advance disclosure, consistent with section 19(a) of RESPA.

Proposed comment 19(e)(2)(i)(A)-1 explains that a creditor or other person may not impose any fee, such as for an application, appraisal, or underwriting, until the consumer has received the disclosures required by § 1026.19(e)(1)(i) and indicated an intent to proceed with the transaction. The only exception to the fee restriction allows the creditor or other person to impose a bona fide and reasonable fee for obtaining a consumer's credit report, pursuant to § 1026.19(e)(2)(i)(B). Proposed comment 19(e)(2)(i)(A)-2 explains that the consumer may indicate intent to proceed in any manner the consumer chooses, unless a particular manner of communication is required by the creditor, provided that the creditor does not assume silence is indicative of intent. The creditor must document this communication to satisfy the requirements of § 1026.25. The proposed comment also includes illustrative examples.

Proposed comment 19(e)(2)(i)(A)-3 discusses the collection of fees and provides that at any time prior to delivery of the required disclosures, the creditor may impose a credit report fee as provided in § 1026.19(e)(2)(i)(B). However, the consumer must receive the disclosures required by § 1026.19(e)(1)(i) and indicate an intent to proceed with the mortgage loan transaction before paying or incurring any other fee imposed by a creditor or other person in connection with the consumer's application for a mortgage loan that is subject to § 1026.19(e)(1)(i). Proposed comment 19(e)(2)(i)(A)-4 provides illustrative examples regarding these requirements.

Proposed comment 19(e)(2)(i)(A)-5 discusses determining when a particular charge is "imposed by" a person. The proposed comment provides that, for purposes of § 1026.19(e), a fee is "imposed by" a person if the person requires a consumer to provide a method for payment, even if the payment is not made at that time. For example, a creditor may not require the consumer to provide a $500 check to pay a "processing fee" before the consumer receives the disclosures required by § 1026.19(e)(1)(i) and the consumer subsequently indicates intent to proceed. The creditor in this example does not comply even if the creditor does not deposit the check until after the disclosures required by § 1026.19(e)(1)(i) are received by the consumer and the consumer subsequently indicates intent to proceed. Similarly, a creditor may not require the consumer to provide a credit card number before the consumer receives the disclosures required by § 1026.19(e)(1)(i) and the consumer subsequently indicates intent to proceed, even if the creditor promises not to charge the consumer's credit card for the $500 processing fee until after the disclosures required by § 1026.19(e)(1)(i) are received by the consumer and the consumer subsequently indicates intent to proceed. In contrast, a creditor complies with § 1026.19(e)(2) if the creditor requires the consumer to provide a credit card number before the consumer receives the disclosures required by § 1026.19(e)(1)(i) and subsequently indicates intent to proceed if the consumer's authorization is only to pay for the cost of a credit report. This is so even if the creditor maintains the consumer's credit card number on file and charges the consumer a $500 processing fee after the disclosures required by § 1026.19(e)(1)(i) are received and the consumer subsequently indicates intent to proceed, provided that the creditor requested and received a separate authorization for the processing fee charge from the consumer after the consumer received the disclosures required by § 1026.19(e)(1)(i).

19(e)(2)(i)(B) Exception to Fee Restriction

Section 1026.19(a)(1)(iii) of Regulation Z currently provides that a person may impose a fee for obtaining a consumer's credit history prior to providing the good faith estimates, which is the lone exception to the general rule established by § 1026.19(a)(1)(ii) that fees may not be imposed prior to the consumer's receipt of the disclosures. Section 1024.7(a)(4) of Regulation X contains a similar exception, but it differs in two important respects. First, Regulation Z provides that the fee may be imposed for a consumer's "credit history," while Regulation X specifies that the fee must be for the consumer's "credit report." The Regulation Z provision could be read as permitting a broader range of activity than just acquiring a consumer's credit report. The Bureau believes that the purposes of the integrated disclosure are better served by adopting the terminology used by Regulation X. Consumers should be able to receive a reliable estimate of mortgage loan costs with as little up-front expense and burden as possible, while creditors should be able to receive sufficient information from the credit report alone to develop a reasonably accurate estimate of costs.

Another issue stems from existing commentary under Regulation Z, which provides that the fee charged pursuant to § 1026.19(a)(1)(iii) may be described or referred to as an "application fee," provided the fee meets the other requirements of § 1026.19(a)(1)(iii). The Bureau believes that the better approach, for purposes of the integrated disclosure, is to require a fee for a credit report to be disclosed with the more precise label. Consumers may be more likely to understand that a credit report fee is imposed if a fee for the purpose of obtaining a credit report is clearly described as such. Additionally, compliance costs are generally reduced when regulatory requirements are standardized. Accordingly, the Bureau proposes § 1026.19(e)(2)(i)(B), which provides that a person may impose a bona fide and reasonable fee for obtaining the consumer's credit report before the consumer has received the disclosures required by § 1026.19(e)(1)(i). Proposed comment 19(e)(2)(i)(B)-1 clarifies that a creditor or other person may impose a fee before the consumer receives the required disclosures if it is for purchasing a credit report on the consumer, provided that such fee is bona fide and reasonable in amount. Also, the creditor must accurately describe or refer to this fee, for example, as a "credit report fee."

19(e)(2)(ii) Written Information Provided to Consumer

The Bureau understands that consumers often request written estimates of loan terms before receiving the RESPA GFE. The Bureau recognizes that these written estimates may be helpful to consumers. However, the Bureau is concerned that consumers may confuse such written estimates, which are not subject to the good faith requirements of TILA section 128(b)(2)(A) and RESPA section 5 and may be unreliable, with the disclosures required under § 1026.19(e)(1)(i), which must be made in good faith. The Bureau is also concerned that unscrupulous creditors may use formatting and language similar to the disclosures required under § 1026.19(e)(1)(i) to deceive consumers into believing that the creditor's unreliable written estimate is actually the disclosure required under § 1026.19(e)(1)(i). These concerns are particularly important in light of section 1405(b) of the Dodd-Frank Act, which places emphasis on improving "consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures."

Creditors may choose to issue, and consumers may want, preliminary written estimates based on less information than is needed to issue the disclosures required under § 1026.19(e)(1)(i). However, mortgage loan costs are often highly sensitive to the information that triggers the disclosures. Thus, the disclosures required under § 1026.19(e)(1)(i) may be more accurate indicators of cost than preliminary written estimates. Consumers may better understand the sensitivity of mortgage loan costs to information about the consumer's creditworthiness and collateral value if consumers are aware of the difference between preliminary written estimates and disclosures required under § 1026.19(e)(1)(i). Additionally, section 1032(a) of the Dodd-Frank Act authorizes the Bureau to prescribe rules to ensure the full, accurate, and effective disclosure of mortgage loan costs in a manner that permits consumers to understand the associated risks. Consumers may not appreciate that preliminary written estimates, which are not subject to the good faith requirements, may not constitute a full, accurate, and effective description of costs, as opposed to relying on the disclosures required under § 1026.19(e)(1)(i), which must be made in good faith. The Bureau seeks to foster consumer understanding of the reliability of the cost information provided, while permitting the use of preliminary written estimates which may be beneficial to consumers.

Accordingly, pursuant to its authority under section 105(a) of TILA, section 1032(a) of the Dodd-Frank Act, and, for residential mortgage loans, sections 129B(e) of TILA and 1405(b) of the Dodd-Frank Act, the Bureau proposes to require creditors to distinguish between preliminary written estimates of mortgage loan costs, which are not subject to the good faith requirements under TILA and RESPA, and the disclosures required under § 1026.19(e)(1)(i), which are. Proposed § 1026.19(e)(2)(ii) would require creditors to provide consumers with a disclosure indicating that the written estimate is not the Loan Estimate required by RESPA and TILA, if a creditor provides a consumer with a written estimate of specific credit terms or costs before the consumer receives the disclosures under § 1026.19(e)(1)(i) and subsequently indicates an intent to proceed with the mortgage loan transaction. This proposed provision is consistent with section 105(a) of TILA in that it will increase consumer awareness of the costs of the transaction by informing consumers of the risk of relying on preliminary written estimates, thereby assuring a meaningful disclosure of credit terms and promoting the informed use of credit. This proposed provision is consistent with section 129B(e) of TILA because permitting creditors to provide borrowers with a preliminary written estimate and the Loan Estimate required by TILA and RESPA without a disclosure indicating the difference between the two is not in the interest of the borrower.

Proposed comment 19(e)(2)(ii)-1 explains that this requirement applies only to written information specific to the consumer. For example, if the creditor provides a document showing the estimated monthly payment for a mortgage loan, and the estimate was based on the estimated loan amount and the consumer’s estimated credit score, then the creditor must include a notice on the document. In contrast, if the creditor provides the consumer with a preprinted list of closing costs common in the consumer’s area, the creditor need not include the warning. The proposed comment also clarifies that this requirement does not apply to an advertisement, as defined in § 1026.2(a)(2). This proposed comment also contains a reference to comment 19(e)(1)(ii)-4 regarding mortgage broker provision of written estimates specific to the consumer.

19(e)(2)(iii) Verification of Information

Section 1024.7(a)(5) of Regulation X currently provides that a creditor may collect any information from the consumer deemed necessary, but the creditor may not require the consumer to provide documentation verifying any information the consumer provided in connection with the application. In order to minimize the cost to consumers of obtaining Loan Estimates, the Bureau believes that this provision should apply to the integrated disclosure. The Bureau proposes § 1026.19(e)(2)(iii), which provides that a creditor shall not require a consumer to submit documents verifying information related to the consumer’s application before providing the disclosures required by § 1026.19(e)(1)(i).

The Bureau makes this proposal pursuant to its authority under section 105(a) of TILA, section 19(a) of RESPA, and, for residential mortgage loans, section 129B(e) of TILA. The proposed regulation will effectuate the purposes of TILA by reducing the burden to consumers associated with obtaining different offers of available credit terms, thereby facilitating consumers’ ability to compare credit terms, consistent with section 105(a) of TILA. This proposed provision is consistent with section 129B(e) of TILA because requiring documentation to verify the information provided in connection with an application increases the burden on borrowers associated with obtaining different offers of available credit terms, which is not in the interest of the borrower. This proposed regulation will enable consumers to receive information about the mortgage loan without imposing costs or burdens on the consumer, which will facilitate shopping, thereby effecting changes in the settlement process that will result in the elimination of kickbacks, referral fees, and other practices that tend to increase unnecessarily the costs of certain settlement services, consistent with the Bureau's authority under section 19(a) of RESPA.

Proposed comment 19(e)(2)(iii)-1 explains that the creditor may collect from the consumer any information that it requires prior to providing the early disclosures, including information not listed in § 1026.2(a)(3)(ii). However, the creditor is not permitted to require, before providing the disclosures required by § 1026.19(e)(1)(i), that the consumer submit documentation to verify the information provided by the consumer. For example, the creditor may ask for the names, account numbers, and balances of the consumer's checking and savings accounts, but the creditor may not require the consumer to provide bank statements, or similar documentation, to support the information the consumer provides orally before providing the disclosures required by § 1026.19(e)(1)(i).

19(e)(3) Good Faith Determination for Estimates of Closing Costs

Background

As noted above, section 102(a) of TILA provides: "The Congress finds that economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit. The informed use of credit results from an awareness of the cost thereof by consumers." 15 U.S.C. 1601(a). This section further provides that the purpose of TILA is "to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit." *Id.*

To further these goals, TILA requires creditors to disclose certain information about the cost of credit. In the context of certain mortgage loans, the disclosures required under section 128(a) of TILA generally are either costs imposed in connection with the extension of credit, or measures of such costs, such as the annual percentage rate. 15 U.S.C. 1638(b). Examples of items that affect the APR are fees and charges imposed by creditors, such as points and underwriting fees. Section 128(b)(2)(A) provides that these disclosures must be delivered not later than three business days after the creditor receives the consumer's written application. Section 128(b)(2)(D) requires the creditor to inform the consumer, no later than three business days before consummation, if the costs of the mortgage loan, as reflected in the annual percentage rate, change from what was originally disclosed. 15 U.S.C. 1638(b)(2)(A), (D).

TILA contains tolerances for determining whether an estimated disclosure is accurate. For example, section 106(f) provides that the finance charge is not accurate if the estimated finance charge disclosed to the consumer changes by more than a certain amount. 15 U.S.C. 1605(f). If disclosures such as these become inaccurate, TILA requires creditors to provide revised disclosures with the corrected amounts. 15 U.S.C. 1638(b)(2)(D). TILA also permits the creation of new tolerances if the Bureau deems them necessary. Specifically, section 121(d) provides that the "Bureau shall determine whether tolerances for numerical disclosures other than the annual percentage rate are necessary to facilitate compliance with [TILA], and if it determines that such tolerances are necessary to facilitate compliance, it shall by regulation permit disclosures within such tolerances." 15 U.S.C. 1631(d). Section 121(d) further provides that the "Bureau shall exercise its authority to permit tolerances for numerical disclosures other than the annual percentage rate so that such tolerances are narrow enough to prevent such tolerances from resulting in misleading disclosures or disclosures that circumvent the purposes of [TILA]." *Id.*

Historically, TILA has generally focused on the costs imposed by creditors alone. In contrast, RESPA, in broadly focusing on all costs associated with real estate transactions, was designed to address market failures in the real estate settlement services industry. Echoing TILA, Congress enacted RESPA to "[e]nsure that consumers throughout the Nation are provided with greater and more timely information on the nature and costs of the settlement process and are protected from unnecessarily high settlement charges caused by certain abusive practices." 12 U.S.C. 2601(a). Congress identified "more effective advance disclosure to home buyers and sellers of settlement costs" as a specific purpose of RESPA. *Id.*

RESPA requires early disclosure of settlement costs to further Congress's stated purpose that consumers should receive effective advance disclosures of such costs. As discussed above, RESPA requires lenders to provide consumers with good faith estimates of settlement costs, which include most fees charged in connection with a real property settlement, within three days of receiving a consumer's application for a mortgage loan. 12 U.S.C. 2602(3), 2604(c), (d).

Regulation Z also contains a good faith estimate requirement, which implements the requirements of TILA section 128(b)(2)(A), in the context of certain mortgage loans. Section 1026.19(a)(1)(i) of Regulation Z provides that "the creditor shall make good faith estimates of the disclosures required by § 1026.18 and shall deliver or place them in the mail not later than the third business day after the creditor receives the consumer's written application." Section 1026.18 includes several disclosures related to the cost of credit, such as the amount financed, finance charge, and annual percentage rate. Section 1026.18(c)(3) also provides that the itemization of amount financed need not be delivered if the RESPA GFE is provided.

After a 10-year investigatory process, HUD amended Regulation X to establish new regulatory requirements surrounding the content, accuracy, and delivery of the GFE. HUD's 2008 RESPA Final Rule added "tolerance" categories limiting the variation between the estimated amounts of settlement charges included on the GFE and the actual amounts included on the RESPA settlement statement. Section 1024.7(e)(1) of Regulation X provides that the actual charges at settlement may not exceed the amounts included on the GFE for (1) the origination charge, (2) while the borrower's interest rate is locked, the credit or charge for the interest rate chosen, (3) while the borrower's interest rate is locked, the adjusted origination charge; and (4) transfer taxes. Section 1024.7(e)(2) provides that the sum of the charges at settlement for the following services may not be greater than 10 percent above the sum of the estimated charges for those services included on the GFE for (1) lender-required settlement services, where the lender selects the third party settlement service provider, (2) lender-required services, title services and required title insurance, and owner's title insurance, when the borrower uses a settlement service provider identified by the loan originator, and (3) government recording charges. Section 1024.7(e)(3) provides that all other estimated charges may change by any amount prior to settlement.

The 2008 RESPA Final Rule also provided that the estimates included on the GFE are binding, with certain limited exceptions and subject to variations permitted by the tolerance categories. 73 FR at 68218-19. Section 1024.7(f)(1) provides: "If changed circumstances result in increased costs for any settlement services such that the charges at settlement would exceed the tolerances for those charges, the loan originator may provide a revised GFE to the borrower."

Section 1024.7(f)(2) provides: "If changed circumstances result in a change in the borrower's eligibility for the specific loan terms identified in the GFE, the loan originator may provide a revised GFE to the borrower."

"Changed circumstances" are defined as (1) acts of God, war, disaster, or other emergency; (2) information particular to the borrower or transaction that was relied on in providing the GFE and that changes or is found to be inaccurate after the GFE has been provided, which may include information about the credit quality of the borrower, the amount of the loan, the estimated value of the property, or any other information that was used in providing the GFE; (3) new information particular to the borrower or transaction that was not relied on in providing the GFE; or (4) other circumstances that are particular to the borrower or transaction, including boundary disputes, the need for flood insurance, or environmental problems. 12 CFR 1024.2(b). Changed circumstances, however, do not include the borrower's name, the borrower's monthly income, the property address, an estimate of the value of the property, the mortgage loan amount sought, and any information contained in any credit report obtained by the loan originator prior to providing the GFE, unless the information changes or is found to be inaccurate after the GFE has been provided, or market price fluctuations by themselves. *Id.*

Additionally, § 1024.7(f)(3) provides: "If a borrower requests changes to the mortgage loan identified in the GFE that change the settlement charges or the terms of the loan, the loan originator may provide a revised GFE to the borrower." Section 1024.7(f)(4) provides: "If a borrower does not express an intent to continue with an application within 10 business days after the GFE is provided, or such longer time specified by the loan originator . . . the loan originator is no longer bound by the GFE."

The exception provided by § 1024.7(f)(4) relates to the ability of consumers to use the GFE to shop and compare mortgage loans, which is one of the primary purposes of the 2008 RESPA Final Rule. A related provision, § 1024.7(c), provides that "the estimate of the charges and terms for all settlement services must be available for at least 10 business days from when the GFE is provided, but it may remain available longer, if the loan originator extends the period of availability."

Section 1024.7(f)(5) provides: "If the interest rate has not been locked, or a locked interest rate has expired, the charge or credit for the interest rate chosen, the adjusted origination charges, per diem interest, and loan terms related to the interest rate may change. When the interest rate is later locked, a revised GFE must be provided showing the revised interest rate-dependent charges and terms. All other charges and terms must remain the same as on the original GFE, except as otherwise provided [under] this section."

Section 1024.7(f)(6) provides: "In transactions involving new construction home purchases, where settlement is anticipated to occur more than 60 calendar days from the time a GFE is provided, the loan originator may provide the GFE to the borrower with a clear and conspicuous disclosure stating that at any time up until 60 calendar days prior to closing, the loan originator may issue a revised GFE. If no such separate disclosure is provided, the loan originator cannot issue a revised GFE, except as otherwise provided [under] this section."

Although settlement charges have historically been the subject of RESPA, section 1419 of the Dodd-Frank Act amended TILA section 128(a) to require creditors to disclose: "In the case of a residential mortgage loan, the aggregate amount of settlement charges for all settlement services provided in connection with the loan, the amount of charges that are included in the loan and the amount of such charges the borrower must pay at closing . . . and the aggregate amount of other fees or required payments in connection with the loan." 15 U.S.C. 1638(a)(17). "Settlement charges" is not defined under TILA. This amendment expands the disclosure requirements of TILA section 128(a) beyond the cost of credit to include all charges imposed in connection with the mortgage loan. No distinction is made between whether those charges relate to the extension of credit or the real estate transaction, or whether those charges are imposed by the creditor or another party, so long as the charges arise in the context of the mortgage loan settlement.

Furthermore, as discussed above, section 1032(f) of the Dodd-Frank Act requires integration of the disclosure provisions under TILA and RESPA. Sections 1098 and 1100A of the Dodd-Frank Act further provide that the purpose of the integrated disclosure is "to facilitate compliance with the disclosure requirements of [RESPA] and [TILA], and to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures." 15 U.S.C. 1604(b), 12 U.S.C. 2603(a). These amendments require integration of the regulations related to the accuracy and delivery of the disclosures, as well as their content.

Issues with Integrating Different Approaches to Good Faith Estimates, Tolerances, and Redisclosure

As discussed above, TILA generally focused on redisclosure in response to changes in the cost of credit that occurred during the mortgage loan origination process. Over time, practices developed that diminished the value of the disclosures. Congress addressed these problems by revising TILA from time to time, seeking to ensure that consumers could use the disclosures to shop for credit.[134] However, problems in the market persisted, and evidence

[134] In explaining the 1980 amendment to TILA, Congress stated that the amendment "would also make disclosures more meaningful to the consumer in mortgage transactions in two respects. First, the creditor would be required to

suggests that consumers were often surprised by the difference between their expectations of the cost of credit, based on the good faith estimates provided during the shopping phase, and the actual cost of credit revealed at settlement.[135]

The issues arising under TILA were even more pronounced under RESPA. HUD spent over ten years investigating problems in the settlement services industry.[136] HUD found that the principles of RESPA were undermined by market forces operating against consumers.[137] In the context of home purchases, consumers' actual settlement costs were sometimes dramatically different from those originally estimated. Consumers did not realize this until immediately before settlement – the point in time where consumers are in the weakest bargaining position. As a result, consumers were often unable to challenge increases in settlement costs when confronted with them at the closing table.[138] HUD found that these high closing costs were

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give truth in lending disclosures within 3 days after receiving a consumer's written application. . . . Under current law, Truth in Lending disclosures are provided for the first time at the real estate closing, making them all but useless for credit shopping." S. Rep. No. 368, 96th Cong., 1st Sess. 1979, *reprinted in* 1980 U.S. Code Cong. & Ad. News 236, 266. Congress also amended the disclosure requirements in 1994 to provide more extensive disclosure on high-cost mortgage loans. Riegle Community Development and Regulatory Improvement Act of 1994, Pub.L. No. 103-325, Title I, § 152(d), 108 Stat. 2191 (Sept. 23, 1994); 15 U.S.C. 1639(a). Congress amended the TILA disclosure requirements again in 1996 to provide disclosures related to variable-rate mortgage loans. Economic Growth and Regulatory Paperwork Reduction Act of 1996, Pub. L. No. 104-208, Title I, Subtitle A, § 2105, 110 Stat. 3009 (Sept. 30, 1996); 15 U.S.C. 1638(a).

135 "For refinancings and second mortgages that fall below the HOEPA triggers, the only required written disclosure of the APR and finance charge is usually given at closing on the TILA disclosure, after which the borrower has only the three day rescission period for price shopping, again too short a period to obtain competing offers." Lauren E. Willis, *Decisionmaking and the Limits of Disclosure: The Problem of Predatory Lending: Price*, 65 Md. L. Rev. 707, 750 (2006). "[T]he prices on subprime loans often turned out to be a moving target. A lender or broker might have the customer apply for one type of loan, price A, say a fixed rate loan; changed the loan during underwriting to an adjustable rate mortgage, price B; and then finally change the loan at closing to something different at price C, say an interest only mortgage." *Federal Reserve Board Public Hearing Re: Building Sustainable Homeownership: Responsible Lending and Informed Consumer Choice*, 155 (July 11, 2006) (testimony of Patricia McCoy), available at http://www.federalreserve.gov/events/publichearings/hoepa/2006/20060711/transcript.pdf.

136 Joint Report to the Congress Concerning Reform of the Truth in Lending Act and the Real Estate Settlement Procedures Act, (July 1998); 2000 HUD-Treasury Report; 2002 RESPA Proposal (67 FR 49134).

137 "Estimates appearing on the GFEs can be significantly lower than the amount ultimately charged at settlement and do not provide meaningful guidance on the costs borrowers will incur at settlement. While unforeseeable circumstances can drive up costs in particular circumstances, in most cases loan originators have the ability to estimate final settlement costs with great accuracy." 73 FR 14030, 14039 (March 14, 2008).

138 "After agreeing to the price of a house, too many families sit down at the settlement table and discover unexpected fees that can add hundreds, if not thousands, of dollars to the cost of their loan. And at that point, they have no other options. On the spot, the borrower is forced to make an impossible choice: either hand over the extra

exacerbated by the fact that consumers rarely shopped for settlement service providers.[139] Accordingly, settlement service providers were not accountable to the consumer, and creditors had little motivation to monitor the legitimacy of settlement costs because those costs were simply passed on to the consumer.[140]

These problems led HUD to the determination that a subjective requirement that estimates be made in "good faith" was not sufficient to achieve the purposes of RESPA. The tolerances included in the 2008 RESPA Final Rule established objective measures of good faith that were designed to ensure that consumers were provided with estimates more closely tied to the actual costs. The provisions related to redisclosure provided industry with the flexibility to revise the charges originally estimated when legitimate and unforeseen issues arose that affected the cost of settlement services, while also ensuring that consumers were not pressured into paying unwarranted costs. The 2008 RESPA Final Rule established a requirement that costs be available for at least 10 business days, along with requirements related to allowing consumers to shop for settlement service providers, sought to re-introduce competition into the markets for both mortgage loan origination and settlement service providers, in accordance with RESPA's original principles.

These revisions to Regulation X took effect in 2010. Some concerns were identified during the implementation process. In particular, concerns have been raised regarding the

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cash and sign, or lose either the house or the funds needed to refinance." *Reforming the Real Estate Settlement Procedure: Review of HUD's proposed RESPA Rule*, 107th Cong. (October 3, 2002) (testimony of Mel Martinez, Secretary of the U.S. Department of Housing and Urban Development).

139 *See* 73 FR 14030, 14034 (March 14, 2008).

140 "There is not always an incentive in today's market for originators to control these costs. Too often, high third-party costs are simply passed through to the consumer." U.S. Dep't. of Housing and Urban Dev., Office of Pol'y Dev. and Research, *RESPA: Regulatory Impact Analysis and Initial Regulatory Flexibility Analysis, FR-5180-F-02, Final Rule to Improve the Process of Obtaining Mortgages and Reduce Consumer Costs*, iv (2008). *See also* Eskridge, supra note 83, at 1184-1185.

treatment of fees charged by affiliates of the lender.[141] Under the 2008 rule, affiliates' fees are permitted to increase by as much as 10 percent prior to the real estate closing, in addition to increases based on changed circumstances and other similar events. Settlement service providers such as appraisal management companies and title companies may be affiliated with the creditor. Fees paid to these affiliates may constitute a large percentage of the total settlement service fees paid by consumers at consummation. Permitting these fees to vary by ten percent may significantly increase the actual cost of obtaining a mortgage loan. This variance is of particular concern given the nature of the relationship between creditors and their affiliates. Regulation X subjects fees paid to creditors to a zero percent tolerance because credit providers are expected to know their own costs. The same reasoning may apply to services provided by affiliates. An affiliate relationship between a creditor and a provider should facilitate greater communication and coordination than a relationship between independent entities acting at arm's length. This is especially so given that the rules require precise estimates only of costs that are likely to occur and provide flexibility for cost revisions when an unexpected event occurs, such as a changed circumstance or a change requested by the consumer.

Additional concerns about affiliate relationships stem from the fact that no justification is required if affiliate fees increase by as much as ten percent. Given that the affiliate relationship is beneficial to the creditor, this may create an incentive to increase fees at the real estate closing without justification, solely to obtain all money available under the tolerance. A rule that encourages such rent-seeking behavior could harm consumers by unjustifiably increasing settlement costs, which is contrary to the purposes of RESPA.

[141] For purposes of this proposal, "affiliate" means any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq*.).

Another concern with Regulation X centers on the ability of consumers to shop for settlement service providers. Regulation X requires loan originators to provide borrowers with a written list of providers in some cases.[142] This provision was intended to enable consumers to shop for settlement service providers, based on the principle that such shopping would spur competition in the settlement service market, thereby reducing the incidence of unnecessarily high settlement service charges. However, concerns have been raised that, rather than simply providing consumers with lists of available settlement service providers to facilitate shopping, creditors have instead developed "closed" lists that include only the creditor's "preferred" providers and are requiring consumers to select one of those providers. This practice effectively may limit competition among settlement service providers instead of promoting competition, contrary to the goals of the regulation.

[142] "Where a loan originator permits a borrower to shop for third party settlement services, the loan originator must provide the borrower with a written list of settlement services providers at the time of the GFE, on a separate sheet of paper." 12 CFR 1024, app. C.

The Bureau's Proposal

An enhanced reliability standard. The Bureau believes that consumers would benefit from having more reliable estimates of costs. A meaningful "good faith" estimate should be based on the best information reasonably available to the person providing the estimate. In many cases, a creditor should be able to estimate costs with considerable precision based on its familiarity with its own underwriting process and its knowledge of the real estate settlement process. A creditor originating a loan in a geographical area with which it is unfamiliar, or using settlement service providers with whom it is not familiar, may not be able to estimate the settlement service costs as accurately. In cases such as these, the ten-percent tolerance currently provided by Regulation X may be appropriate.

However, creditors who have affiliate relationships with service providers should have access to the providers' data about the actual costs of those services, including how often changed circumstances occur, and the magnitude of resulting cost increases. Thus, in many cases, creditors may be able to provide accurate estimates of settlement costs for services provided by affiliates, and therefore should not need to rely on the ten-percent tolerance. In addition to the increased level of knowledge and communication suggested by the affiliate relationship, the frequency of business with a particular affiliate provides creditors with even more data, which may be used to develop more accurate estimates. It may be reasonable to expect creditors to use the significant amount of historical settlement cost data available to them, by virtue of the repeat business from affiliate relationships, to develop highly accurate estimates of costs. Accordingly, the Bureau proposes to include charges paid to affiliates of the creditor in the category of fees that may not vary from the estimated amount disclosed, subject to legitimate reasons for revision such as changed circumstances and revisions requested by the consumer.

The Bureau also believes that consumers would benefit from a more competitive market for settlement service providers. A list of service providers offers consumers the opportunity to speak with multiple providers and select the providers and services that best fit consumers' needs. Although the Bureau understands the concerns regarding preferred provider lists identified above, such lists may be a natural outgrowth of creditors' business and are not necessarily harmful to consumers. Indeed, it would be much more difficult for creditors to provide good faith estimates of settlement service charges without basing such estimates on charges imposed by actual settlement service providers in a particular area with whom the creditor has established relationships and regularly does business.

Creditors that assemble preferred provider lists are in a superior position of knowledge with respect to the expected costs of the services of those providers, for reasons similar to those seemingly inherent in the creditor-affiliate relationship. The relationship between creditor and preferred provider suggests a level of communication and knowledge that is absent from a relationship between a creditor and a settlement service provider who do not regularly do business. The repeat business afforded by the preferred provider relationship should also give creditors access to statistically significant amounts of historical settlement charge data, with which the creditor can accurately predict the cost of a settlement service, in the absence of a valid reason for revision such as a changed circumstance. It may be reasonable to expect the creditor to use this relationship for the benefit of consumers in the form of more accurate initial estimates of costs.

The creditor's knowledge may be less certain with preferred providers, with whom the creditor has some pre-existing relationship or agreement, than for affiliates, with whom the creditor has an actual control-based relationship. But this difference is countered when the creditor does not permit the consumer to shop independently for the settlement service. Such closed lists require consumers to choose providers preferred by the creditor and prohibit consumers from choosing more cost efficient, or perhaps higher quality, settlement service providers. Consumers presented with a closed list of preferred providers are neither benefitted by more accurate estimates nor able to protect their own financial interests. Consumers should have the ability to influence the quality and cost of settlement services related to what, for most consumers, will be the most significant financial obligation of their lives. If the creditor arrogates that opportunity, then the creditor should also take a greater responsibility for estimating accurately and assume some of the risk of under-estimation if it does not. Thus, the Bureau proposes to include charges paid to non-affiliated third party service providers in the category of fees that may not vary from the estimated amount disclosed if the creditor does not permit the consumer to shop for those services, subject to legitimate reasons for revision such as changed circumstances and revisions requested by the consumer.

This proposal seeks to strike the appropriate balance between consumers' need for accurate, timely, and reliable information about the costs of a mortgage loan and industry's need for flexibility for the wide range of unexpected issues that arise during the mortgage loan origination process. Creditors are routine participants in the mortgage market, but individual consumers are not. As a result, creditors have access to important cost data that are unavailable to consumers. It therefore may be reasonable to expect creditors to use this advantage to provide consumers with reasonably accurate estimates of the costs associated with a real estate settlement. This consideration is more compelling when creditors have pre-existing, and advantageous, relationships with affiliated and "preferred" settlement service providers. More reliable estimates are inherently beneficial because they enable consumers to make informed and responsible financial decisions, they promote honest competition among the majority of industry providers who want a fair and level playing field, and they prevent financial surprises at the real estate closing that may greatly harm consumers.

More reliable estimates also make it more likely that consumers will shop for mortgage loans based on all relevant costs among multiple providers, furthering one of the key principles of TILA and RESPA. Encouraging consumers to shop for settlement services further facilitates a competitive market for those services, thereby preventing unnecessarily high settlement costs and achieving one of the key purposes of RESPA. This approach furthers the goals of the 2008 RESPA Final Rule and the principles upon which TILA and RESPA are founded.

Legal authority. The Bureau is proposing to adopt an enhanced reliability standard for settlement costs pursuant to its authority to prescribe standards for "good faith estimates" under TILA section 128 and RESPA section 5, as well as its general rulemaking, exception, and exemption authorities under TILA sections 105(a) and 121(d), RESPA section 19(a), section 1032(a) of the Dodd-Frank Act, and, for residential mortgage loans, section 1405(b) of the Dodd-Frank Act and section 129B(e) of TILA.

The Bureau has considered the purposes for which it may exercise its authority under TILA section 105(a) and, based on that review, believes that the proposed adjustments and exceptions may be appropriate. The proposal is consistent with the statute's purpose in that it seeks to ensure that the cost estimates are more meaningful and better inform consumers of the actual costs associated with obtaining credit. The proposal has the potential to effectuate the statute's goals by ensuring more reliable estimates, which may increase the level of shopping for mortgage loans and foster honest competition for prospective consumers among financial institutions. The Bureau believes that technological advances in the mortgage loan origination market, coupled with the relationships that currently exist between creditors and the settlement service industry, may have improved the ability of creditors to provide accurate estimates, subject to reasonable exceptions. The proposal could also prevent potential circumvention or evasion of TILA by penalizing underestimation to gain a competitive advantage in situations where TILA requires good faith.

Section 121(d) of TILA generally authorizes the Bureau to adopt tolerances necessary to facilitate compliance with the statute, provided such tolerances are narrow enough to prevent misleading disclosures or disclosures that circumvent the purposes of the statute. 15 U.S.C. 1631(d). The Bureau has considered the purposes for which it may exercise its authority under TILA section 121(d) and, based on that review, believes that the proposed tolerances may be appropriate. The proposal has the potential to facilitate compliance with the statute by providing bright line rules for the determination of "good faith" based on the knowledge of costs that creditors have, or reasonably should have. The narrowed tolerances may also prevent misleading disclosures by forcing creditors who have access to accurate cost information through affiliate networks or exclusive provider arrangements, and today use such information strategically to underestimate cost estimates, to absorb any overages.

The proposal also may prevent circumvention of TILA by preventing creditors from using the tolerances to capture rent through their affiliates, and thereby unnecessarily increasing the cost of credit. The proposed tolerances may be sufficiently narrow by focusing on areas where the creditor is, or reasonably should be, in a position of superior knowledge, while maintaining the existing tolerances in areas where the creditor is providing estimates based on less certain information, such as cost estimates for services provided by independent providers.

In addition, the proposed regulation is consistent with Dodd-Frank Act section 1032(a) because requiring more accurate initial estimates of the costs of the transaction, thereby limiting the possibility of strategic underestimation to gain a competitive advantage, will ensure that the features of mortgage loan transactions and settlement services will be more fully, accurately, and effectively disclosed to consumer in a manner than permits consumers to understand the costs, benefits, and risks associated the mortgage loan. It is also in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b), because providing consumers with more accurate estimates of the cost of the mortgage loan transaction will improve consumer understanding and awareness of the mortgage loan transaction through the use of disclosure.

Section 129B(e) of TILA generally authorizes the Bureau to adopt regulations prohibiting or conditioning terms, acts, or practices relating to residential mortgage loans that are not in the interest of the borrower. The Bureau has considered the purposes for which it may exercise its authority under TILA section 129B(e) and, based on that review, believes that the proposed regulations are appropriate because unreliable estimates are not in the interest of the borrower.

Section 19(a) of RESPA authorizes the Bureau to prescribe regulations and make interpretations to carry out the purposes of RESPA, which include more effective advance disclosure of settlement costs. 12 U.S.C. 2601(a), 2617(a). The Bureau has considered the purposes for which it may exercise its authority under RESPA section 19(a) and, based on that review, believes that the proposed rules and interpretations may be appropriate. The proposal has the potential to ensure more effective advance disclosure of settlement costs by requiring creditors to disclose accurate estimates when such creditors are in a position to do so.

The Bureau solicits comment on all aspects of this proposal, including the cost, burden, and benefits to consumers and to industry regarding the proposed revisions to the good faith requirements. The Bureau solicits comment on the frequency, magnitude, and causes of settlement cost increases. The Bureau also requests comment on any alternatives to the proposal that would further the purposes of TILA, RESPA, and the Dodd-Frank Act and provide consumers with more useful disclosures.

19(e)(3)(i) General Rule

Regulation X currently provides that the amounts imposed for the origination charge and transfer taxes may not exceed the amounts included on the RESPA GFE, unless certain exceptions are met. § 1024.7(e)(1). The items included under this category are generally limited to charges paid to lenders and brokers, in addition to transfer taxes.

The Bureau is proposing to incorporate this provision in new § 1026.19(e)(3)(i). Furthermore, as discussed above, the Bureau is proposing to expand the scope of the current regulation. Under the proposed rule, the default rule is that any charge paid by the consumer that exceeds the amount originally estimated on the disclosures provided pursuant to § 1026.19(e)(1)(i) was not provided in good faith. This default rule is subject to legitimate cost revisions when an unexpected event occurs, such as a changed circumstance or a change requested by the consumer. Also, the charges for certain items are subject to exceptions allowing other increases as permitted under § 1026.19(e)(3)(ii) and (iii). Thus, the Bureau believes that the rule offers a level of flexibility similar to the current rules under Regulation X. The Bureau believes that the primary impact of adopting this bright line default rule will be to protect consumers from unnecessary increases in charges.

Consequently, the Bureau proposes § 1026.19(e)(3)(i), which provides that the charges paid by or imposed on the consumer may not exceed the estimated amounts of those charges provided pursuant to § 1026.19(e)(1)(i), subject to permissible reasons for revision such as changed circumstances and revisions requested by the consumer, and except as otherwise provided under § 1026.19(e)(3)(ii) and (iii).

During the Small Business Panel Review process, several small entity representatives expressed concern about the unintended consequences that may result from applying the zero-percent tolerance rule currently under Regulation X to affiliates of the lender or mortgage broker and to providers selected by the lender. *See* Small Business Review Panel Report at 34, 37-38, 40, 64, 67, and 71. The Small Business Review Panel recommended that the Bureau consider alternatives to expanding application of the zero-percent tolerance that would increase the reliability of cost estimates while minimizing the impacts on small entities. *See id*. at 29. The Bureau has given careful consideration to this recommendation, but has not yet identified any alternatives that would increase disclosure reliability while minimizing small entity impact. The Bureau solicits comment on any such alternatives. The Panel also recommended that the Bureau solicit comment on the effectiveness of the current tolerance rules. *Id*. Consistent with the Small Business Review Panel's recommendation, the Bureau solicits comment on whether the current tolerance rules have sufficiently improved the reliability of the estimates that lenders give consumers, while preserving lenders' flexibility to respond to unanticipated changes that occur during the loan process.

Proposed comment 19(e)(3)(i)-1 explains that § 1026.19(e)(3)(i) imposes a general rule that an estimated charge disclosed pursuant to § 1026.19(e) is not in good faith if the charge paid by or imposed on the consumer exceeds the amount originally disclosed. Although § 1026.19(e)(3)(ii) and (e)(3)(iii) provide exceptions to the general rule for certain types of charges, those exceptions generally do not apply to (1) fees paid to the creditor; (2) fees paid to a broker; (3) fees paid to an affiliate of the creditor or a broker; (4) fees paid to an unaffiliated third party if the creditor did not permit the consumer to shop for a third party service provider; and (5) transfer taxes.

Proposed comment 19(e)(3)(i)-2 provides guidance on the issue of whether an item is "paid to" a particular person. In the mortgage loan origination process, individuals often receive payments for services and subsequently pass those payments on to others. Similarly, individuals often pay for services in advance of the real estate closing and subsequently seek reimbursement from the consumer. This comment provides examples of how situations such as these are treated for the purposes of § 1026.19.

Proposed comment 19(e)(3)(i)-3 discusses when items are characterized as transfer taxes, as opposed to recording fees. Transfer taxes are analyzed under § 1026.19(e)(3)(i) for purposes of determining whether an estimate is provided in good faith. Recording fees are analyzed under § 1026.19(e)(3)(ii) for purposes of determining whether an estimate is provided in good faith.

Proposed comment 19(e)(3)(i)-4 provides examples illustrating the good faith requirement in the context of specific credits, rebates, or reimbursements. An item identified, on the disclosures provided pursuant to § 1026.19(e), as a payment from a creditor to the consumer to pay for a particular fee, such as a credit, rebate, or reimbursement are not subject to the good faith determination requirements in § 1026.19(e)(3)(i) or (ii) if the increased specific credit, rebate, or reimbursement actually reduces the cost to the consumer. Specific credits, rebates, or reimbursements may not be disclosed or revised in a way that would otherwise violate the requirements of § 1026.19(e)(3)(i) and (ii). The proposed comment also provides illustrative examples of these requirements.

Proposed comment 19(e)(3)(i)-5 discusses how to determine "good faith" in the context of lender credits. The proposed comment explains that the disclosure of "lender credits," as identified in § 1026.37(g)(6)(ii), is required by § 1026.19(e)(1)(i). These are payments from the creditor to the consumer that do not pay for a particular fee on the disclosures provided pursuant to § 1026.19(e)(1)(i). These non-specific credits are negative charges to the consumer – as the lender credit decreases the overall cost to the consumer increases. Thus, an actual lender credit provided at the real estate closing that is less than the estimated lender credit provided pursuant to § 1026.19(e)(1)(i) is an increased charge to the consumer for purposes of determining good faith under § 1026.19(e)(3)(i). For example, if the creditor provides a $750 estimate for lender credits in the disclosures required by § 1026.19(e)(1)(i), but only a $500 lender credit is actually provided to the consumer at the real estate closing, the creditor does not comply with § 1026.19(e)(3)(i) because, although the actual lender credit was less than the estimated lender credit provided in the revised disclosures, the overall cost to the consumer increased and, therefore, did not comply with § 1026.19(e)(3)(i). See also § 1026.19(e)(3)(iv)(D) and comment 19(e)(3)(iv)(D)-1 for a discussion of lender credits in the context of interest rate dependent charges.

19(e)(3)(ii) Limited Increases Permitted for Certain Charges

Regulation X § 1024.7(e)(2) currently provides that the sum of the amounts charged for all lender-required settlement services where the consumer does not independently choose a provider, title insurance, and recording charges may increase by as much as 10 percent prior to settlement, subject to revisions arising from exceptions such as changed circumstances. The Bureau believes that a more narrow regulation may be appropriate in this context. The Bureau therefore proposes § 1026.19(e)(3)(ii), which permits the sum of all charges for lender-required settlement services where the lender permits the consumer to shop for a provider other than those identified by the creditor and recording fees to increase by 10 percent for the purposes of determining good faith. As explained in the general discussion under § 1026.19(e)(3) above, the Bureau believes that the purposes of TILA and RESPA are better served by removing affiliate fees from this category and including other settlement services in this category only if the consumer is permitted to shop independently for a service provider. Proposed comment 19(e)(3)(ii)-1 explains that § 1026.19(e)(3)(ii) provides that certain estimated charges are in good faith if the sum of all such charges paid by or imposed on the consumer does not exceed the sum of all such charges disclosed pursuant to § 1026.19(e) by more than 10 percent. Section 1026.19(e)(3)(ii) permits this limited increase for only: (1) fees paid to an unaffiliated third party if the creditor permitted the consumer to shop for the service, consistent with § 1026.19(e)(1)(vi)(A), and (2) recording fees.

Proposed comment 19(e)(3)(ii)-2 clarifies that pursuant to § 1026.19(e)(3)(ii), whether an individual estimated charge subject to § 1026.19(e)(3)(ii) is in good faith depends on whether the sum of all charges subject to § 1026.19(e)(3)(ii) increase by more than 10 percent, even if a particular charge does not increase by more than 10 percent. This proposed comment also clarifies that § 1026.19(e)(3)(ii) provides flexibility in disclosing individual fees by focusing on aggregate amounts, and provides illustrative examples.

Proposed comment 19(e)(3)(ii)-3 discusses the determination of good faith when a consumer is permitted to shop for a settlement service, but either does not select a settlement service provider, or chooses a settlement service provider identified by the creditor on the list required by § 1026.19(e)(1)(vi)(C). The proposed comment explains § 1026.19(e)(3)(ii), which provides that if the creditor requires a service in connection with the mortgage loan transaction, and permits the consumer to shop, then good faith is determined pursuant to § 1026.19(e)(3)(ii)(A), instead of § 1026.19(e)(3)(i) and subject to the other requirements in

§ 1026.19(e)(3)(ii)(B) and (C). For example, if, in the disclosures provided pursuant to § 1026.19(e)(1)(i), a creditor includes an estimated fee for an unaffiliated settlement agent and permits the consumer to shop for a settlement agent, but the consumer does not choose a settlement agent, or chooses an agent identified by the creditor on the list required by § 1026.19(e)(1)(vi)(C), then the estimated settlement agent fee is included with the fees that may, in aggregate, increase by no more than 10 percent for the purposes of § 1026.19(e)(3)(ii). If, however, the consumer chooses a provider that is not on the written list, then good faith is determined according to § 1026.19(e)(3)(iii).

Proposed comment 19(e)(3)(ii)-4 discusses how the good faith determination requirements apply to recording fees. Recording fees are mandated by State or local law and paid to a government agency. Consequently, several of the requirements regarding good faith do not apply. The proposed comment explains that the condition specified in § 1026.19(e)(3)(ii)(B), that the charge not be paid to an affiliate of the creditor, is inapplicable in the context of recording fees. The condition specified in § 1026.19(e)(3)(ii)(C), that the creditor permits the consumer to shop for the service, is similarly inapplicable. Therefore, estimates of recording fees need only satisfy the condition specified in § 1026.19(e)(3)(ii)(A) (*i.e.*, that the aggregate amount increased by no more than 10 percent) to meet the requirements of § 1026.19(e)(3)(ii).

19(e)(3)(iii) Variations Permitted for Certain Charges

Section 1024.7(e)(3) of Regulation X currently provides that the amounts charged for services, other than those identified in § 1024.7(e)(1) and § 1024.7(e)(2), may change at settlement. The Bureau agrees that certain types of estimates, such as those for property insurance premiums, may change significantly between the time that the original disclosures are provided and consummation. However, the Bureau believes that the regulation will be improved by specifically identifying which items are included in this category. Clear delineation of these items should facilitate compliance by reducing the need to question how to categorize those items. Thus, the Bureau proposes § 1026.19(e)(3)(iii), which provides that estimates of prepaid interest, property insurance premiums, amounts placed into an escrow, impound, reserve, or similar account, and charges paid to third-party service providers selected by the consumer consistent with § 1026.19(e)(1)(vi)(A) that are not on the list provided pursuant to § 1026.19(e)(1)(vi)(C) are in good faith regardless of whether the amount actually paid by the consumer exceeds the estimated amount disclosed, provided such estimates are consistent with the best information reasonably available to the creditor at the time the disclosures were made.

Proposed comments 19(e)(3)(iii)-1, 19(e)(3)(iii)-2, and 19(e)(3)(iii)-3 explain that the disclosures for items subject to § 1026.19(e)(3)(iii) must be made in good faith, even though good faith is not determined pursuant to a comparison of estimated amounts and actual costs. The comments clarify that the disclosures must be made according to the best information reasonably available to the creditor at the time the disclosures are made. The Bureau is concerned that unscrupulous creditors may underestimate, or fail to include estimates for, the items subject to § 1026.19(e)(3)(iii) and mislead consumers into believing the cost of the mortgage loan is less than it actually is. This concern must be balanced against the fact that some items may change significantly and legitimately prior to consummation. Furthermore, while the creditor should include estimates for all fees "the borrower is likely to incur," it may not be reasonable to expect the creditor to know every fee, no matter how uncommon, agreed to by the consumer, for example in the purchase and sale agreement, prior to providing the estimated disclosures. The proposal strikes a balance between these considerations by imposing a general good faith requirement. Thus, proposed comment 19(e)(3)(iii)-1 explains that estimates of prepaid interest, property insurance premiums, and impound amounts must be consistent with the best information reasonably available to the creditor at the time the disclosures are provided. Differences between the amounts of such charges disclosed pursuant to § 1026.19(e)(1)(i) and the amounts of such charges paid by or imposed upon the consumer do not constitute a lack of good faith, so long as the original estimated charge, or lack of an estimated charge for a particular service, was based on the best information reasonably available to the creditor at the time the disclosure was provided. For example, if the creditor requires homeowner's insurance but fails to include a homeowner's insurance premium on the estimates provided pursuant to § 1026.19(e)(1)(i), then the creditor has not complied with § 1026.19(e)(3)(iii). However, if the creditor does not require flood insurance and the subject property is located in an area where floods frequently occur, but not located in a zone where flood insurance is required, failure to include flood insurance on the original estimates provided pursuant to § 1026.19(e)(1)(i) does not constitute a lack of good faith. Or, if the creditor knows that the loan must close on the 15th of the month but estimates prepaid interest to be paid from the 30th of that month, then the under-disclosure violates § 1026.19(e)(3)(iii).

Proposed comment 19(e)(3)(iii)-2 discusses the good faith requirement for required services chosen by the consumer that has been permitted to shop consistent with § 1026.19(e)(1)(vi)(A). The proposed comment explains that, if a service is required by the creditor, the creditor permits the consumer to shop for that service consistent with § 1026.19(e)(1)(vi)(A), the creditor provides the list required by § 1026.19(e)(1)(vi)(C), and the consumer chooses a service provider that is not on the list to perform that service, then the actual amounts of such fees need not be compared to the original estimates for such fees to perform the good faith analysis required by § 1026.19(e)(3)(i) or (ii). Differences between the amounts of such charges disclosed pursuant to § 1026.19(e)(1)(i) and the amounts of such charges paid by or imposed on the consumer do not necessarily constitute a lack of good faith. However, the original estimated charge, or lack of an estimated charge for a particular service, must be made based on the best information reasonably available to the creditor at that time. For example, if the consumer informs the creditor that the consumer will choose a settlement agent not identified by the creditor, and the creditor subsequently discloses an unreasonably low estimated settlement agent fee, then the under-disclosure does not comply with § 1026.19(e)(3)(iii). The comment also clarifies that, if the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) but fails to provide the list required by § 1026.19(e)(1)(vi)(C), good faith is determined pursuant to § 1026.19(e)(3)(ii) instead of § 1026.19(e)(3)(iii) regardless of the provider selected by the consumer, unless the provider is an affiliate of the creditor in which case good faith is determined pursuant to § 1026.19(e)(3)(i).

Proposed comment 19(e)(3)(iii)-3 discusses the good faith requirement for non-required services chosen by the consumer. Differences between the amounts of estimated charges for services not required by the creditor disclosed pursuant to § 1026.19(e)(1)(i) and the amounts of such charges paid by or imposed on the consumer do not necessarily constitute a lack of good faith. For example, if the consumer informs the creditor that the consumer will obtain a type of inspection not required by the creditor, the creditor may include the charge for that item in the disclosures provided pursuant to § 1026.19(e)(1)(i), but the actual amount of the inspection fee need not be compared to the original estimate for the inspection fee to perform the good faith analysis required by § 1026.19(e)(3)(iii). However, the original estimated charge, or lack of an estimated charge for a particular service, must still be made based on the best information reasonably available to the creditor at the time that the estimate was provided. For example, if the subject property is located in a jurisdiction where consumers are customarily represented at the real estate closing by their own attorney, but the creditor fails to include a fee for the consumer's attorney, or includes an unreasonably low estimate for such fee, on the original estimates provided pursuant to § 1026.19(e)(1)(i), then the creditor's failure to disclose, or under-estimation, does not comply with § 1026.19(e)(3)(iii).

19(e)(3)(iv) Revised Estimates

Regulation X § 1024.7(f) currently provides that the estimates included on the RESPA GFE are binding, subject to six exceptions. If the lender establishes one of these six exceptions, the RESPA GFE may be re-issued with revised estimates. The Bureau agrees that there are certain situations that may legitimately cause increases over the amounts originally estimated, and that the regulations should provide a clear mechanism for providing revised estimates in good faith. The Bureau proposes § 1026.19(e)(3)(iv), which provides that, for purposes of determining good faith, a charge paid by or imposed on the consumer may exceed the originally estimated charge if the revision is caused by one of the six reasons identified in § 1026.19(e)(3)(iv)(A) through (F). Proposed comment 19(e)(3)(iv)-1 illustrates this provision.

Consistent with current Regulation X,[143] proposed comment 19(e)(3)(iv)-2 clarifies that, to satisfy the good faith requirement, revised estimates may increase only to the extent that the reason for revision actually caused the increase and provides illustrative examples of this requirement. Proposed comment 19(e)(3)(iv)-3 discusses the documentation requirements related to the provision of revised estimates. Regulation X § 1024.7(f) contains a separate regulatory provision related to documentation requirements. The Bureau believes that this requirement is encompassed within the requirements of § 1026.25. The proposed comment clarifies that the regulations include a documentation requirement related to the disclosures, but

[143] *See* § 1024.7(f)(1), (2), (3), and (5).

the requirements are located under § 1026.25, instead of § 1026.19. As discussed below, the Bureau is proposing to impose enhanced recordkeeping requirements under § 1026.25.

19(e)(3)(iv)(A) Changed Circumstance Affecting Settlement Charges

In general. Regulation X § 1024.7(f)(1) currently provides that a revised RESPA GFE may be provided if changed circumstances result in increased costs for any settlement service such that charges at settlement would exceed the tolerances for those charges. The Bureau agrees that creditors should be able to provide revised estimates if certain situations occur that increase charges. The Bureau proposes § 1026.19(e)(3)(iv)(A), which provides that a valid reason for re-issuance exists when changed circumstances cause estimated charges to increase or, for those charges subject to § 1026.19(e)(3)(ii), cause the sum of all such estimated charges to increase by more than 10 percent. Proposed comment 19(e)(3)(iv)(A)-1 provides further explanation of this requirement and includes several practical examples.

Changed circumstance. As explained in the general discussion under § 1026.19(e)(3) above, Regulation X § 1024.2 generally defines changed circumstances as information and events that warrant revision of the estimated amounts included on the RESPA GFE. The Bureau generally agrees with the information and events included in the current definition. However, the Bureau has received feedback that the current definition is confusing. Thus, the Bureau proposes, within § 1026.19(e)(3)(iv)(A), a new definition of changed circumstance, which provides that a changed circumstance is an extraordinary event beyond the control of any interested party or other unexpected event specific to the consumer or transaction, information specific to the consumer or transaction that the creditor relied upon when providing the disclosures and that was inaccurate or subsequently changed, or new information specific to the consumer or transaction that was not relied on when providing the disclosures.

This proposed definition, most significantly, omits the fourth prong of the existing definition, which provides that: “ [o]ther circumstances that are particular to the borrower or transaction, including boundary disputes, the need for flood insurance, or environmental problems” is considered a changed circumstance. The Bureau believes that this prong is not needed because it is covered elsewhere in the definition, and may be contributing to the current industry uncertainty surrounding what constitutes a changed circumstance. However, the Bureau seeks comment on whether this proposal is appropriate, and specifically on whether there are scenarios that should be considered a changed circumstance that would not be captured under any of the other three prongs. Proposed comment 19(e)(3)(iv)(A)-2 provides additional elaboration on this issue and provides several examples of changed circumstances.

Proposed comment 19(e)(3)(iv)(A)-3 discusses how the definition of application under § 1026.2(a)(3) relates to the definition of changed circumstances under § 1026.19(e)(3)(iv)(A). The proposed comment explains that a creditor is not required to collect the consumer’s name, monthly income, or social security number to obtain a credit report, the property address, an estimate of the value of the property, or the mortgage loan amount sought. However, for purposes of determining whether an estimate is provided in good faith under § 1026.19(e)(1)(i), a creditor is presumed to have collected these six pieces of information. For example, if a creditor provides the disclosures required by § 1026.19(e)(1)(i) prior to receiving the property address from the consumer, the creditor cannot subsequently claim that the receipt of the property address is a changed circumstance, under § 1026.19(e)(3)(iv)(A) or (B).

19(e)(3)(iv)(B) Changed Circumstance Affecting Eligibility

Regulation X § 1024.7(f)(2) currently provides that a revised RESPA GFE may be provided if a changed circumstance affecting borrower eligibility results in increased costs for any settlement service such that charges at settlement would exceed the tolerances for those charges. The Bureau proposes § 1026.19(e)(3)(iv)(B), which provides that a valid reason for reissuance exists when a changed circumstance affecting the consumer's creditworthiness or the value of the collateral causes the estimated charges to increase. Proposed comment 19(e)(3)(iv)(B)-1 explains that if changed circumstances cause a change in the consumer's eligibility for specific loan terms disclosed pursuant to § 1026.19(e)(1)(i) and revised disclosures are provided reflecting such change, the actual amounts paid by the consumer may be measured against the revised estimated disclosures to determine if the actual fee has increased above the estimated fee. The proposed comment also provides several illustrative examples.

19(e)(3)(iv)(C) Revisions Requested by the Consumer

Regulation X § 1024.7(f)(3) currently provides that a revised RESPA GFE may be provided if a borrower requests changes to the mortgage loan identified in the GFE that change the settlement charges or the terms of the loan. The Bureau agrees that creditors should be able to provide revised estimates that increase charges from the original estimates due to revisions requested by the consumer. The Bureau proposes § 1026.19(e)(3)(iv)(C), which provides that a valid reason for reissuance exists when a consumer requests revisions to the credit terms or the settlement that cause estimated charges to increase. Proposed comment 19(e)(3)(iv)(C)-1 illustrates this requirement.

19(e)(3)(iv)(D) Interest Rate Dependent Charges

Regulation X § 1024.7(f)(5) currently provides that, if the interest rate has not been locked, or a locked interest rate has expired, the charge or credit for the interest rate chosen, the adjusted origination charges, per diem interest, and loan terms related to the interest rate may change, provided, however, that when the interest rate is later locked, a revised GFE must be provided showing the revised interest rate-dependent charges and terms. The Bureau agrees that disclosures related to the interest rate should be able to fluctuate if the consumer's rate has not been set. The Bureau also agrees that revised disclosures should be provided when the consumer's rate is later set. However, the Bureau is concerned that this provision may be used to harm consumers. There is a possibility that unscrupulous creditors could use this provision to engage in rent-seeking behavior, or to attempt to circumvent the requirements of TILA or RESPA. The Bureau acknowledges these concerns, but the Bureau is unaware of any evidence that creditors are using current Regulation X § 1024.7(f)(5) to harm consumers or to circumvent RESPA. The Bureau believes that the correct balance may be to retain the current regulation while monitoring the market to determine if the regulation is being used to the detriment of consumers. Thus, the Bureau proposes § 1026.19(e)(3)(iv)(D), which provides that a valid reason for reissuance exists when a consumer's rate is set, and also provides that revised disclosures must be provided reflecting the revised interest rate, bona fide discount points, and lender credits. Proposed comment 19(e)(3)(iv)(D)-1 illustrates this requirement. The Bureau also seeks comment on the frequency and magnitude of revisions to the interest rate dependent charges, the frequency of cancellations of contractual agreements related to interest rate dependent charges, such as rate lock agreements, and the reasons for such revisions and cancellations.

19(e)(3)(iv)(E) Expiration

Regulation X § 1024.7(f)(4) currently provides that if a borrower does not express an intent to continue with the transaction within ten business days after the RESPA GFE is provided, or such longer time specified by the loan originator, then the loan originator is no longer bound by the RESPA GFE. The Bureau believes that consumers should be able to rely on the estimated charges for a sufficient period of time to permit shopping. The Bureau also believes that, if the consumer does not indicate intent to proceed within the ten-day period, creditors should be able to provide revised disclosures reflecting new charges. The Bureau proposes § 1026.19(e)(3)(iv)(E), which provides that a valid reason for reissuance exists when a consumer expresses an intent to proceed more than ten business days after the disclosures are provided. Proposed comment 19(e)(3)(iv)(E)-1 illustrates this requirement.

19(e)(3)(iv)(F) Delayed Settlement Date on a Construction Loan

Regulation X § 1024.7(f)(6) currently provides that in transactions involving new construction home purchases, where settlement is expected to occur more than 60 calendar days from the time a GFE is provided, the loan originator cannot issue a revised GFE unless the loan originator provided the borrower with a clear and conspicuous disclosure stating that at any time up until 60 calendar days prior to the real estate closing, the loan originator may issue a revised GFE. The Bureau believes that the current law under Regulation X should apply to the integrated disclosures. The Bureau agrees that creditors should be able to issue revised disclosures for construction loans where consummation will not occur until well into the future, likely after construction is completed, provided that the consumer is aware of this fact. The Bureau proposes § 1026.19(e)(3)(iv)(F), which provides that a valid reason for revision exists on construction loans when consummation is scheduled to occur more than 60 days after delivery of the estimated disclosures, provided that the consumer was alerted to this fact when the estimated disclosures were provided.

Proposed comment 19(e)(3)(iv)(F)-1 clarifies that a loan for the purchase of a home either to be constructed or under construction is considered a construction loan to purchase and build a home for the purposes of § 1026.19(e)(3)(iv)(F). For example, a loan to build a home that has yet to be constructed, or a loan to purchase a home on which construction is currently underway, is a construction loan to build a home for the purposes of § 1026.19(e)(3)(iv)(F). However, if a use and occupancy permit has been issued for the home prior to the issuance of the Loan Estimate, then the home is not considered to be under construction and the transaction would not be a construction loan to purchase and build a home for the purposes of § 1026.19(e)(3)(iv)(F). This comment is consistent with guidance provided by HUD in the HUD RESPA FAQs p. 21, # 2 ("GFE - New construction").

19(e)(4) Provision of Revised Disclosures

Timing Requirements for Provision of Revised Disclosures

TILA's requirement that creditors provide corrected disclosures is not linked to the time when a creditor discovers that a correction is necessary. Instead, section 128(b)(2)(D) of TILA provides that the creditor shall furnish additional, corrected disclosures to the borrower not later than three business days before the date of consummation of the transaction, if the previously disclosed annual percentage rate is no longer accurate, as determined under TILA section 107(c). 15 U.S.C. 1638(b)(2)(D). Regulation Z implements this requirement in § 1026.19(a)(2)(ii). RESPA does not expressly address timing requirements for the delivery of revised GFEs, but Regulation X generally requires that a revised GFE must be provided within three business days of the creditor receiving information sufficient to establish a reason for revision.[144]

While both regulations contain redisclosure requirements, their approaches are different. Regulation Z ensures that the consumer is made aware of changes at a specific point in time before consummation, but does not require the creditor to keep the consumer informed of

[144] "If a revised GFE is to be provided, the loan originator must do so within 3 business days of receiving information sufficient to establish changed circumstances." 12 CFR 1024.7(f)(1) and (2). "If a revised GFE is to be provided, the loan originator must do so within 3 business days of the borrower's request." 12 CFR 1024.7(f)(3). "The loan originator must provide the revised GFE within 3 business days of the interest rate being locked or, for an expired interest rate, re-locked." 12 CFR 1024.7(f)(5).

incremental changes during the loan origination process. In contrast, Regulation X ensures that the consumer is kept aware of certain changes during the process, but those changes may occur up to the day of settlement. These different approaches may stem from the underlying purposes of the respective statutes: TILA focuses primarily on the disclosure of high-level measures of the costs imposed by the creditor, such as the APR, while RESPA requires itemized disclosure of all charges associated with the settlement of a federally related mortgage loan and any underlying real estate transaction, regardless of who imposes the charge.

The Bureau believes that the policy goals of both statutes are best served by adopting the Regulation X requirement that revised disclosures be delivered within three business days of the creditor establishing that a valid reason for revision exists. Intermittent redisclosure of the integrated Loan Estimate is necessary under RESPA because settlement service provider costs typically fluctuate during the mortgage loan origination process. Furthermore, intermittent redisclosure is consistent with the purposes of TILA because it promotes the informed use of credit by keeping the consumer apprised of changes in costs.

Accordingly, the Bureau is proposing § 1026.19(e)(4)(i), which provides that, if a creditor delivers a revised Loan Estimate, the creditor must do so within three business days of establishing that a valid reason for revision exists. Proposed comment 19(e)(4)-1 provides illustrative examples of this requirement.

The Bureau proposes this provision pursuant to its authority under TILA section 105(a), RESPA section 19(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, sections 129B(e) of TILA and 1405(b) of the Dodd-Frank Act. This proposed provision is consistent with TILA's purposes in that alerting consumers to significant settlement cost increases as they occur, rather than prior to consummation, increases consumer awareness during the mortgage loan origination process, enabling consumers to avoid the uninformed use of credit. This provision is consistent with section 129B(e) of TILA because failing to inform borrowers of significant settlement cost increases as they occur is not in the interest of the borrower. This also achieves RESPA's purposes because informing consumers of significant settlement cost increases as they occur is a more effective method of advance disclosure of settlement costs than only informing consumers at or shortly prior to consummation. In addition, the proposed regulation is consistent with Dodd-Frank Act section 1032(a) because the features of mortgage loan transactions and settlement services will be more fully, accurately, and effectively disclosed to consumer in a manner than permits consumers to understand the costs, benefits, and risks associated the mortgage loan and settlement services if consumers are made aware of significant settlement cost increases as they occur, rather than prior to consummation. It is also in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b), because alerting consumers to significant settlement cost increases during the process will improve consumer understanding and awareness of the mortgage loan transaction through the use of disclosure.

Prohibition Against Delivering Early Disclosures at the Same Time as Final Disclosures

As explained above, the purposes of RESPA and TILA include effective advance disclosure of settlement costs, and the informed use of credit by consumers. *See* TILA section 102; RESPA section 2. Section 105(a) of TILA also permits the Bureau to prescribe regulations that would improve consumers' ability to understand the mortgage loan transaction. The Dodd-Frank Act enhances TILA's focus by placing special emphasis on the requirement that disclosures must be made in a way that is clear and understandable to the consumer. Section 1405 of the Dodd-Frank Act focuses on improving "consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures." The Bureau is aware that, in some cases, creditors have provided a revised GFE at the real estate closing along with the RESPA settlement statement. The Bureau is concerned that this practice may be confusing for consumers and may diminish their awareness and understanding of the transaction.

The Bureau recognizes that there are cases in which a consumer may not be confused by receiving good faith estimates on the same day, or even at the same time, as the consumer receives the actual settlement costs. However, because the estimated costs will match the actual costs, the Bureau is concerned that consumers may be confused by seemingly duplicative disclosures. The Bureau is also concerned that this duplication may contribute to information overload stemming from too many disclosures, which may, in turn, inhibit the consumer's ability to understand the transaction. Accordingly, proposed § 1026.19(e)(4)(ii) prohibits creditors from providing a consumer with disclosures of estimated and actual costs at the same time. To draw a clear line to facilitate compliance, the creditor does not comply with the requirements of proposed § 1026.19(e) if the consumer receives revised versions of the disclosures required under § 1026.19(e)(1)(i) on the same business day as the consumer receives the disclosures required by § 1026.19(f)(1)(i).

Accordingly, the Bureau is proposing § 1026.19(e)(4)(ii), which provides that the creditor shall deliver revised versions of the disclosures required by § 1026.19(e) in a manner that ensures such revised disclosures are not received on the same business day as the consumer receives the disclosures required by § 1026.19(f)(1)(i). The Bureau proposes this provision pursuant to its authority under TILA section 105(a), RESPA section 19(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). The proposed provision is consistent with TILA's purposes because prohibiting simultaneous provision of a revised Loan Estimate and the Closing Disclosure promotes the informed use of credit by reducing the potential for consumer confusion and information overload. Similarly, this provision achieves RESPA's purposes because the receipt of settlement cost information on a single disclosure is a more effective method of advance disclosure of settlement costs. In addition, the proposed regulation is consistent with Dodd-Frank Act section 1032(a) because consumers will understand the costs, benefits, and risks associated with the mortgage loan and settlement services if the actual terms and costs of the transaction are disclosed on the Closing Disclosure only. It is also in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b), because ensuring that consumers do not receive duplicative disclosures will improve consumer understanding and awareness of the mortgage loan transaction through the use of disclosure.

Proposed comment 19(e)(4)-2 discusses the requirement that revised disclosures may not be delivered at the same time as the final disclosures. The proposed comment explains that creditors comply with the requirements of § 1026.19(e)(4) if the revised disclosures are reflected in the disclosures required by § 1026.19(f)(1)(i) (*i.e.*, the Closing Disclosure). This comment also includes illustrative examples of the requirement.

19(f) Mortgage Loans Secured by Real Property—Final Disclosures

As discussed in the preamble text introducing § 1026.19, TILA applies only to creditors and requires, for certain mortgage transactions, creditors to furnish a corrected disclosure to the borrower not later than three business days before the date of consummation of the transaction if the prior disclosed APR has become inaccurate. 15 U.S.C. 1638(b)(2)(A), (D). In contrast, RESPA generally applies to settlement agents and requires the person conducting the settlement (*e.g.*, the settlement agent) to complete a settlement statement and make it available for inspection by the borrower at or before settlement. 12 U.S.C. 2603(b). RESPA also provides that, upon the request of the borrower, the person who conducts the settlement must permit the borrower to inspect those items which are known to such person on the settlement statement during the business day immediately preceding the day of settlement. *Id.*

Regulation Z implements TILA's requirement that the creditor deliver corrected disclosures and provides that, if the annual percentage rate disclosed in the early TILA disclosure becomes inaccurate, the creditor shall provide corrected disclosures with all changed terms. § 1026.19(a)(2)(ii). Regulation Z further provides that the consumer must receive the corrected disclosures no later than three business days before consummation. *Id.* Regulation X provides that the settlement agent shall permit the borrower to inspect the RESPA settlement statement, completed to set forth those items that are known to the settlement agent at the time of inspection, during the business day immediately preceding settlement. § 1024.10(a).

Section 1032(f) of the Dodd-Frank Act provides that the Bureau shall propose for public comment rules that combine the disclosures required under TILA and sections 4 and 5 of RESPA. As noted above, although the Dodd-Frank Act amended TILA and RESPA to reflect section 1032(f)'s mandate to integrate the rules under TILA and RESPA, Congress did not reconcile the timing requirements or amend the division of responsibilities between creditor and settlement agent in TILA and RESPA.

19(f)(1) Provision

19(f)(1)(i) Scope

As discussed above, the integrated disclosure mandate requires the Bureau to reconcile what Congress did not. Thus, pursuant to its authority under sections 105(a) of TILA, 19(a) of RESPA, and 1032(f) of the Dodd-Frank Act, the Bureau is proposing to integrate the disclosure requirements in TILA section 128 and RESPA section 4 in § 1026.19(f)(1)(i). This section provides that in a closed-end consumer credit transaction secured by real property, other than a reverse mortgage subject to § 1026.33, the creditor shall provide the consumer with the disclosures in § 1026.38 reflecting the actual terms of the credit transaction. Proposed comment 19(f)(1)(i)-1 provides illustrative examples of this provision.

19(f)(1)(ii) Timing

19(f)(1)(ii)(A) In General

The Bureau must determine when the integrated disclosures must be provided, given that the statutory requirements are not in sync. The Bureau believes that, to comply with both TILA and RESPA, the integrated disclosure must be delivered no later than three days before consummation. The Bureau recognizes that RESPA requires settlement agents to permit borrower inspection of the settlement statement only one business day in advance of settlement, and even then RESPA requires disclosure of only the information to the extent that it is known to the settlement agent. However, the fact that Congress did not alter the timing requirements under RESPA does not imply that the timing requirements under TILA were eliminated. It can be safely presumed that Congress was aware of the requirement that creditors must deliver final disclosures three business days before consummation because Congress created the three-business-day waiting period in 2008. Furthermore, section 1098 of the Dodd-Frank Act, which amends RESPA section 4 to require integrated disclosures, specifically provides that such integrated disclosures shall "include real estate settlement cost statements." This suggests that Congress intended creditors to deliver the settlement cost statements with the TILA disclosures required to be delivered no later than three business days before consummation, even though the language in RESPA section 4 related to settlement agent delivery remains.[145]

The expansion of the items required to be disclosed three business days prior to consummation also supports the Bureau's interpretation. As discussed above, section 1419 of the Dodd-Frank Act also amended TILA by adding section 128(a)(17), which requires creditors to disclose the aggregate amount of settlement charges for all settlement services provided in connection with the loan and the aggregate amount of other fees or required payments in connection with the loan. The items included in this amendment are nearly all of the items that are included on the RESPA settlement statement, which suggests that Congress intended for creditors to disclose information that was traditionally known only to settlement agents in advance of consummation. This amendment, coupled with the fact that Regulation Z requires redisclosure of all changed terms three business days before consummation when the APR is inaccurate, implies that Dodd-Frank requires provision of the integrated disclosure no later than three business days before consummation.

The determination of how to integrate these conflicting statutory provisions also must be made in light of section 1405(b) of the Dodd-Frank Act, which focuses on improving "consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures." Consumers may be more aware of and better understand their transactions if consumers receive the disclosures reflecting all of the terms and costs associated with their transactions three days before consummation. This should afford consumers sufficient time to review, analyze, and question the information reflected in the disclosure, such that consumers are

[145] The language in section 4 of RESPA requiring settlement statement delivery one business day in advance of settlement was added in 1976. *See* section 3 of P.L. 94-205 (Jan. 2, 1976). Interpreting the recent amendments in a way that overrides the legacy language is consistent with Supreme Court precedent. *See FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) ("[T]he meaning of one statute may be affected by other Acts, particularly where Congress has spoken subsequently and more specifically to the topic at hand.").

aware of and understand the transactions by the time consumers are required to obligate themselves. This should also provide consumers with sufficient time to identify and correct errors, discuss and negotiate cost increases, and have the necessary funds available. This may also eliminate the opportunity for bad actors to surprise consumers with unexpected costs at the closing table, when consumers are less able to question such costs.

In addition, the Bureau is concerned that consumers would not receive the disclosures far enough in advance of consummation to review and understand the transaction under an alternate reading of the statute. As explained above, Regulation Z currently requires creditors to ensure that consumers receive the corrected TIL disclosures no later than three business days prior to consummation. A less stringent rule that allowed consumers to receive the disclosures on the day of consummation would be inconsistent with both TILA and the goals this proposal seeks to achieve. However, the Bureau is also concerned that it would be impractical to require delivery earlier than three business days before consummation. Thus, the Bureau believes that the proposal should provide flexibility to industry by requiring creditors to ensure that consumers receive the disclosures no later than the third business day before consummation. Under this approach, a creditor need not complete the disclosures until the third business day before consummation, provided it can ensure that the consumer will receive the disclosures that day, such as via electronic mail consistent with applicable requirements or hand delivery.

As discussed above, the integrated disclosure mandate requires the Bureau to reconcile what Congress did not. Section 105(a) of TILA authorizes the Bureau to modify and add requirements under certain circumstances, and the Bureau believes that requiring redisclosure in cases where it is not currently required under Regulation Z or Regulation X is necessary to effectively integrate the disclosures. Accordingly, the Bureau proposes § 1026.19(f)(1)(ii)(A), which provides that, except for transactions secured by timeshares, or as provided under § 1026.19(f)(2), the creditor shall ensure that the consumer receives the disclosures no later than three business days before consummation. Proposed comment 19(f)(1)(ii)-1 provides illustrations of this requirement. Proposed comment 19(f)(1)(ii)-2 explains the requirement that consumers must receive disclosures no later than three days in advance of consummation, and provides practical examples illustrating appropriate delivery methods.

The Bureau informed the Small Business Review Panel that the Bureau was considering requiring reissuance if the APR increased by more than 1/8 of 1 percent, certain loan features were added, or if the amount needed to close increased beyond a certain tolerance. *See* Small Business Panel Review Report at 11. While this proposal includes the tolerance for the amount needed to close and would require reissuance if certain loan features are added, this proposal does not include an additional APR tolerance for reissuance. Based on further review, the Bureau believes that the $100 amount needed to close tolerance provides sufficient flexibility, thereby making an additional APR tolerance unnecessary. The Bureau was also concerned that the additional APR tolerance would harm consumers by allowing potentially large costs to change immediately prior to closing. Importantly, the Bureau believes that this proposal is substantially similar to the possibilities discussed with the Small Business Review Panel. In virtually all cases where the APR increases by more than 1/8 of 1 percent, the amount needed to close would also have increased by more than $100, requiring re-disclosure. However, the Bureau solicits comment on whether the use of an APR tolerance would provide any additional benefits.

The Bureau recognizes that this modification would require redisclosure three days before consummation in circumstances that are not currently required under Regulation Z. This proposal removes the condition, provided for under TILA section 128(b)(2)(D), that corrected disclosures need not be delivered if the estimated APR included in the early TILA disclosure is accurate at the time of consummation. The Bureau has received extensive feedback indicating that APR estimates included in the early TILA disclosures are so rarely accurate that most creditors provide corrected disclosures as a standard business practice, instead of analyzing the accuracy of the disclosed APR. Thus, the Bureau believes that the benefit afforded by the condition under TILA section 128(b)(2)(D) is more illusory than real, and may, in fact, impose an unnecessary compliance burden on industry. In addition, the Bureau suspects that the expansion of the list of items included in the APR, pursuant to the proposed amendments to § 1026.4, may make it less likely that a creditor will be able to accurately estimate the APR within three business days of application. Therefore, this proposal does not condition disclosure prior to consummation on APR accuracy.

These proposals are made pursuant to the Bureau's legal authority under sections 105(a) of TILA, 19(a) of RESPA, 1032(a) of the Dodd-Frank Act, and, for residential mortgage transactions, sections 129B(e) of TILA and 1405(b) of the Dodd-Frank Act. The Bureau has considered the purposes for which it may exercise its authority under section 105(a) of TILA and, based on that review, believes that the proposed modifications are appropriate. The proposal may help consumers avoid the uninformed use of credit by ensuring that consumers receive disclosures of the actual terms and costs associated with the mortgage loan transaction early enough that consumers have sufficient time to become fully informed as to the cost of their credit. This provision is consistent with section 129B(e) of TILA because failing to provide borrowers with enough time to become fully informed of the actual terms and costs of the transaction is not in the interest of the borrower.

The Bureau has also considered the purposes for which it may exercise its authority under section 19(a) of RESPA and, based on that review, believes that the proposed rules and interpretations are appropriate. The proposal has the potential to ensure more effective advance disclosure of settlement costs by requiring creditors to disclose the actual settlement costs associated with the transaction three business days before consummation.

Proposed § 1026.19(f)(1)(ii)(A) is consistent with Dodd-Frank Act section 1032(a) because the features of mortgage loan transactions and settlement services will be more fully, accurately, and effectively disclosed to consumer in a manner than permits consumers to understand the costs, benefits, and risks associated consumers will understand the costs and risks associated with the mortgage loan and settlement services if consumers receive the disclosures reflecting all of the terms and costs associated with their transactions three days before consummation.

In addition, the Bureau has considered the purposes for which it may exercise its authority under section 1405(b) of the Dodd-Frank Act and, based on that review, believes that the proposed modifications are appropriate. The proposal may improve consumer awareness and understanding of the mortgage loan transaction by ensuring that consumers receive the disclosures reflecting all of the terms and costs associated with their transactions three days in advance of consummation. The proposal may also be in the interest of consumers and in the public interest because the proposal may eliminate the opportunity for bad actors to surprise consumers with unexpected costs at the closing table, when consumers are less able to question such costs.

The Bureau recognizes that this is a change from current industry practice. During the Small Business Review process, several small entity representatives were opposed to this modification. *See* Small Business Review Panel report at 35, 38, 40, 45, 53-54, 59-60, 67-68, 72, and 77. The Small Business Review Panel recommended that the Bureau explore ways to mitigate the potential impact of the three business day requirement on small entities. *See* id at 29. Based on this feedback and consistent with the Small Business Review Panel's recommendation, the Bureau solicits comment on alternative approaches, including any that can minimize the burden on industry, especially small entities, while serving the needs of consumers and effectively integrating the disclosures, as required by the Dodd-Frank Act.

19(f)(1)(ii)(B) Timeshares

As explained above, in 2008 Congress amended TILA to require delivery of final disclosures three business days prior to consummation. However, Congress explicitly exempted mortgage loans secured by timeshares, as defined by 11 U.S.C. 101(53D), from the three-day requirement.[146] Accordingly, pursuant to its authority under sections 105(a) of TILA, 19(a) of RESPA, and 1405(b) of the Dodd-Frank Act, the Bureau proposes § 1026.19(f)(1)(ii)(B), which states that for transactions secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D), the creditor shall ensure that the consumer receives the disclosures required under paragraph (f)(1)(i) of this section as soon as reasonably practicable, but no later than consummation. This proposed regulation carries out the purposes of TILA and RESPA by ensuring meaningful disclosure of credit terms and effective advance disclosure of settlement costs, consistent with section 105(a) of TILA and 19(a) of RESPA, respectively. Also, this proposed regulation will improve consumer awareness and understanding of transactions involving residential mortgage loans by requiring effective disclosure within a timeframe

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[146] Mortgage Disclosure Improvement of 2008, Pub.L. No. 110-289, Title V, § 2502(a)(6), 122 Stat. 2654, 2857 (July 30, 2008); 15 U.S.C. 1638(b)(2)(G).

appropriate for loans secured by a timeshare, which will be in the best interest of consumers and the public consistent with Dodd-Frank Act section 1405(b).

Proposed comment 19(f)(1)(ii)-3 explains that for loans secured by timeshares, as defined under 11 U.S.C. 101(53D), § 1026.19(f)(1)(ii)(B) requires a creditor to ensure that the consumer receives the disclosures required under § 1026.19 (f)(1)(i) as soon as reasonably practicable, but no later than consummation. The proposed comment also includes illustrative examples of this requirement.

19(f)(1)(iii) Delivery

Section 128(b)(2)(E) of TILA provides that, if the disclosures are mailed to the consumer, the consumer is considered to have received them three business days after they are mailed. 15 U.S.C. 1638(b)(2)(E). RESPA does not expressly address delivery requirements. Regulation Z provides that if the disclosures are provided to the consumer by means other than delivery in person, the consumer is deemed to have received the disclosures three business days after they are mailed or delivered. *See* § 1026.19(a)(1)(ii). Regulation X provides that the settlement agent shall deliver the completed RESPA settlement statement at or before the settlement, except if the borrower waives the right to delivery of the completed RESPA settlement statement, in which case the completed RESPA settlement statement shall be mailed or delivered as soon as practicable after settlement. § 1024.10(b), (c).

To establish a consistent standard for the integrated Closing Disclosure, pursuant to its authority under sections 105(a) of TILA, 19(a) of RESPA, and 1405(b) of the Dodd-Frank Act, the Bureau proposes to adopt § 1026.19(f)(1)(iii), which provides that, if any disclosures required under § 1026.19(f)(1)(i) are not provided to the consumer in person, the consumer is presumed to have received the disclosures three business days after they are mailed or delivered to the address specified by the consumer.

Proposed comment 19(f)(1)(iii)-1 explains that if any disclosures required under § 1026.19(f)(1)(i) are not provided to the consumer in person, the consumer is presumed to have received the disclosures three business days after they are mailed or delivered. This is a presumption which may be rebutted by providing evidence that the consumer received the disclosures earlier than three business days. The proposed comment also contains illustrative examples. Proposed comment 19(f)(1)(iii)-2 clarifies that the presumption established in § 1026.19(f)(1)(iii) applies to methods of electronic delivery, such as email. However, creditors using electronic delivery methods, such as email, must also comply with § 1026.17(a)(1). This proposed comment also contains illustrative examples.

The Bureau recognizes that this requirement is different than the current requirement in Regulation Z. As explained above, the current rules deem corrected disclosures mailed or delivered to the consumer by a method other than in-person delivery to be received three business days after mailing or delivery. In contrast, the proposed rule instead creates a presumption that the disclosures are received three business days after they are mailed or delivered to the address provided by the consumer. While the current rule may be appropriate for the disclosures provided under § 1026.19(a), the Bureau is concerned that the current rule may not be appropriate for the integrated Closing Disclosure, which contains much more information than the final TILA disclosures subject to the current rule, and therefore will require more time to review and understand. It therefore may be appropriate to create a presumption of receipt, which would provide additional encouragement for lenders to ensure that the disclosures are received in a timely manner. However, the Bureau solicits feedback regarding whether the proposed rules will create uncertainty regarding compliance. The Bureau also solicits comment on whether the rules should be analogous to the current rule under § 1026.19(a)(2), which uses "deem" instead of "presume." Finally, the Bureau seeks feedback regarding whether § 1026.19(a) should be modified to reflect § 1026.19(f)(1)(iii), if the final rule adopts the presumption of receipt.

This proposed provision is consistent with section 105(a) of TILA in that it may help consumers avoid the uninformed use of credit by ensuring that consumers receive disclosures of the actual terms and costs associated with the mortgage loan transaction early enough that consumers have sufficient time to become fully informed as to the cost of credit. This proposed provision is also consistent with section 19(a) of RESPA because it has the potential to ensure more effective advance disclosure of settlement costs by requiring creditors to make sure that the disclosures are delivered to the address specified by the consumer three business days before consummation. In addition, the proposal is consistent with section 1405(b) of the Dodd-Frank Act because the proposal may improve consumer awareness and understanding of the mortgage loan transaction by ensuring that disclosures reflecting all of the terms and costs associated with their transactions are delivered to the address specified by the consumer three business days in advance of consummation. Ensuring that consumers receive disclosures in a timely manner is also in the interest of consumers and in the public interest because the proposal may allow consumers to receive the disclosure early enough to question and understand their mortgage loan transaction.

19(f)(1)(iv) Consumer's Waiver of Waiting Period Before Consummation

Section 128(b)(2)(F) of TILA provides that the consumer may waive or modify the timing requirements for disclosures to expedite consummation of a transaction, if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency. Section 128(b)(2)(F) further provides that: (1) the term "bona fide personal financial emergency" may be further defined in regulations issued by the Bureau; (2) the consumer must provide the creditor with a dated, written statement describing the emergency and specifically waiving or modifying the timing requirements, which bears the signature of all consumers entitled to receive the disclosures; and (3) the creditor must provide, at or before the time of waiver or modification, the final disclosures. 15 U.S.C. 1638(b)(2)(F). This provision is implemented in § 1026.19(a)(3) of Regulation Z. Neither RESPA nor Regulation X contains a similar provision.

Although the Bureau understands that waivers based on a bona fide personal financial emergency are rare, this exception serves an important purpose: consumers should be able to waive the protection afforded by the waiting period if, in the face of a financial emergency, the waiting period does more harm than good. Accordingly, the Bureau is proposing § 1026.19(f)(1)(iv), which allows a consumer to waive the three-business-day waiting period in the event of a bona fide personal financial emergency. In addition, the Bureau seeks comment on the nature of waivers based on bona fide personal financial emergencies. The Bureau also seeks comment on whether the bona fide personal financial emergency exception is needed more in some contexts than in others (*e.g.*, in refinance transactions or purchase money transactions).

Proposed comment 19(f)(1)(iv)-1 states that, a consumer may modify or waive the right to the three-business-day waiting period required by § 1026.19(f)(1)(ii) only after the creditor makes the disclosures required by § 1026.19(f)(1)(i). This comment is modeled after comment 19(a)(3)-1, which is based on the same statutory text, and is consistent with commentary on waiving the rescission period and the pre-consummation waiting period required for certain high-cost mortgage transactions. The consumer must have a bona fide personal financial emergency that necessitates consummating the credit transaction before the end of the waiting period. Whether these conditions are met is determined by the facts surrounding individual situations. The imminent sale of the consumer's home at foreclosure, where the foreclosure sale will proceed unless loan proceeds are made available to the consumer during the waiting period, is one example of a bona fide personal financial emergency. Each consumer who is primarily liable on the legal obligation must sign the written statement for the waiver to be effective.

Alternative – Proposed 19(f)(1)(v) Settlement Agent

As discussed above, neither TILA nor Regulation Z contain requirements related to settlement agents, but RESPA and Regulation X generally apply to settlement agents with respect to closing disclosure requirements. Section 1032(f) of the Dodd-Frank Act requires the Bureau to propose for public comment rules that combine the disclosures required under TILA and sections 4 and 5 of RESPA. The Dodd-Frank Act amended TILA and RESPA to reflect section 1032(f)'s mandate to integrate the rules under TILA and RESPA, but Congress did not reconcile the division of responsibilities between creditor and settlement agent in TILA and RESPA.

The Bureau recognizes that people who conduct settlements, such as settlement agents and closing attorneys, play a valuable role in the real estate settlement process. The Bureau also believes that settlement agents may be able to assist consumers with issues that arise during a real estate settlement as, or perhaps more, effectively than creditors. However, the Bureau is concerned that, in the context of providing disclosures, settlement agents may not be able to fulfill the obligations imposed by TILA. The Bureau is also concerned that consumers will receive duplicative, inaccurate, or unreliable disclosures if the responsibility to provide disclosures is divided.

As discussed above, proposed § 1026.19(f)(1)(i) makes the creditor solely responsible for the provision of the disclosures required by § 1026.19(f). Although this may be the appropriate solution, an alternative approach that permits creditors and settlement agents to split responsibility may also be appropriate. This alternative would require the creditor and settlement agent to agree on a division of responsibilities regarding the delivery of the disclosures. Accordingly, pursuant to its authority under sections 105(a) of TILA, 19(a) of RESPA, and 1405(b) of the Dodd-Frank Act, the Bureau proposes alternative § 1026.19(f)(1)(v), which provides that a settlement agent may provide a consumer with the disclosures required under § 1026.19(f)(1)(i), provided the settlement agent complies with all requirements of § 1026.19(f) as if it were the creditor. As discussed under proposed alternative comment 19(f)(1)(v)-3 below, this proposed regulation is not intended to relieve the creditor's responsibility under TILA. The creditor would remain responsible for ensuring that disclosures are provided in accordance with the requirements of § 1026.19(f). Disclosures provided by a settlement agent in accordance with the requirements of § 1026.19(f) satisfy the creditor's obligation under § 1026.19(f)(1)(i). As discussed under proposed alternative comment 19(f)(1)(v)-3 below, this proposed regulation is not intended to relieve the creditor's responsibility under TILA. The creditor would remain responsible for ensuring that disclosures are provided in accordance with the requirements of § 1026.19(f). Disclosures provided by a settlement agent in accordance with the requirements of § 1026.19(f) satisfy the creditor's obligation under § 1026.19(f)(1)(i). In addition, the Bureau invites comment on other methods of dividing responsibility between creditors and settlement service providers, provided that such other methods ensure that consumers are provided with prompt, accurate, and reliable disclosures.

The Bureau informed the Small Business Review Panel that the Bureau was considering an alternate proposal where the lender would be responsible for preparing the TILA-required information, the settlement agent would be responsible for preparing the RESPA-required information, and the lender and settlement agent would be jointly responsible for providing the consumer with an integrated Closing Disclosure three business days before closing. *See* Small Business Panel Review Report at 12. While the alternate proposal in this proposed rule permits shared responsibility, it does not delineate responsibility between RESPA and TILA content. Based on further review, the Bureau determined that such a division would be impracticable. There is significant overlap between the disclosures required by the statutes, and creditors and settlement agents have access to both RESPA and TILA information. The Bureau believes that the better approach is to permit shared responsibility, but allow creditors and settlement agents to decide how to most effectively divide that responsibility. However, the Bureau solicits comment on the benefits and costs associated with this alternative, especially regarding any impact on small businesses that was not raised during the Small Business Review process.

This proposed regulation carries out the purposes of TILA because requiring the involvement of a settlement agent could result in increased consumer awareness and more meaningful disclosure of credit terms, consistent with section 105(a) of TILA. This proposed regulation could also achieve the purposes of RESPA by resulting in more effective advance disclosure of settlement costs, consistent with section 19(a) of RESPA. This proposed regulation could also improve consumer understanding and awareness of the transaction by permitting the form to be completed and provided by settlement agents, who often assist consumers during a real estate closing, which is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

Proposed alternative comment 19(f)(1)(v)-1 clarifies that a settlement agent may provide the disclosures required under § 1026.19(f)(1)(i) instead of the creditor. By assuming this responsibility, the settlement agent becomes responsible for complying with all of the relevant requirements as if it were the creditor, meaning that "settlement agent" should be read in the place of "creditor" for all the relevant provisions of § 1026.19(f), except where the context indicates otherwise. The creditor and settlement agent must effectively communicate to ensure timely and accurate compliance with the requirements of this section.

Proposed alternative comment 19(f)(1)(v)-2 clarifies that if a settlement agent issues any disclosure under § 1026.19(f), the settlement agent must comply with the requirements of § 1026.19(f). This proposed alternative comment also clarifies that the settlement agent may assume the responsibility to provide some or all of the disclosures required by § 1026.19(f), provides that the consumer receives one single disclosure form containing all of the information required to be disclosed pursuant to § 1026.19(f)(1)(i), in accordance with the other requirements in § 1026.19(f), such as requirements related to timing and delivery. The comment also includes illustrative examples.

Proposed alternative comment 19(f)(1)(v)-3 explains that if a settlement agent provides disclosures required under § 1026.19(f) in the creditor's place, the creditor remains responsible under § 1026.19(f) for ensuring that the requirements of § 1026.19(f) have been satisfied. For example, the creditor does not comply with § 1026.19(f) if the settlement agent does not provide the disclosures required under § 1026.19(f)(1)(i), or if the consumer receives the disclosures later than three business days before consummation.

The proposed comment also clarifies that the creditor does not satisfy the requirements of § 1026.19(f) if it provides duplicative disclosures. For example, a creditor does not satisfy its obligation by issuing disclosures required under § 1026.19(f) that mirror ones already issued by the settlement agent for the purpose of demonstrating that the consumer received timely disclosures. The creditor is expected to maintain communication with the settlement agent to ensure that the settlement agent is acting in place of the creditor. Disclosures provided by a settlement agent in accordance with § 1026.19(f)(1)(v) satisfy the creditor's obligation under § 1026.19(f)(1)(i).

Proposed alternative comment 19(f)(1)(v)-4 clarifies that the settlement agent may assume the responsibility to provide some or all of the disclosures required by § 1026.19(f). However, the consumer must receive one single disclosure form containing all of the information required to be disclosed pursuant to § 1026.19(f)(1)(i), in accordance with the other requirements in § 1026.19(f), such as requirements related to timing and delivery. The proposed alternative comment also includes illustrative examples.

19(f)(2) Subsequent Changes

There are several circumstances where the strict application of the three-day-waiting period required by § 1026.19(f)(1)(ii) may operate to the consumer's detriment. The Bureau seeks to provide flexibility where doing so would benefit the consumer. Thus, the Bureau is proposing § 1026.19(f)(2), which provides that creditors need not comply with the timing requirements in § 1026.19(f)(1)(ii) if the disclosure provided pursuant to § 1026.19(f)(1)(i) is subsequently revised for any of the reasons described in § 1026.19(f)(2)(i) through (v).

The Bureau proposes § 1026.19(f)(2) pursuant to its authority under sections 105(a) of TILA and 19(a) of RESPA. As explained in more detail below, the Bureau believes that these proposed regulations will carry out the purposes of TILA and RESPA by ensuring meaningful disclosure of credit terms, more effective advance disclosure of settlement costs, and will result in the elimination of kickbacks, referral fees, and other practices that tend to increase unnecessarily the costs of certain settlement services, consistent with sections 105(a) of TILA and 19(a) of RESPA, respectively.

19(f)(2)(i) Changes Due to Consumer and Seller Negotiations

The Bureau recognizes that sellers and buyers frequently alter the terms of the real estate transaction based on the condition of the house at the time of the walk-though inspection, which is often the day before the scheduled real estate closing, and in some cases even continue to negotiate the deal at the closing table. These negotiations may affect items included on the Closing Disclosure, which, under the proposal, must be delivered three days prior to consummation. The Bureau believes that the regulations should provide flexibility to address this common occurrence, so that these changes do not trigger an additional three-day-waiting period. Thus, pursuant to its authority under section 105(a) of TILA and section 19(a) of RESPA, the Bureau proposes § 1026.19(f)(2)(i), which states that if, after the creditor provides the consumer with the disclosures, the consumer and the seller agree to make changes to the transaction that affect items disclosed, the creditor shall deliver revised disclosures reflecting such changes at or before consummation. Proposed comment 19(f)(2)(i)-1 provides illustrative examples of this requirement. This proposed regulation will carry out the purposes of TILA by ensuring meaningful disclosure of credit terms and enable the informed use of credit by enabling buyers and sellers to conduct final negotiations informed by the final credit terms provided in the disclosures, and by ensuring that the disclosures can be modified to reflect such negotiations immediately prior to the real estate closing, consistent with section 105(a) of TILA. This will also help to achieve the purposes of RESPA by enabling more effective advance disclosure of settlement costs, and will result in the elimination of kickbacks, referral fees, and other practices that tend to increase unnecessarily the costs of certain settlement services, by enabling buyers and sellers to conduct final negotiations informed by the final credit terms provided in the disclosures, and by ensuring that the disclosures can be modified to reflect such negotiations immediately prior to the real estate closing, consistent with section 19(a) of RESPA.

19(f)(2)(ii) Changes to the Amount Actually Paid by the Consumer

The Bureau does not believe that small miscalculations or minor changes to the transaction should result in closing delays. Therefore, the Bureau proposes § 1026.19(f)(2)(ii), which provides that, if the amount actually paid by the consumer does not exceed the amount disclosed under § 1026.38(d)(1) by more than $100, the creditor shall deliver revised disclosures at or before consummation. The Bureau believes that $100 may be the correct tolerance based on feedback received regarding the items most likely to change prior to consummation. The Bureau seeks comment on whether the threshold to accommodate small miscalculations or minor changes prior to consummation should be higher or lower than the proposed $100.

The Bureau proposes § 1026.19(f)(2)(ii) pursuant to its authority under section 105(a) of TILA and section 19(a) of RESPA. This proposed regulation will carry out the purposes of TILA by ensuring meaningful disclosure of credit terms and enable the informed use of credit by permitting minor underestimation in the final amount paid by the consumer, which will lessen the likelihood that creditors will overestimate the final amount paid by the consumer, consistent with section 105(a) of TILA. This will also help to achieve the purposes of RESPA by enabling more effective advance disclosure of settlement costs, and will result in the elimination of kickbacks, referral fees, and other practices that tend to increase unnecessarily the costs of certain settlement services by permitting minor underestimation in the final amount paid by the consumer, which will lessen the likelihood that creditors will unnecessarily increase the cost of settlement services by overestimating the final amount paid by the consumer, consistent with section 19(a) of RESPA.

Proposed comment 19(f)(2)(ii)-1 discusses the requirements of § 1026.19(f)(2)(ii), which states that the creditor may provide revised disclosures without regard to the timing requirements in § 1026.19(f)(1)(ii) if the amount actually paid by the consumer does not exceed the amount disclosed pursuant to § 1026.38(d)(1) by more than $100, provided that the creditor delivers revised disclosures at or before consummation. This proposed comment also includes illustrative examples of these requirements.

Proposed comment 19(f)(2)(ii)-2 clarifies that revised disclosures provided at consummation may reflect adjustments pursuant to both § 1026.19(f)(2)(i) and § 1026.19(f)(2)(ii). Thus, although § 1026.19(f)(2)(ii) limits the difference between the amount disclosed pursuant to § 1026.19(f)(1)(i) and the amount actually paid at the real estate closing by the consumer to $100, the amount actually paid by the consumer at the real estate closing may vary by more than $100, to the extent permitted by § 1026.19(f)(2)(i). This proposed comment also includes illustrative examples of this provision.

19(f)(2)(iii) Changes Due to Events Occurring After Consummation

The Bureau is aware that some costs are not known with absolute certainty until the documents are recorded. For example, it is possible that a locality could change its schedule of recording fees, without advance notice, the day after the consumer signs the mortgage loan documents, but before the documents are recorded. The regulations need to provide sufficient flexibility to accommodate issues, such as these, when such changes are caused by a government entity. Thus, pursuant to its authority under section 105(a) of TILA and section 19(a) of RESPA, the Bureau proposes § 1026.19(f)(2)(iii), which provides that, if an event occurs after consummation that causes the disclosures to become inaccurate, and such inaccuracy results solely from payments to a government entity in connection with the transaction, the creditor shall deliver revised disclosures to the consumer no later than the third business day after the event occurs, provided the consumer receives the corrected disclosures no later than 30 days after consummation. This proposed regulation will prevent circumvention and evasion of, and will facilitate compliance with, TILA, by ensuring that consumers receive correct disclosures of the final terms and costs of the transaction, consistent with section 105(a) of TILA. This proposed regulation is also made pursuant to the Bureau's authority to implement section 4 of RESPA, consistent with section 19(a) of RESPA. Proposed comment 19(f)(2)(iii)-1 clarifies that this provision applies to payments imposed by government entities, such as taxes, recording fees, and other taxes related to the real estate transaction, and provides several illustrative examples. The Bureau also solicits feedback on whether changes, other than payments to government entities, may occur after the real estate closing, and whether the regulation should provide additional flexibility for such changes.

19(f)(2)(iv) Changes Due to Clerical Errors

Regulation X § 1024.8(c) provides that an inadvertent or technical error in completing the HUD-1 or HUD-1A shall not be deemed a violation of section 4 of RESPA if a revised HUD-1 or HUD-1A is provided within 30 calendar days after settlement. Section 130 of TILA has a similar provision, with respect to civil liability, which relieves creditors of civil liability under certain circumstances, including if, within 60 days of identifying an error, the creditor notifies the person concerned and makes whatever adjustments are necessary.[147] There is no similar provision in RESPA or Regulation Z. Pursuant to its authority under section 105(a) of TILA and 19(a) of RESPA, the Bureau proposes § 1026.19(f)(2)(iv), which provides that a creditor does not violate § 1026.19(f)(1)(i) if the disclosures contain non-numeric clerical errors, provided the creditor delivers corrected disclosures as soon as reasonably practicable and no later than 30 days after consummation. Proposed comment 19(f)(2)(iv)-1 clarifies that clerical errors are errors such as typographical errors, or other minor errors that do not affect the amount owed by the consumer. This proposed regulation will prevent circumvention and evasion of, and will facilitate compliance with, TILA, by ensuring that consumers receive correct disclosures consistent with section 105(a) of TILA. This proposed regulation will also result in the elimination of kickbacks, referral fees, and other practices that tend to increase unnecessarily the costs of certain settlement services by ensuring that the consumers' records correctly reflect the terms, payments, and entities involved in the transaction, consistent with section 19(a) of RESPA. The Bureau also solicits feedback on whether the regulations should provide flexibility for numeric clerical errors, and how such flexibility could be provided without undermining the reliability of the disclosures provided to consumers at or before consummation.

19(f)(2)(v) Refunds Related to the Good Faith Analysis

Neither RESPA nor Regulation Z expressly require creditors to refund money to the consumer based on variations between the disclosed estimated costs of settlement services and the amounts for such settlement services actually paid by the consumer. Section 1024.7(i) of

[147] "A creditor or assignee has no liability under this section or section 108 or section 112 for any failure to comply with any requirement imposed under this chapter or chapter 5, if within sixty days after discovering an error, whether pursuant to a final written examination or notice issued under section 108(e)(1) or through the creditor's or assignee's own procedures, and prior to the institution of an action under this section or the receipt of written notice of the error from the obligor, the creditor or assignee notifies the person concerned of the error and makes whatever adjustments in the appropriate account are necessary to assure that the person will not be required to pay an amount in excess of the charge actually disclosed, or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower." 15 U.S.C. 1640(b).

Regulation X, however, provides that a lender or mortgage broker violates section 5 of RESPA if any charges at settlement exceed the charges listed on the GFE by more than the permitted tolerances, provided, however, that the loan originator may cure the tolerance violation by reimbursing to the borrower the amount by which the tolerance was exceeded at settlement or within 30 calendar days after settlement. As noted above, section 130 of TILA has a similar provision, with respect to civil liability, which relieves creditors of civil liability under certain circumstances, including if, within 60 days of identifying an error, the creditor notifies the person concerned and makes whatever adjustments are necessary to assure that the person will not be required to pay an amount in excess of the charge actually disclosed.

Accordingly, pursuant to its authority under sections 105(a) of TILA, 19(a) of RESPA, and 1405(b) of the Dodd-Frank Act, the Bureau proposes § 1026.19(f)(2)(v), which provides that, if amounts paid by the consumer exceed the amounts specified under § 1026.19(e)(3)(i) or (ii), the creditor complies with § 1026.19(e)(1)(i) if the creditor refunds the excess to the consumer as soon as reasonably practicable and no later than 30 days after consummation, and the creditor complies with § 1026.19(f)(1)(i) if the creditor provides revised disclosures that reflect such refund as soon as reasonably practicable and no later than 30 days after consummation. This proposed regulation will enable meaningful disclosure of credit terms, prevent circumvention and evasion of TILA, and will facilitate compliance with TILA by enabling creditors to refund amounts collected in excess of the good faith requirements, consistent with TILA section 105(a). This will also result in the meaningful advance disclosure of settlement costs and the elimination of kickbacks, referral fees, and other practices that tend to increase unnecessarily the costs of certain settlement services by enabling creditors to refund amounts collected in excess of the good faith requirements, thereby furthering the meaningfulness and reliability of the estimated disclosures, consistent with section 19(a) of RESPA.

Proposed comment 19(f)(2)(v)-1 discusses refunds related to the good faith analysis. The proposed comment explains the requirement under § 1026.19(f)(2)(v) providing that, if amounts paid by the consumer exceed the amounts specified under § 1026.19(e)(3)(i) or (ii) of this section, the creditor does not violate § 1026.19(e)(1)(i) if the creditor delivers disclosures revised to reflect the refund of such excess as soon as reasonably practicable and no later than 30 days after consummation. This proposed comment also includes illustrative examples of these requirements.

19(f)(3) Charges Disclosed

19(f)(3)(i) Actual Charge

Neither TILA nor Regulation Z addresses the amounts paid to settlement service providers for settlement services. However, section 4 of RESPA provides that the settlement statement shall contain the amount imposed upon the consumer in connection with the settlement. 12 U.S.C. 2603(a). Section 1024.8(b)(1) of Regulation X provides the general rule that the settlement agent shall state the actual charges paid by the borrower and seller on the HUD-1, or by the borrower on the HUD-1A. Pursuant to its authority under section 105(a) of TILA, section 19(a) of RESPA, Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b), the Bureau proposes § 1026.19(f)(3)(i), which provides that the amount imposed upon the consumer for any settlement service shall not exceed the amount actually received by the service provider for that service, except if the charge is an average charge, as provided under § 1026.19(f)(3)(ii).

This proposed regulation will prevent circumvention and evasion of, and will facilitate compliance with, TILA by requiring disclosure of the actual terms and costs of the transaction, consistent with section 105(a) of TILA. The proposed regulation implements the requirements of RESPA section 4, pursuant to the Bureau's implementation authority under RESPA section 19(a). This will also result in the elimination of kickbacks, referral fees, and other practices that tend to increase unnecessarily the costs of certain settlement services, consistent with RESPA sections 2(b) and 8. This will also ensure that the features of the consumer's mortgage loan are fully and accurately disclosed to the consumer, consistent with Dodd-Frank Act section 1032(a). The proposed regulation will also improve consumer awareness and understanding of transactions involving residential mortgage loans and is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

Proposed comment 19(f)(3)(i)-1 explains that § 1026.19(f)(3)(i) provides the general rule that the amount imposed upon the consumer for any settlement service shall not exceed the amount actually received by the service provider for that service. Except as otherwise provided in § 1026.19(f)(3)(ii), a creditor violates § 1026.19(f)(3)(i) if the amount imposed upon the consumer exceeds the amount actually received by the service provider for that service.

19(f)(3)(ii) Average Charge

As part of the 2008 RESPA Final Rule, HUD adopted a limited exception to the requirement that the settlement statement shall contain the amount imposed on the consumer, which shall not be more than the amount received by the settlement service provider. 12 U.S.C. 2603(a), 2607(b). A lender or settlement service provider may charge more for a settlement service than the amount paid for that service if the charge is an average charge. Specifically, Regulation X § 1024.8(b) provides that the average charge for a settlement service shall be no more than the average amount paid for a settlement service by one settlement service provider to another settlement service provider on behalf of borrowers and sellers for a particular class of transactions involving federally related mortgage loans, and that the total amounts paid by borrowers and sellers for a settlement service based on the use of an average charge may not exceed the total amounts paid to the providers of that service for the particular class of transactions.

Section 1024.8(b)(2) also provides that, the settlement service provider shall define the particular class of transactions for purposes of calculating the average charge as all transactions involving federally related mortgage loans for a period of time as determined by the settlement service provider, but not less than 30 calendar days and not more than 6 months, a geographic area as determined by the settlement service provider, and a type of loan as determined by the settlement service provider. Regulation X also requires a settlement service provider to use an average charge in the same class of transactions for which the charge was calculated, and if the settlement service provider uses the average charge for any transaction in the class, then the settlement service provider must use the same average charge in every transaction within that class for which a GFE was provided. *Id.* Regulation X prohibits the use of an average charge for any settlement service if the charge for the service is based on the loan amount or property value, such as transfer taxes, interest charges, reserves or escrow, or any type of insurance, including mortgage insurance, title insurance, or hazard insurance, and also requires the settlement service provider to retain all documentation used to calculate the average charge for a particular class of transactions for at least three years after any settlement for which that average charge was used. *Id.*

Pursuant to its authority under section 105(a) of TILA and 19(a) of RESPA, the Bureau proposes § 1026.19(f)(3)(ii), which provides that a creditor or settlement service provider may charge a consumer or seller the average charge for a settlement service if the average charge is no more than the average amount paid for that service by or on behalf of all consumers and sellers for a class of transactions, the creditor or settlement service provider defines the class of transactions based on an appropriate period of time, geographic area, and type of loan, the creditor or settlement service provider uses the same average charge for every transaction within the defined class, and the creditor or settlement service provider does not use an average charge for any type of insurance, for any charge based on the loan amount or property value, or if doing so is otherwise prohibited by law. HUD adopted average-charge pricing pursuant to its authority under section 19(a) of RESPA after finding that average-charge pricing would benefit consumers by lowering settlement costs and enabling more effective advance disclosure of such costs, consistent with RESPA sections 2(b), 4, 5, 8(c)(5), and 19(a).[148] In addition to this authority, the Bureau finds that proposed § 1026.19(f)(3)(ii) will prevent circumvention and evasion of, and will facilitate compliance with, TILA, consistent with section 105(a) of TILA. This proposed regulation will also improve consumer awareness and understanding of the transaction, which will be in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

Proposed comment 19(f)(3)(ii)-1 explains that average-charge pricing is the exception to the rule in § 1026.19(f)(3)(i) that consumers shall not pay more than the exact amount charged by a settlement service provider for the performance of that service. If the creditor develops representative samples of specific settlement costs for a particular class of transactions, the creditor may charge the average cost for that settlement service instead of the actual cost for such transactions. An average-charge program may not be used in a way that inflates the cost for settlement services overall.

Proposed comment 19(f)(3)(ii)-2 explains how an appropriate period of time, geographic area, and type of loan may be defined, and provides illustrative examples of issues a person may encounter when defining an appropriate geographic area and an appropriate type of loan. Proposed comment 19(f)(3)(ii)-3 provides further explanation related to the requirement that if a creditor chooses to use an average charge for a settlement service for a particular loan within a class, then the creditor must use that average charge for that service on all loans within the class.

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[148] *See* 73 FR 14030, 14051-14052 (March 14, 2008). Section 8(c)(5) of RESPA provided that: "Nothing in this section shall be construed as prohibiting . . . such other payments or classes of payments or other transfers as are specified in regulations prescribed by the Secretary." 12 U.S.C. 2607(c)(5)(2008).

Proposed comment 19(f)(3)(ii)-3 also provides practical examples illustrating the uniform use requirement.

Proposed comment 19(f)(3)(ii)-4 illustrates the requirement that the average charge must be calculated according to the average amount paid for a settlement service in a prior period, and clarifies that updates to the average charge may be delayed for an amount of time sufficient to re-calculate the average charge, provided that such delays are applies uniformly from one time period to the next.

Proposed comment 19(f)(3)(ii)-5 discusses the requirement that the total amount of average charges paid by consumers for settlement services may not exceed the total amount paid for those settlement services overall. The Bureau has received extensive feedback from industry that this requirement, which currently exists under RESPA and Regulation X, has impeded industry adoption of average charge pricing. Prohibiting industry from collecting more money than is actually paid to settlement service providers means that industry cannot actually average costs over time, and must instead operate at a loss in the long term if industry chooses to use average charge pricing. The Bureau believes that the use of average-charge pricing promotes greater reliability for consumers. Therefore, the Bureau seeks to address this concern to facilitate the adoption of average-charge pricing. Proposed comment 19(f)(3)(ii)-5 addresses this issue and discusses the ways in which a person may comply with this requirement. A person may refund the excess amounts collected or may factor in the excesses when determining the average charge for the next period. A person may also comply by establishing a rolling monthly period of re-evaluation. A person complies by re-calculating the average amount every month, and will be deemed to be in compliance with Sections 4 and 8 of RESPA if the person uses this method, even if the person collects more for settlement services than the total amount paid for those settlement services over time.

Proposed comment 19(f)(3)(ii)-6 explains that adjustments to the average charge based on prospective analysis are permitted if the creditor or settlement service provider develops a statistically accurate and reliable method for doing so. However, the Bureau is concerned that prospective adjustments may not be practicable in the context of determining average charges. Accordingly, the Bureau seeks comment on whether such a provision is appropriate.

Proposed comment 19(f)(3)(ii)-7 discusses the requirement that average charges may not be used for insurance premiums or for items that vary according to the loan amount or property value, such as transfer taxes. Proposed comment 19(f)(3)(ii)-8 clarifies that an average charge may not be used where prohibited by any applicable State or local law. Proposed comment 19(f)(3)(ii)-9 explains how the recordkeeping requirements in § 1026.25 apply to the documents related to the calculation of average charge.

19(f)(4) Transactions Involving a Seller

Neither TILA nor Regulation Z contain requirements related to the seller. Section 4 of RESPA provides that the integrated disclosure shall conspicuously and clearly itemize all charges imposed upon the seller in connection with the settlement. 12 U.S.C. 2603(a). Regulation X states that the settlement agent shall provide a completed HUD-1 to any seller at or before the settlement, unless the borrower waives the right to delivery of the HUD-1 at or before settlement, in which case the HUD-1 shall be mailed to the seller as soon as practicable after settlement. § 1024.10(b) and (c). Pursuant to its authority under sections 105(a) of TILA, 19(a) of RESPA, Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b), the Bureau proposes § 1026.19(f)(4)(i), (ii), and (iii). Proposed

§ 1026.19(f)(4)(i) provides that in a closed-end consumer credit transaction secured by real property, other than a reverse mortgage subject to § 1026.33, the person conducting the settlement shall provide the seller with the disclosures in § 1026.38 that relate to the seller. Proposed § 1026.19(f)(4)(ii) provides that the person conducting the settlement shall provide these disclosures no later than the day of consummation. If an event occurs after consummation that causes such disclosures to become inaccurate, and such inaccuracy results solely from payments to a government entity, the person conducting the real estate closing shall deliver revised disclosures to the seller no later than 30 days after consummation. Proposed § 1026.19(f)(4)(iii) provides that the amount imposed upon the seller for any settlement service shall not exceed the amount actually received by the service provider for that service, except for average charges calculated pursuant to § 1026.19(f)(3)(ii).

This proposed regulation will prevent circumvention and evasion of, and will facilitate compliance with, TILA, consistent with section 105(a) of TILA. The proposed regulation implements the requirements of RESPA section 4, pursuant to the Bureau's implementation authority under RESPA section 19(a). This proposed regulation will also result in the meaningful advance disclosure of settlement costs and the elimination of kickbacks, referral fees, and other practices that tend to increase unnecessarily the costs of certain settlement services by ensuring that the terms of the transaction that relate to the seller, which include amounts owed to the seller, are fully and accurately disclosed to the seller, consistent with RESPA sections 8 and 19(a). Receipt of the integrated disclosures in accordance with this proposed regulation will also ensure that the features of the transaction and settlement services will be more fully and accurately disclosed to the consumer in a manner that permits sellers to understand the costs of the transaction, consistent with Dodd-Frank Act section 1032(a). The proposed regulation, by requiring sellers to receive the integrated disclosure, will also improve seller's awareness and understanding of the seller's transaction, which involves a residential mortgage loan, which is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

Proposed comment 19(f)(4)(ii)-1 explains that, if an event occurs after consummation that causes such disclosures to become inaccurate and such inaccuracy results solely from payments to a government entity, the person conducting the real estate closing shall deliver revised disclosures to the seller no later than 30 days after consummation. Section 1026.19(f)(4)(i) requires disclosure of the items that relate to the seller's transaction. Thus, the person conducting the real estate closing need only provide revised disclosures if an item related to the seller's transaction becomes inaccurate and such inaccuracy results solely from payments to a government entity. The proposed comment also provides illustrative examples of this requirement.

19(f)(5) No Fee

Although TILA does not address fees related to the preparation of disclosures, RESPA provides that no fee may be imposed on any person, as a part of settlement costs or otherwise, by a lender in connection with a federally related mortgage loan made by such lender for the preparation or delivery of the settlement statement required by section 4 of RESPA or for statements required by TILA. 12 U.S.C. 2610. Although Regulation Z does not contain a similar requirement, § 1024.12 of Regulation X implements RESPA's requirement. Pursuant to its authority under sections 105(a) of TILA and 19(a) of RESPA, the Bureau proposes § 1026.19(f)(5), which provides that no fee may be imposed on any person, as a part of settlement costs or otherwise, by a creditor or by a servicer for the preparation or delivery of the disclosures required under § 1026.19(f)(1)(i), escrow account statements required pursuant to section 10 of RESPA, or other statements required by TILA. This proposed regulation will strengthen the informed use of credit by ensuring that consumers are not informed that consumers must pay fees prohibited by law, and enhance competition by ensuring that creditors do not attempt to gain a competitive advantage by charging prohibited fees, both of which are consistent with section 105(a) of TILA. This proposal is also made pursuant to the Bureau's authority to implement section 10 of RESPA, consistent with section 19(a) of RESPA. This proposed regulation will also result in the meaningful advance disclosure of settlement costs and the elimination of kickbacks, referral fees, and other practices that tend to increase unnecessarily the costs of certain settlement services by ensuring that illegal fees are not included on the disclosures, consistent with section 19(a) of RESPA.

19(g) Special Information Booklet at Time of Application

Section 1024.6 of Regulation X contains the provisions related to the Special Information Booklet, which is required by section 5 of RESPA. 12 U.S.C. 2604. The Bureau plans to update the booklet consistent with the amendments to section 5 of RESPA in section 1450 of the Dodd-Frank Act and to reflect the integrated disclosures, once those disclosures are finalized. Pursuant to its authority under TILA section 105(a) and RESPA section 19(a), the Bureau proposes § 1026.19(g), which is substantially similar to the existing requirements in Regulation X, but modified to conform to the usage associated with TILA. The Bureau also solicits feedback on whether the CHARM booklet, required under § 1026.19(b)(1), should be incorporated into the Special Information Booklet. This proposed provision is consistent with TILA's purposes in that it will increase consumer awareness of the costs of the transaction by informing consumers that settlement costs can be influenced by shopping, thereby promoting the informed use of credit.

This proposed regulation will enhance consumers' ability to shop for a mortgage loan, which will effect changes in the settlement process that will result in the elimination of kickbacks, referral fees, and other practices that tend to increase unnecessarily the costs of certain settlement services, consistent with the Bureau's authority under section 19(a) of RESPA.

Proposed comment 19(g)(1)-1 provides that the Bureau may, after publishing a notice in the Federal Register, issue a revised or separate special information booklet that addresses transactions subject to § 1026.19(g). The Bureau may also choose to permit the forms or booklets of other Federal agencies, in which case the availability of the booklet or alternate materials for these transactions will be set forth in a notice in the Federal Register.

Proposed comment 19(g)(1)-2 clarifies that when two or more persons apply together for a loan, the creditor complies with § 1026.19(g) if the creditor provides a copy of the booklet to one of the persons applying.

Proposed comment 19(g)(2)-1 explains that the special information booklet may be reproduced in any form, provided that no changes are made, except as otherwise provided under § 1026.19(g). Provision of the special information booklet as a part of a larger document does not satisfy the requirements of § 1026.19(g). Any color, size and quality of paper, type of print, and method of reproduction may be used so long as the booklet is clearly legible.

Proposed comment 19(g)(2)-2 clarifies that the special information booklet may be translated into languages other than English.

Section 1026.22 Determination of Annual Percentage Rate

22(a) Accuracy of Annual Percentage Rate

The Bureau is proposing conforming amendments to § 1026.22 to reflect the fact that proposed § 1026.38(o)(2) sets forth finance charge tolerances for mortgage transactions subject to § 1026.19(f), as discussed below. The tolerances set forth in § 1026.18(d)(1) continue to apply to closed-end transactions that are not subject to proposed § 1026.19(f). Accordingly, the Bureau proposes to revise § 1026.22(a)(4) and (5) and comment 22(a)(4)-1 to add references to § 1026.38(o)(2).

Section 1026.24—Advertising

24(d) Advertisement of Terms that Require Additional Disclosures

24(d)(2) Additional Terms

Comment 24(d)(2)-2 currently provides guidance on how to state the terms of repayment in an advertisement, as required in § 1026.24(d)(2)(ii). The Bureau is proposing to exercise its authority under TILA section 105(a) to revise the comment to conform with the additional forms of repayment term disclosures that may apply to various types of mortgage transactions under this proposal. Proposed comment 24(d)(2)-2 clarifies that, in advertisements for closed-end credit secured by real property or a dwelling, the repayment terms disclosed in the interest rate and payment summary table or the projected payments table in §§ 1026.18(s) or 1026.37(c) and 1026.38(c), as applicable, can be provided in an advertisement pursuant to § 1026.24(d)(2)(ii). The use of either the payment schedule described in § 1026.18(g) or the interest rate and payments summary table described in § 1026.18(s) to state the terms of repayment can be provided for transactions secured by real property or a dwelling under comment 24(d)(2)-2. In light of the existence of the interest rate and payment summary table described in § 1026.18(s) and the addition of the projected payments table described in §§ 1026.37(c) and 1026.38(c) of this proposed rule, the Bureau believes that the format of disclosure applicable to a particular transaction is also the most appropriate format for advertising purposes. Comment 24(d)(2)-2 would therefore be revised to clarify that disclosing the terms of repayment in the interest rate and payment summary table and the projected payment tables described in § 1026.18(s) or §§ 1026.37(c) and 1026.38(c), as applicable, satisfies the requirements in § 1026.24(d)(2)(ii). These revisions would also make clear that the payment schedule described in § 1026.18(g) is not the only permissible disclosure under § 1026.24(d)(2)(ii).

Section 1026.25 Record Retention

As discussed below, the Bureau proposes to amend § 1026.25 to apply the recordkeeping requirements currently under Regulation X to the proposed integrated disclosures and to require creditors to keep such records in an electronic, machine readable format.

25(a) General Rule

The Bureau proposes to amend § 1026.25(a) to exempt the requirements of §§ 1026.19(e) and (f). Instead, the record retention requirements for compliance with these sections will be established under a new § 1026.25(c)(1).

25(c) Records Related to Certain Requirements for Mortgage Loans

25(c)(1) Records Related to Requirements for Loans Secured by Real Property

25(c)(1)(i) General Rule

Neither TILA nor RESPA contain record retention requirements. Section 1026.25 of Regulation Z requires creditors to retain evidence of compliance with TILA for two years after the date disclosures are required to be made or action is required to be taken. Section 1024.7(f) of Regulation X requires lenders to retain documentation of any reason for providing a revised GFE for no less than three years after settlement. Furthermore, § 1024.10(e) of Regulation X requires lenders to retain each completed RESPA settlement statement and related documents for five years after settlement, unless the lender disposes of its interest in the mortgage and does not service the mortgage.

The Bureau proposes to reconcile these provisions by generally requiring a creditor to retain evidence of compliance with the requirements of § 1026.19(e) and (f) for three years. The Bureau recognizes that extending the record retention requirement from two years, as currently provided in Regulation Z, to three years may increase costs. However, the Bureau is unaware of any issues related to complying with the three year period currently required by Regulation X. Creditors may be able to use existing recordkeeping systems to maintain the integrated disclosure data at no additional cost. Additionally, several sections of RESPA are subject to a three year statute of limitations.[149] Adopting a document retention period of less than three years may affect legal actions brought under RESPA. Thus, it may be appropriate to require creditors to maintain records related to compliance for three years, as opposed to the two year requirement currently under Regulation Z.

Pursuant to its authority under section 105(a) of TILA and section 19(a) of RESPA, the Bureau proposes § 1026.25(c)(1)(i), which states that, except as provided under § 1026.25(c)(1)(ii), a creditor shall retain evidence of compliance with the requirements of § 1026.19(e) and (f) for three years after the later of the date of consummation, the date disclosures are required to be made, or the date the action is required to be taken. The Bureau believes that this proposed modification will ensure that records associated with the integrated disclosures are kept long enough to facilitate compliance with both TILA and RESPA, which is necessary to both prevent circumvention of and facilitate compliance with TILA and RESPA. The Bureau also solicits comment on whether the three year period is appropriate, whether the retention requirement should be extended to five years to match the recordkeeping requirement

[149] "[A]ctions [under sections 6, 8, or 9] brought by the Bureau, the Secretary, the Attorney General of any State, or the insurance commissioner of any State may be brought within 3 years from the date of the occurrence of the violation." RESPA section 16, 12 U.S.C. 2614.

in proposed § 1026.25(c)(1)(ii), and whether a shorter time period would conflict with the statute of limitations under section 16 of RESPA.

Proposed comment 25(c)(1)(i)-1 applies guidance currently applicable under § 1026.25(a) to proposed § 1026.25(c). The proposed comment clarifies that the creditor must retain evidence that it performed the required actions as well as made the required disclosures. This includes, for example, evidence that the creditor properly differentiated between affiliated and independent third party settlement service providers for determining good faith under § 1026.19(e)(3); evidence that the creditor properly documented the reason for revisions under § 1026.19(e)(3)(iv); or evidence that the creditor properly calculated average cost under § 1026.19(f)(3)(ii). Proposed comment 25(c)(1)(i)-2 provides a cross-reference to § 1026.19(e)(1)(ii), which imposes responsibilities on mortgage brokers in some situations and may implicate § 1026.25(c).

25(c)(1)(ii) Closing Disclosures

As noted above, while § 1026.25 of Regulation Z generally requires creditors to retain evidence of compliance with TILA for two years after the date disclosures are required to be made or action is required to be taken, § 1024.10(e) of Regulation X requires lenders to retain each completed RESPA settlement statement and related documents for five years after settlement, unless the lender disposes of its interest in the mortgage and does not service the mortgage. If the lender disposes of its interest and does not service the mortgage, § 1024.10(e) requires the lender to provide the lender's copy of the RESPA settlement statement to the owner or servicer of the mortgage as part of the transfer of the loan file. The owner or servicer to whom the files are transferred must retain the RESPA settlement statement for the remainder of the five-year period.

Because the Closing Disclosure contains the settlement information that is currently provided on the RESPA settlement statement, the Bureau proposes to adopt the five-year requirement. This information serves an important purpose as both the record of all fees associated with the transaction and as part of the official disbursement record. As such, this information may be needed for more than two years after the transaction. For example, State and local laws related to transactions involving real property may depend on the information being available for five years. Additionally, the current five-year recordkeeping requirement under Regulation X has been in effect since 1992.[150] The Bureau is unaware of any problems caused by the five year requirement and does not believe the time period should be shortened without evidence that the rule is not operating as intended, is unnecessary, or otherwise harms consumers. Thus, it appears that requiring creditors to retain copies of the Closing Disclosure for five years is appropriate.

Pursuant to its authority under section 105(a) of TILA and section 19(a) of RESPA, the Bureau proposes § 1026.25(c)(1)(ii). Proposed § 1026.25(c)(1)(ii)(A) states that the creditor shall retain each completed disclosure required under § 1026.19(f)(1)(i) and (f)(4)(i), and all documents related to such disclosures, for five years after settlement. The Bureau believes that this proposed modification will ensure that records associated with the integrated disclosures are kept long enough to facilitate compliance with both TILA and RESPA, which is necessary to both prevent circumvention of and facilitate compliance with TILA. The proposed recordkeeping requirement will also enable accurate supervision, which will result in the more effective advance disclosure of settlement costs, consistent with section 19(a) of RESPA. Proposed § 1026.25(c)(1)(ii)(B) provides that, if a creditor sells, transfers, or otherwise disposes of its interest in a mortgage and does not service the mortgage, the creditor shall provide a copy

[150] 57 FR 49600, 49607 (Nov. 2, 1992).

of the disclosures required under § 1026.19(f)(1)(i) or (f)(4)(i) to the owner or servicer of the mortgage as a part of the transfer of the loan file. Such owner or servicer shall retain such disclosures for the remainder of the five-year period. Proposed § 1026.25(c)(1)(ii)(C) provides that the Bureau shall have the right to require provision of copies of records related to the disclosures required under § 1026.19(f)(1)(i) or (f)(4)(i).

The Bureau recognizes that this proposal is different from the current requirements under Regulation X, which does not require a creditor to maintain these documents if the creditor disposes of its interest in the mortgage loan and does not service the mortgage loan. However, the Bureau believes that the current requirement provides little practical benefit to creditors, because other provisions of Regulations Z and X require creditors to maintain records of compliance for several years, even if the creditor transfers, sells, or otherwise disposes of its interest in the mortgage loan. The Bureau solicits feedback regarding whether it is appropriate for creditors that transfer, sell, or otherwise dispose of their interest in the mortgage loan, and do not service the mortgage loan, to keep these records for the five-year period. The Bureau also requests feedback on the additional costs that would result from such a requirement.

25(c)(1)(iii) Electronic Records

Issues Related to Adopting a Standard, Machine Readable, Electronic Data Format. Neither TILA nor RESPA address electronic recordkeeping. Regulation Z permits, but does not require, electronic recordkeeping. Comment 25(a)-2 provides that records can be maintained by any method that reproduces disclosures accurately, including computer programs. Regulation X also permits, but does not require, electronic records. *See* § 1024.23 and HUD RESPA FAQs p.3, #4 ("GFE-General").

The Bureau has sought information regarding the costs of keeping records in an electronic, machine readable format. "Machine readable" means a format where the individual data elements comprising the record can be transmitted, analyzed, and processed by a computer program, such as a spreadsheet or database program. Data formats for image reproductions (*e.g.*, PDF) or document text, such as those used by word processing programs, are not machine readable for purposes of this proposal. Based on these discussions, including information learned from the Small Entity Representatives participating in the Small Business Review Panel process, the Bureau recognizes that requiring records in an electronic, machine readable format will impose new costs on industry. Industry would incur costs for either acquiring a system to create records in electronic, machine readable format, or for modifying their current systems to use a standard format required by regulation. *See* Small Business Review Panel Report at 30. However, feedback provided to the Small Business Review Panel indicates that creditors currently rely on electronic systems for most aspects of the mortgage loan origination process, which include electronic record creation and storage. *See id.* Thus, any new costs caused by a machine readable recordkeeping requirement would be limited to the up-front costs of upgrading existing computer systems and additional, ongoing data storage costs.

In contrast, the benefits of keeping records in machine readable format may be significant. A prescribed electronic format may reduce costs across the entire mortgage loan origination industry due to efficiency gains associated with a standardized data format. Information received by the Bureau suggests that creditors, mortgage brokers, title companies, investors, and other mortgage technology providers use systems with proprietary data formats. As a result, data must be translated between formats as it is transmitted from one point to another throughout the mortgage loan origination process. A standard electronic record format may eliminate these multiple data formats, thereby increasing efficiency in the origination process, reducing industry costs in the long term, and reducing costs to consumers. Also, the Bureau is aware that many firms currently face significant internal costs for maintaining multiple internal technological systems. A single data format may lower overall and long-term costs by enabling creditors to migrate from older data formats to a single, standard data format.

Other benefits may be realized from a standard, electronic, machine readable format. A standard format may facilitate innovation in the financial services industry by making it easier for technology companies to create new programs that improve the mortgage origination process and lower industry costs, instead of tailoring programs to each firm's unique proprietary data format. A standard machine readable format may also facilitate industry adoption of mortgage documentation technology. Such developments would reduce industry's reliance on paper files, which would lower ongoing costs while reducing the paperwork burden on both industry and consumers. Furthermore, electronic, machine readable records may allow regulators to monitor some aspects of compliance remotely. Remote examinations may benefit creditors by easing the burden associated with devoting staff time and resources to on-site examinations. All of these benefits may reduce industry cost and burden in the long run, thereby reducing costs to consumers as well.

The Bureau believes that the benefits of a standard, machine readable electronic data format may outweigh the costs associated with adopting and maintaining such a format. Thus, pursuant to its authority under section 105(a) of TILA, the Bureau proposes § 1026.25(c)(1)(iii), which provides that a creditor shall retain evidence of compliance in electronic, machine readable format. The Bureau believes that this proposed requirement will ensure that records associated with the integrated disclosures are readily available for examination, which is necessary to both prevent circumvention of and facilitate compliance with TILA. This proposed regulation may also facilitate compliance with TILA by easing the burden of examinations and ensuring that all entities subject to TILA keep records in a standard format. Proposed comment 25(c)(1)(iii)-1 clarifies that the requirements of § 1026.25(c)(1)(iii) are in addition to any other formats that may be required by administrative agencies responsible for enforcing the regulation. The Bureau solicits comment on this approach, including the costs associated with such a requirement.

As discussed in the Initial Regulatory Flexibility Analysis, section VIII.B.4.b below, the proposed electronic recordkeeping requirement may not be appropriate for certain classes of entities, such as small creditors that do not currently have such electronic filing systems or use vendor software. The upfront and ongoing costs of such a requirement on small creditors may outweigh any benefits. However, the Bureau does not have sufficient data to determine whether and which small creditors should be exempt from the requirements. Accordingly, pursuant to its authority under section 105(f) of TILA, the Bureau proposes that, as an alternative to requiring electronic records, that a class of entities consisting of small creditors be exempted based on either entity size or the number of loans originated.

The Bureau has considered the factors in TILA section 105(f) and believes that an exception could be appropriate under that provision if the costs imposed on small entities outweigh the benefits to consumers. In such circumstances, an exemption would be appropriate for all affected borrowers who receive mortgage loans from small entities, regardless of their other financial arrangements and financial sophistication and the importance of the loan to them. Similarly, an exemption would be appropriate for all affected loans issued by exempt small entities, regardless of the amount of the loan and whether the loan is secured by the principal residence of the consumer. Furthermore, on balance, the proposed exemption would simplify the credit process for small entities without undermining the goal of consumer protection or denying important benefits to consumers. The Bureau recognizes that its exemption and exception authorities apply to a class of transactions, and proposes to apply these authorities to the loans covered under the proposal of the entities proposed for potential exemption.

Consistent with the recommendation of the Small Business Review Panel, the Bureau solicits comment on whether a small business exemption is appropriate, whether such small business exemption should be based on entity size or the number of loans originated, and the appropriate exemption threshold in terms of institution size or the number of loans originated, respectively. The Bureau solicits feedback on whether such an exemption for depository institutions should be different than an exemption for non-depository institutions. The Bureau also solicits feedback on small business' current technology costs, and how such costs might be affected by an electronic recordkeeping requirement.

Based on the Bureau's discussions with industry regarding machine readable data formats, the Bureau believes that XML may be the most appropriate format for electronic recordkeeping. However, the Bureau solicits comment on the costs and challenges associated with adopting an XML format. The Bureau also solicits feedback on other data formats that may be more appropriate than XML.

Smart Disclosure. "Smart disclosure" generally refers to a requirement that data be kept in standard, machine readable format that is also available to the public. In the context of mortgage loans, any regulation implementing smart disclosure would require creditors to provide consumers with data related to the loan origination process. Smart disclosure can facilitate intelligent decision-making by consumers and encourage innovation. For example, if consumers were provided with Loan Estimates in electronic format, computer programs and applications may be developed to allow consumers to compare Loan Estimates between different creditors. Or, programs may be developed that assist consumers in assessing the ongoing costs, risks, and affordability of a single Loan Estimate for the individual consumer.

The Bureau recognizes that smart disclosures may encourage the informed use of credit and promote innovation in the consumer financial services industry. While the Bureau supports these goals, the Bureau is not proposing a smart disclosure requirement at this time. The Bureau intends to continue monitoring the consumer financial services market and will revisit this issue if, in the future, the Bureau determines that such a requirement is appropriate.

Section 1026.28 Effect on State Laws

TILA preempts State laws to the extent of their inconsistency with that statute and permits States, creditors, and other interested parties to request a determination by the Bureau regarding such inconsistency. Specifically, section 111(a)(1) states that the provisions of chapters 1 (General Provisions), 2 (Credit Transactions), and 3 (Credit Advertising and Limits on Credit Card Fees) of TILA do not annul, alter, or affect the laws of any State relating to the disclosure of information in connection with credit transactions, except to the extent that those laws are inconsistent with the provisions of TILA and then only to the extent of the inconsistency. 15 U.S.C. 1610(a)(1). Upon its own motion or upon the request of any creditor, State, or other interested party that is submitted in accordance with procedures prescribed in regulations of the Bureau, the Bureau shall determine whether any such inconsistency exists. *Id.* If the Bureau determines that a State-required disclosure is inconsistent, creditors located in that State may not make disclosures using the inconsistent term or form, and shall incur no liability under the State law for failure to use such term or form, notwithstanding that such determination is subsequently amended, rescinded, or determined by judicial or other authority to be invalid for any reason. *Id.* Section 111(b) generally provides that TILA does not otherwise annul, alter, or effect in any manner the meaning, scope, or applicability of the laws of any State, including, but not limited to, laws relating to the types, amounts, or rates of charges, or any elements of charges, permissible under such laws in connection with the extension or use of credit, and neither does TILA extend the applicability of those laws to any class of persons or transactions to which they would not otherwise apply. 15 U.S.C. 1610(b).

Regulation Z § 1026.28 implements TILA section 111. Section 1026.28(a) provides that State law requirements that are inconsistent with the requirements contained in chapters 1 through 3 of TILA and the implementing provisions of Regulation Z are preempted to the extent of the inconsistency.[151] Under § 1026.28(a), a State law is inconsistent with a TILA provision if it requires a creditor to make disclosures or take actions that contradict the requirements of TILA. A State law contradicts a requirement of TILA if it requires the use of the same term to represent a different amount or a different meaning than TILA, or if it requires the use of a term different from that required in TILA to describe the same item. A creditor, State, or other interested party may request the Bureau to determine whether a State law requirement is inconsistent, and if the Bureau makes such a determination a creditor may not make disclosures using the inconsistent term or form.[152] The specific procedures for requesting a State law

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[151] There are different rules regarding preemption of State laws relating to the disclosure of credit information in any credit or charge card application or solicitation that is subject to the requirements of section 127 of TILA and the correction of billing errors, but those rules are outside the scope of this rulemaking. *See* § 1026.28(a)(2), (d).

[152] TILA section 111(a)(2) and § 1026.28(b) generally permit a creditor, State, or other interested party to request that the Bureau determine whether a State-required disclosure is substantially the same in meaning as a TILA disclosure, and if the Bureau makes such a determination, creditors in the State can provide the State-required disclosure in lieu of the TILA disclosure. Comment 28(b)-1 clarifies that under § 1026.28, a State disclosure can be substituted for a Federal disclosure only after a determination of substantial similarity. State exemptions are addressed in more detail under § 1026.29 and associated commentary.

preemption determination are set forth in § 1026.28(c) and appendix A to part 1026. Appendix A states, among other things, that the Bureau reserves the right to reverse a determination for any reason bearing on the coverage or effect of State or Federal law.

Current Regulation Z commentary provides further guidance on the TILA preemption rules. Comment 28(a)-2 includes examples of State laws that would be preempted (*e.g.*, a State law requiring use of the term "finance charge" but defining the term to include fees that TILA excludes, or to exclude fees that TILA includes). Comment 28(a)-3 explains that State law requirements calling for disclosure of items not covered by TILA or that require more detailed disclosures generally do not contradict the TILA requirements, provides examples of State laws that would not be preempted, and gives guidance as to whether a State law requiring itemization of the amount financed would be preempted. Comment 28(a)-4 explains that a creditor, prior to a preemption determination, may either (1) give the State disclosures or (2) apply the preemption standards to a State law, conclude that it is inconsistent, and choose not to give the State-required disclosures (but that no immunity is given under § 1026.28(a) for violations of State law if the creditor chooses not to make State disclosures and the Bureau later determines that the State law is not preempted). The comment also states that the Bureau will give sufficient time to creditors to revise their forms and procedures as necessary to conform with its preemption determinations. Comments 28(a)-8 through -15 discuss prior determinations made by the Federal Reserve Board prior to July 21, 2011, and recognized by the Bureau unless and until the Bureau makes and publishes any contrary determinations, to preempt certain State laws. For example, comment 28(a)-15 notes that, in Wisconsin, disclosure of the annual percentage rate under the particular State law referenced in the comment is preempted, because while the statute refers to "annual percentage rate," it requires disclosure of a different amount than under TILA.

Section 18 of RESPA and Regulation X § 1024.13 provide that State laws that are inconsistent with RESPA or Regulation X are preempted to the extent of the inconsistency. 12 U.S.C. 2616; 12 CFR 1024.13. RESPA and Regulation X do not annul, alter, affect, or exempt any person subject to their provisions from complying with the laws of any State with respect to settlement practices, except to the extent of the inconsistency. *Id.* Upon request by any person, the Bureau is authorized to determine whether such inconsistencies exist, and the Bureau may not determine that any State law is inconsistent with any provision of RESPA if the Bureau determines that such law or regulation gives greater protection to the consumer. 12 CFR 1024.13(b). In making this determination, the Bureau must consult with "appropriate Federal agencies." *Id.*; *see also* 12 U.S.C. 2616. Section 1024.13(c) sets forth the process by which the Bureau makes a preemption determination. Unlike Regulation Z, Regulation X does not list any State laws preempted by RESPA, and the Bureau is not aware of any.

The preemption provisions in TILA and RESPA and their implementing regulations thus contain similar language as far as scope of the preemption (*i.e.*, in both cases State laws generally are preempted only "to the extent of the inconsistency"), but include different authority and procedures for determining whether State laws are preempted. For example, unlike Regulation X, § 1026.28 provides a regulatory standard for determining "inconsistency" (*i.e.*, disclosures or actions that contradict Federal law requirements) along with detailed commentary. RESPA, but not TILA, requires the preemption determination to be made by the Bureau in consultation with other appropriate Federal agencies. Moreover, while the Regulation Z provision addresses the relationship between Federal and State laws governing credit transactions, § 1024.13 refers to laws regarding settlement practices.

As noted previously, section 1032(f) of the Dodd-Frank Act requires the Bureau to propose rules and forms that combine the disclosures required under TILA and sections 4 and 5 of RESPA into a single, integrated disclosure for mortgage loan transactions covered by those laws. In addition, the Dodd-Frank Act amended sections 105(b) of TILA and 4(a) of RESPA, respectively, to require the integration of those disclosure requirements. However, the Dodd-Frank Act did not specify whether the TILA or the RESPA State law preemption provision applies to the provision of the integrated mortgage disclosures. In order to meet the Dodd-Frank Act's mandate, the proposed rule must reconcile the differences regarding these State law preemption regimes.

Furthermore, there are certain transactions subject to TILA, but not RESPA, for which the integrated mortgage disclosures must be delivered under the proposed rule. Pursuant to § 1026.19(e) and (f), the proposed rule covers all closed-end consumer credit transactions secured by real property, other than reverse mortgages. Some of these transactions are not subject to RESPA (*i.e.*, if they are not a federally related mortgage loan as defined in Regulation X § 1024.2), but consumers in such transactions will receive integrated mortgage disclosures containing certain content mandated by RESPA. This may create confusion as to which preemption provision controls were a State law preemption question to arise with respect to the RESPA-mandated content on the integrated mortgage disclosures.

Accordingly, Dodd-Frank Act section 1032(f), TILA section 105(b), and RESPA section 19(a) provide the Bureau with authority to reconcile the provisions of TILA and RESPA to carry out the integrated disclosure requirement. Based on such authority and the Bureau's authority under TILA section 105(a) and RESPA section 19(a) to make rules consistent with the purposes of those statutes, the Bureau is proposing to require that the State law preemption provisions of

Regulation Z, § 1026.28, apply to any State law preemption question arising with respect to the requirements of sections 4 and 5 of RESPA (other than the RESPA section 5(c) requirements regarding provision of a list of certified homeownership counselors), and §§ 1026.19(e) and (f), 1026.37, and 1026.38. By applying the Regulation Z State law preemption provision to any State law preemption question arising with respect to the requirements of §§ 1026.19(e) and (f), 1026.37, and 1026.38, this requirement encompasses all closed-end consumer credit transactions secured by real property that are covered by the proposed rule, regardless of whether they are independently subject to RESPA. However, § 1024.13 applies to State law preemption questions arising with respect to other aspects of RESPA and Regulation X, including the RESPA section 5(c) requirements regarding provision of a list of certified homeownership counselors.

To effectuate this change, the Bureau is proposing two modifications to § 1026.28 and its associated commentary. First, the proposed rule modifies § 1026.28(a) to provide that a determination of whether a State law is inconsistent with the requirements of sections 4 and 5 of RESPA (other than the RESPA section 5(c) requirements regarding provision of a list of certified homeownership counselors) and proposed §§ 1026.19(e) and (f), 1026.37, and 1026.38 shall be made in accordance with § 1026.28 and not Regulation X § 1024.13. Second, the proposed rule adds text to comment 28(a)-1 providing that, to the extent applicable to a transaction subject to § 1026.19(e) and (f), any reference to "creditor" in § 1026.28 includes a creditor, a mortgage broker, or a closing agent, as applicable. This change coincides with the alternative proposed § 1026.19(f)(1)(v), which permits the closing agent to deliver the Closing Disclosure in place of the creditor. If the alternative permitting the closing agent to deliver the Closing Disclosure is not adopted, the closing agent reference in the proposed edit to comment 28(a)-1 will not be adopted.

The Bureau notes that proposed § 1026.28 and associated commentary do not incorporate the language in RESPA section 18 and Regulation X § 1024.13(b) providing that the Bureau may not determine that any State law is inconsistent with any RESPA provision if the Bureau determines that such law or regulation gives greater protection to the consumer. However, the Bureau believes that proposed § 1026.28 is consistent with RESPA section 18. Specifically, a State disclosure is likely to confuse consumers if it uses the same term to represent a different amount or a different meaning than, or if it requires the use of a different term to describe the same item as, the integrated mortgage disclosures developed in this rulemaking through extensive consumer testing. Accordingly, for purposes of this rulemaking, the Bureau believes that such State disclosures generally do not provide greater protection for consumers.

Nevertheless, the Bureau intends to take a cautious case-by-case approach to evaluating inconsistency under RESPA section 18. The Bureau also intends to consult with other Federal agencies, as appropriate, within the scope of RESPA concerning any evaluations of inconsistency under RESPA section 18. Furthermore, the Bureau emphasizes that nothing in this proposed rule is intended to preempt State laws that offer greater substantive consumer protections than those provided under sections 4 and 5 of RESPA[153] and §§ 1026.19(e) and (f), 1026.37, and 1026.38 (*e.g.*, a State law imposing stricter limits on closing cost increases or requiring disclosures of the final closing costs seven days before consummation). A more protective State law would not be inconsistent with such RESPA and Regulation Z provisions, and therefore would not be preempted by § 1026.28, because a creditor's compliance with the more protective State law would also satisfy the requirements of such RESPA and Regulation Z provisions.

[153] As discussed above, proposed revised § 1026.28 and associated commentary do not govern State law preemption questions arising under the RESPA section 5(c) requirements for provision of a list of certified homeownership counselors.

The Bureau believes that the proposed revisions to the regulatory text and commentary to § 1026.28 effectively specify whether the Regulation Z or RESPA State law preemption provision applies to any State law preemption question arising with respect to the requirements of sections 4 and 5 of RESPA (other than the RESPA section 5(c) requirements regarding provision of a list of certified homeownership counselors) and proposed §§ 1026.19(e) and (f), 1026.37, and 1026.38.

Section 1026.29 State Exemptions

TILA has several provisions that permit the Bureau to grant State exemptions from certain TILA disclosure provisions. Section 111(a)(2) allows the Bureau, upon its own motion or upon the request of any creditor, State, or other interested party that is submitted in accordance with procedures prescribed in regulations of the Bureau, to determine whether any disclosure required under any State law is substantially the same in meaning as a disclosure required under TILA. 15 U.S.C. 1610(a)(2). If the Bureau makes such a determination, TILA section 111(a)(2) provides that creditors located in that State may make such disclosure in compliance with such State law in lieu of the TILA disclosure, except that (1) the annual percentage rate and finance charge must be disclosed as required by section 122 of TILA, and (2) State-required disclosures may not be made in lieu of the high-cost mortgage disclosures under section 129 of TILA. Section 123 of TILA allows the Bureau by regulation to exempt any class of credit transactions within any State from the requirements of chapter 2 of TILA (Credit transactions) if the Bureau determines that the law of the State subjects the class of transactions to requirements substantially similar to those imposed under chapter 2 of TILA, and that there is adequate provision for enforcement.[154] 15 U.S.C. 1633.

Regulation Z § 1026.29 and appendix B to part 1026 implement the TILA State exemption provisions.[155] Pursuant to § 1026.29(a), a State may apply to the Bureau to exempt a class of transactions within the State from the requirements of chapter 2 (Credit transactions) or chapter 4 (Credit billing) of TILA and the corresponding provisions of Regulation Z. The Bureau shall grant an exemption if it determines that (1) the State law is substantially similar to the Federal law or, in the case of chapter 4 of TILA, affords the consumer greater protection than the Federal law, and (2) there is adequate provision for enforcement. Comment 29(a)-2 clarifies that State law is "substantially similar" for purposes of § 1026.29(a) if the State statutory or regulatory provisions and State interpretations of those provisions are generally the same as TILA and Regulation Z. Comment 29(a)-3 clarifies that, generally, there is adequate provision for enforcement if appropriate State officials are authorized to enforce the State law through procedures and sanctions comparable to those available to Federal enforcement agencies. Comment 29(a)-4 states that the Bureau recognizes certain TILA exemptions granted by the Federal Reserve Board to Maine, Connecticut, Massachusetts, Wyoming, and Oklahoma prior to July 21, 2011, until and unless the Bureau makes and publishes any contrary determination. Comment 29(a)-4.i through -4.v currently provides, in relevant part, that credit transactions in these five States that are subject to the State consumer credit codes or truth in lending acts enumerated in such comment are exempt from the requirements of chapter 2 of TILA, which sets

[154] Section 171(b) of TILA also addresses State exemptions and contains nearly identical language to section 123, but section 171(b) applies with respect to TILA chapter 4 (credit billing), which is not affected by this rulemaking. 15 U.S.C. 1661j(b).

[155] As noted earlier, § 1026.28(b) generally permits a creditor, State, or other interested party to request that the Bureau determine whether a State-required disclosure is substantially the same in meaning as a TILA disclosure, and if the Bureau makes such a determination, creditors in the State can provide the State-required disclosure in lieu of the TILA disclosure. Comment 28(b)-1 clarifies that under § 1026.28, a State disclosure can be substituted for a Federal disclosure only after a determination of substantial similarity.

forth, among other provisions, the disclosure requirements for closed-end mortgages. The specific procedures for requesting a State exemption are set forth in § 1026.29(c) and appendix B to part 1026. Appendix B states, among other things, that the Bureau reserves the right to revoke an exemption if at any time it determines that the standards required for an exemption are not met.

Unlike TILA, RESPA does not contain a State exemption provision for credit transactions subject to RESPA. Rather, as discussed above with respect to § 1026.28, section 18 of RESPA and Regulation X § 1024.13 provide that State laws that are inconsistent with RESPA or Regulation X are preempted to the extent of the inconsistency. 12 U.S.C. 2616; 12 CFR 1024.13.

As noted above, sections 1032(f), 1098, and 1100A of the Dodd-Frank Act require the Bureau to propose for public comment, rules and forms that combine the disclosures required under TILA and sections 4 and 5 of RESPA into a single, integrated disclosure for mortgage loan transactions covered by those laws. However, the Dodd-Frank Act did not address a number of inconsistencies between TILA and RESPA that affect the provision of the integrated mortgage disclosures, including inconsistent provisions regarding the application of State law. In order to meet the Dodd-Frank Act's mandate, the proposed rule must reconcile the State exemption provisions.

Accordingly, pursuant to its authority under Dodd-Frank Act section 1032(f), TILA section 105(b), and RESPA section 19(a) as well as its authority under TILA section 105(a) and RESPA section 19(a) to make rules consistent with the purposes of those statutes, the Bureau is proposing to require that the TILA State exemption provision apply to transactions subject to proposed § 1026.19(e) and (f) (*i.e.*, all closed-end consumer credit transactions secured by real property, other than a reverse mortgage). By applying the TILA State exemption provision to transactions subject to § 1026.19(e) and (f), rather than the RESPA State preemption provision (which is silent as to the granting of State exemptions under RESPA), this requirement would cover all closed-end consumer credit transactions secured by real property that are covered by the proposed rule, including those subject to RESPA. The Bureau believes this is consistent with the intent of TILA's State exemption provision and the integrated disclosure mandate in Dodd-Frank Act section 1032(f), TILA section 105(b), and RESPA section 19(a) because it allows States to maintain their existing exemptions so long as consumers receive disclosures and protections that are substantially similar to those in the proposed rule. Furthermore, using the TILA State law exemption provision for transactions subject to § 1026.19(e) and (f) will facilitate compliance with the disclosure requirements of TILA and RESPA and promote the informed use of credit and more effective advance notice of settlement costs since creditors, consistent with TILA section 105(a) and RESPA section 19(a), by applying a consistent standard to those transactions.

To effectuate this change, the Bureau is proposing two substantive modifications to the commentary to § 1026.29, in addition to relabeling some of the section numbering and lettering. First, proposed revised comment 29(a)-2 modifies the guidance regarding the "substantially similar" standard set forth in § 1026.29(a)(1) (*i.e.*, one of the two preconditions to the granting of an exemption). Proposed revised comment 29(a)-2 clarifies that, in order for transactions that would otherwise be subject to the integrated disclosures required by § 1026.19(e) and (f) to be exempt from those disclosure requirements, the State statutory or regulatory provisions and State interpretations of those provisions must require disclosures that are generally the same as those prescribed by § 1026.19(e) and (f), in the forms prescribed by §§ 1026.37 and 1026.38. This means that, in order for an existing State exemption to be maintained, the State's law must require disclosures that are generally the same as the integrated disclosures, including the RESPA content.

Second, proposed revised comment 29(a)-4 states that, although RESPA and Regulation X do not provide procedures for State exemptions, for transactions subject to § 1026.19(e) and (f), compliance with the requirements of §§ 1026.19(e) and (f), 1026.37, and 1026.38 satisfies the requirements of sections 4 and 5 of RESPA (other than the RESPA section 5(c) requirements regarding provision of a list of certified homeownership counselors). Furthermore, the proposed revised comment states that if the transaction is subject to a previously-granted State exemption, then compliance with the requirements of any State laws and regulations incorporating the requirements of §§ 1026.19(e) and (f), 1026.37, and 1026.38 likewise satisfies the requirements of sections 4 and 5 of RESPA (other than the RESPA section 5(c) requirements regarding provision of a list of certified homeownership counselors). Thus, in Maine, Connecticut, Massachusetts, Oklahoma, and Wyoming, creditors, mortgage brokers, and settlement agents, as applicable, may satisfy sections 4 and 5 of RESPA (other than the RESPA section 5(c) requirements regarding provision of a list of certified homeownership counselors) through compliance with State law so long as the "substantially similar" State statutory and regulatory provisions (*i.e.*, the State consumer codes or truth in lending acts enumerated in comment 29(a)-4.1 through -4.v, as applicable) expressly mandate delivery of the integrated mortgage disclosures required by the Dodd-Frank Act and implemented by the proposed rule.

The Bureau believes that the proposed revisions to the commentary to § 1026.29 effectively reconcile the conflicting TILA and RESPA provisions by clarifying the standards for the Bureau's granting of exemptions from certain relevant TILA and RESPA provisions going forward. The proposed revisions also clarify how compliance with sections 4 and 5 of RESPA (other than the RESPA section 5(c) requirements regarding provision of a list of certified homeownership counselors) may be accomplished with respect to transactions subject to the previously-granted TILA exemptions in light of the Dodd-Frank Act's mandate to integrate the mortgage disclosures under TILA and sections 4 and 5 of RESPA. Finally, the proposed revisions do not change the existing language in comment 29(a)-4 and appendix B to part 1026 reserving the Bureau's right to make and publish any contrary determination regarding State exemptions previously granted by the Federal Reserve Board and, more generally, to revoke State exemptions if the standards for granting them are no longer met.

The Bureau understands these proposed changes will likely require some of the five States previously granted State exemptions under 12 CFR 226.29, the predecessor to § 1026.29, to change their laws and/or regulations, which may be a lengthy process.[156] This is because to the extent the "substantially similar" State laws and regulations underlying the TILA State exemptions do not currently require the integrated disclosures mandated by the Dodd-Frank Act (specifically, the portions mandated by RESPA), there is a gap in these States' current statutory and regulatory regimes that must be filled in order to maintain the State exemptions. As such, the Bureau hereby solicits comment on the amount of time that will be needed for these States to change their laws and/or regulations.

[156] While these proposed changes may require some of these five States to change their laws and/or regulations, others incorporate TILA and Regulation Z into their State laws and/or regulations by reference. Therefore, the Bureau anticipates that these other States should not have to take any action to maintain their existing exemptions directly as a result of this proposed rule.

Section 1026.37 Content of Disclosures for Certain Mortgage Transactions (Loan Estimate)

Proposed § 1026.37 sets forth the required content of the integrated Loan Estimate disclosures, required by proposed § 1026.19(e) to be provided to a consumer within three business days of the creditor's receipt of the consumer's application.

As discussed above, the Loan Estimate integrates the disclosures currently provided in the RESPA GFE and the early TILA disclosure. In addition, the Loan Estimate integrates several disclosures that would otherwise be provided separately under various Federal laws. The Bureau believes the three-page Loan Estimate integrates at least seven pages of disclosures. Specifically, the Loan Estimate incorporates: (i) three pages of the RESPA GFE; (ii) two pages typically used for the early TILA disclosure; (iii) one page typically used for the appraisal notification provided under ECOA section 701(e); and (iv) one page typically used for the servicing disclosure provided under RESPA section 6. In addition, the Loan Estimate incorporates the disclosure of: (i) the total interest percentage under TILA section 128(a)(19), which was added by section 1419 of the Dodd-Frank Act; (ii) the aggregate amount of loan charges and closing costs the consumer must pay at consummation under TILA section 128(a)(17), which was added by section 1419 of the Dodd-Frank Act; (iii) for refinance transactions, the anti-deficiency protection notice under TILA section 129C(g)(3), which was added by section 1414(c) of the Dodd-Frank Act; and (iv) the homeowner's insurance disclosure in TILA section 106(c) and § 1026.4(d)(2)(i), which is required to exclude homeowner's insurance premiums from the finance charge. In absence of the Bureau's integration of the early TILA disclosure and the RESPA GFE, some these new disclosures would have been added to the early TILA disclosure, which potentially could have increased that disclosure's typical two pages to three pages.

Proposed § 1026.37 provides that the information set forth in § 1026.37(a) through (n) shall be disclosed "as applicable." The Bureau is proposing a new comment 37-1 to clarify that a disclosure that is not applicable to a transaction generally may be eliminated entirely or may be included but marked "not applicable" or "N/A."

As discussed below, proposed § 1026.37(o) provides rules for the form of the disclosures required by § 1026.37(a) through (n). Proposed comment 37-2 directs creditors to § 1026.37(o) and its commentary for guidance on format and permissible modifications to the form of the disclosures.

37(a) General Information

The Bureau proposes § 1026.37(a), which combines and modifies disclosures currently provided under Regulations X and Z and adds additional disclosures in the Loan Estimate for transactions subject to proposed § 1026.19(e). For the reasons discussed below and consistent with TILA section 105(a), RESPA section 19(a), and the purposes of those statutes, proposed § 1026.37(a) will promote the informed use of credit and more effective advance disclosure of settlement costs. In addition, proposed § 1026.37(a) will enable consumers to better understand the costs, benefits, and risks associated with mortgage transactions, consistent with Dodd-Frank Act section 1032(a). Furthermore, proposed § 1026.37(a) will improve consumer awareness and understanding of transactions involving residential mortgage loans and is therefore in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

37(a)(1) Form Title

Although the Dodd-Frank Act requires the Bureau to combine the TILA and RESPA mortgage disclosures that are currently provided to consumers within three business days after application, the Act does not prescribe a title for the integrated form. Under § 1024.2(b) of

Regulation X, the form providing consumers with the RESPA good faith estimate of settlement charges they are likely to incur is called the “Good Faith Estimate” or “GFE.” Regulation Z does not prescribe a name for the TILA good faith estimate required by § 1026.19(a)(1), although comment 17(a)(1)-5.ix permits the creditor to provide “[a] brief caption identifying the disclosures” and provides as examples of acceptable titles, “Federal Truth in Lending Disclosures” and “Real Estate Loan Disclosures.”

Proposed § 1026.37(a)(1) requires the creditor to use the term “Loan Estimate” as the title of the integrated disclosures creditors provide pursuant to proposed § 1026.19(e). The Bureau believes the adoption of a standardized form name may eliminate confusion for consumers seeking to compare estimates for different loans and thereby promote the informed use of credit and more effective advance notice of settlement costs, consistent with TILA section 105(a) and RESPA section 19(a), and will enable consumers to better understand the costs, benefits, and risks associated with mortgage transactions, consistent with Dodd-Frank Act section 1032(a). In addition, the use of standard terminology for the integrated disclosures will facilitate compliance for industry, which is a purpose of this rulemaking under Dodd-Frank Act sections 1098 and 1100A.

37(a)(2) Form Purpose

Proposed § 1026.37(a)(2) requires the creditor to include a statement regarding one of the primary uses of the Loan Estimate for consumers, which is to compare with the Closing Disclosure to verify the loan terms and costs. Specifically, proposed § 1026.37(a)(2) requires the creditor to provide the following statement at the top of all Loan Estimates, “Save this Loan Estimate to compare with your Closing Disclosure.” The proposed language may benefit consumers and promote the informed use of credit by encouraging consumers to use the Loan

Estimate as a tool to help them readily identify any changes to the loan transaction or costs that may have occurred between issuance of the initial Loan Estimate and the Closing Disclosure.

Requiring creditors to disclose the purpose for the Loan Estimate and related disclosures is not a new requirement. Appendix C of Regulation X currently requires specific language regarding the purpose of the GFE.[157] And while the Bureau's proposed language differs from that prescribed by HUD, the Bureau believes that the disclosure in proposed § 1026.37(a)(2) accomplishes the same goal in a clearer and more succinct manner. Accordingly, this disclosure promotes the informed use of credit and more effective advance notice of settlement costs, consistent with TILA section 105(a) and RESPA section 19(a), and will enable consumers to better understand the costs, benefits, and risks associated with mortgage transactions, consistent with Dodd-Frank Act section 1032(a).

37(a)(3) Creditor

TILA section 128(a)(1) requires disclosure of the "identity of the creditor required to make [the] disclosure." 15 U.S.C. 1638(a)(1). Regulation Z § 1026.18(a) implements TILA section 128(a)(1) and requires for each transaction the identity of the creditor making the disclosure. HUD imposed a similar requirement in appendix C to Regulation X, requiring the name and contact information for the "loan originator."

Pursuant to TILA section 105(a), RESPA section 19(a), and Dodd-Frank Act section 1032(a), proposed § 1026.37(a)(3) mirrors § 1026.18(a) and requires the name of the creditor making the disclosure. By allowing the consumer to identify the name of the creditor providing the Loan Estimate, this disclosure will promote the informed use of credit and more effective

[157] Appendix C to Regulation X requires the following statement on the GFE under the heading "Purpose": "This GFE gives you an estimate of your settlement charges and loan terms if you are approved for this loan. For more information, see HUD's *Special Information Booklet* on settlement charges, your *Truth-in-Lending Disclosures*, and other consumer information at www.hud.gov/respa. If you decide you would like to proceed with this loan, contact us."

advance notice of settlement costs and will enable consumers to better understand the costs, benefits, and risks associated with mortgage transactions.

Proposed comment 1026.37(a)(3)-1 cross-references § 1026.17(d) and comment 17(d)-1 and clarifies that, in transactions with multiple creditors, only the creditor making the disclosure must be identified. Proposed comment 37(a)(3)-2 states that, in transactions where the loan is originated by a mortgage broker, the name of the creditor, if known, must still be provided even if the mortgage broker provides the disclosure to the consumer.

37(a)(4) Date Issued

Appendix C to Regulation X requires creditors to provide the date of the GFE. Proposed § 1026.37(a)(4) mirrors this requirement by mandating disclosure of the date the Loan Estimate is mailed or delivered to the consumer. Proposed comment 1026.37(a)-1 clarifies that the "date issued" is the date the creditor delivers the Loan Estimate to the consumer and is not affected by the creditor's method of delivery.

The Bureau is proposing this requirement pursuant to its authority under TILA section 105(a) and RESPA section 19(a) because disclosure of the date the Loan Estimate is issued will promote the informed use of credit and more effective advance disclosure of settlement costs, which are purposes of TILA and RESPA respectively, by enabling consumers to compare the Loan Estimate with any revised Loan Estimates that may be issued. In addition, this comparison will enable consumers to identify changes in loan terms and costs and thereby understand the costs, benefits, and risks associated with the mortgage transaction, consistent with Dodd-Frank Act section 1032(a).

37(a)(5) Applicants

Appendix C to Regulation X requires disclosure of the name of the applicants for the mortgage loan transaction. Similarly, pursuant to TILA section 105(a), RESPA section 19(a), and Dodd-Frank Act section 1032(a), proposed § 1026.37(a)(5) requires creditors to disclose the name of the applicants for the loan transaction. By enabling consumers to confirm that the Loan Estimate is intended for them, this disclosure will promote the informed use of credit and more effective advance notice of settlement costs and will enable consumers to better understand the costs, benefits, and risks associated with mortgage transactions. Proposed comment 37(a)(5)-1 clarifies that the names of all applicants for the mortgage loan must be disclosed on the form and that if the form cannot accommodate the names of all the applicants, the creditor may attach to the back of the form a separate page listing the remaining applicants.

37(a)(6) Property

Appendix C to Regulation X requires at the top of the GFE the "address or location of the property" for which the financing is sought. The Bureau proposes to use its authority in TILA section 105(a), RESPA section 19(a), and section 1032(a) of the Dodd-Frank Act to impose a similar requirement for the Loan Estimate required by proposed § 1026.19(e). The Bureau believes that, by providing the consumer with basic information about the property that is the subject of the loan transaction, this disclosure will promote the informed use of credit and more effective advance notice of settlement costs and will enable consumers to better understand the costs, benefits, and risks associated with mortgage transactions.

Accordingly, proposed § 1026.37(a)(6) requires the creditor to disclose the street address or location of the property that secures the transaction that is the subject of the Loan Estimate. Proposed comment 37(a)(6)-1 instructs creditors to provide a legal description or other locator for the property in cases where there is no street address. The proposed comment also clarifies that a zip code would be required in all instances.

37(a)(7) Sale Price

Proposed § 1026.37(a)(7)(i) requires disclosure of the contract sale price for the property identified in proposed § 1026.37(a)(6). For transactions that do not involve a seller, proposed § 1026.37(a)(7)(ii) requires disclosure of the estimated value for the property identified in proposed § 1026.37(a)(6). Proposed comment 37(a)(7)-1 provides guidance regarding the requirement to provide the estimated value of the property, if a creditor has performed its own estimate or obtained an appraisal or valuation of the property.

The disclosure of the contract sale price and estimated property value, as applicable, is a new requirement, which the Bureau proposes pursuant to its authority under TILA section 105(a), RESPA section 19(a), and section 1032(a) of the Dodd-Frank Act for transactions subject to proposed § 1026.19(e). The Bureau believes that including the contract sales price or estimated property value in the Loan Estimate will help promote the informed use of credit and more effective advance notice of settlement costs and will enable consumers to better understand the costs, benefits, and risks associated with mortgage transactions by ensuring that consumers have in a single location all the information needed to decide whether to enter into a legal obligation.

37(a)(8) Loan Term

Existing appendix C to Regulation X requires the loan originator to disclose the loan term as part of the "Summary of Your Loan" disclosure. Regulation Z does not have a similar requirement, although TILA provides for such a disclosure.[158] Proposed § 1026.37(a)(8)

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[158] TILA section 128(a)(6) requires disclosure of the "number, amount, and due dates or period" of periodic payments which, in effect, makes disclosure of the loan term a statutory requirement. Section 1026.18(g)

essentially mirrors appendix C to Regulation X and requires the creditor to disclose the term to maturity of the credit. The prototype mortgage disclosures used at the Bureau's consumer testing displayed this in terms of years, and consumers were able to understand and evaluate easily the term to maturity. The Bureau believes that this unit of time provides a frame of reference to consumers that they use more regularly and that is easier to understand than months, which may result in large numbers that are unfamiliar to consumers, such as 180 or 360 months. Accordingly, proposed § 1026.37(a)(8) requires the loan term to be expressed in years.

The Bureau understands from industry feedback provided in connection with the Bureau's stakeholder outreach that some adjustable rate loans may be structured so that the periodic principal and interest payment is fixed and increases in the interest rate increase the loan term instead of the payment. Accordingly, proposed comment 37(a)(8)-1 provides guidance regarding compliance with the requirement of proposed § 1026.37(a)(8) if the term to maturity is adjustable under the terms of the legal obligation.

The Bureau proposes § 1026.37(a)(8) pursuant to its authority under TILA section 105(a), RESPA section 19(a), and section 1032(a) of the Dodd-Frank Act to implement TILA section 128(a)(6) and because disclosing the loan term will help promote the informed use of credit and more effective advance notice of settlement costs and will enable consumers to better understand the costs, benefits, and risks associated with mortgage transactions.

37(a)(9) Purpose

Neither Regulation Z nor Regulation X currently requires disclosure of the purpose of the loan. With the number of loan products available on the market, some of which are targeted for

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implements TILA section 128(a)(6) for non-mortgage transactions, but there is no corresponding disclosure requirement for mortgage loan transactions in existing § 1026.18(s). In this proposal, the Bureau intends to implement TILA section 128(a)(6) by requiring disclosure of the loan term for mortgages in proposed § 1026.37(a)(8).

a particular purpose, inclusion of this information on the Loan Estimate will promote the informed use of credit and more effective advance notice of settlement costs and will enable consumers to better understand the costs, benefits, and risks associated with mortgage transactions. Accordingly, the Bureau proposes to use its authority under TILA section 105(a), RESPA section 19(a), and section 1032(a) of the Dodd-Frank Act to require creditors to disclose the intended purpose of the extension of credit.

Under proposed § 1026.37(a)(9), the creditor is required to disclose as the purpose of the loan one of the following: (1) purchase; (2) refinance; (3) construction; or (4) home equity loan. Proposed comment 37(a)(9)-1 provides general guidance on identifying the most accurate loan purpose and clarifies that, in disclosing the loan purpose, the creditor must consider all relevant information available to the creditor at the time of the disclosure and that, if there is uncertainty, the creditor may rely on the consumer's stated purpose. The Bureau seeks comment on whether additional loan purposes should be added to § 1026.37(a)(9).

37(a)(9)(i) Purchase

If the credit is to finance the acquisition of the property that is the subject of the loan transaction, proposed § 1026.37(a)(9)(i) requires the creditor to disclose that the loan is a "Purchase." Proposed comment 37(a)(9)-1.i clarifies the meaning of the term "purchase."

37(a)(9)(ii) Refinance

Proposed § 1026.37(a)(9)(ii) requires the creditor to disclose that the loan is for a "Refinance" if, consistent with § 1026.20(a) other than with regard to the identity of the creditor, the credit is to refinance an existing obligation already secured by the property that is the subject of the transaction. Like § 1026.20(a), whether a transaction is a refinancing under proposed § 1026.37(a)(9)(ii) depends on whether the original obligation has been satisfied or extinguished and replaced by a new obligation, based on the parties' contract and applicable law. This may include an obligation under which amounts other than principal remain due under the existing obligation and are to be paid with the new obligation to satisfy the existing obligation. Proposed comment 37(a)(9)-1.ii clarifies the meaning of the term “refinance” and that the consumer may or may not receive cash from the transaction. Proposed comment 37(a)(9)(ii)-1.ii also provides a description of a refinancing with and without cash provided and provides an example of how a consumer may use cash received in a refinancing transaction with cash provided. Proposed comment 37(a)(9)-2 also clarifies that proposed § 1026.37(a)(9)(ii), unlike § 1026.20(a), applies to all such transactions even if the refinancing is undertaken by a new creditor.

37(a)(9)(iii) Construction

If the extension of credit is to finance the construction of a dwelling on the property, proposed § 1026.37(a)(9)(iii) requires the creditor to disclose that the loan is for “Construction.” Proposed comment 37(a)(9)-1.iii clarifies that the creditor is required to disclose that the loan is for “construction” both in transactions where the extension of credit is to cover the costs of a construction project only (“construction-only” loan), whether it is a new construction or a renovation project, and in transactions where a multiple advance loan may be permanently financed by the same creditor (“construction-to-permanent” loan). The proposed comment also clarifies that, in construction-only transactions, the consumer may be required to make interest-only payments during the construction phase of the project with the loan balance due at the completion of the construction project. Finally, proposed comment 37(a)(9)-1.iii cross-references § 1026.17(c)(6)(ii) and comments 17(c)(6)-2 and -3 for further guidance regarding construction-to-permanent transactions.

37(a)(9)(iv) Home Equity Loan

If the extension of credit does not involve the purchase of real property as described in proposed § 1026.37(a)(9)(i) or the construction of a dwelling as described in proposed § 1026.37(a)(9)(iii) and will not be used to refinance an existing obligation as described in proposed § 1026.37(a)(9)(ii), proposed § 1026.37(a)(9)(iv) requires the creditor to state that the extension of credit is for a "Home Equity Loan." Proposed comment 37(a)(9)(iv)-1.iv clarifies that the home equity loan disclosure applies whether the transaction will be secured by a first or subordinate lien on the property.

37(a)(10) Product

Pursuant to TILA section 128(b)(2)(C)(ii), under existing § 1026.18(s), the creditor is required to provide certain information about the interest rate and payments, which is based on the loan product. In proposed § 1026.37(a)(10), the Bureau requires a description of the loan product. The Bureau proposes this new requirement pursuant to its authority under TILA section 105(a), RESPA section 19(a), section 1032(a) of the Dodd-Frank Act, and section 1405(b) of the Dodd-Frank Act with respect to residential mortgage loans. The Bureau believes that requiring the disclosure of the loan product on the Loan Estimate promotes the informed use of credit and more effective advance disclosure of settlement charges by providing consumers with key loan terms early in the transaction and in a clear and conspicuous manner. This disclosure also enables consumers to better understand the costs, benefits, and risks associated with mortgage transactions. In addition, the disclosure of the loan product may improve consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures, and is in the interest of consumers and in the public interest.

Specifically, proposed § 1026.37(a)(10)(i) requires the creditor to identify the type of loan product for which the consumer has applied and proposed § 1026.37(a)(10)(ii) requires a description of certain loan features added to the loan product that may change the consumer's periodic payment. Proposed § 1026.37(a)(10)(iii) provides instructions on how to disclose loan products that contain one or more loan features, states that the creditor may disclose only one loan feature, and cross-references proposed § 1026.37(a)(10)(ii) as establishing the following hierarchy to be adhered to when disclosing a loan product with more than one loan feature: (1) negative amortization; (2) interest-only; (3) step payment; and (4) balloon payment. Proposed § 1026.37(a)(10)(iv) requires that the disclosure of any loan product or loan feature be preceded by any introductory rate periods, adjustable features, and applicable time periods. This aspect of the proposal would not apply to fixed rate loans with no additional features. Finally, comments to proposed § 1026.37(a)(10) provide further descriptions and examples of the loan products and features to be disclosed, as discussed below.

37(a)(10)(i)

Proposed § 1026.37(a)(10)(i) requires disclosure of one of the following as the product for which the consumer has applied:

37(a)(10)(i)(A) Adjustable Rate

If the annual percentage rate may increase after consummation, but the rates that will apply or the periods for which they will apply are not known at consummation, proposed § 1026.37(a)(10)(i)(A) requires that the loan be disclosed as an "Adjustable Rate." Proposed comment 37(a)(10)-1.i clarifies the proper format for disclosure of an adjustable-rate product.

37(a)(10)(i)(B) Step Rate

Under proposed § 1026.37(a)(10)(i)(B), the loan product is required to be disclosed as a "Step Rate" if the interest rate will change after consummation and the applicable rates and the periods for the applicable rates are known. Proposed comment 37(a)(10)-1.ii clarifies that the proper format for disclosure of a step-rate product.

37(a)(10)(i)(C) Fixed Rate

Proposed § 1026.37(a)(10)(i)(C) requires the creditor to disclose the loan product as a "Fixed Rate" if the product is neither an Adjustable Rate nor a Step Rate, as described in § 1026.37(a)(10)(i)(A) and (B), respectively. Proposed comment 37(a)(10)-1.iii provides guidance regarding the disclosure required by § 1026.37(a)(10)(i)(C).

37(a)(10)(ii)

Proposed § 1026.37(a)(10)(ii) requires the disclosure of loan features that may change the consumer's periodic payment. As noted above, although structured differently, § 1026.18(s) requires a similar disclosure. Proposed § 1026.37(a)(10)(ii) requires the consumer to disclose one of the following features, as applicable: negative amortization, interest-only, step payment, balloon payment, or seasonal payment. Proposed comment 37(a)(10)-2 clarifies the requirements of § 1026.37(a)(10)(iii) and (iv) with respect to the feature that is disclosed and the time period or the length of the introductory period and the frequency of the adjustment periods, as applicable, that preceded the feature. For example: an adjustable-rate product with an introductory rate that is interest-only for the first five years and then adjusts every three years starting in year six would be disclosed as "5 Year Interest Only, 5/3 Adjustable Rate"; a step-rate product with an introductory interest rate that lasts for seven years, and adjusts every year thereafter for the next five years at a predetermined rate would be disclosed as "7/1 Step Rate"; and a fixed rate product that is interest-only for ten years with a balloon payment due at the end of the ten-year period would be disclosed as "10 Year Interest Only, Fixed Rate." The balloon payment feature, however, would be disclosed elsewhere on the form as described in the section-by-section analysis of proposed § 1026.37(b) and (c).

37(a)(10)(ii)(A) Negative Amortization

Proposed § 1026.37(a)(10)(ii)(A) requires that the creditor disclose a "Negative Amortization" loan feature if, under the terms of the legal obligation, the loan balance may increase. Proposed comment 37(a)(10)-2.i provides an example of the disclosure of a loan product with a negative amortization feature.

37(a)(10)(ii)(B) Interest Only

Proposed § 1026.37(a)(10)(ii)(B) requires that the creditor disclose an "Interest Only" loan feature if, under the legal obligation, one or more regular periodic payments may be applied only to interest accrued and not to the loan principal. Proposed comment 37(a)(10)-2.ii provides an example of the disclosure of a loan product with an interest only feature.

37(a)(10)(ii)(C) Step Payment

Proposed § 1026.37(a)(10)(ii)(C) requires that the creditor disclose a "Step Payment" loan feature if the terms of the legal obligation include a feature that involves scheduled variations in the periodic payment during the term of the loan that are not caused by changes in the interest rate. Proposed comment 37(a)(10)-2.iii clarifies that the term "step payment" is sometimes also called a "graduated payment" and provides an example and guidance on the format to be used when disclosing a loan product with a Step Payment feature.

37(a)(10)(ii)(D) Balloon Payment

Proposed § 1026.37(a)(10)(ii)(D) requires that the creditor disclose a "Balloon Payment" loan feature if the transaction includes a balloon payment as defined in proposed § 1026.37(b)(5). Proposed comment 37(a)(10)-2.iv clarifies that the term "balloon payment" has the same meaning as in proposed § 1026.37(b)(5) and provides further guidance on the format to be used when disclosing a loan product with a balloon payment feature.

37(a)(10)(ii)(E) Seasonal Payment

Proposed § 1026.37(a)(10)(ii)(E) requires that the creditor disclose whether the terms of the legal obligation expressly provide that regular periodic payments are not scheduled for specified unit-periods on a regular basis, disclosed as a "Seasonal Payment" feature. The Bureau understands from industry feedback provided in connection with the Bureau's stakeholder outreach that some loans, which may be more prevalent in the community bank market, may be structured so that periodic principal and interest payments are not scheduled to be made by the consumer in between specified unit-periods on a regular basis. For example, such a loan may be structured so that payments are not required to be made by the consumer during the months of June through August each year of the loan term. These loans are sometimes called "teacher loans." Accordingly, proposed § 1026.37(a)(10)(ii)(E) provides for the disclosure of such a product feature. Proposed comment 37(a)(10)-2.v provides guidance regarding this requirement.

37(a)(10)(iii)

Proposed § 1026.37(a)(10)(iii) requires that if more than one loan feature is applicable to the transaction, the creditor disclose only the first applicable loan feature from the order in which they are presented in proposed § 1026.37(a)(10)(ii). This proposed order of loan features prioritizes the loan features to ensure that consumers receive information about potential costs and risks in a readily visible format, understanding that consumers will receive information about some applicable features elsewhere in the Loan Estimate. For example, the existence of a balloon payment is also disclosed under both proposed § 1026.37(b) and (c), and thus, is later in the order of loan features under proposed § 1026.37(a)(10)(iii). In addition, seasonal payments do not pose as great a risk to consumers as do negatively amortizing or non-amortizing payments, and thus, disclosure of these features is earlier than seasonal payments in the order under proposed § 1026.37(a)(10)(iii).

37(a)(10)(iv)

Finally, proposed § 1026.37(a)(10)(iv) requires the creditor to include in the disclosures required by § 1026.37(a)(10)(i) and (ii) information regarding any introductory rate period, adjustment period, or time period, as applicable, and that this information should precede both the loan product and any features disclosed, as applicable. For example, if the consumer applies for an adjustable-rate loan that includes a scheduled regular periodic payment that results in negative amortization in years one through three, interest-only payments in years four and five, and an interest rate that adjusts every two years after year three, the creditor would disclose the product as “3 Year Negative Amortization, 3/2 Adjustable Rate.”

37(a)(11) Loan Type

Existing appendix A to Regulation X requires disclosure of the loan type in section B of the RESPA settlement statement. The Bureau proposes to use its authority under TILA section 105(a), RESPA section 19(a), and Dodd-Frank Act 1032(a) to require a similar disclosure. The types of transactions disclosed under proposed § 1026.37(a)(11) may include different cost structures or underwriting requirements. The disclosure of the type of transaction enables consumers to evaluate whether it is the type of transaction that is best suited for their personal situation. The Bureau believes that including information regarding the type of transaction for which the consumer has applied will promote the informed use of credit and more effective advance disclosure of closing costs, and will enable consumers to better understand the costs, benefits, and risks associated with mortgage transactions by providing consumers with information regarding important characteristics of the loan early in the transaction. Accordingly, under proposed § 1026.37(a)(11), creditors are required to disclose one of the following loan types: Conventional, FHA, VA, or Other.

37(a)(11)(i) Conventional

If the loan is not guaranteed or insured by a Federal or State government agency, proposed § 1026.37(a)(11)(i) requires the creditor to disclose that the loan is a "Conventional."

37(a)(11)(ii) FHA

If the loan is insured by the Federal Housing Administration, proposed § 1026.37(a)(11)(ii) requires the creditor to disclose that the loan is a "FHA."

37(a)(11)(iii) VA

If the loan is guaranteed by the U.S. Department of Veterans Affairs, proposed § 1026.37(a)(11)(iii) requires the creditor to disclose that the loan is a "VA."

37(a)(11)(iv) Other

For federally-insured or guaranteed loans that do not fall within the categories described in proposed § 1026.37(a)(11)(i) through (iii) and loans insured or guaranteed by a State agency or other entity, proposed § 1026.37(a)(11)(iv) requires the creditor to disclose the loan type as "Other" and provide a brief description of the loan. Proposed comment 1026.37(a)(11)-1 provides details on the type of loans that would be categorized as "Other" and an example of an acceptable description of a loan that falls within that category.

37(a)(12) Loan Identification Number (Loan ID #)

Appendix A to Regulation X requires the settlement agent to provide the "loan number" in the RESPA settlement statement. The Bureau proposes to use its authority in TILA section 105(a), RESPA section 19(a), and Dodd-Frank Act section 1032(a) to require disclosure of the loan number on the Loan Estimate. The Bureau believes that including this information in a prominent position on the Loan Estimate will promote the informed use of credit and more effective advance disclosure of settlement costs and will enable consumers to better understand the costs, benefits, and risks associated with mortgage transactions by providing consumers with access to information they may use repeatedly throughout the transaction.

Accordingly, proposed § 1026.37(a)(12) requires the creditor to provide a unique number that may be used by the lender, consumer, and other parties to identify the loan transaction, labeled as "Loan ID #." Proposed comment 37(a)(12)-1 clarifies that the lender has the discretion to create the unique loan identification number and that different and unrelated loan transactions with the same creditor may not share the same loan identification number.

37(a)(13) Rate Lock

Existing appendix C to Regulation X requires the loan originator to disclose information regarding the expiration date for the interest rate, charges, and related terms offered by the originator in the GFE. The Bureau believes that this information is critical to the consumer's ability to understand the transaction and avoid the uninformed use of credit. Furthermore, disclosure of this information promotes more effective advance disclosure of settlement costs and will enable consumers to better understand the costs, benefits, and risks associated with mortgage transactions. Thus, the Bureau proposes to use its authority under TILA section 105(a), RESPA section 19(a), and Dodd-Frank Act section 1032(a) to require creditors to provide the rate lock information currently provided in the RESPA GFE.

Consistent with this requirement, proposed § 1026.37(a)(13) requires the creditor to disclose whether the interest rate identified under proposed § 1026.37(b)(2) has been locked by the consumer and, if set, proposed § 1026.37(a)(13)(i) requires disclosure of the date and time (including the applicable time zone) the locked rate would expire. Proposed § 1026.37(a)(13)(ii) states that the "rate lock" statement required by proposed § 1026.37(a)(13) is to be accompanied by a statement notifying the consumer that the interest rate, points, and lender credits provided in the Loan Estimate are subject to change unless the rate has been set by the consumer and the date and time (including the applicable time zone) all estimated closing costs provided in the Loan Estimate will expire. Proposed comment 37(a)(13)-1 clarifies that for purposes of proposed § 1026.37(a)(13), a disclosed interest rate is set for a specific period of time even if subject to conditions set forth in the rate-lock agreement between the creditor and consumer. Proposed comment 37(a)(13)-2 clarifies that the information provided under proposed § 1026.37(a)(13) is required whether or not the transaction is consummated or the terms are otherwise not accepted or extended. Proposed comment 37(a)(13)-3 states that all times provided in the disclosure must reference the applicable time zone and provides an example of an appropriate disclosure of the applicable time zone.

37(b) Loan Terms

To shop for and understand the cost of credit, consumers must be able to identify and understand the key loan terms offered to them. As discussed below, the Bureau's consumer testing suggests that the following are key loan terms that consumers recognize and expect to see on closed-end mortgage disclosures, together with their settlement charges: loan amount; interest rate; periodic principal and interest payment; whether the loan amount, interest rate, or periodic payment can increase; and whether the loan has a prepayment penalty or balloon payment.

TILA requires the disclosure of some of these key loan terms, but not all. Notably, the loan amount and interest rate are currently not specifically required to be disclosed by TILA section 128. 15 U.S.C. 1638. Although Regulation Z currently requires the interest rate to be disclosed in the payment schedule required by § 1026.18(s), it does not require the loan amount to be disclosed for non-HOEPA loans, and does not require a summary table identifying these key loan terms for closed-end credit secured by real property. 12 CFR 1026.18. For federally related mortgage loans, § 1024.7(d) of Regulation X currently requires the GFE to contain a table on page 1, labeled "Summary of your loan terms," which contains the following information: (i) initial loan amount; (ii) loan term; (iii) initial interest rate; (iv) initial monthly amount owed for principal, interest, and mortgage insurance; (v) whether the interest rate can rise, and if so, the maximum interest rate and the date of the first interest rate change; (vi) whether the loan balance can rise, and if so, the maximum loan balance; (vii) whether the monthly amount owed for principal, interest, and mortgage insurance can rise, and if so, the payment amount at the first change and the maximum payment; (viii) whether the loan has a prepayment penalty and the maximum prepayment penalty; and (xi) whether the loan has a balloon payment, the amount, and when it is due. 12 CFR 1024.7(d).

Pursuant to its authority under TILA section 105(a), RESPA section 19(a), and Dodd-Frank Act section 1032(a), the Bureau proposes to require creditors to provide the key loan terms described above in a summary table as part of the integrated Loan Estimate required by proposed § 1026.19(e) for closed-end transactions secured by real property (other than reverse mortgages). At the Bureau's consumer testing, participants were able to use the summary table to identify and compare easily the key loan terms for different loans. Based on its consumer testing, the Bureau believes that a concise loan summary table will improve consumer understanding of the loan terms presented, such as an understanding of whether the consumer can afford the loan, enable comparisons of different credit terms offered by the same or multiple creditors, and enable consumers to verify information about the loan provided by the creditor orally or in some other form, such as a worksheet. The Bureau believes that this disclosure will effectuate the purposes of TILA by promoting the informed use of credit and assuring a meaningful disclosure to consumers, including more effective advance disclosure of settlement costs. Furthermore, consistent with section 1032(a) of the Dodd-Frank Act, this disclosure would ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

The table appears under the heading “Loan Terms” to enhance visibility. The individual items of information in the table are also labeled to enhance visibility. The format provides consumers with a bold “yes” or “no” answer to the questions of whether the loan amount, interest rate, or periodic payment can increase, and whether the loan has a prepayment penalty or balloon payment. The format of the Loan Terms table will help consumers quickly and easily identify their key loan terms.

The Bureau proposes comment 37(b)-1 to provide additional guidance to creditors regarding the Loan Terms table. Proposed comment 37(b)-1 clarifies that the Loan Terms table should reflect the terms of the legal obligation that the consumer will enter into, based on information the creditor knows or reasonably should know. A discussion of the specific items included in the table follows.

37(b)(1) Loan Amount

Neither TILA nor RESPA specifically requires the disclosure of the loan amount for the transaction. TILA section 128(a)(2) requires disclosure of the amount financed, of which the principal amount of the loan is the most significant component, but the section does not require a separate disclosure of the principal amount of the loan. 15 U.S.C. 1638(a)(2). Regulation Z

§ 1026.32(c)(5) currently requires the disclosure of the total amount the consumer will borrow, as reflected by the face amount of the note, for loans subject to HOEPA. For federally related mortgage loans under RESPA, § 1024.7(d) of Regulation X currently requires the disclosure of the loan amount in the summary table on page 1 of the GFE with the text, "Your initial loan amount is."

The Bureau believes, based on its consumer testing, that the loan amount is important to consumers to understand readily, compare, and verify the amount of credit offered to them. The principal amount of the loan is a basic element of the transaction that should be disclosed to consumers.

Pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and RESPA section 19(a), the Bureau proposes to require a disclosure of the principal amount of the transaction for closed-end transactions secured by real property (other than reverse mortgages). The Bureau proposes this requirement to effectuate the purposes of TILA to promote the informed use of credit and ensure a meaningful disclosure of credit terms to consumers. In addition, consistent with section 1032(a) of the Dodd-Frank Act, the Bureau believes that the disclosure of the loan amount in the Loan Terms table may ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances. Further, like HUD, the Bureau believes the loan amount is necessary to understanding the transaction and its disclosure would effectuate the purposes of RESPA.

Proposed § 1026.37(b)(1) requires creditors to disclose the "loan amount," which is defined as the amount of credit to be extended under the terms of the legal obligation. This disclosure is labeled “Loan Amount” to enhance visibility. Disclosing the loan amount may also alert the consumer to fees that are financed in addition to the amount of credit sought for the consumer’s purchase, refinance, or other purpose.

37(b)(2) Interest Rate

TILA section 128(a)(3) and (4) requires disclosure of the finance charge and the annual percentage rate, for which the interest rate is a factor in the calculation. 15 U.S.C. 1638(a)(3), (4).[159] However, the statute does not require a separate disclosure of the interest rate. Currently, Regulation Z requires creditors to disclose the interest rate only in the interest rate and payment summary table required by § 1026.18(s). For federally related mortgage loans, § 1024.7(d) of Regulation X requires that the GFE state the interest rate with the text “your initial interest rate is” in the summary table on page 1.

The Bureau believes that the interest rate is an important loan term that consumers should be able to locate readily on the disclosure, because it is the basis for the periodic payments of principal and interest that the consumer will be obligated to make. Participants in the Bureau’s consumer testing used the interest rate as one of the primary factors when evaluating, comparing, and verifying loan terms.

The Bureau proposes to use its authority under TILA section 105(a) to require disclosure of the interest rate for the transaction to effectuate the purposes of TILA to promote the informed use of credit and ensure a meaningful disclosure of credit terms to consumers. In addition, consistent with section 1032(a) of the Dodd-Frank Act, the Bureau believes that the disclosure of the interest rate in the Loan Terms table may ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers

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[159] As discussed below, the finance charge disclosure is implemented in proposed § 1026.38(o)(2). The APR disclosure is implemented in proposed §§ 1026.37(l)(2) and 1026.38(o)(4).

in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances. Further, like HUD, which required disclosure of the interest rate in its good faith estimate form, the Bureau proposes to use its authority under RESPA section 19(a) to require disclosure of the interest rate, because the interest rate is important to consumer understanding of the transaction.

Proposed § 1026.37(b)(2) requires disclosure of the initial interest rate that will be applicable to the transaction, labeled the “Interest Rate.” If the initial interest rate may adjust based on an index, the creditor must disclose the fully-indexed rate, which is defined within that paragraph. Proposed comment 37(b)(2)-1 provides guidance regarding how to calculate the fully-indexed rate to be disclosed.

37(b)(3) Principal and Interest Payment

TILA section 128(a)(6) requires disclosure of the number, amount, and due dates or period of payments scheduled to repay the loan. 15 U.S.C. 1638(a)(6). TILA section 128(b)(2)(C)(ii) requires the maximum principal and interest payment and examples of other potential principal and interest payments to be disclosed when the “annual rate of interest is variable…or the regular payments may otherwise be variable.” 15 U.S.C. 1638(b)(2)(C)(ii).

Currently, for closed-end transactions secured by real property or a dwelling, Regulation Z requires creditors to disclose the periodic principal and interest payment only in the interest rate and payment summary table required by § 1026.18(s). For federally related mortgage loans, § 1024.7(d) of Regulation X requires the GFE to contain the initial periodic payment for principal and interest and mortgage insurance with the text “Your initial monthly amount owed for principal, interest, and any mortgage insurance is.”

The Bureau believes that, like the interest rate, the periodic principal and interest payment is a key loan term that consumers should be able to locate readily on the form. The Bureau's consumer testing indicates that consumers use the periodic principal and interest payment of the loan as a primary factor in evaluating and comparing a loan. The Bureau believes that a specific disclosure of the periodic principal and interest payment in the Loan Terms table will assist consumers in readily evaluating, comparing, and verifying possible loan terms. This payment enables consumers to compare loans of one or multiple creditors based on the same measure, rather than a payment that may include estimates for escrow payments for property costs or mortgage insurance. Accordingly, the Bureau proposes § 1026.37(b)(3) to require the Loan Terms table to include the periodic principal and interest payment simply labeled "Principal & Interest," with an indication of the applicable unit-period. If the initial periodic payment may adjust based on changes to an index, the payment disclosed is required to be based on the fully-indexed rate disclosed under proposed § 1026.37(b)(2). The unit-period that is applicable to a transaction is currently described in appendix J to Regulation Z. Proposed comment 37(b)(3)-1 clarifies that the label of the periodic principal and interest payment should reflect the appropriate unit-period for the transaction. Proposed comment 37(b)(3)-2 provides guidance regarding how to calculate the payment to be disclosed if the initial interest rate is adjustable based on an index.

The Bureau believes that the total periodic payment the consumer would be responsible to make to the creditor, including any required mortgage insurance and escrow payments, is also important for the consumer to consider when evaluating a loan offer. This amount allows a consumer to determine the affordability of the credit transaction and underlying real estate transaction. Accordingly, the Bureau proposes to include with the principal and interest payment a statement referring the consumer to the total periodic payment, including estimated amounts for any escrow and mortgage insurance payments, which is disclosed in the Projected Payments table under proposed § 1026.37(c), immediately below the Loan Terms table.

The Bureau proposes to use its authority under TILA section 105(a) to require disclosure of the periodic principal and interest payment, along with a reference to the total periodic payment, in the Loan Terms table to effectuate the purposes of TILA to promote the informed use of credit and ensure a meaningful disclosure of credit terms to consumers. In addition, consistent with section 1032(a) of the Dodd-Frank Act, the Bureau believes that this disclosure may ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances. Further, the Bureau proposes to use its authority under RESPA section 19(a) to require this disclosure because the disclosure will improve consumer understanding of the transaction, including settlement costs. The Bureau also proposes this requirement pursuant to its authority under section 1405(b) of the Dodd-Frank Act. The Bureau believes this disclosure may improve consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures, and is in the interest of consumers and in the public interest.

37(b)(4) Prepayment Penalty

Currently, TILA section 128(a)(11), 15 U.S.C. 1638(a)(11), and Regulation Z § 1026.18(k)(1) require the creditor to disclose whether or not a penalty may be imposed if the obligation is prepaid in full for a transaction that includes a finance charge computed from time to time by application of a rate to the unpaid principal balance. For federally related mortgage loans, § 1024.7(d) of Regulation X requires the summary table on page 1 of the GFE to state whether or not the loan has a prepayment penalty with the text, "Does your loan have a prepayment penalty?"

The Bureau's consumer testing indicates that consumers use the existence of a prepayment penalty as an important factor in understanding and evaluating loan offers. Accordingly, because of the importance to consumers of prepayment penalties, proposed § 1026.37(b)(4) requires disclosure of whether the loan has a prepayment penalty in the Loan Terms table, labeled "Prepayment Penalty." As discussed below, under proposed § 1026.37(b)(7), the existence or non-existence of a prepayment penalty provision in the loan contract is indicated by an affirmative or negative answer (designed as a simple "yes" or "no") to the question, "Does the loan have these features?" In the Bureau's consumer testing, consumers were able to use this disclosure to determine easily if the loan had a prepayment penalty.

The Bureau proposes to require disclosure of whether the transaction includes a prepayment penalty under TILA section 128(a)(11), its implementation authority under TILA section 105(a), and RESPA section 19(a). The Bureau believes this additional information will promote consumer understanding of the cost of credit and more effective disclosure of the terms of the credit.

Definition of Prepayment Penalty

TILA establishes certain disclosure requirements for transactions for which a penalty is imposed upon prepayment, but does not define the term "prepayment penalty." TILA section 128(a)(11) requires that the transaction-specific disclosures for closed-end consumer credit transactions disclose whether (1) a consumer is entitled to a rebate of any finance charge upon refinancing or prepayment in full pursuant to acceleration or otherwise, if the obligation involves a precomputed finance charge, and (2) a "penalty" is imposed upon prepayment in full if the obligation involves a finance charge computed from time to time by application of a rate to the unpaid principal balance. 15 U.S.C. 1638(a)(11). Also, TILA section 128(a)(12) requires that the transaction-specific disclosures state that the consumer should refer to the appropriate contract document for information regarding certain loan terms or features, including "prepayment rebates and penalties." 15 U.S.C. 1638(a)(12).

Section 1026.18(k) implements (and largely mirrors) TILA section 128(a)(11). Section 1026.18(k)(1) provides that "when an obligation includes a finance charge computed from time to time by application of a rate to the unpaid principal balance," the creditor must disclose "a statement indicating whether or not a penalty may be imposed if the obligation is prepaid in full." Comment 18(k)(1)-1 clarifies that such a "penalty" includes, for example, "interest charges for any period after prepayment in full is made" and a minimum finance charge, but does not include, for example, loan guarantee fees. Section 1026.18(k)(2) provides for the disclosure of a statement indicating whether or not the consumer is entitled to a rebate of any finance charge if the obligation is prepaid in full when an obligation includes a finance charge other than the finance charge described in § 1026.18(k)(1). Comment 18(k)(2)-1 clarifies that § 1026.18(k)(2) applies to any finance charges that do not take account of each reduction in the principal balance of an obligation, such as recomputed finance charges and charges that take account of some but not all reductions in principal.

In addition, TILA section 129(c)(1) limits the circumstances in which a high-cost mortgage may include a prepayment penalty where the consumer pays all or part of the principal before the date on which the principal is due. 15 U.S.C. 1639(c)(1)(A). In the high-cost mortgage context, any method of computing a refund of unearned scheduled interest is a prepayment penalty if it is less favorable than the actuarial method, as defined by section 933(d) of the Housing and Community Development Act of 1992. 15 U.S.C. 1639(c)(1)(B). Section 1026.32(d)(6) implements these TILA provisions.

Although the disclosure requirements under current § 1026.18(k) apply to closed-end mortgage and non-mortgage transactions, in its 2009 Closed-End Proposal, the Board proposed to establish a new § 226.38(a)(5) for disclosure of prepayment penalties for closed-end mortgage transactions. *See* 74 FR at 43334, 43413. In proposed comment 38(a)(5)-2, the Board stated that examples of prepayment penalties include charges determined by treating the loan balance as outstanding for a period after prepayment in full and applying the interest rate to such "balance," a minimum finance charge in a simple-interest transaction, and charges that a creditor waives unless the consumer prepays the obligation. 74 FR at 43413. In addition, the Board's proposed comment 38(a)(5)-3 listed loan guarantee fees and fees imposed for preparing a payoff statement or other documents in connection with the prepayment as examples of charges that are not prepayment penalties. *Id.* The Board's 2010 Mortgage Proposal included amendments to existing comment 18(k)(1)-1 and proposed comment 38(a)(5)-2 stating that prepayment penalties include "interest" charges after prepayment in full even if the charge results from interest accrual amortization used for other payments in the transaction. *See* 75 FR at 58756, 58781.[160]

Prepayment penalties were also addressed in the Board's 2011 ATR Proposal implementing sections 1411, 1412, and 1414 of the Dodd-Frank Act (codified at 15 U.S.C. 1629c), which expand the scope of the ability-to-repay requirement under TILA and establish "qualified mortgage" standards for complying with such requirement. *See* 76 FR at 27482,

[160] The preamble to the Board's 2010 Mortgage Proposal explained that the proposed revisions to current Regulation Z commentary and the proposed comment 38(a)(5) from the Board's 2009 Closed-End Proposal regarding interest accrual amortization were in response to concerns about the application of prepayment penalties to certain Federal Housing Administration (FHA) and other loans (*i.e.*, when a consumer prepays an FHA loan in full, the consumer must pay interest through the end of the month in which prepayment is made). *See* 75 FR at 58586.

27491. Specifically, the Board's proposed § 226.43(b)(10) generally followed the current Regulation Z guidance on prepayment penalties (*i.e.*, comment 18(k)(1)-1) and the proposed definitions and guidance in the Board's 2009 Closed-End Proposal and 2010 Mortgage Proposal. However, the Board's 2011 ATR Proposal differed from the prior proposals and current guidance in the following respects: (1) proposed § 226.43(b)(10) defined prepayment penalty with reference to a payment of "all or part of" the principal in a transaction covered by the provision, while § 1026.18(k) and associated commentary and the Board's 2009 Closed-End Proposal and 2010 Mortgage Proposal referred to payment "in full," (2) the examples provided omitted reference to a minimum finance charge and loan guarantee fees,[161] and (3) proposed § 226.43(b)(10) did not incorporate, and the Board's 2011 ATR Proposal did not otherwise address, the language in § 1026.18(k)(2) and associated commentary regarding disclosure of a rebate of a precomputed finance charge.

Based on the Bureau's consideration of the existing statutory and regulatory definitions of "penalty" and "prepayment penalty" under TILA sections 128(a) and 129(c) and §§ 1026.18(k) and 1026.32(d)(6), the Board's proposed definitions of prepayment penalty, and the Bureau's authority under TILA section 105(a) and Dodd-Frank Act sections 1032(a) and, for residential mortgage transactions, 1405(b), the Bureau is proposing to define "prepayment penalty" in proposed § 1026.37(b)(4) for transactions subject to §§ 1026.19(e) and (f) as a charge imposed for paying all or part of a transaction's principal before the date on which the principal is due. The proposed definition of prepayment penalty as applicable to the transactions subject to §§ 1026.19(e) and (f) broadens the existing statutory and regulatory definitions under TILA

[161] The preamble to the Board's 2011 ATR Proposal addressed why the Board chose to omit these two items. The Board reasoned that a minimum finance charge need not be included as an example of a prepayment penalty because such a charge typically is imposed with open-end, rather than closed-end, transactions. The Board stated that loan guarantee fees are not prepayment penalties because they are not charges imposed for paying all or part of a loan's principal before the date on which the principal is due. *See* 76 FR at 27416.

section 128(a)(11) and § 1026.18(k), and thereby may result in more frequent disclosures of prepayment penalties to consumers than would be made under the existing definitions. Therefore, the Bureau believes that the disclosures of prepayment penalties under proposed § 1026.37(b)(4) will effectuate the purposes of TILA and RESPA by facilitating the informed use of credit and more effective advance disclosure of settlement costs. In addition, the revised disclosures will ensure that the features of mortgage loan products initially and over their terms are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the loan products in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). Furthermore, these disclosures will improve consumers' awareness and understanding of residential mortgage transactions, which is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

Proposed comment 37(b)(4)-1 clarifies that the disclosure of the prepayment penalty under § 1026.37(b)(4) applies to transactions where the terms of the loan contract provide for a prepayment penalty, even though it is not certain at the time of the disclosure whether the consumer will, in fact, make a payment to the creditor that would cause imposition of the penalty. This proposed comment also clarifies that if the transaction includes a prepayment penalty, § 1026.37(b)(7) sets forth the information that must be disclosed under § 1026.37(b)(4).

Proposed comment 37(b)(4)-2.i through -2.iv gives the following examples of prepayment penalties: (1) a charge determined by treating the loan balance as outstanding for a period of time after prepayment in full and applying the interest rate to such "balance," even if the charge results from interest accrual amortization used for other payments in the transaction under the terms of the loan contract; (2) a fee, such as an origination or other loan closing cost, that is waived by the creditor on the condition that the consumer does not prepay the loan; (3) a minimum finance charge in a simple interest transaction; and (4) computing a refund of unearned interest by a method that is less favorable to the consumer than the actuarial method, as defined by section 933(d) of the Housing and Community Development Act of 1992, 15 U.S.C. 1615(d). Proposed comment 37(b)(4)-2.i further clarifies that "interest accrual amortization" refers to the method by which the amount of interest due for each period (*e.g.*, month) in a transaction's term is determined and notes, for example, that "monthly interest accrual amortization" treats each payment as made on the scheduled, monthly due date even if it is actually paid early or late (until the expiration of any grace period). The proposed comment also provides an example where a prepayment penalty of $1,000 is imposed because a full month's interest of $3,000 is charged even though only $2,000 in interest was earned in the month during which the consumer prepaid.

Proposed comment 37(b)(4)-3 clarifies that a prepayment penalty does not include: (1) fees imposed for preparing and providing documents when a loan is paid in full, whether or not the loan is prepaid, such as a loan payoff statement, a reconveyance document, or another document releasing the creditor's security interest in the dwelling that secures the loan; or (2) loan guarantee fees.

Proposed comment 37(b)(4)-4 clarifies that, with respect to an obligation that includes a finance charge that does not take into account each reduction in the principal balance of the obligation (*e.g.*, precomputed finance charges), § 1026.37(b)(4) satisfies disclosure of whether or not the consumer is entitled to a rebate of any finance charge if the obligation is prepaid in full or part. The comment further clarifies that if the transaction involves both a precomputed finance charge and a finance charge computed by application of a rate to an unpaid balance, disclosures about both the prepayment rebate and the prepayment penalty are made under § 1026.37(b)(4) as one disclosure to the question required by § 1026.37(b)(7). For example, if in such a transaction, a portion of the precomputed finance charge will not be provided as a rebate and also a prepayment penalty based on the amount prepaid is provided for by the loan contract, both disclosures are made under § 1026.37(b)(4) as one aggregate amount, stating the maximum amount and time period under § 1026.37(b)(7). If the transaction instead provides a rebate of the precomputed finance charge upon prepayment, but imposes a prepayment penalty based on the amount prepaid, the disclosure required by § 1026.37(b)(4) is an affirmative answer and the information required by § 1026.37(b)(7). This proposed comment incorporates existing guidance in Regulation Z commentary regarding disclosure of whether the consumer is entitled to a rebate of finance charges that do not take into account each reduction in principal balance. *See* comments 18(k)-2 and -3 and 18(k)(2)-1.

The definition of prepayment penalty in proposed § 1026.37(b)(4) and associated commentary substantially incorporates the definitions of and guidance on prepayment penalty from the Board's 2009 Closed-End Proposal, 2010 Mortgage Proposal, and 2011 ATR Proposal and, as necessary, reconciles their differences. For example, the Bureau proposes that the prepayment penalty definition in § 1026.37(b)(4) refer to payment of "all or part of a covered transaction's principal," rather than merely payment "in full," because knowledge of whether a partial prepayment triggers a penalty is important for consumers. Also, the Bureau is proposing to incorporate the language from the Board's 2009 Closed-End Proposal and 2010 Mortgage Proposal but omitted in the Board's 2011 ATR Proposal listing a minimum finance charge as an example of a prepayment penalty and stating that loan guarantee fees are not prepayment penalties, because similar language is found in longstanding Regulation Z commentary. Based on the differing approaches taken by the Board in its recent mortgage proposals, however, the

Bureau seeks comment on whether a minimum finance charge should be listed as an example of a prepayment penalty and whether loan guarantee fees should be excluded from the definition of prepayment penalty.

The Bureau expects to coordinate the definition of prepayment penalty in proposed § 1026.37(b)(4) with the definitions in the Bureau's other pending rulemakings mandated by the Dodd-Frank Act concerning ability-to-repay, high-cost mortgages under HOEPA, and mortgage servicing. To the extent consistent with consumer protection objectives, the Bureau believes that adopting a consistent definition of "prepayment penalty" across its various pending rulemakings affecting closed-end mortgages will facilitate compliance. As an additional part of this effort to adopt a consistent regulatory definition of "prepayment penalty," the Bureau is also proposing certain conforming revisions to § 1026.18(k) and associated commentary, as discussed earlier in the section-by-section analysis for the proposed revised § 1026.18(k).

37(b)(5) Balloon Payment

TILA section 128(a)(6) requires disclosure of the number, amount, and due dates or period of payments scheduled to repay the loan. Currently, for closed-end transactions secured by real property or a dwelling, Regulation Z requires balloon payments to be disclosed only in connection with the interest rate and payment summary table required by § 1026.18(s). For federally related mortgage loans, § 1024.7(d) of Regulation X requires the GFE to state in the summary table on page 1 whether or not the loan has a balloon payment with the text, "Does your loan have a balloon payment?"

Pursuant to its authority under TILA section 128(a)(6), TILA section 105(a), RESPA section 19(a), and Dodd-Frank Act section 1032(a), the Bureau proposes § 1026.37(b)(5), which requires disclosure of whether the credit transaction requires a balloon payment, as defined within the provision. This disclosure is provided in the Loan Terms table, labeled “Balloon Payment.” As discussed below, under proposed § 1026.37(b)(7), the existence or non-existence of a balloon payment provision is indicated by a “yes” or “no” answer to the question, “Does the loan have these features?” In the Bureau’s consumer testing, consumers were able to determine readily whether a loan had a balloon payment. The Bureau’s consumer testing indicates that consumers consider whether a loan has a balloon payment to be an important factor in evaluating loans. The Bureau believes that this disclosure will effectuate the purposes of TILA and RESPA because it will promote the informed use of credit and assure a meaningful disclosure to consumers, and thus, will benefit consumers and the public and result in more effective advance disclosure.

Definition of Balloon Payment

Sections 1412 and 1432(b) of the Dodd-Frank Act both define “balloon payment” as “a scheduled payment that is more than twice as large as the average of earlier scheduled payments.” These definitions are incorporated into TILA sections 129C(b)(2)(A)(ii) and 129(e), respectively. 15 U.S.C. 1639c(b)(2)(A)(ii), 1639(e). Regulation Z § 1026.18(s)(5)(i), however, defines “balloon payment” as “a payment that is more than two times a regular periodic payment.”

The Board’s 2011 ATR Proposal implementing section 1412 of the Dodd-Frank Act incorporates Regulation Z’s existing definition of “balloon payment” in § 1026.18(s)(5)(i) rather than the definition in section 1412. *See* proposed § 226.43(e)(2)(i)(C), 76 FR 27390, 27484. The Board noted that this definition is substantially similar to the statutory one, except that it uses as its benchmark any regular periodic payment rather than the average of earlier scheduled payments. 76 FR at 27455. The Board also reasoned that incorporating the Regulation Z, rather than Dodd-Frank Act, definition of "balloon payment" facilitates compliance by affording creditors a single definition of the term within Regulation Z. *Id.* at 27456.

By defining "balloon payment" in the 2011 ATR Proposal based on the Regulation Z definition, the Board proposed to adjust the Dodd-Frank Act statutory definition. In doing so, the Board stated that it was relying on TILA section 105(a) authority to make such adjustments for all or any class of transactions as in the judgment of the Board are necessary or proper to facilitate compliance with TILA. *Id.*; 15 U.S.C. 1604(a). The class of transactions for which the adjustment was proposed encompassed all transactions covered by the 2011 ATR Proposal, *i.e.*, closed-end consumer credit transactions that are secured by a dwelling. The Board, however, solicited comment on the appropriateness of the proposed adjustment. The Board also stated that the proposed adjustment was supported by the Board's authority under TILA section 129B(e) to condition terms, acts, or practices relating to residential mortgage loans that the Board finds necessary or proper to facilitate compliance. 15 U.S.C. 1639b(e).

In view of the different definitions of "balloon payment" between the Dodd-Frank Act and Regulation Z and the approach taken by the Board in the 2011 ATR Proposal, and based on the Bureau's authority under TILA section 105(a) and Dodd-Frank Act sections 1032(a), and for residential mortgage loans, Dodd-Frank Act section 1405(b), the Bureau is proposing a definition of "balloon payment" in proposed § 1026.37(b)(5) that largely incorporates the existing Regulation Z definition in § 1026.18(s)(5)(i), *i.e.*, a payment that is more than two times a regular periodic payment. For the reasons discussed below, the Bureau believes that the proposed definition will promote the informed use of credit and facilitate compliance with TILA, consistent with TILA section 105(a). In addition, this definition will enhance consumer understanding of the costs, benefits, and risks associated with the transaction in light of the facts and circumstances (consistent with Dodd-Frank Act section 1032(a)), and improve consumers' awareness and understanding of residential mortgage transactions, which is in the interest of consumers and the public (consistent with Dodd-Frank Act section 1405(b)).

The proposed definition in § 1026.37(b)(5) revises the current regulatory language to state that a balloon payment cannot be a regular periodic payment. This revision is intended to prevent a regular periodic payment following a scheduled or permitted payment increase under the terms of a loan contract (*e.g.*, based on a rate adjustment under an adjustable rate loan) from being characterized as a balloon payment if it is more than two times a regular periodic payment occurring prior to the payment increase. Moreover, proposed commentary to § 1026.37(b)(5) clarifies the meaning of regular periodic payment and discusses how all regular periodic payments during the loan term are used to determine whether a particular payment is a balloon payment (*i.e.*, if the particular payment is more than two times any one regular periodic payment during the loan term, it is disclosed as a balloon payment under § 1026.37(b)(5) unless the particular payment itself is a regular periodic payment). These clarifications are intended to resolve ambiguity in the current regulatory definition and associated commentary, and thereby facilitate compliance.[162]

This definition applies to all transactions subject to proposed § 1026.19(e). The Bureau recognizes that this proposed definition deviates from that prescribed in the Dodd-Frank Act. However, for the reasons set forth in the 2011 ATR Proposal, the Bureau believes that adopting a consistent definition within Regulation Z will promote the informed use of credit and facilitate compliance and, therefore, will also benefit consumers and the public. *See* 76 FR at 27456.

[162] According to existing comment 32(d)(1)(i), a payment is a "regular periodic payment" if it is not more than twice the amount of other payments. This definition, which is essentially the mirror image of the balloon payment definition in § 1026.18(s)(5)(i) (*i.e.*, a payment that is more than two times a regular periodic payment), leaves uncertainty as to how to determine whether a payment is a balloon payment when there are multiple regular periodic payments during the loan term (*e.g.*, if the regularly scheduled payments increase due to an adjustable rate feature).

The Bureau recognizes that these additional clarifications may result in more payments being disclosed as balloon payments than under the current regulatory definition. The Bureau believes that more frequent disclosure of balloon payment terms facilitates the informed use of credit, ensures that the features of mortgage loan products initially and over their terms are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the loan products in light of the facts and circumstances, and improves consumers' awareness and understanding of residential mortgage transactions, which is in the interest of consumers and the public. The Bureau seeks comment, however, on whether the definition of balloon payment in proposed § 1026.37(b)(5) should be revised to exclude any particular type of payment. Furthermore, the Bureau believes that a payment that is twice any one regular periodic payment using the regulatory definition, as revised in this proposed rule, would be equal to or less than a payment that is twice the average of earlier scheduled payments using the statutory definition. The Bureau notes that the range of scheduled payment amounts under the first approach is more limited and defined. For example, if the regular periodic payment is $200, a payment of greater than $400 would constitute a balloon payment. Under the statutory definition, however, the threshold amount for a balloon payment could be greater than $400 if, for example, the regular periodic payments were increased by $100 each year. Under this scenario, the amount constituting a "balloon payment" could increase with the incremental increase of the average of earlier scheduled payments. The Bureau believes that under the existing regulatory definition, as revised by the proposed rule, consumers would have a better understanding of the highest possible regular periodic payment in a repayment schedule and may experience less "payment shock" as a result. Therefore, the Bureau believes that the existing regulatory definition may better protect consumers and would be in their interest. In addition, the Bureau believes that the definition of "balloon payment" based on the existing regulatory definition would facilitate and simplify compliance by eliminating the need to average earlier scheduled payments.

Proposed comment 37(b)(5)-1 clarifies that the "regular periodic payment" used to determine whether a payment is a "balloon payment" for purposes of § 1026.37(b)(5) is the payment of principal and interest (or interest only, depending on the loan features) payable under the terms of the loan contract for two or more unit periods in succession. The comment also clarifies that all regular periodic payments during the loan term are used to determine whether a particular payment is a balloon payment, regardless of whether the regular periodic payments change during the loan term due to rate adjustments or other payment changes permitted or required under the loan contract (*i.e.*, if the particular payment is more than two times any one regular periodic payment during the loan term, it is disclosed as a balloon payment under § 1026.37(b)(5) unless the particular payment itself is a regular periodic payment). Proposed comment 37(b)(5)-1.i gives an example of a step-rate mortgage with two different regular periodic payment amounts. Proposed comment 37(b)(5)-1.ii clarifies the definition of "regular periodic payment" in the context of a loan with an adjustable rate, where, under the terms of the loan contract, the regular periodic payments may increase after consummation, but the amounts of such payment increases (if any) are unknown at the time of consummation. In such instance, the proposed comment clarifies that the "regular periodic payments" are based on the fully-indexed rate, except as otherwise determined by any premium or discounted rates, the application of any interest rate adjustment caps, or any other known, scheduled rates under the terms specified in the loan contract. The proposed comment also refers to the analogous guidance provided in current comments 17(c)(1)-8 and -10, and gives an example of an adjustable rate mortgage with two different periodic payment amounts.

Proposed comment 37(b)(5)-1.iii clarifies that for a loan with a negative amortization feature, the "regular periodic payment" does not take into account the possibility that the consumer may exercise an option to make a payment greater than the minimum scheduled periodic payment. Proposed comment 37(b)(5)-1.iv clarifies that, for purposes of § 1026.37(c), § 1026.37(b)(5) governs the threshold determination of whether a loan has a balloon payment feature, but § 1026.37(c) governs the disclosure of balloon payments in the "Projected Payments" table under that section.

The proposed definition of balloon payment in proposed § 1026.37(b)(5) includes the payments of a single or double payment transaction. Proposed comment 37(b)(5)-2 provides clarification regarding such single and double-payment transactions, which require a single payment due at maturity or only two payments during the loan term, and do not require regular periodic payments. A single payment transaction does not have regular periodic payments, because regular periodic payments must be made two or more unit periods in succession (s*ee* proposed comment 37(b)(5)-1, described above). And while a loan with only two scheduled payments, depending on the circumstances, may have regular periodic payments (*e.g.*, if the two payments are made during the last month of years one and two of a two-year loan term), there is no third payment that could potentially be the balloon payment (*i.e.*, a payment that is more than twice the amount of the regular periodic payments). The Bureau believes the payments of such transactions are essentially equivalent, economically and practically, from the perspective of a consumer, to a balloon payment. The comment clarifies that notwithstanding the fact that there is no regular periodic payment to compare such single or double payments to, any payment in a single payment transaction or a transaction with only two scheduled payments is a "balloon payment" under § 1026.37(b)(5).

The Bureau is coordinating the definition of "balloon payment" in proposed § 1026.37(b)(5) with the definitions of "balloon payment" in the Bureau's other pending rulemakings under the Dodd-Frank Act concerning ability-to-repay and high-cost mortgages under HOEPA. To the extent consistent with consumer protection objectives, the Bureau believes that adopting a consistent definition of "balloon payment" across the Bureau's Dodd-Frank Act rulemakings affecting closed-end credit transactions will facilitate compliance, as discussed in part II above.

37(b)(6) Increases after Consummation

TILA section 128(b)(2)(C)(ii) requires, for closed-end credit transactions secured by a dwelling in which the interest rate or payments may vary, the disclosure of examples of adjustments to the regular required payment based on changes in the interest rates, including the maximum payment amount of the regular required payments based on the maximum interest rate under the contract. TILA section 128(b)(2)(C)(ii) also requires the Bureau to conduct consumer testing so that consumers can easily understand the fact that the initial regular payments are for a specific time period and will end on a certain date and that payments will subsequently adjust to a potentially higher amount. Currently, Regulation Z's disclosures for closed-end credit transactions secured by real property or a dwelling require information about whether the interest rate, periodic principal and interest payment, and loan amount can change. The disclosures are given in the interest rate and payment table required by § 1026.18(s). For federally related mortgage loans, § 1024.7(d) of Regulation X requires this information to be disclosed in the summary table on page 1 of the GFE, as affirmative or negative answers to the questions "Can your interest rate rise," "Even if you make payments on time, can your loan balance rise," and "Even if you make payments on time, can your monthly amount owed for principal, interest, and any mortgage insurance rise?"

As discussed above, the Bureau conducted consumer testing of prototype mortgage disclosures over ten rounds. During each round of testing, consumers placed significant emphasis when evaluating loans on whether the loan amount, interest rate, or periodic principal and interest payment could increase, the amount and timing of such increases, and whether they were scheduled increases or only potential increases. Accordingly, the Bureau believes that this information should be disclosed so that consumers can easily find and understand it.

The Bureau proposes § 1026.37(b)(6) to require that this information be disclosed in the Loan Terms table. Specifically, proposed § 1026.37(b)(6) requires disclosure of whether the amounts required to be disclosed by proposed § 1026.37(b)(1) through (3) may increase. If those amounts may increase, the creditor must also disclose, as applicable: (i) the maximum principal balance for the transaction and the date when the last payment for which the principal balance is permitted to increase will occur; (ii) the frequency of interest rate adjustments, the date when the interest rate begins to adjust, the maximum interest rate under the terms of the transaction, and the first adjustment that could result in the maximum interest rate; (iii) the frequency of adjustments to the periodic principal and interest payment, the date when the principal and interest payment begins to adjust, the maximum principal and interest under the transaction, and the first adjustment that can result in the maximum principal and interest payment; and (iv) the periods of any features that permit the periodic principal and interest payment to adjust without an adjustment to the interest rate, such as information about interest-only periods. The Bureau also understands from industry feedback provided in connection with the Bureau's stakeholder outreach that some adjustable rate loans, which may be more prevalent in the community bank market, may be structured so that the periodic principal and interest payment is fixed and increases in the interest rate increase the loan term instead of the payment. Accordingly, the information required by proposed § 1026.37(b)(6)(ii) also includes a statement of that fact for transactions that contain such a feature.

The Bureau proposes a format that provides this information as affirmative or negative answers to one comprehensive question, "Can this amount increase after closing?" The answers to this question are capitalized and in bold text. In addition, bullet-pointed text immediately to the right of these answers provides the maximum amounts, frequencies of changes, references to more detailed information disclosed elsewhere on the form, and other relevant information. Bold text will be used for important information in these statements, to enable consumers to see it quickly. Proposed form H-24 in appendix H of Regulation Z illustrates the disclosure of such information, including the bullet-pointed text required and the portions of such text that are to be bolded.

The Bureau tested prototype versions of this table in its consumer testing. During testing, consumers were able to understand and use this information in the proposed format when evaluating and comparing terms of credit. Based on these results, the Bureau believes that this format will enable consumers to find the information readily, to use it for evaluating and comparing terms of credit, and to understand the information.

Accordingly, pursuant to TILA section 128(b)(2)(C)(ii) and the Bureau's authority under TILA section 105(a), RESPA section 19(a), Dodd-Frank Act section 1032(a), and Dodd-Frank Act 1405(b), the Bureau proposes § 1026.37(b)(6) to require this information in the Loan Terms table and in the format required to be used by proposed § 1026.37(o). The Bureau believes that this disclosure will effectuate the purposes of TILA because it will promote the informed use of credit and assure a meaningful disclosure to consumers, and thus, will benefit consumers and the public. The Bureau believes this information improves consumer awareness and understanding of residential mortgage loans and is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b). The Bureau also believes that, consistent with Dodd-Frank Act section 1032(a), this requirement may ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances. In addition, like HUD, the Bureau believes this information is important to consumer understanding of the transaction and as a result, will promote more effective advance disclosure of settlement costs and should be provided on the disclosure.

37(b)(7) Details about Prepayment Penalty and Balloon Payment

Currently, for closed-end credit transactions secured by real property or a dwelling, § 1026.18(k) of Regulation Z does not require the disclosure of the maximum prepayment penalty that may be charged. While § 1026.18(s) currently requires the balloon payment that may be charged on a loan to be disclosed, it is not required to be disclosed with other key terms of the transaction. For federally related mortgage loans, § 1024.7(d) of Regulation X currently requires the maximum prepayment penalty and balloon payment in the summary table on page 1 of the GFE with the text, "your maximum prepayment penalty is $__" and "you have a balloon payment of $__ due in __ years."

Proposed § 1026.37(b)(7) requires the information in proposed § 1026.37(b)(4) and (5) to be disclosed as an affirmative or negative answer to the question "Does the loan have these features?" The section also requires disclosure of the maximum prepayment penalty, the period in which a prepayment penalty may be imposed, the amounts of any balloon payments and the dates of such payments. Like the information required to be disclosed by proposed § 1026.37(b)(6), the format required for this information by proposed § 1026.37(o) emphasizes the maximum amounts by using bold text, to enable consumers to find these amounts quickly.

In the Bureau's consumer testing, consumers were able to use this disclosure to determine easily if the loan had a prepayment penalty, the maximum amount, and the period during which the penalty applied, and the amount and time of a balloon payment. The Bureau's consumer testing has indicated that consumers place significant emphasis when evaluating loans on the potential for large balloon or prepayment penalty amounts.

The Bureau proposes to use its authority under TILA sections 105(a), Dodd-Frank Act section 1032(a), and RESPA section 19(a) to require disclosure of this information in the Loan Terms table of the Loan Estimate. The Bureau believes that placing these details about prepayment penalties and balloon payments in the summary table with bold text for the maximum amounts allows consumers to find this information easily, enabling consumers to understand and evaluate loans, promoting meaningful disclosure of credit terms to consumers. The Bureau believes that this disclosure will effectuate the purposes of TILA because it will promote the informed use of credit and assure a meaningful disclosure to consumers, and thus, will benefit consumers and the public. In addition, like HUD, the Bureau believes this information is important to consumer understanding of the transaction and as a result, will promote more effective advance disclosure of settlement costs and should be provided on the disclosure. Proposed comment 37(b)(7)(i)-1 provides guidance regarding calculating the maximum amount of the prepayment penalty.

37(b)(8) Timing

The Bureau's consumer testing indicated the references to the dates required to be disclosed by proposed § 1026.37(b)(6) and (7) are easily understood by consumers if disclosed in whole years. The prototype mortgage disclosures used at the Bureau's consumer testing displayed these dates as years, and consumers were able to understand and evaluate the risks posed by these maximum amounts. The Bureau believes that this unit of time provides a frame of reference to consumers that they use more regularly and that is easier to understand than "payments" or high-number values of "months," such as 60 months.

Accordingly, pursuant to its authority under TILA section 105(a), Dodd-Frank section 1032(a), and RESPA section 19(a), proposed § 1026.37(b)(8) requires the information required to be disclosed by paragraphs (b)(6) and (7) to be disclosed by stating the number of the year in which the payment or adjustment occurs, counting from the date that interest for the regularly scheduled periodic payment begins to accrue. Proposed comment 37(b)(8)-1 provides examples of how to disclose dates using the timing rules of proposed § 1026.37(b)(8). The Bureau believes this disclosure provides a meaningful disclosure of credit terms, promotes the informed use of credit by consumers, and may ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

37(c) Projected Payments

Statutory Requirements

TILA section 128(a)(6) requires creditors to disclose the number, amount, and due dates or period of payments scheduled to repay the total of payments. 15 U.S.C. 1638(a)(6).

TILA section 128(b)(2)(C)(ii) requires the disclosure of certain payment-related information for closed-end variable-rate transactions, or transactions where the regular payment may otherwise be variable, that are secured by a dwelling, including examples of payments. 15 U.S.C. 1638(b)(2)(C)(ii). Specifically, creditors must provide examples of adjustments to the regular required payment on the extension of credit based on the change in the interest rates specified by the contract for such extension of credit. *Id.* Among the examples required is an example that reflects the maximum payment amount of the regular required payments on the extension of credit, based on the maximum interest rate allowed under the contract. *Id.* TILA section 128(b)(2)(C)(i) also provides that these examples must be in conspicuous type size and format and that the payment schedule be labeled ‘‘Payment Schedule: Payments Will Vary Based on Interest Rate Changes.’’ Section 128(b)(2)(C)(ii) requires the Bureau to conduct consumer testing to determine the appropriate format for providing the disclosures to consumers so that the disclosures can be easily understood.

In addition, TILA section 128(a)(16)(A), added to TILA by section 1419 of the Dodd-Frank Act, provides that, for variable-rate residential mortgage loans for which an escrow account will be established, the creditor must disclose both the initial monthly principal and interest payment, and the initial monthly principal and interest payment including any amount deposited in an escrow account for the payment of applicable taxes, insurance, and assessments. 15 U.S.C. 1638(a)(16)(A). New TILA section 128(a)(16)(B) also requires that, for variable-rate residential mortgage loans for which an escrow account will be established, the creditor disclose the amount of the fully-indexed monthly payment due under the loan for the payment of principal and interest, and the fully-indexed monthly payment including any amount deposited in an escrow account for the payment of applicable taxes, insurance, and assessments. 15 U.S.C.

1638(a)(16)(B). TILA section 128(b)(4)(A), added by section 1465 of the Dodd-Frank Act, provides that, in the case of any consumer credit transaction secured by a first mortgage on the principal dwelling of the consumer, other than an open-end credit plan or reverse mortgage, for which an escrow account has been or will be established, the disclosures required by TILA section 128(a)(6) must take into account the amount of any monthly payment to such account, in accordance with section 10(a)(2) of RESPA.[163] 15 U.S.C. 1638(b)(4)(A); 12 U.S.C. 2609(a)(2). New TILA section 128(b)(4)(B) generally requires creditors to take into account the taxable assessed value of the property during the first year after consummation, including the value of any improvements constructed or to be constructed on the property, if known, and the replacement costs of the property for hazard insurance, when disclosing taxes and insurance escrows pursuant to TILA section 128(b)(4)(A). 15 U.S.C. 1638(b)(4)(B).

Current Rules

Current § 1026.18(s) implements the requirements of TILA sections 128(a)(6) and 128(b)(2)(C) for all closed-end transactions secured by real property or a dwelling, other than transactions secured by the consumer’s interest in a timeshare plan described in 11 U.S.C. 101(53D). Section 1026.18(s) requires creditors to disclose the contract interest rate, regular periodic payment, and any balloon payment. For adjustable-rate or step-rate amortizing mortgages, the creditor must disclose up to three interest rates and corresponding periodic payments. If payments are scheduled to increase independent of an interest-rate adjustment, the creditor must disclose the increased payment. If a borrower may make one or more payments of interest only, all payment amounts disclosed must be itemized to show the amount that will be

[163] Section 10(a)(2) of RESPA prohibits the lender, over the life of the escrow account, from requiring the borrower to make payments to an escrow account that exceed one-twelfth of the total annual escrow disbursements that the lender reasonably anticipates paying from the escrow account during the year, plus the amount necessary to maintain a one-sixth cushion. 12 U.S.C. 2609(a)(2).

applied to interest and the amount that will be applied to principal. Current § 1026.18(s) requires special interest rate and payment disclosures for loans that permit negative amortization. Also under current § 1026.18(s), creditors must separately itemize an estimate of the amount for taxes and insurance, including mortgage insurance, if the creditor will establish an escrow account for the payment of such amounts. The Board adopted this requirement pursuant to its authority under TILA section 105(a), based on consumer testing which indicated that consumers compare loans based on the monthly payment amount and that escrow payment information is necessary for consumers to understand the monthly amount they will pay. MDIA Interim Rule, 75 FR at 58476-77. Current § 1026.18(s) also requires the disclosure of total periodic payments. Creditors must provide the information about interest rates and payments in the form of a table, and creditors are not permitted to include other, unrelated information in the table.

Current § 1026.18(s) expands the scope of TILA section 128(b)(2)(C) to all closed-end transactions secured by real property or a dwelling, other than transactions secured by the consumer's interest in a timeshare plan, including transactions in which the interest rate and regular payments do not vary and those that are secured by real property that does not include a dwelling. The Board adjusted the scope of this provision pursuant to its authority under TILA section 105(a). The Board reasoned that providing examples of increased interest rates and payments will help consumers understand the risks involved in certain loans, and that consistent disclosure requirements for all mortgage-secured, closed-end consumer credit transactions, whether or not they include a dwelling, would ease compliance burden for mortgage creditors. MDIA Interim Rule, 75 FR at 58473-74. The Board also stated that applying § 1026.18(s) to transactions where the interest rate or regular payments do not vary would simplify compliance for creditors and make it easier for consumers to compare different loan products. For all other closed-end credit transactions, § 1026.18(g) provides the rules for disclosing the payment schedule.

The Bureau's Proposal

Pursuant to its authority under TILA section 105(a) and Dodd-Frank Act sections 1032(a) and 1405(b), the Bureau proposes to incorporate the requirements of current § 1026.18(s) into new § 1026.37(c), for closed-end mortgages subject to proposed § 1026.19(e), with certain adjustments that are outlined below. The Bureau believes that these requirements are necessary and proper to effectuate the purposes of TILA by promoting the informed use of credit. Accordingly, proposed § 1026.37(c) implements the requirements of TILA sections 128(a)(6) and 128(b)(2)(C), and also implements the requirements of new TILA sections 128(a)(16) and (b)(4), for closed-end mortgages subject to proposed § 1026.19(e). For all other closed-end transactions, § 1026.18(g) and (s) would continue to apply.

Like existing § 1026.18(s), proposed § 1026.37(c) requires creditors to disclose, in a separate table, an itemization of each separate periodic payment or range of payments required after consummation under the terms of the legal obligation. Proposed § 1026.37(c) also requires disclosure of an estimate of taxes, insurance, and assessments and the payments to be made with escrow account funds. Specifically, the table required by proposed § 1026.37(c) must contain the projected principal and interest, mortgage insurance, estimated escrowed taxes and insurance, estimated total monthly payment, and estimated taxes, insurance, and assessment disclosures, required by § 1026.37(c)(1) through (4). Pursuant to proposed § 1026.37(o) and form H-24, the table required by proposed § 1026.37(c) will appear on the first page of the Loan Estimate. The Bureau proposes that, as under § 1026.18(s), the table required by proposed § 1026.37(c) must be disclosed in all transactions subject to proposed § 1026.19(e), even in transactions where the interest rate will not vary and those that are secured by real property that does not include a dwelling. Unlike current § 1026.18(s), the projected payment table required by proposed § 1026.37(c) applies to transactions secured by the consumer's interest in a timeshare plan but does not apply to transactions secured by a dwelling that is not real property, for the reasons discussed in the section-by-section analysis to proposed § 1026.19.

The Bureau proposes to exercise its authority under TILA section 105(a), Dodd-Frank Act 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b) to require the information disclosed pursuant to proposed § 1026.37(c) to appear under the heading "Projected Payments." As discussed above, TILA section 128(b)(2)(C)(i) requires the payment schedule to be labeled "Payment Schedule: Payments Will Vary Based on Interest Rate." The Bureau believes that "Projected Payments" conveys the same substantive meaning, in plainer and simpler language, and is a more accurate heading for the table required by proposed § 1026.37(c) since payment amounts may vary for reasons other than interest rate, such as in graduated-payment plans or the termination of mortgage insurance under applicable law. The heading also performed well in consumer testing. Using the table under the heading "Projected Payments," participants in the Bureau's consumer testing were able to readily identify that their monthly payments might change in the future. Furthermore, the Bureau believes that the Loan Terms table required by proposed § 1026.37(b) effectively discloses when payments and interest rate will vary, and that consumers will not benefit from disclosure of that information in multiple places on the disclosure. Accordingly, this proposed adjustment promotes the informed use of credit, improves consumer awareness and understanding of transactions involving residential mortgage loans, and is in the interest of consumers and the public, consistent with the purpose of TILA and with Dodd-Frank Act section 1405(b). In addition, the Bureau believes that this disclosure would ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances, consistent with section 1032(a) of the Dodd-Frank Act.

Proposed comment 37(c)-1 provides that, for purposes of proposed § 1026.37(c), the terms “adjustable rate,” “fixed rate,” “negative amortization,” and “interest-only” have the meanings prescribed in § 1026.37(a)(10).

37(c)(1) Periodic Payment or Range of Payments

37(c)(1)(i)

Proposed § 1026.37(c)(1)(i) provides rules regarding the separate periodic payments or ranges of payments to be disclosed on the table required by § 1026.37(c). Specifically, proposed § 1026.37(c)(1)(i) provides that the initial periodic payment or range of payments is a separate periodic payment or range of payments and, except as otherwise provided in § 1026.37(c)(1)(ii), the following events require the disclosure of additional separate periodic payments or ranges of payments: (A) periodic principal and interest payment or range of such payments may change; (B) a scheduled balloon payment; and (C) the creditor must automatically terminate mortgage insurance coverage, or any functional equivalent, under applicable law.

Proposed comments 37(c)(1)(i)-1, 37(c)(1)(i)(A)-1 through -3, 37(c)(1)(i)(B)-1, and 37(c)(1)(i)(C)-1 through -3 provide guidance to creditors on the events requiring the disclosure of a separate periodic payment or range of payments. Proposed comment 37(c)(1)(i)-1 clarifies that, for purposes of § 1026.37(c)(1)(i), the periodic payment is the regularly scheduled payment of principal and interest, mortgage insurance, and escrow payments described in § 1026.37(c)(2) without regard to any final payment that differs from other payments because of rounding to account for payment amounts including fractions of cents. Proposed comment 37(c)(1)(i)(A)-1 provides that periodic principal and interest payments may change when the interest rate, applicable interest rate caps, required periodic principal and interest payments, or ranges of such payments may change. Minor payment variations resulting solely from the fact that months have different numbers of days are not changes to periodic principal and interest payments. For a loan that permits negative amortization, proposed comment 37(c)(1)(i)(A)-2 clarifies that periodic principal and interest payments may change at the time of a scheduled recast of the mortgage loan and when the consumer must begin making fully amortizing payments of principal and interest. The comment also provides that the disclosure should be based on the assumption that the consumer will make only the minimum payment required under the terms of the legal obligation, for the maximum amount of time permitted, taking into account changes to interest rates that may occur under the terms of the legal obligation, and that the table required by § 1026.37(c) should reflect any balloon payment that would result from making the minimum payment required under the terms of the legal obligation. In a loan that permits payment of only interest for a specified period, proposed comment 37(c)(1)(i)(A)-3 clarifies that periodic principal and interest payments may change for purposes of § 1026.37(c)(1)(i)(A) when the consumer must begin making fully amortizing periodic payments of principal and interest.

Proposed comment 37(c)(1)(i)(B)-1 states that, for purposes of § 1026.37(c)(1)(i)(B), whether a balloon payment occurs is determined pursuant to § 1026.37(b)(5) and its commentary. Although the existence of a balloon payment is determined pursuant to § 1026.37(b)(5) and its commentary, balloon payment amounts to be disclosed under § 1026.37(c) are calculated in the same manner as periodic principal and interest payments under § 1026.37(c). For example, for a balloon payment amount that can change depending on previous interest rate adjustments that are based on the value of an index at the time of the adjustment, the balloon payment amounts are calculated using the assumptions for minimum and maximum interest rates described in § 1026.37(c)(1)(iii) and its commentary, and should be disclosed as a range of payments.

Proposed comments 37(c)(1)(i)(C)-1 through -3 provide guidance to creditors regarding the disclosure of mortgage insurance. Proposed comment 37(c)(1)(i)(C)-1 states that "mortgage insurance" means insurance against the nonpayment of, or default on, an individual mortgage, and that, for purposes of proposed § 1026.37(c), "mortgage insurance or any functional equivalent" includes any mortgage guarantee that provides coverage similar to mortgage insurance (such as a United States Department of Veterans Affairs or United States Department of Agriculture guarantee), even if not technically considered insurance under State or other applicable law. The Bureau understands that some governmental loan programs impose an annual guarantee fee, and that creditors typically collect a monthly escrow for the payment of such amounts. Current § 1026.18(s) requires creditors to disclose whether mortgage insurance is included in monthly escrow payments, but industry uncertainty exists as to whether it is permissible to identify such guarantees as mortgage insurance on the disclosure required by § 1026.18(s). Although the Bureau recognizes that such guarantees are legally distinguishable from mortgage insurance, they are functionally very similar. Accordingly, proposed comment 37(c)(1)(i)(C)-1 clarifies that creditors should disclose any mortgage guarantee that provides coverage similar to mortgage insurance, even if not considered insurance under State or other applicable law, as mortgage insurance on the disclosure required by § 1026.37(c). Proposed comment 37(c)(1)(i)(C)-1 is consistent with the treatment of mortgage guarantee fees under proposed comment 18(s)(3)(i)(C)-2.

Proposed comment 37(c)(1)(i)(C)-2 gives guidance to creditors on the calculation and termination of mortgage insurance premiums by providing that, for purposes of proposed § 1026.37(c)(1)(i)(C), mortgage insurance premiums should be calculated based on the declining principal balance that will occur as a result of changes to the interest rate and payment amounts, assuming the fully-indexed rate at consummation, taking into account any introductory rates. Finally, proposed comment 37(c)(1)(i)(C)-3 clarifies that the table required by proposed § 1026.37(c) reflects the consumer's mortgage insurance payments until the date on which the creditor must automatically terminate coverage under applicable law, even though the consumer may have a right to request that the insurance be cancelled earlier. Unlike termination of mortgage insurance, a subsequent decline in the consumer's mortgage insurance premiums is not, by itself, an event that requires the disclosure of additional separate periodic payments or ranges of payments in the table required by § 1026.37(c). For example, some mortgage insurance programs annually adjust premiums based on the declining loan balance. Such annual adjustment to the amount of premiums would not require a separate disclosure of a periodic payment or range payments.

37(c)(1)(ii)

Proposed § 1026.37(c)(1)(ii) contains special rules for the disclosure of separate periodic payments or ranges of payments described in § 1026.37(c)(1)(i). Specifically, proposed § 1026.37(c)(1)(ii) provides that the table required by § 1026.37(c) shall not disclose more than four separate periodic payments or ranges of payments. For all events requiring disclosure of additional separate periodic payments or ranges of payments described in § 1026.37(c)(1)(i) after the second to occur, the separate periodic payments or ranges of payments shall be disclosed as a single range of payments, subject to the special rules listed in proposed § 1026.37(c)(1)(ii)(A) through (C).

Proposed § 1026.37(c)(1)(ii)(A) contains a special rule for final balloon payments. That section would require that a final balloon payment shall always be disclosed as a separate periodic payment or range of payments and that, if a final balloon payment is disclosed, no more than three other separate periodic payments or ranges of payments are disclosed. Proposed comment 37(c)(1)(ii)(A)-1 clarifies that § 1026.37(c)(1)(ii)(A) is an exception to the general rule in § 1026.37(c)(1)(ii), and requires that a balloon payment that is scheduled as a final payment under the terms of the legal obligation is always disclosed as a separate periodic payment or range of payments. Balloon payments that are not final payments, such as a balloon payment due at the scheduled recast of a loan that permits negative amortization, are disclosed pursuant to the general rule in § 1026.37(c)(1)(ii). Proposed § 1026.37(c)(1)(ii)(B) provides a special rule for disclosure of mortgage insurance premiums, requiring that the automatic termination of mortgage insurance, or any functional equivalent, under applicable law shall be disclosed as a separate periodic payment or range of payments only if the total number of events that require disclosure of additional separate periodic payments or ranges of payments described in § 1026.37(c)(1)(i), other than the termination of mortgage insurance or any functional equivalent, does not exceed two.

Finally, proposed § 1026.37(c)(1)(ii)(C) provides a special rule for events that require additional separate periodic payments or ranges of payments that occur during the same year. Under proposed § 1026.37(c)(1)(ii)(C), if changes to periodic principal and interest payments described in § 1026.37(c)(1)(i)(A) would require more than one separate disclosure during a single year, such periodic payments must be disclosed as a single range of payments.

37(c)(1)(iii)

Proposed § 1026.37(c)(1)(iii) provides rules for the disclosure of ranges of payments. A range of payments is disclosed when the periodic principal and interest payment may adjust based on index rates at the time an interest rate adjustment may occur or multiple events are combined in a range of payments pursuant to proposed § 1026.37(c)(1)(ii). When a range of payments is required, the creditor must disclose the minimum and maximum possible payment amount for both the principal and interest payment under proposed § 1026.37(c)(2)(i) and the total periodic payment under proposed § 1026.37(c)(2)(iv). In the case of an interest rate adjustment, the maximum payment amounts are determined by assuming that the interest rate in effect throughout the loan term is the maximum possible interest, and the minimum payment amounts are determined by assuming that the interest rate in effect throughout the loan term is the minimum possible interest rate.

Proposed comment 37(c)(1)(iii)-1 clarifies that a range of payments must be disclosed when the periodic principal and interest payments are not known at the time the disclosure is provided because they are subject to changes based on index rates at the time of an interest rate adjustment or when multiple events are disclosed as a range of payments pursuant to § 1026.37(c)(1)(ii). For such transactions, proposed § 1026.37(c)(3)(iii) requires the creditor to disclose both the minimum and maximum periodic principal and interest payments, expressed as a range. In disclosing the maximum possible interest rate for purposes of § 1026.37(c), the creditor assumes that the interest rate will rise as rapidly as possible after consummation, taking into account the terms of the legal obligation, including any applicable caps on interest rate adjustments and lifetime interest rate cap. For a loan with no lifetime interest rate cap, the maximum rate is determined by reference to other applicable laws, such as State usury law. In disclosing the minimum possible interest rate for purposes of § 1026.37(c), the creditor assumes that the interest rate will decrease as rapidly possible after consummation, taking into account any introductory rates, caps on interest rate adjustments, and lifetime interest rate floor. For an adjustable rate mortgage based on an index that has no lifetime interest rate floor, the minimum interest rate is equal to the margin. Proposed comment 37(c)(1)(iii)-2 clarifies that, when a range of payments is required, the amount required to be disclosed for mortgage insurance premiums pursuant to § 1026.37(c)(2)(ii) and the amount payable into escrow pursuant to § 1026.37(c)(2)(iii) shall not be disclosed as a range. Proposed comment 37(c)(1)(iii)-3 provides guidance to creditors on the disclosure of ranges of payments in adjustable rate mortgages.

37(c)(2) Itemization

Proposed § 1026.37(c)(2) requires that each separate periodic payment or range of payments included in the table required by proposed § 1026.37(c) must be itemized to include the following: (1) the amount payable for principal and interest, labeled 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 § 1026.37(c)(2)(i), labeled “Mortgage Insurance”; (3) the amount payable into an escrow account to pay for some or all of the charges described in § 1026.37(c)(4)(ii)(A) through (E), labeled “Estimated Escrow,” including a statement that the amount disclosed can increase over time; and (4) the total periodic payment, calculated as the sum of the amounts disclosed pursuant to § 1026.37(c)(2)(i) through (iii), labeled “Total Monthly Payment.” As discussed in the Kleimann Testing Report, the Bureau’s consumer testing indicates that consumers understand the table and can identify the components of their total monthly payment using this itemization of payments.

Proposed comment 37(c)(2)(ii)-1 clarifies that mortgage insurance payments should be reflected on the disclosure required by § 1026.37(c) even if no escrow account is established for the payment of mortgage insurance premiums. If the consumer is not required to purchase mortgage insurance, the creditor discloses the mortgage insurance premium as "0". Proposed comment 37(c)(2)(ii)-2 clarifies that the creditor must disclose mortgage insurance pursuant to § 1026.37(c)(2)(ii) on the same periodic basis that payments for principal and interest are disclosed pursuant to § 1026.37(c)(2)(i), even if mortgage insurance premiums are actually paid on some other periodic basis.

The Bureau proposes to require creditors to disclose the amount of estimated escrow payments pursuant to its authority under TILA sections 128(a)(16), 128(b)(4)(A), and 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). As discussed above, TILA section 128(a)(16) requires that, for variable-rate residential mortgage loans for which an escrow account will be established, the creditor must disclose the initial total monthly payment, including escrow payments for taxes and insurance. The Bureau proposes to modify this requirement to cover all transactions subject to proposed § 1026.19(e) for which an escrow account will be established, including fixed-rate loans. Additionally, TILA section 128(b)(4)(A) requires that, for any consumer credit transaction secured by a first lien on the principal dwelling of the consumer for which an escrow account will be established, the creditor must take into account escrow payments when making the disclosures required by TILA section 128(a)(6). The Bureau also proposes to modify the scope of this requirement to cover all transactions subject to proposed § 1026.19(e) for which an escrow account will be established, pursuant to its authority under TILA sections 128(a)(16), 128(b)(4)(A), and 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b).

These modifications are consistent with the purposes of TILA, as they may promote the informed use of credit by allowing consumers to more readily compare loans. Further, applying a single disclosure rule to all transactions subject to proposed § 1026.19(e) may ease compliance burden for creditors. Accordingly, these modifications will improve consumer awareness and understanding of residential mortgage loans and are in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b). In addition, consistent with section 1032(a) of the Dodd-Frank Act, this disclosure would ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

Further, the Bureau proposes to require creditors to disclose the maximum periodic payment for mortgage insurance premiums corresponding to the periodic principal and interest payment disclosed pursuant to § 1026.37(c)(2)(i), separately from other escrowed amounts, pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b), even if no escrow account is established for the payment of such amounts. Current § 1026.18(s) requires creditors to include mortgage insurance in the disclosure of the amounts required to be paid into escrow. However, § 1026.18(s) does not require creditors to separately disclose payments for mortgage insurance. The Bureau believes that consumers would benefit from disclosure of the periodic amount of mortgage insurance payments required by the creditor, and believes that consumers would benefit from the disclosure of any required mortgage insurance payments even if no escrow account for the payment of such amounts will be established. Requiring such disclosure in all cases may facilitate comparison between loans and improve overall understanding of credit terms. Accordingly, the Bureau believes this requirement promotes the informed use of credit, will improve consumer awareness and understanding of transactions involving residential mortgage loans, and is in the interest of consumers and the public, consistent with the purpose of TILA and with Dodd-Frank Act section 1405(b). Further, consistent with section 1032(a) of the Dodd-Frank Act, this disclosure would ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

In addition, the Bureau understands that some mortgage insurance plans are structured such that periodic mortgage insurance payments decrease over time. Accordingly, the Bureau proposes to require creditors to disclose the maximum amount payable for mortgage insurance premiums, or any functional equivalent, corresponding to the periodic principal and interest payment disclosed pursuant to § 1026.37(c)(2)(i). The Bureau believes this disclosure will enhance consumer understanding of and facilitate comparison between loans by more accurately reflecting the amount of mortgage insurance payments over time.

Proposed comment 37(c)(2)(iii)-1 clarifies that the disclosure of taxes and insurance described in § 1026.37(c)(2)(iii) is required only if the creditor will establish an escrow account for the payment of the amounts described in § 1026.37(c)(4)(ii)(A) through (E), consistent with TILA section 128(b)(4)(A) and current § 1026.18(s).

37(c)(3) Subheadings

Proposed § 1026.37(c)(3)(i) provides that the labels required pursuant to § 1026.37(c)(2) must be listed under the subheading "Payment Calculation." Proposed § 1026.37(c)(3)(ii) provides that each separate, itemized periodic payment or range of payments to be disclosed under § 1026.37(c) must be disclosed under a subheading that states the number of years of the loan during which that payment or range of payments will apply. The subheadings must be stated in a sequence of whole years from the date that the first such payment is due. Proposed comment 37(c)(3)(ii)-1 provides additional guidance on the disclosure of the number of years of the loan during which the payment or range of payments will apply, and proposed comment 37(c)(3)(ii)-2 provides guidance on disclosure of the years of the loan for transactions with variable terms, such as transactions where the loan term may increase based on an adjustment of the interest rate.

37(c)(4) Taxes, Insurance, and Assessments

As discussed above, the Bureau is proposing to require creditors in transactions subject to proposed § 1026.19(e) to disclose estimated payments to escrow accounts pursuant to its authority under TILA sections 128(a)(16), 128(b)(4)(A), and 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). The Bureau also proposes § 1026.37(c)(4) pursuant to this authority. Proposed § 1026.37(c)(4)(i) provides that creditors must disclose the label "Estimated Taxes, Insurance & Assessments." Proposed § 1026.37(c)(4)(ii) requires creditors to disclose the sum of property taxes, mortgage-related insurance premiums required by the creditor other than amounts payable for mortgage insurance premiums, homeowner's association, condominium or cooperative fees, ground rent or leasehold payments, and special assessments, as applicable, expressed as a monthly amount. The creditor must disclose this amount even if no escrow account for the payment of some or any such charges will be established. Proposed comments 37(c)(4)(ii)-1 and -2 provide guidance to creditors on the meaning of mortgage-related insurance premiums and special assessments.

Proposed § 1026.37(c)(4)(iii) requires creditors to state that the amount disclosed pursuant to § 1026.37(c)(4)(ii) can increase over time. Proposed § 1026.37(c)(4)(iv) requires creditors to state whether the amount disclosed pursuant to § 1026.37(c)(4)(ii) includes payments for property taxes, hazard insurance, and other amounts described in § 1026.37(c)(4)(ii), along with a description of any such amounts, and an indication of whether such amounts will be paid by the creditor using escrow account funds. Proposed § 1026.37(c)(4)(v) requires creditors to provide a statement that the consumer must pay separately any amounts described in § 1026.37(c)(4)(ii) that are not paid by the creditor using escrow funds. Finally, proposed § 1026.37(c)(4)(vi) requires creditors to provide a reference to the information disclosed pursuant to § 1026.37(g)(3).

Under proposed § 1026.37(c)(4), the disclosure of estimated taxes, insurance, and assessments is required even where no escrow account will be established for the payment some or any such amounts. The Bureau proposes this requirement pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). As discussed in the Kleimann Testing Report, consumer testing indicates that consumers view the total monthly payment amount as a key piece of information and look for this amount when shopping for mortgages. Even when no escrow account is established for the payment of taxes and insurance, this is an important measure of the consumer's ability to afford the transaction. For this reason, the Bureau believes that consumers would benefit from the disclosure of the amounts that will required to be paid for taxes, insurance, and assessments, even if no escrow account will be established for the payment of such amounts. Absent such a disclosure, consumers may not fully comprehend the cost of their home loan on a periodic basis, and may not be as readily able to compare credit terms and make an informed decision about whether to proceed with the transaction. Accordingly, the Bureau believes this modification is consistent with the purpose of TILA to promote the informed use of credit, and will improve consumer awareness and understanding of residential mortgage loans and is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b). In addition, consistent with section 1032(a) of the Dodd-Frank Act, this disclosure would ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

37(c)(5) Calculation of Taxes and Insurance

As previously discussed, section 1465 of the Dodd-Frank Act added to TILA new section 128(b)(4)(A), which provides that, in the case of any consumer credit transaction secured by a first mortgage on the principal dwelling of the consumer, other than an open-end credit plan or reverse mortgage, for which an escrow account has been or will be established in connection with the transaction for the payment of property taxes, homeowner's (also referred to and including hazard) and flood insurance premiums, as applicable, or other periodic payments with respect to the property, the disclosures required by TILA section 128(a)(6) must take into account the amount of any monthly payment to such account, in accordance with section 10(a)(2) of RESPA. In addition, new TILA section 128(b)(4)(B) requires that the amount taken into account under TILA section 128(b)(4)(A) for the payment of property taxes, hazard or flood insurance premiums, or other periodic payments or premiums with respect to the property shall reflect the taxable assessed value of the real property securing the transaction after consummation of the transaction. That amount must include the value of any improvements on the property or to be constructed on the property, if known, even if such construction costs are not financed from the proceeds of the transaction, and the replacement costs of the property for hazard insurance, in the initial year after the transaction.

Pursuant to the Bureau's implementation authority under TILA section 105(a), proposed § 1026.37(c)(5) implements this requirement for transactions subject to § 1026.19(e) and requires that the estimated escrow and estimated taxes, insurance, and assessments disclosures required pursuant to § 1026.37(c)(2)(iii) and (4)(ii), respectively, reflect (1) the taxable assessed value of the real property securing the transaction after consummation, including the value of any improvements on the property or to be constructed on the property, whether or not such construction will be financed from the proceeds of the transaction, if known, for property taxes; and (2) the replacement costs of the property during the initial year after the transaction, for hazard and flood insurance.

Pursuant to its authority under TILA section 105(a) and Dodd-Frank Act sections 1032(a) and 1405(b), the Bureau proposes to expand the requirements of TILA section 128(b)(4)(A) and (B) to cover all transactions subject to proposed § 1026.19(e), including transactions where no escrow account will be established for the payment of property taxes or hazard insurance, transactions that are secured by real property that does not include the principal dwelling of the consumer, and transactions secured by subordinate liens. These modifications appear to be consistent with the purposes of TILA, as they may promote the informed use of credit by allowing consumers to more readily compare loans. Further, applying a single disclosure rule to all transactions subject to proposed § 1026.19(e) may ease compliance burden for creditors. Accordingly, these modifications will improve consumer awareness and understanding of residential mortgage loans and are in the interest of consumers and the public, consistent with

Dodd-Frank Act section 1405(b). In addition, consistent with section 1032(a) of the Dodd-Frank Act, the proposed disclosure would ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

37(d) Cash to Close

Pursuant to its authority under TILA section 105(a) and Dodd-Frank section 1032(a), the Bureau proposes to require creditors to provide the estimated total closing costs imposed upon the consumer and the estimated amount of cash needed at consummation from the consumer. This disclosure will effectuate the purposes of TILA by promoting the informed use of credit and will ensure the features of the mortgage transaction are fully, accurately and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, because it will indicate to the consumer the amount the consumer will have to pay at consummation of the credit transaction and closing of the real estate transaction. Accordingly, proposed § 1026.37(d) requires the disclosure of an estimate of the cash needed from the consumer at consummation of the transaction, with a breakdown of the amounts of loan costs and other costs associated with the transaction.

Under § 1026.37(d)(1), the dollar amount due from the consumer is the same amount as calculated in accordance with proposed § 1026.37(h)(4) and is disclosed under the heading of "Cash to Close" and labeled "Estimated Cash to Close." The total dollar amount of the loan costs to be paid by the consumer at closing as calculated under proposed § 1026.37(f)(4) is disclosed under proposed § 1026.37(d)(2). The total dollar amount of the other costs to be paid by the consumer at closing as calculated under proposed § 1026.37(g)(5) is disclosed under proposed § 1026.37(d)(3). The amount of lender credits disclosed under § 1026.37(g)(6)(ii) is disclosed under § 1026.37(d)(4). The sum of the amounts disclosed under proposed § 1026.37(d)(2), through 1026.37(d)(4) is disclosed with a description of "Closing Costs" under § 1026.37(d)(5). A statement directing the consumer to refer to the location of the Loan Estimate that contains the tables required under § 1026.37(f) and (g) is required under § 1026.37(d)(6).

37(e) Website Reference

Appendix C to Regulation X includes a statement in the RESPA GFE that directs consumers to HUD's website and other sources of additional information, stating the following, "For more information, see HUD's Special Information Booklet on settlement charges, your Truth-in-Lending Disclosures, and other consumer information at www.hud.gov/respa." Regulation Z does not contain a similar provision. The Bureau proposes to use its authority under TILA section 105(a), RESPA section 19(a), and Dodd-Frank Act section 1032(a) to require disclosure of the Bureau's website in proposed § 1026.37(e). The Bureau believes that a disclosure in the Loan Estimate directing consumers to additional information and tools on its website may help consumers understand the mortgage process and the various loan products in the market, and consequently better understand their loan transaction and make informed decisions about whether to enter into a loan transaction or which loan product best meets their needs. Accordingly, this disclosure will effectuate the purposes of TILA and RESPA by promoting the informed use of credit and more effective advance notice of settlement costs, consistent with TILA section 105(a) and RESPA section 19(a), and will ensure that the features of the mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to better understand the costs, benefits, and risks associated with mortgage transactions, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a).

Therefore, proposed § 1026.37(e) requires creditors to include a statement notifying the consumer that additional information and tools regarding mortgage loans may be found at the Bureau's website. Proposed § 1026.37(e) also requires a reference to the link/uniform resource locator (URL) address for the Bureau's website.

37(f) Closing Cost Details; Loan Costs

Under section 5(c) of RESPA creditors must provide mortgage loan applicants with a good faith estimate of the amount or range of charges for specific settlement services the applicant is likely to incur in connection with the consummation of the loan. 12 U.S.C. 2604(c). Section 1024.7 of Regulation X implements this mandate by requiring creditors and mortgage brokers to provide the RESPA GFE, which must be completed in accordance with the instructions in appendix C to Regulation X. Appendix C sets out specific instructions for the information that must be disclosed on the RESPA GFE, including the loan costs that must be included and how to identify those costs on the disclosure.

As discussed above, Dodd-Frank Act section 1032(f) requires the Bureau to combine these RESPA disclosures with the disclosures required by TILA. In addition to existing TILA disclosure requirements, section 1419 of the Dodd-Frank Act amended TILA section 128(a) to require, in the case of a residential mortgage loan, disclosure of the aggregate amount of settlement charges for all settlement services provided in connection with the loan and the aggregate amount of other fees or required payments in connection with the loan. 15 U.S.C. 1638(a)(17).

Pursuant to its authority under TILA section 105(a), RESPA section 19(a), and Dodd-Frank Act sections 1032(f) and, for residential mortgage loans, 1405(b), the Bureau proposes to require creditors to provide the loan costs and other costs imposed upon the consumer in tables as part of the integrated Loan Estimate. Proposed § 1026.37(f) and (g) implement these early disclosure requirements of TILA and RESPA by setting out details relating to the costs for consummating the mortgage loan, including loan costs and other costs. Based on its consumer testing, the Bureau believes that early disclosure of estimated loan costs and other costs, as set forth in proposed § 1026.37(f) and (g), will improve consumer understanding of the credit and property transactions. The Bureau believes that these disclosures will effectuate the purpose of TILA by promoting the informed use of credit and assuring a meaningful disclosure to consumers. The Bureau believes that the disclosures will also satisfy the RESPA requirement to provide a consumer with a good faith estimate of the amount or range of charges for specific settlement services the consumer is likely to incur in connection with the closing. In addition, these disclosures will ensure that the features of the mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a).

In particular, proposed § 1026.37(f) requires the creditor to itemize, as “Loan Costs,” its fees and other charges to the consumer for extending the credit or that compensate a mortgage broker for originating the transaction. The creditor must disclose the individual itemized charges, along with subtotals for prescribed categories of those itemized charges, and the total of all such itemized charges. In general, these charges are currently required to be disclosed—as itemized or aggregate charges and amounts—on the RESPA GFE, the RESPA settlement statement, or both.[164]

Proposed comment 37(f)-1 explains that the items disclosed as Loan Costs pursuant to § 1026.37(f) are those that the creditor or mortgage broker require for consummation. Proposed comment 37(f)-2 provides a cross-reference to the commentary under § 1026.19(e)(1)(ii), which discusses the requirements and responsibilities of mortgage brokers that provide the disclosures required under § 1026.19(e) and § 1026.37(f).

37(f)(1) Origination Charges

Under proposed § 1026.37(f)(1), charges included on the Loan Estimate under the subheading of "Origination Charges" are those that the consumer will pay to the creditor and any loan originator for originating and extending the credit. The points that the consumer will pay to the creditor to reduce the interest rate are specifically identified and itemized as the first item under this subheading.

As discussed above in part II.F, the Bureau currently is engaged in six other rulemakings that relate to mortgage credit and intends that the rulemakings function collectively as a

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[164] On June 20, 2012, HUD's Office of Policy Development and Research and the Urban Institute released a study entitled "What Explains Variation in Title Charges? A Study of Five Large Markets," http://www.huduser.org/portal/publications/hsgfin/title_charges_2012.html, based on HUD-1 settlement statements of FHA loans from 2001. *See* p. 13. The study discusses, among other things, that an observed positive association between the number of items listed and net service fees was statistically significant after taking home prices into account. *See* p. 29. However, the report could not determine whether this indicates additional value to the consumer or additional costs to the settlement agent due to limitations of the data. *Id.* The study states that "there is no way to ascertain from the data whether an itemized cost is an attempt to confuse consumers or the provision of an additional, valuable service that the homebuyer is willing to pay for. Both interpretations are plausible." *Id.* Under this proposal, itemization is permitted on the Loan Estimate, but highly visible subtotals in gray shading and bold font are displayed above the itemized charges for specific categories of costs. Based on its consumer testing, the Bureau believes the highly visible subtotals, along with the highly visible "Services You Can Shop For" subcategory of Closing Costs on the Loan Estimate, will inform consumers that they can shop for their own service providers and provide them with, along with the itemization, readily comparable cost categories to shop between creditors and service providers. Such shopping for settlement service providers, according to the study, could provide "significant benefits to consumers." *See* p. 28. The study suggests that future research using more detailed data on costs incurred by settlement agents would be valuable. *See* p. 29. The Bureau welcomes additional comments and studies on the issue of itemization of costs on the Loan Estimate and Closing Disclosure during the comment period.

whole. Accordingly, the Bureau may have to modify aspects of this proposed rule not only in response to public comment on this proposal, but also to maintain consistency with final determinations made after opportunity for public comment in the other, related rulemakings. For example, Dodd-Frank Act section 1403 amended TILA section 129B(c)(2) to prohibit an origination fee or charge that is paid to a mortgage originator by any person other than the consumer, unless the mortgage originator does not receive compensation directly from the consumer and the consumer does not make an upfront payment of discount points, origination points, or fees (other than certain third-party fees). 15 U.S.C. 1639b(c)(2)(B). Amended TILA section 129B(c)(2) also provides the Bureau with the authority to waive or create exemptions from this prohibition with respect to the clause against the consumer making an upfront payment of discount points, origination points, or fees, where doing so is in the interest of consumers and in the public interest. *Id*. As discussed in the materials distributed for the Small Business Review Panel convened for the Residential Mortgage Loan Origination Standards rulemaking implementing amended TILA section 129B(c)(2), the Bureau is considering exercising its waiver or exemption authority in that rulemaking.[165] The Bureau will coordinate these rulemakings and, if applicable and appropriate, will modify the disclosure of origination charges under § 1026.37(f)(1) for consistency with the final rule implementing amended TILA section 129B(c)(2). The Bureau invites comment on how, in light of amended TILA section 129B(c)(2), the Bureau should refine or modify the way in which origination charges are disclosed under proposed § 1026.37(f)(1). The public will also have the opportunity to comment on the Bureau's implementation of amended TILA section 129B(c)(2) when a proposed rule is published later

[165] *Small Business Review Panel for Residential Mortgage Loan Origination Standards Rulemaking: Outline of Proposals Under Consideration and Alternatives Considered* (May 19, 2012), available at http://files.consumerfinance.gov/f/201205_cfpb_MLO_SBREFA_Outline_of_Proposals.pdf.

this summer. The Bureau expects the comment period for the proposal set forth in this notice will still be open at that time.

TILA section 128(a)(18), as added by Dodd-Frank Act section 1419, requires the creditor to disclose, for residential mortgage loans, the aggregate amount of fees paid to the mortgage originator in connection with the loan, the amount of such fees paid directly by the consumer, and any additional amount received by the originator from the creditor. In the discussion of proposed § 1026.37(l) below, the Bureau notes that research regarding consumer comprehension and behavior and the results of the Bureau's consumer testing suggest that an effective disclosure regime minimizes the risk of consumer distraction and information overload by providing only information that will assist most consumers. The Bureau has evaluated the usefulness to consumers and others at early stages of the loan process of the disclosures required by TILA section 128(a)(18), as added by Dodd-Frank Act section 1419. Based on that evaluation, and as discussed further below, the Bureau is proposing to use its authority under TILA section 105(a) and (f), RESPA section 19(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b), to exempt transactions subject to proposed § 1026.19(e) from certain of the itemized disclosures required by TILA section 128(a)(18). In particular, for transactions subject to proposed § 1026.19(e), proposed § 1026.37(f)(1) requires the creditor to disclose the amounts of origination fees paid by the consumer to creditors and loan originators in connection with the loan, but not any amounts received by a loan originator from the creditor. However, as discussed below with respect to proposed § 1026.38(f)(1), the full disclosure required by TILA section 128(a)(18) is included in the disclosure requirements for transactions subject to proposed § 1026.19(f). In other words, although certain TILA section 128(a)(18) disclosures would not be included in the Loan Estimate, they would be provided in the Closing Disclosure.

The RESPA GFE currently required by Regulation X aggregates all compensation paid to all loan originators and includes a separate item that reflects as a “credit” to the consumer fees received by mortgage brokers from the creditor rather than the consumer. A major goal of the RESPA GFE disclosure requirements was to provide consumers with a clear disclosure of any rate-based payments being made by creditors to mortgage brokers who may be working with the consumer. Regulation X provides generally that lender and mortgage broker origination charges are to be included on page 2 of the RESPA GFE, in Block 1 (“Our origination charge”), Block 2 (“Your credit or charge (points) for the specific interest rate chosen”), and Line A (Your Adjusted Origination Charges”). *See* 12 CFR part 1024, appendix C (instructions for “Your Adjusted Origination Charges”). Under the disclosure requirements in Regulation X, all charges for services related to the creation of the mortgage loan are to be included on the RESPA GFE in the single amount stated in Block 1 and the single amount in Block 2, as applicable. The RESPA GFE disclosure requirements prohibit creditors and mortgage brokers from charging any fees for getting the loan that are in addition to the amounts included in Blocks 1 and 2. *Id.* (instructions for “Block 1”).

The requirements related to the disclosures in Blocks 1 and 2 of the GFE have been a source of uncertainty for creditors, mortgage brokers, and consumers. HUD provided informal guidance to address some of the uncertainty in a number of its HUD RESPA FAQs and HUD RESPA Roundups, much of which involved where and how to disclose compensation paid directly and indirectly to mortgage brokers.

In 2010, subsequent to the issuance of HUD’s 2008 RESPA Final Rule, the Board established by regulation in § 1026.36 of Regulation Z restrictions on the compensation of loan originators, including mortgage brokers.[166] The Board adopted these restrictions only after concluding that disclosure of creditor-paid compensation did not provide sufficient protection for consumers.[167]

Section 1403 of the Dodd-Frank Act codified similar restrictions. 15 U.S.C. 1639b(c). As a result of these additional consumer protections and based on consumer testing, the Bureau believes that consumers may not benefit from any additional disclosure of rate-based compensation when shopping for and considering the costs of a mortgage loan. Therefore, in proposed § 1026.37(f)(1), the Bureau proposes to eliminate the separate GFE Blocks 1 and 2 disclosures, thereby eliminating the need to follow different instructions for loans involving a mortgage broker than for loans originated without one.

Consistent with Dodd-Frank section 1405(b), disclosure of only the direct charges the consumer will pay will reduce both consumer confusion and the possibility of information overload, improve consumer understanding of the Loan Estimate form, and make it easier for creditors or mortgage brokers to complete the estimates of closing costs, which is in the interest of consumers and in the public interest. In addition, consistent with TILA section 105(a) and RESPA section 19(a), the proposed disclosure will effectuate the purposes of TILA and RESPA by promoting the informed use of credit and more effective disclosure of settlement costs by allowing consumers to focus only on the amounts they will pay. Furthermore, consistent with

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[166] 75 FR 58509 (Sept. 24, 2010) (Board's 2010 Compensation Final Rule).

[167] The Board's 2010 Compensation Final Rule discussed the history of efforts by the Board to address concerns regarding consumers' understanding of fees received by mortgage brokers from creditors. Before issuing that final rule, the Board considered proposed disclosures of such compensation, but had withdrawn the proposed disclosures because of concern that they could confuse consumers and undermine their decisionmaking rather than improve it. 75 FR at 58511. A 2008 study referenced in the Board's 2010 Compensation Final Rule indicated additional disclosures may not help consumers understand and avoid financial incentives for loan originators that may be contrary to consumer interests. *Id.* The study found that consumers were confused by, and in some cases did not appropriately apply, the information provided in disclosures about mortgage broker compensation arrangements. Macro International, *Consumer Testing of Mortgage Broker Disclosures* (July 10, 2008), available at http://www.federalreserve.gov/newsevents/press/bcreg/20080714regzconstest.pdf.

section 1032(a) of the Dodd-Frank Act, proposed § 1026.37(f) would ensure that the origination costs for consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

As noted above, § 1026.37(f) is also proposed pursuant to the Bureau's exemption authority under TILA section 105(f). The Bureau has considered the factors in TILA section 105(f) and believes that, for the reasons discussed above, an exception is appropriate under that provision. Specifically, the Bureau believes that the proposed exemption is appropriate for all affected borrowers, regardless of their other financial arrangements and financial sophistication and the importance of the loan to them. Similarly, the Bureau believes that the proposed exemption is appropriate for all affected loans, regardless of the amount of the loan and whether the loan is secured by the principal residence of the consumer. Furthermore, the Bureau believes that, on balance, the proposed exemption will simplify the credit process without undermining the goal of consumer protection or denying important benefits to consumers. Accordingly, the Bureau is proposing to exempt the disclosures required pursuant to § 1026.19(e) from the requirement in TILA section 128(a)(18) to itemize fees received by loan originators from the creditor.

The Bureau invites comment on whether the final rule should require that fees received by loan originators from the creditor be included in the Loan Estimate. In addition, because the foregoing analysis under TILA section 105(f) and the Bureau's other exemption authorities may apply to the disclosure of creditor-paid compensation on the Closing Disclosure pursuant to proposed § 1026.38(f)(1), the Bureau solicits comments on whether the disclosure should be omitted there as well. While a goal of the proposed forms and requirements is to develop clear disclosures that help consumers understand the credit transaction and closing costs, another goal is to facilitate consumer comparison of the actual charges at consummation with the charges estimated soon after application. If, as proposed, the amounts received by loan originators from the creditor are not itemized in the Loan Estimate, the consumer-comparison purpose of the disclosure forms is not advanced by itemizing those amounts in the Closing Disclosure. In fact, itemizing amounts in the Closing Disclosure that are not itemized on the Loan Estimate may add to consumer confusion without any offsetting benefit.

The Bureau believes, however, that certain additional information about origination costs may benefit consumers at early stages of the loan process. In its 2008 RESPA Final Rule, HUD explained its reason for limiting to lump-sum amounts certain disclosures, such as for origination and title charges, as avoiding consumer confusion resulting from a proliferation of itemized fees. HUD described the RESPA GFE that was in place before the effective date of the 2008 RESPA final rule as "not inform[ing] consumers what the major costs are so that they can effectively shop and compare mortgage offers among different loan originators." 73 FR at 68260. Therefore HUD sought to simplify the mortgage loan origination process by consolidating costs into a few major cost categories on the RESPA GFE. *Id.*

The Bureau understands HUD's reasoning in its 2008 RESPA final rule for establishing revised requirements for the disclosure of origination-related charges in the RESPA GFE form. The Bureau notes, however, that HUD did not specifically test the effect of separating the lump sum amounts for major categories of loan costs into component charges.[168] As discussed in the Kleimann Testing Report, in several rounds of testing, the Bureau examined the effect of such itemization of loan costs on consumers' understanding of the loan transaction and their tendency

[168] *See*, U.S. Dep't. of Hous. and Urban Dev., *Summary Report: Consumer Testing of the Good Faith Estimate Form (GFE)*, prepared by Kleimann Communications Group, Inc. (2008), available at http://www.huduser.org/publications/pdf/Summary_Report_GFE.pdf.

and ability to shop. As a result of its testing, the Bureau proposes to modify the requirements for disclosing origination-related items on the Loan Estimate. As discussed in the Kleimann Testing Report, at the Bureau's consumer testing, participants were more likely to question loan costs when they were presented in an itemized format, rather than as only an aggregate or lump sum of those costs. While participants commented favorably on lump-sum totals, they also asked for more detail about the fees that were included in the lump sum, especially when the total was a significant amount, such as for origination charges or title fees.

Further, as discussed in the Kleimann Testing Report, participants more often indicated a desire to negotiate origination charges and shop for third-party services when provided the additional details about these closing costs. Itemized closing costs also prompted participants to ask more questions about the other costs in the Loan Estimate. Although participants also responded favorably to lump-sum disclosures, without the additional information about the cost category they were less likely to indicate a desire to negotiate costs, shop for providers, and ask for additional detail about a large cost. As discussed in the Kleimann Testing Report, testing indicates that descriptive, itemized listings of the component charges in a category of closing costs related to improved performance of the participants in understanding both the underlying services provided and the amounts imposed for those services. In addition, testing participants stated that they felt more comfortable with the transaction when provided with additional detail, in part because they believed they were more responsible consumers when they were more informed. The more-complete information also may help a consumer determine whether to shop for a particular service or services. During its outreach efforts, the Bureau heard anecdotal reports that creditors are often prepared to provide consumers with additional detail about aggregate amounts disclosed on the RESPA GFE, in any event. State law also may require creditors to provide such additional detail about certain categories of costs by consummation or before accepting a fee,[169] or to retain such detail in their loan files.[170]

Therefore, proposed § 1026.37(f)(1) does not limit the disclosure of origination-related closing costs to an aggregate amount with two lines under predefined headings (as is the case with the RESPA GFE). Instead, proposed § 1026.37(f)(1) requires that the Loan Estimate include a subtotal of the amounts for all "Origination Charges," but permits the creditor to list up to 13 component items. The creditor must use a descriptive label for each component fee or charge, and must disclose the amount of that fee or charge. Proposed § 1026.37(f)(1) requires the creditor to include under the subheading "Origination Charges" the percentage of the loan amount, and the resulting calculation of the dollar amount, that is charged to the consumer as points to lower the interest rate. The Loan Estimate form H-24, in appendix H to Regulation Z, includes a line for this disclosure immediately under the subheading "Origination Charges." The line's label reads: "_ % of Loan Amount (Points)," and the blank before the percentage sign is to be filled in with the applicable number.

The Bureau does not propose to eliminate the disclosure of a single total amount of origination charges from the Loan Estimate form, however. The RESPA GFE currently shows a subtotal of the origination charges on Line A ("Your Adjusted Origination Charges"). Pursuant to § 1026.37(f)(1), the Bureau proposes to show in the Loan Estimate a similar subtotal accompanying the subheading "Origination Charges." The Bureau's testing of the Loan Estimate forms indicates that consumers can easily find and use this subtotal of the origination

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[169] *See, e.g.,* Tex. Ins. Code Ann. § 2702.053 (title charges); Ga. Comp. R. & Regs. 80-11-1-.01 (origination charges).

[170] *See, e.g.*, North Carolina Commissioner of Banks Memorandum, *Disclosure of Origination Fees under HUD's New RESPA Rules* (December 3, 2010), available at http://www.nccob.gov/public/docs/Financial%20Institutions/Mortgage/OCOB_Letter_Regarding_Disclosure_of_Origination_Fees_under_HUDs_new_RESPA_Rules.pdf.

charges to evaluate and compare loans, as discussed in the Kleimann Testing Report. Further, the testing indicates that consumers easily understand that the subtotal represents the sum of the itemized fees and charges.

The Bureau is proposing the requirements in § 1026.37(f)(1) pursuant to its implementation authority under TILA section 105(a) and RESPA section 19(a) because disclosure of the points, component charges, and total origination charges will promote the informed use of credit and more effective advance disclosure of settlement costs, which are purposes of TILA and RESPA respectively. Dodd-Frank Act sections 1032(a) and 1405(b) are also sources of authority for the proposed requirements in § 1026.37(f)(1). The information disclosed under § 1026.37(f)(1) will enable consumers to understand and negotiate fees, shop for origination services, and compare the Loan Estimate with any revised Loan Estimate and the Closing Disclosure, thereby ensuring that the features of the mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). Furthermore, for the reasons stated above, the proposed rule is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

The Bureau is aware of concerns that permitting itemization may encourage creditors to list numerous component charges that the RESPA GFE currently requires to be consolidated into one charge.[171] Based on its testing, however, the Bureau believes that proposed § 1026.37(f)(1), which permits some itemization but also requires disclosure of the subtotal of origination

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[171] In its 2008 RESPA Final Rule, HUD stated that: "Current RESPA regulations have led to a proliferation of charges that makes consumer shopping and the mortgage settlement process both difficult and confusing, even for the most informed shoppers. Long lists of charges certainly do not highlight the bottom-line costs so consumers can shop and compare mortgage offers among different originators." 73 FR 68204, 68267 (Nov. 17, 2008).

charges, provides consumers with information they want without encumbering their ability to compare credit offers among different creditors. The Bureau invites comment on whether other limits on itemization, in addition to the proposed limits on the number of charges that may be itemized pursuant to § 1026.37(f)(1), should be included in the final rule and, if so, what those limits should be.

Proposed comment 37(f)(1)-1 clarifies that charges that are included under the subheading “Origination Charges” pursuant to § 1026.37(f)(1) are those charges paid by the consumer for which the amount is paid to the creditor or loan originator for originating and extending the mortgage credit. The comment includes cross-references to § 1026.37(o)(4) for rules on rounding amounts disclosed, comment 19(e)(3)(i)-2 for a discussion of when a fee is considered to be “paid to” a person, and comment 36(a)-1 for a discussion of the meaning of “loan originator.” Proposed comment 37(f)(1)-2 clarifies that only loan originator charges paid directly by the consumer are included in the items listed pursuant to § 1026.37(f)(1), but notes that charges paid by the creditor through the interest rate are disclosed on the Closing Disclosure pursuant to § 1026.38(f)(1). Proposed comment 37(f)(1)-3 provides examples of the items that might be disclosed as “Origination Charges” on the Loan Estimate. Proposed comment 37(f)(1)-4 explains that if the consumer is not charged any points for the loan, the creditor may leave blank the percentage of points required by § 1026.37(f)(1)(i), but must disclose the dollar amount of “$0.” Proposed comment 37(f)(1)-5 clarifies that the creditor may decide the level of itemization of origination charges that is appropriate, subject to the limitations in § 1026.37(f)(1)(ii) on the number of lines.

37(f)(2) Services You Cannot Shop For

The fees and charges listed under the subheading “Services You Cannot Shop For” pursuant to proposed § 1026.37(f)(2) are for services that the creditor would require in connection with the transaction, but that would be provided by persons other than the creditor or mortgage broker. Only items for which the creditor does not permit the consumer to shop in accordance with § 1026.19(e)(1)(vi)(A) are listed under this subheading. As discussed above, § 1026.19(e)(3)(ii) applies the same criterion in determining whether an estimated charge is subsequently permitted to increase by a limited amount, absent other considerations set out in § 1026.19(e)(3).

Currently, Regulation X provides that third-party services required by the creditor and for which the creditor does not permit the consumer to shop are to be included, as applicable, in Blocks 3 (“Required services that we select”) and 4 (“Title services and lender’s title insurance”) on the RESPA GFE. Regulation X also provides that charges for title services, like charges for origination services, are not itemized on the RESPA GFE, but are disclosed only as a total. *See* appendix C to Regulation X (instructions for Blocks 3, 4 (“all fees for title searches, examinations, and endorsements, for example, would be included in this total”), and 6).

As discussed in connection with proposed § 1026.37(f)(1), consumer testing performed on Loan Estimate forms indicated that itemization related to improved performance of the participants in understanding both the services provided and the charges imposed for those services. Participants appeared more likely to negotiate fees and shop for services when provided additional details that helped them to understand the nature of the services and the potential value of shopping for a particular service. Pursuant to § 1026.37(f)(2) and (3), the Bureau proposes to show in the Loan Estimate subtotals and itemized amounts for loan costs, including for title-related services, on the highlighted lines with the subheadings “Services You Cannot Shop For” and “Services You Can Shop For.” The Bureau’s testing of the forms indicates that consumers can easily find and appropriately use the subtotals of these amounts, as discussed in the Kleimann Testing Report.

Pursuant to § 1026.37(f)(2), each item disclosed under the subheading “Services You Cannot Shop For” must include a descriptive name and the estimated charge, and the creditor must provide a subtotal of all such items. All items for which the charges relate to the provision of title insurance and the handling of the closing must be identified beginning with “Title -.” The creditor may use up to 13 lines to itemize charges under the subheading for “Services You Cannot Shop For.”

The Bureau is proposing the requirements in § 1026.37(f)(2) pursuant to its authority under TILA section 105(a) and RESPA section 19(a) because disclosure of third-party services required by a creditor for consummation of the loan, their component and total charges, and the fact that the creditor will limit the choice of providers for those services will promote the informed use of credit and more effective advance disclosure of settlement costs, which are purposes of TILA and RESPA respectively. Dodd-Frank Act sections 1032(a) and 1405(b) are also sources of authority for the proposed requirements in § 1026.37(f)(2). The information disclosed under § 1026.37(f)(2) will enable consumers to understand and negotiate fees, shop for a mortgage loan, and compare the Loan Estimate with any revised Loan Estimate and the Closing Disclosure, thereby ensuring that the features of the mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). Furthermore, for the reasons stated above, the proposed disclosure is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

As discussed above, the Bureau is aware of concerns that permitting itemization may encourage creditors to list numerous component charges that the RESPA GFE currently requires to be consolidated. The Bureau invites comment on whether other limits on itemization, in addition to the proposed limits on the number of charges that may be itemized pursuant to § 1026.37(f)(2), should be included in the final rule and, if so, what those limits should be.

Proposed comment 37(f)(2)-1 cross-references comments 19(e)(1)(iv)-1, 19(3)(i)-1, and 19(e)(3)(iv)-1 through -3 for discussions of the factors relevant to determining whether a consumer is permitted to shop and whether a creditor has exercised good faith in providing estimates of charges. Proposed comment 37(f)(2)-2 provides examples of the services that might be listed under "Services You Cannot Shop For." Proposed comment 37(f)(2)-3 provides examples of services that would be listed using a phrase beginning with "Title -." Proposed comment 37(f)(2)-4 clarifies that the amount listed for the lender's title insurance coverage is the amount of the premium without any adjustment that might be made for the simultaneous purchase of an owner's title insurance policy, and it cross-references comment 37(g)(4)-1 for the disclosure of the premium for owner's title insurance.

37(f)(3) Services You Can Shop For

The fees and charges listed under the subheading "Services You Can Shop For" pursuant to proposed § 1026.37(f)(3) are for services that the creditor would require in connection with its decision to make the loan, but that would be provided by persons other than the creditor or mortgage broker. Only items for which the creditor permits the consumer to shop in accordance with § 1026.19(e)(1)(vi)(A) are listed under this subheading. Thus, all Loan Costs that are not paid to the creditor or mortgage broker are itemized exclusively under either this subheading or the subheading “Services You Cannot Shop For.”

Currently, Regulation X provides that third-party services required by the creditor but for which the creditor permits the consumer to shop are to be included, as applicable, in Blocks 4 (“Title services and lender’s title insurance”) and 6 (“Required services that you can shop for”) on the RESPA GFE. Regulation X also provides that charges for title services, like charges for origination services, are not itemized on the RESPA GFE, but are disclosed only as a total. *See* appendix C to Regulation X (instructions for Blocks 3, 4 (“all fees for title searches, examinations, and endorsements, for example, would be included in this total”), and 6).

As discussed in connection with proposed § 1026.37(f)(1) and (2), consumer testing performed on Loan Estimate forms indicated that itemization related to improved performance of the participants in understanding both the services charged and the costs of those services. Participants appeared more likely to negotiate fees and shop for services when provided additional details that helped them to understand the nature of the services and the potential value of shopping for a particular service. Pursuant to § 1026.37(f)(2) and (3), the Bureau proposes to show in the Loan Estimate subtotals and itemized amounts for loan costs, including for title-related services, on the highlighted lines with the subheadings “Services You Cannot Shop For” and “Services You Can Shop For.” The Bureau’s testing of the forms indicates that consumers can easily find and appropriately use the subtotals of these amounts.

Pursuant to § 1026.37(f)(3), each item disclosed under the subheading “Services You Can Shop For” must include a descriptive name and the estimated charge, and the creditor must provide a subtotal of all such items. All items for which the fees and charges relate to the provision of title insurance and the handling of the closing must be identified beginning with "Title -." The creditor may use up to 14 lines to itemize charges under this subheading.

The Bureau is proposing the requirements in § 1026.37(f)(3) pursuant to its authority under TILA section 105(a) and RESPA section 19(a) because disclosure of third-party services required by a creditor for consummation of the loan, their component and total charges, and the fact that the creditor will permit the consumer to choose the providers for those services will promote the informed use of credit and more effective advance disclosure of settlement costs, which are purposes of TILA and RESPA respectively. Dodd-Frank Act sections 1032(a) and 1405(b) are also sources of authority for the proposed requirements in § 1026.37(f)(3). The information disclosed under § 1026.37(f)(3) will enable consumers to understand and negotiate fees, shop for a mortgage loan, and compare the Loan Estimate with any revised Loan Estimate and the Closing Disclosure, thereby ensuring that the features of the mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). Furthermore, for the reasons stated above, the proposed disclosure is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

As discussed above, the Bureau is aware of concerns that itemization may encourage creditors to list numerous component charges that the RESPA GFE currently requires to be consolidated. The Bureau invites comment on whether other limits on itemization, in addition to the proposed limits on the number of charges that may be itemized pursuant to § 1026.37(f)(3), should be included in the final rule and, if so, what those limits should be.

Proposed comment 37(f)(3)-1 provides cross-references to comments 19(e)(3)(ii)-1 through -3, 19(e)(3)(iii)-2, and 19(e)(3)(iv)-1 through -3 for discussions of determining good faith in estimating the costs for required services when the consumer is permitted to choose the provider of those services. Proposed comment 37(f)(3)-2 provides examples of the services that might be listed under "Services You Can Shop For." Proposed comment 37(f)(3)-3 provides cross-references to comments 37(f)(2)-3 and -4 for guidance on services that would be labeled beginning with "Title -" and on calculating the amount disclosed for lender's title insurance, and it cross-references comment 37(g)(4)-1 for the disclosure of the premium for owner's title insurance.

37(f)(4) Total Loan Costs

Proposed § 1026.37(f)(4) requires the creditor to disclose, labeled "Total Loan Costs," the sum of the subtotals disclosed under § 1026.37(f)(1) through (3) for Origination Charges, Services You Cannot Shop For, and Services You Can Shop For, respectively. This total represents all costs that the creditor and mortgage broker impose in connection with the transaction.

Although a comparable total is not required to be stated on the current RESPA GFE, the same costs are included in other subtotals on the RESPA GFE. The Bureau believes that grouping and subtotaling these items in this way will provide better information to the consumer about costs that are specific to obtaining the mortgage loan from the creditor. Other costs that the consumer may encounter as part of the transfer of ownership of the property are generally related to items and requirements for which the amounts are controlled by other entities or persons, including governmental jurisdictions and the consumer, and are addressed in proposed § 1026.37(g). Accordingly, disclosure of this information will promote the informed use of credit and more effective advance notice of settlement costs, consistent with TILA section 105(a) and RESPA section 19(a). It will also ensure that the features of the mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to better understand the costs, benefits, and risks associated with mortgage transactions, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). Furthermore, for the reasons stated above, the proposed disclosure is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

37(f)(5) Item Descriptions and Ordering

Proposed § 1026.37(f)(5) requires the creditor to use terminology that briefly and clearly describes each item disclosed under § 1026.37(f). Except for the item for points that the consumer will pay, which must be listed as the first item under the subheading "Origination Charges," all items must be listed in alphabetical order under the applicable subheading. The current RESPA GFE and early TILA disclosure do not include a similar requirement. The Bureau believes that a consistent listing of the costs that appear on the Loan Estimate and the Closing Disclosure will facilitate the consumer's comparison of the two disclosure documents and understanding of the transaction as a whole. Accordingly, this requirement will effectuate the purposes of TILA and RESPA by promoting the informed use of credit and more effective advance notice of settlement costs, consistent with TILA section 105(a) and RESPA section 19(a), and will ensure that the features of the mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to better understand the costs, benefits, and risks associated with mortgage transactions, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a).

37(f)(6) Use of Addenda

Proposed § 1026.37(f)(6) provides that addenda may not be used to itemize disclosures required by § 1026.37(f)(1) or (2). If the creditor is not able to itemize all of the charges required to be disclosed in the number of lines provided under § 1026.37(f)(1)(ii) and (f)(2)(ii), the remaining charges must be disclosed as an aggregate amount in the last line permitted under the applicable paragraph. An addendum may be used to itemize disclosures required by § 1026.37(f)(3), or any remaining charges may be disclosed as an aggregate amount in the last line permitted under paragraph (f)(3). The Bureau is proposing the requirements in § 1026.37(f)(6) pursuant to its authority under TILA section 105(a) and RESPA section 19(a) because standardization of the information provided on the disclosures required under § 1026.19(e) will provide consistent information that consumers will be able to use to better understand the mortgage transaction, shop for loans, and compare the Loan Estimate with any revised Loan Estimate and the Closing Disclosure, thereby promoting the informed use of credit and more effective advance disclosure of settlement costs, which are purposes of TILA and RESPA respectively. This standardization will also ensure that the features of the mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to more readily understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a), which is also a source of authority for the proposed requirements.

Proposed comment 37(f)(6)-1 clarifies that a creditor is permitted to provide additional disclosures that are required by State law, as long as those disclosures are provided on a document whose pages are separate from, and are not presented as part of, the disclosures provided in accordance with § 1026.37(f). Proposed comment 37(f)(6)-2 provides an example of a label that may be used to reference an addendum as permitted under § 1026.37(f)(6)(ii).

37(g) Closing Cost Details; Other Costs

Under section 5(c) of RESPA, creditors must provide mortgage loan applicants with a good faith estimate of the amount or range of charges for specific settlement services the applicant is likely to incur in connection with the consummation of the loan. 12 U.S.C. 2604(c). Section 1024.7 of Regulation X implements this mandate by requiring creditors and mortgage brokers to provide the GFE, which must be completed in accordance with the instructions in appendix C to Regulation X. Appendix C sets out specific instructions for the information that must be disclosed on the GFE, including which loan costs must be included and how to identify those costs on the GFE.

As discussed above, Dodd-Frank Act section 1032(f) requires the Bureau to combine these RESPA disclosures with the pre-consummation disclosures required by TILA. In addition to existing TILA disclosure requirements, section 1419 of the Dodd-Frank Act amended TILA section 128(a) to require, in the case of a residential mortgage loan, disclosure of the aggregate amount of settlement charges for all settlement services provided in connection with the loan and the aggregate amount of other fees or required payments in connection with the loan. 15 U.S.C. 1638(a)(17).

Pursuant to its authority under Dodd-Frank Act section 1032(f), TILA section 105(a), and RESPA section 19(a), the Bureau proposes to require creditors to disclose the loan costs and other costs imposed upon the consumer in tables as part of the integrated Loan Estimate. Proposed § 1026.37(f) and (g) implement the early disclosure requirements in TILA and RESPA by setting out details relating to the costs for consummating the mortgage loan, including loan costs and other costs. Based on its consumer testing, the Bureau believes that early disclosure of estimated loan costs and other costs, as set forth in proposed § 1026.37(f) and (g), will improve consumer understanding of the credit and property transactions. The Bureau believes that these disclosures will effectuate the purpose of TILA by promoting the informed use of credit and assuring a meaningful disclosure to consumers. The Bureau believes that the disclosures will also satisfy the RESPA requirement to provide a consumer with a good faith estimate of the amount or range of charges for specific settlement services the consumer is likely to incur in connection with the closing. Dodd-Frank Act sections 1032(a) and 1405(b) are also sources of authority for the proposed rule. These disclosures will ensure that the features of the mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). Furthermore, for the reasons stated above, the proposed rule is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

Proposed § 1026.37(g) requires creditors to disclose as “Other Costs” on the Loan Estimate certain items that are in addition to the Loan Costs that are specifically required by the creditor before consummation of a credit transaction and are disclosed pursuant to § 1026.37(f). The “Other Costs” disclosed pursuant to § 1026.37(g) are necessary to complete the real estate closing. These items usually concern payments for governmental requirements, insurance premiums, and items that are charged by parties to the property transaction other than the creditor. The creditor must disclose under four subheadings individual itemized charges, along with subtotals for categories of those itemized charges.

Consumer feedback from the Bureau's consumer testing indicated that clear amounts for the total costs of the loan and real estate closing were also important to consumers' understanding of the complete transaction. Consistent with that feedback, under two additional subheadings, the creditor must disclose the total of Other Costs and the total of Loan Costs plus Other Costs. In general, all of these charges are currently required to be disclosed—as itemized or aggregate charges and amounts—on the RESPA GFE, the RESPA settlement statement, or both. Combining these charges and totals into the disclosures required by § 1026.19(e) will enable consumers to understand the services and charges related to the loan and property transactions, shop for the loan and certain services, and compare the Loan Estimate with any revised Loan Estimate and the Closing Disclosure, thereby ensuring that the features of the mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). Proposed comment 37(g)-1 describes the kinds of charges that are disclosed under § 1026.37(g). Proposed comment 37(g)-2 clarifies that items that are paid at or before closing under the real estate contract are not disclosed on the Loan Estimate, except to the extent the creditor is aware of those charges at the time the Loan Estimate is issued. These items will be disclosed, however, in the Closing Disclosure pursuant to § 1026.38(f), (g), (j) and (k).

37(g)(1) Taxes and Other Government Fees

Proposed § 1026.37(g)(1) requires the disclosure of taxes and other government fees for recording of documents and transfer taxes assessed against the purchase price of a real estate contract or the loan amount. Recording fees differ from transfer taxes because recording fees are based on the nature or physical characteristics of the document being recorded and are not based on the sales price or loan amount. The Bureau is proposing the requirements in § 1026.37(g)(1) pursuant to its authority under TILA section 105(a) and RESPA section 19(a) because disclosure of taxes and government fees required to be paid in the real estate closing will educate consumers about costs they must be prepared to pay in the transaction, thereby promoting the informed use of credit and more effective advance disclosure of settlement costs, which are purposes of TILA and RESPA respectively. Dodd-Frank Act sections 1032(a) and 1405(b) are also sources of authority for the proposed requirements in § 1026.37(g)(1). This information also ensures that the features of the mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). Furthermore, for the reasons stated above, the proposed disclosure is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

Proposed comment 37(g)(1)-1 clarifies that recording fees are assessed by a government authority in order to record and index documents related to property transfers under State or local law. Proposed comment 37(g)(1)-2 clarifies that government charges that are not transfer taxes are disclosed with recording fees under § 1026.37(g)(1)(i). Proposed comment 37(g)(1)-3 explains that, in general, transfer taxes are State and local government fees on mortgages and home sales that are based on the loan amount or sales price. Proposed comment 37(g)(1)-4 clarifies that the only transfer taxes disclosed under § 1026.37(g)(1) are transfer taxes imposed on the consumer, as determined under State or local law, and that if unpaid transfer taxes can result in a lien being placed on the property of the consumer, the transfer tax is disclosed under § 1026.37(g)(1). The comment further clarifies that if State or local law is unclear, or does not specifically attribute the transfer tax, the creditor may use common practice in the locality of the property to apportion the amount of the transfer tax disclosed as paid by the consumer under § 1026.37(g)(1). This comment is consistent with guidance provided by HUD in the HUD RESPA FAQs p.34, #2 (“GFE-Block 8”). Proposed comment 37(g)(1)-5 explains that although transfer taxes paid by the seller in a purchase transaction are not disclosed pursuant to § 1026.37(g), they will be disclosed on the Closing Disclosure under § 1026.38(g)(1)(ii). Proposed comment 37(g)(1)-6 clarifies that the lines and labels required under § 1026.37(g)(1) may not be deleted, and that additional items may not be listed under the subheading.

37(g)(2) Prepaids

Proposed § 1026.37(g)(2) requires the disclosure of prepaid charges for real estate property taxes, insurance premiums, and other items that must be paid to insure the property or satisfy real estate tax obligations, as well as other charges that must be satisfied before consummation of the credit transaction and the real estate closing. Proposed § 1026.37(g)(2) also prescribes some of the items, and additional information about those items, that must be included under the subheading “Prepaids.” The Bureau is proposing the requirements in § 1026.37(g)(2) pursuant to its authority under TILA section 105(a) and RESPA section 19(a) because disclosure of charges that must be satisfied as part of the mortgage transaction will educate consumers about costs they must be prepared to pay, thereby promoting the informed use of credit and more effective advance disclosure of settlement costs, which are purposes of TILA and RESPA respectively. Dodd-Frank Act sections 1032(a) and 1405(b) are also sources of authority for the proposed requirements. This information ensures that the features of the mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). Furthermore, for the reasons stated above, the proposed disclosure is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

Proposed comment 37(g)(2)-1 provides examples of other periodic charges that are required to be paid at consummation and are disclosed under § 1026.37(g)(2). Proposed comment 37(g)(2)-2 clarifies that the interest rate disclosed under § 1026.37(g)(2)(iii) is the same interest rate that is disclosed under § 1026.37(b)(2). Proposed comment 37(g)(2)-3 clarifies that the terms "property taxes," "homeowner's insurance," and "mortgage insurance" have the same meaning as those terms are used under § 1026.37(c) and its commentary. Proposed comment 37(g)(2)-4 clarifies that the lines and labels required under § 1026.37(g)(2) may not be deleted.

37(g)(3) Initial Escrow Payment at Closing

Proposed § 1026.37(g)(3) requires the disclosure of the initial payments to establish an escrow account to pay for future recurring charges. Disclosure of these amounts is required under § 1024.7 and § 1024.17 of Regulation X, and the items and amounts must be disclosed in Block 9 of the RESPA GFE. Proposed § 1026.37(g)(3) also prescribes some of the items, and additional information about those items, that must be included under the subheading "Initial Escrow Payment at Closing." The Bureau is proposing the requirements in § 1026.37(g)(3) pursuant to its authority under TILA section 105(a) and RESPA section 19(a) because disclosure of initial payments that consumers are required to make to establish escrow accounts for future recurring charges will educate consumers about costs they must be prepared to pay in the mortgage transaction, thereby promoting the informed use of credit and more effective advance disclosure of settlement costs, which are purposes of TILA and RESPA respectively. Dodd-

Frank Act sections 1032(a) and 1405(b) are also sources of authority for the proposed requirements. This information ensures that the features of the mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). Furthermore, for the reasons stated above, the proposed disclosure is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

Proposed comment 37(g)(3)-1 clarifies that for any item required to be listed that is not charged to the consumer, the monthly payment amount and time period may be left blank, but the dollar amount for the item must be shown as zero. Proposed comment 37(g)(3)-2 clarifies that the aggregate escrow account adjustment required for the HUD-1 settlement statement under Regulation X § 1024.17(d)(2) is not included on the Loan Estimate, but is included on the Closing Disclosure under § 1026.38(g)(3). Proposed comment 38(g)(3)-3 clarifies that "property taxes," "homeowner's insurance," and "mortgage insurance" have the same meaning as those terms are used under § 1026.37(c) and its commentary. Proposed comment 37(g)(3)-4 clarifies that the lines and labels required under § 1026.37(g)(3) may not be deleted.

37(g)(4) Other

Proposed § 1026.37(g)(4) requires the disclosure of any other items that the consumer has become legally obligated to pay in connection with the transaction, to the extent that the existence of these items is known by the creditor at the time the Loan Estimate is issued. The label for any item that is a component of title insurance must include the description "Title –" at the beginning. The label for all items for which the amounts disclosed are premiums for separate optional insurance, warranty, guarantee, or event-coverage products must include the parenthetical “(optional)” at the end. The items disclosed under proposed § 1026.37(g)(4) are not required by the creditor. These items are also not additional coverage or endorsements added to products required by the creditor. Accordingly, they are not disclosed under other paragraphs of proposed § 1026.37(f) or (g) and are disclosed under the subheading “Other.” These items are voluntary products that the consumer may be likely or may have already elected to purchase, and of which the creditor knows or is aware. The Bureau is proposing the requirements in § 1026.37(g)(4) pursuant to its authority under TILA section 105(a) and RESPA section 19(a) because disclosure of payments that consumers are likely to pay in a mortgage transaction will educate consumers about costs they must be prepared to pay at closing, thereby promoting the informed use of credit and more effective advance disclosure of settlement costs, which are purposes of TILA and RESPA respectively. Dodd-Frank Act sections 1032(a) and 1405(b) are also sources of authority for the proposed requirements. This information ensures that the features of the mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the transaction in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). Furthermore, for the reasons stated above, the proposed disclosure is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

Proposed comment 37(g)(4)-1 clarifies that any owner’s title insurance policy premium disclosed under § 1026.37(g)(4) is based on a basic rate, and not an “enhanced” premium. This comment is consistent with guidance provided in the HUD RESPA FAQs p.33, #3 (“GFE-Block 5"). Proposed comment 37(g)(4)-1 also provides an example of a label for owner’s title insurance and cross-references comment 37(f)(2)-4 for disclosure of the premium for lender’s title insurance. Proposed comment 37(g)(4)-2 clarifies that any title insurance policy disclosed on the Loan Estimate based on a simultaneous issuance calculation must be disclosed by adding the full owner's title insurance premium plus the simultaneous issuance premium, and then deducting the amount of the lender's title at the full premium rate. Proposed comment 37(g)(4)-3 provides examples of products to which the description "(optional") applies and cross-references comments 4(b)(7) and (b)(8)-1 through -3 and comments 4(b)(10)-1 and -2 for descriptions and guidance concerning disclosure of premiums for credit life, debt suspension, and debt cancellation coverage. Proposed comment 37(g)(4)-4 provides examples of other items that are disclosed under § 1026.37(g)(4) if known by the creditor at the time the Loan Estimate is issued and refers to comment 19(e)(3)(iii)-3 concerning application of the good faith requirement for services that are not required by the creditor.

37(g)(5) Total Other Costs

Proposed § 1026.37(g)(5) requires disclosure under the subheading "Total Other Costs" of the sum of the subtotals disclosed pursuant to paragraphs (g)(1) through (g)(4). The Bureau is proposing the requirements in § 1026.37(g)(5) pursuant to its authority under TILA section 105(a) and RESPA section 19(a) because disclosure of the total of the charges consumers must pay, in addition to charges for consummating the loan, will promote the informed use of credit and more effective advance disclosure of settlement costs, which are purposes of TILA and RESPA respectively. Dodd-Frank Act sections 1032(a) and 1405(b) are also sources of authority for the proposed requirements. This information ensures that the features of the mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a).

Furthermore, for the reasons stated above, the proposed disclosure is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

37(g)(6) Total Closing Costs

Proposed § 1026.37(g)(6) requires the disclosure under the subheading "Total Closing Costs" of a subtotal of the items disclosed as "Total Loan Costs" and "Total Other Costs" pursuant to paragraphs (f)(4) and (g)(5); the amount of any generalized lender credits to be provided at consummation, stated as a negative number; and the sum of the subtotal of loan and other costs and the (negative) amount of lender credits. The Bureau is proposing the requirements in § 1026.37(g)(6) pursuant to its authority under TILA section 105(a) and RESPA section 19(a) because disclosure of the total amounts consumers must pay to consummate the loan and close the property transaction will promote the informed use of credit and more effective advance disclosure of settlement costs, which are purposes of TILA and RESPA respectively. Dodd-Frank Act sections 1032(a) and 1405(b) are also sources of authority for the proposed requirements. This information ensures that the features of the mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). Furthermore, for the reasons stated above, the proposed disclosure is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b). Proposed comment 37(g)(6)(iii)-1 clarifies that generalized lender credits not associated with a particular service are disclosed under § 1026.37(g)(6)(iii), but lender credits for specific items disclosed on the Loan Estimate are disclosed as paid by others on the Closing Disclosure under § 1026.38(f) and (g), as applicable.

37(g)(7) Item Descriptions and Ordering

In identifying the items listed as Other Costs, the creditor is required to use terminology that briefly and clearly describes the item. All items must be listed in alphabetical order following the items prescribed to be included under the subheading. The current RESPA GFE and early TILA disclosure do not include a similar requirement. The Bureau is proposing the requirements in § 1026.37(g)(7) pursuant to its authority under TILA section 105(a) and RESPA section 19(a) because a consistent listing of the costs that appear on the Loan Estimate and the Closing Disclosure will facilitate the consumer's comparison of the two disclosure documents and understanding of the transaction as a whole, thereby promoting the informed use of credit and more effective advance disclosure of settlement costs, which are purposes of TILA and RESPA respectively. This requirement also will ensure that the features of the mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permit consumers to understand the costs, benefits, and risks associated with the mortgage transaction in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a).

37(g)(8) Use of Addenda

Proposed § 1026.37(g)(8) provides that addenda may not be used to itemize disclosures required by § 1026.37(g). If the creditor is not able to itemize all of the charges required to be disclosed in the number of lines provided under a subheading, the remaining charges must be disclosed as an aggregate amount in the last line permitted under the applicable subheading. The Bureau is proposing the requirements in § 1026.37(g)(8) pursuant to its authority under TILA section 105(a) and RESPA section 19(a) because standardization of the information provided on the disclosures required under § 1026.19(e) will provide consistent information that consumers will be able to use to better understand the mortgage transaction, shop for loans, and compare the

Loan Estimate with any revised Loan Estimate and the Closing Disclosure, thereby promoting the informed use of credit and more effective advance disclosure of settlement costs, which are purposes of TILA and RESPA respectively. This standardization will also ensure that the features of the mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permit consumers to more readily understand the costs, benefits, and risks associated with the mortgage transaction in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a), which is also a source of authority for the proposed requirements.

Proposed comment 37(g)(8)-1 clarifies that a creditor is permitted to provide additional disclosures that are required by State law, as long as those disclosures are provided on a separate document whose pages are physically separate from, and are not presented as part of, the disclosures provided in accordance with § 1026.37.

37(h) Calculating Cash to Close

Pursuant to its authority under TILA section 105(a) and Dodd-Frank Act section 1032(a), the Bureau proposes § 1026.37(h), which requires the disclosure of the calculation of an estimate of the cash needed from the consumer at consummation of the transaction. In addition to promoting the informed use of credit (which is a purpose of TILA), this disclosure would ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product, in light of the facts and circumstances, consistent with section 1032(a) of the Dodd-Frank Act. Proposed comment 37(h)-1 clarifies that the labels to be used on the Loan Estimate for each amount must match their description in proposed § 1026.37(h)(1) to (7).

37(h)(1) Total Closing Costs

37(h)(2) Closing Costs to be Financed

Under § 1026.37(h)(1), the total closing costs would be disclosed as calculated under § 1026.37(g)(6) as a positive number. Under § 1026.37(h)(2), the amount of the closing costs to be paid from loan proceeds would be disclosed as a negative number.

37(h)(3) Downpayment and Other Funds from Borrower

Under § 1026.37(h)(3), the amount of the downpayment and other funds from consumer at consummation would be disclosed as a positive number. In a purchase transaction the downpayment would be calculated as the difference between the purchase price of the property and the principal amount of the credit. In all other transactions, the funds from the consumer would be calculated under § 1026.37(h)(5).

37(h)(4) Deposit

Under proposed § 1026.37(h)(4), the amount that is paid to the seller or held in trust or escrow by a third party pursuant to the terms of a contract for sale of real estate disclosed as a negative number. Proposed comment 37(h)(4)-1 clarifies that in any transaction other than a purchase transaction, the amount disclosed under proposed § 1026.37(h)(4) must be $0.

37(h)(5) Funds for Borrower

Under proposed § 1026.37(h)(5), the amounts to be disclosed under both § 1026.37(h)(3) and § 1026.37(h)(5) are calculated by subtracting the amount of debt being satisfied by the real estate transaction and the amount of the credit extended by the new loan, excluding any amount under § 1026.37(h)(2) since that amount of the credit extended has already been accounted for in the cash to close calculation by inclusion in § 1026.37(h)(2). Funds for Borrower" is intended to generally represent the amount anticipated to be disbursed to the consumer or used at consumer's discretion at consummation of the transaction, such as in cash-out refinance transactions. The determination of whether the transaction will result in "Funds for Borrower" is made under proposed § 1026.37(h)(5). When the result of the calculation is positive, that amount is disclosed under § 1026.37(h)(3), and $0.00 is disclosed under § 1026.37(h)(5). When the result of the calculation is negative, that amount is disclosed under § 1026.37(h)(5), and $0.00 is disclosed under § 1026.37(h)(3). When the result is $0.00, $0.00 is disclosed in both §§ 1026.37(h)(3) and 1026.37(h)(5).

37(h)(6) Seller Credits

Under proposed § 1026.37(h)(6), the amount of any seller credit, to the extent known by the creditor, is disclosed as a negative number. Proposed comment 37(6)-1 clarifies that seller credits known by the creditor at the time of application are disclosed under § 1026.37(h)(6), and that seller credits that are not known by the creditor are not disclosed under § 1026.37(h)(6).

37(h)(7) Adjustments and Other Credits

Under proposed § 1026.37(h)(7) the amount of other credits for all loan costs and other costs, to the extent known, that are to be paid by persons other than the loan originator, creditor, consumer, or seller disclosed as a negative number. Proposed comment 37(h)(7)-1 clarifies that amounts expected to be paid by third parties not involved in the transaction, such as gifts from family members and not otherwise identified under § 1026.37(h), would be included in this amount to the extent known by the creditor. Proposed comment 37(h)(7)-2 clarifies that the term "persons" as used in § 1026.37(h)(7) includes all individuals and any entity, regardless of the legal structure of such entity. Proposed comment 37(h)(7)-3 clarifies that only credits from parties other than the creditor or seller can be disclosed pursuant to § 1026.37(h)(7). Seller credits and credits from the creditor are disclosed pursuant to § 1026.37(h)(6) and

§ 1026.37(g)(6)(ii), respectively. Proposed comment 37(h)(7)-4 clarifies that other credits known by the creditor at the time of application are disclosed under § 1026.37(h)(7), and that other credits that are not known by the creditor are not disclosed under § 1026.37(h)(6).

37(h)(8) Estimated Cash to Close

Under proposed § 1026.37(h)(8) the total of the amounts disclosed under proposed § 1026.37(h)(1) to (7) is disclosed. Proposed comment 37(h)(8)-1 clarifies that the sum total of § 1026.37(h)(1) through (7) must be disclosed pursuant to § 1026.37(h)(8) as either a positive number, a negative number, or zero. A positive number indicates the estimated amount that the consumer can be expected to pay at consummation to complete the transaction. A negative number indicates the estimated amount that the consumer can receive from the transaction at consummation. A result of zero indicates that the consumer is anticipated to neither need to pay any amount or receive any amount from the transaction at consummation.

37(i) Adjustable Payment Table

For certain credit transactions secured by a dwelling, TILA section 128(b)(2)(C)(ii) requires the disclosure of examples of adjustments to the regular required payment on the extension of credit based on the change in the interest rates specified by the contract. Among the examples must be the maximum regular required payment based on the maximum interest rate allowed under the contract. While this section requires examples based on changes to the interest rates, the requirement is triggered if either the interest rate may change or the "regular payments may otherwise be variable." 15 U.S.C. 1638(b)(2)(C)(ii). TILA section 128(b)(2)(C)(ii) does not, however, require the disclosure of the existence of loan terms that may cause the periodic payment to adjust without a change to the interest rate.

The Bureau believes that, to promote the informed use of credit, loan terms that may cause the periodic principal and interest payment to adjust without a change to the interest rate (such as an optional payment loan) or include a period during which the payment may not pay principal (such as an interest-only period) or is not required to make payments should be clearly disclosed to consumers. In the Bureau's consumer testing, participants generally were able to use this information to evaluate the credit terms of the loan disclosed.

For example, the Bureau provided mortgage disclosures for interest-only loans to participants using a prototype of an "adjustable payment table" at its consumer testing. The table displayed whether the loan had an interest-only, optional-payment, or step-payment period; the length of such period; the amount of the periodic principal and interest payment at the first adjustment; the frequency and amounts of subsequent adjustments; and the maximum possible principal and interest payment under the terms of the loan. Participants were able to use this table to determine the presence of the interest-only period and the length of the period, as well as how the principal and interest payments would change as a result. Also, participants were able to understand that the purpose of the table generally was to inform them about such features. They were able to determine from the prototype table that the credit terms did not include one of the other features, such as an optional-payment or step-payment period.

Proposed § 1026.37(i) requires an Adjustable Payment (AP) table to disclose examples of the required periodic principal and interest payment, including the maximum possible required principal and interest payment, for loans with terms that allow the principal and interest payment to adjust not based on adjustments to the interest rate. In contrast, proposed § 1026.37(j) requires provision of an Adjustable Interest Rate table for credit transactions with terms that permit the interest rate to adjust after consummation. Proposed § 1026.37(i)(1) through (3) requires the disclosure to state affirmatively or negatively whether the loan has an interest-only, payment-option, or step-payment period, and the length of such period. Proposed § 1026.37(i)(4) also requires the disclosure to state affirmatively or negatively whether the loan has a seasonal payment feature and the period during which periodic payments are affected by such feature. As discussed above with respect to proposed § 1026.37(a)(10), the Bureau understands that some loans may be structured so that periodic principal and interest payments are not required to be made by the consumer in between specified unit-periods on a regular basis.

The format of the table as required by proposed § 1026.37(o), and as illustrated by form H-24 in appendix H to Regulation Z, provides the affirmative or negative statement in bold text in the form of a question and answer. In addition, the examples of the periodic principal and interest payments are set apart from these answers by a subheading in bold text. The Bureau believes, based on consumer testing, that this format displays the information in a readily visible, clear, and understandable manner for consumers.

The Bureau proposes these requirements pursuant to TILA section 128(b)(2)(C)(ii), and its authority under TILA section 105(a), section 1032(a) of the Dodd-Frank Act, and, for residential mortgage loans, section 1405(b) of the Dodd-Frank Act. The Bureau proposes to use its authority under TILA section 105(a) to require this information to be disclosed for all transactions subject to § 1026.19(e) and (f). The Bureau believes this information may effectuate the purposes of TILA by allowing consumers to compare more readily the different loan terms available to them, and specifically, whether they contain such adjustable or seasonal payment terms. In addition, consistent with section 1032(a) of the Dodd-Frank Act, this disclosure would ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks. In addition, the Bureau believes this information may improve consumer awareness and understanding of transactions involving residential mortgage loans and is in the interest of consumers and the public interest.

Proposed comment 37(i)-1 clarifies that under § 1026.37(i), the AP table may only be disclosed if the periodic principal and interest payment may change after consummation based on an adjustment that is not an adjustment to the interest rate, or if the transaction is a seasonal payment product as described in proposed § 1026.37(a)(10)(ii)(E). The creditor is not permitted to disclose the table if the loan terms do not meet these requirements, even if the table is left blank or disclosed with an "N/A" within each row. The Bureau believes that the inclusion of the AP table in such cases would be unduly distracting and confusing to a consumer and could contribute to information overload – especially if an entire table is included only to be marked "not applicable." As the information within the table must be determined dynamically, depending on each transaction's terms, the Bureau believes a requirement that it be omitted when not applicable is unlikely to be a significant additional burden. This comment references proposed comment 37-1, which clarifies the general permission in proposed § 1026.37 to provide the required disclosures "as applicable" is subject to the more specific prohibition in proposed § 1026.37(i), which does not permit disclosure of the AP table when it is not applicable. As the two tables' numbers of rows and columns are determined dynamically, depending on each transaction's terms, the Bureau believes a requirement that they be omitted when not applicable is unlikely to be a significant additional burden. The Bureau seeks comment on whether this dynamic inclusion/exclusion requirement would be unduly burdensome for creditors.

Proposed comment 37(i)-2 provides guidance and examples of how the information required by proposed § 1026.37(i)(1) through (4) should be disclosed. Proposed comment

37(i)(5)-1 clarifies that the applicable unit-period should be disclosed in the subheading required by proposed § 1026.37(i)(5). Proposed comment 38(i)(5)-2 provides guidance on how to disclose the first payment adjustment required to be disclosed by proposed § 1026.37(i)(5)(i) when the exact payment number is unknown at the time of the disclosure. Proposed comment 38(i)(5)-3 provides guidance regarding how to disclose the frequency of adjustments to the periodic principal and interest payment after the initial adjustment, as required by proposed § 1026.37(i)(5)(ii). Proposed comment 37(i)(5)-4 provides guidance regarding how to calculate the maximum periodic principal and interest payment for purposes of the disclosure required by proposed § 1026.37(i)(5)(iii).

The format required by proposed § 1026.37(o), and illustrated by forms H-24(b) and (c) in appendix H to this part, provides the information required by proposed § 1026.37(i) in a concise, organized table. This table appears immediately adjacent to the Adjustable Interest Rate (AIR) Table required by proposed § 1026.37(j) for loans that also permit the interest rate to adjust after consummation. The table uses bold text for the questions and capitalized "yes" and "no" text for the answers required by proposed § 1026.37(i)(1), (2), (3), and (4). The AP table also uses bold text for the subheading required by proposed § 1026.37(i)(5). Based on its testing, the Bureau believes this format displays the information in a clear, readily visible, and understandable manner for consumers.

37(j) Adjustable Interest Rate Table

Currently, TILA does not expressly require disclosure of the interest rate for closed-end credit. However, as noted above, for closed-end credit secured by a dwelling, TILA section 128(b)(2)(C)(ii) requires disclosure of examples of the periodic principal and interest payment based on changes to the interest rate, including the maximum principal and interest payment during the life of the loan. 15 U.S.C. 1638(b)(2)(C)(ii). Regulation Z § 1026.18(s) currently requires, for closed-end credit transactions with adjustable interest rates secured by real property or a dwelling, disclosure of examples of the interest rate and periodic principal and interest payments, including the maximum of these amounts under the terms of the loan. For federally related mortgage loans, § 1024.7(d) of Regulation X currently requires the summary table on page one of the RESPA GFE to disclose the initial interest rate, labeled "Your initial interest rate is." Then below another row of the summary table stating the initial monthly payment, the RESPA GFE states whether the interest rate is adjustable as an affirmative or negative answer, labeled "Can your interest rate rise?" If the answer is affirmative, the RESPA GFE states the maximum interest rate and when the first change in the interest rate will occur within the following sentence: "It can rise to a maximum of __%. The first change will be in _____."

The Bureau believes that loan terms that can cause the interest rate to adjust should be clearly disclosed to consumers. At the Bureau's consumer testing, participants generally stated that information regarding potential changes to the interest rate was important in their evaluation of a loan. Participants generally understood that the interest rate affected the amount of interest due under the loan and used the information regarding potential changes to the interest rate to evaluate loans. Although proposed § 1026.37(b)(2) provides key information about interest rate adjustments, the Bureau believes more detail regarding an adjustable interest rate is important because it would provide consumers with additional detail regarding potential changes to the interest and periodic payments that may be useful in evaluating and comparing loans.

The Bureau provided mortgage disclosures for adjustable interest rate loans to participants using a prototype of an "Adjustable Interest Rate Table" at its consumer testing. The table displayed information about the index and margin applicable to the loan, the initial interest rate, the minimum and maximum interest rates during the life of the loan, the frequency of changes to the interest rate, and limits on the interest rate changes. Participants were able to understand that the purpose of the table generally was to inform them about the adjustable interest rate terms under the loan and often used the table to compare adjustable-rate loans. The table enabled consumers to determine the interest rate terms of the transaction and to compare two adjustable-rate loans with different terms.

Therefore, the Bureau proposes to use its authority under TILA section 105(a), section 1032(a) of the Dodd-Frank Act, and, for residential mortgage loans, section 1405(b) of the Dodd-Frank Act to require more detailed information regarding the terms of an adjustable interest rate to be disclosed in a separate table, called the Adjustable Interest Rate (AIR) Table, under proposed § 1026.37(j). The information regarding the index and margin applicable to the interest rate changes, the lifetime cap and floor on the interest rate, and limits on interest rate adjustments are not currently provided together to consumers in a clear, readily visible, and understandable manner. Consumers can find this information within the promissory note, but they typically do not receive the promissory note until they are at the closing table. Disclosure of this information in the Loan Estimate and Closing Disclosure will enable consumers to verify whether these terms have changed during the loan process. This is especially important if the index and margin have changed or the lifetime maximum interest rate has changed, because such changes can significantly affect the amounts of periodic payments over the life of the loan.

As described above, participants in the Bureau's consumer testing used much of this information and generally considered interest rate information to be an important factor in evaluating a loan. Participants were able to compare this information between loans and between the disclosures provided after application and prior to loan closing. The Bureau believes this information may enable consumers to understand and compare credit terms more readily, effectuating the purposes of TILA. For similar reasons, the Bureau believes this disclosure will ensure that the features of the transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks, in light of the facts and circumstances, consistent with section 1032(a) of the Dodd-Frank Act. The Bureau also believe this information will improve consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures, and is in the interest of consumers and in the public interest.

Proposed § 1026.37(j) requires disclosure of the index and margin for an adjustable rate loan for which the interest rate will adjust according to an external index. For a loan with an interest rate that changes based on scheduled or pre-determined interest rate adjustments and does not also change based on the adjustment of an external index, such as a “step-rate” product, proposed § 1026.37(j) requires disclosure of the amount of any adjustments to the interest rate that are scheduled and their frequency. The table also requires disclosure of: (i) the interest rate at consummation of the loan transaction; (ii) the minimum and maximum possible interest rates after the introductory rate expires; (iii) the maximum possible change for the first adjustment of the interest rate; (iv) the maximum possible change for subsequent adjustments of the interest rate; (v) the number of months after interest for the first regularly scheduled periodic principal and interest payment begins to accrue when the interest rate may first change; and (vi) the frequency of subsequent interest rate adjustments.

Proposed comment 37(j)-1 clarifies that the table required by proposed § 1026.37(j) may only be provided in the Loan Estimate when the interest rate may change after consummation. The creditor is not permitted to disclose the table in the Loan Estimate if the interest rate will remain fixed, even if the table is left blank or disclosed with an "N/A" within each row. As with the AP table, the Bureau believes that the inclusion of the AIR table in such cases would be unduly distracting and confusing to a consumer and potentially cause information overload – especially if an entire table is included only to be marked "not applicable." As the information within the table must be determined dynamically, depending on each transaction's terms, the Bureau believes a requirement that it be omitted when not applicable is unlikely to be a significant additional burden. In the discussion of proposed § 1026.37(i) above, the Bureau seeks comment on whether this dynamic inclusion/exclusion requirement would be unduly burdensome for creditors.

Proposed comment 37(j)(1)-1 provides guidance regarding how the name of the index may be shortened. Proposed comment 37(j)(2)-1 clarifies that the table discloses the information required by proposed § 1026.37(j)(2) only if the loan does not also permit the interest rate to adjust according to an external index. Proposed comment 37(j)(3)-1 provides guidance regarding the initial interest rate that must be disclosed. Proposed comment 37(j)(4)-1 clarifies how the minimum interest rate should be disclosed if the legal obligation does not state a minimum rate. Proposed comment 37(j)(4)- 2 clarifies how the maximum interest rate should be disclosed if the legal obligation does not state a maximum interest rate. While § 1026.30 currently provides that a creditor must include a maximum interest rate in any closed-end consumer credit contract secured by a dwelling for which the annual percentage rate may increase after consummation, that section applies only to transactions secured by a dwelling. The disclosure required by proposed § 1026.37(j)(4) applies to transactions subject to § 1026.19(e), which includes consumer credit transactions secured by real property, which may not include a dwelling.

Proposed comment 37(j)(5)-1 clarifies that if the exact month of the first adjustment to the interest rate is not known at the time the disclosure is provided, the earliest possible month must be disclosed under proposed § 1026.37(j)(6). Proposed comment 37(j)(6)-1 clarifies that when more than one limit applies to subsequent adjustments to the interest rate, the largest amount must be disclosed under proposed § 1026.37(j)(6).

The format required by proposed § 1026.37(o), and illustrated by proposed form H-24(C) in appendix H to this part, provides the information required by proposed § 1026.37(j) in a concise, single table. This table appears immediately adjacent to the AP table required by proposed § 1026.37(i) for loans that permit the periodic principal and interest payment to adjust based on an adjustment other than an adjustment to the interest rate. The table uses concise labels and bold subheadings for disclosures of the frequency of interest rate changes and the limits on interest rate changes. Based on its testing, the Bureau believes this format displays the information in a clear, readily visible, and understandable manner for consumers.

37(k) Contact Information

Under TILA section 128(a)(1) and Regulation Z § 1026.18(a), the TILA disclosures must include the identity of the creditor. Comment 18(a)-1 clarifies that the "identity" of the creditor must include the name of the creditor, but may also include the creditor's address and/or telephone number. As stated in appendix C to Regulation X, the RESPA GFE must include the name, address, phone number, and email address (if any) of the loan originator.

TILA, RESPA, and their implementing regulations do not currently require the disclosure of contact information for the individual loan officer, however. Therefore, the Bureau is proposing to require that the Loan Estimate contain certain contact information for the loan officer as set forth in proposed § 1026.37(k) based on its authority under TILA section 105(a), RESPA section 19(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). The Bureau believes that this contact information will effectuate the purposes of TILA and RESPA by facilitating the informed use of credit and ensuring that consumers are provided with greater and more timely information on the costs of the settlement process. Providing consumers with multiple types of contact information for the loan officers with whom they interact on the transaction will allow consumers easier access to information relevant to the transaction (including costs), which in turn ensures that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a matter that permits consumers to understand the costs, benefits, and risks associated with the transaction in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). The Bureau also believes such disclosure will improve consumers' awareness and understanding of residential mortgage transactions, which is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

In light of the differing requirements under TILA and RESPA with regard to the types of contact information disclosed on the early TILA disclosure and RESPA GFE, respectively, the Bureau also is proposing § 1026.37(k) based on its mandate under sections 1032(f), 1098, and 1100A of the Dodd-Frank Act to propose rules and forms that combine the disclosures required under TILA and sections 4 and 5 of RESPA into a single, integrated disclosure for mortgage loan transactions covered by those laws. As discussed above, appendix C to Regulation X states that the RESPA GFE must include the name, address, phone number, and email address (if any) of the loan originator. Thus, as part of the Bureau's statutory mandate to integrate the TILA and RESPA disclosures, the Bureau must integrate the disclosures currently required under Regulation X with the TILA-mandated disclosures of the creditor's identity, discussed above.

Furthermore, TILA section 129B(b)(1)(B), 15 U.S.C. 1639b(b)(1)(B), which was added by section 1402(a)(2) of the Dodd-Frank Act, mandates that each mortgage originator include on all loan documents any unique identifier of the mortgage originator provided by the Nationwide Mortgage Licensing System and Registry (NMLSR). TILA section 129B(b)(1)(B) will be implemented in a separate rulemaking. The Bureau proposes to use its authority under TILA section 105(a) and Dodd-Frank Act sections 1032(a) and, for residential mortgage loans, 1405(b) of the Dodd-Frank Act to propose § 1026.37(k) for transactions subject to proposed § 1026.19(e). Proposed § 1026.37(k) requires creditors to provide certain contact and licensing information for themselves, the mortgage broker, and their respective loan officers, as applicable. The Bureau expects to harmonize this proposal with the rulemaking implementing TILA section 129B(b)(1)(B).

The Bureau believes that requiring on the Loan Estimate the disclosure of the name and NMLSR identification number (NMLSR ID) number, if any, for the creditor, mortgage broker, and the loan officers employed by such entities, as applicable (or, if none, the license number or other unique identifier, if any, issued by the applicable State, locality, or other regulatory body with responsibility for licensing and/or registering such entity's or individual's business activities) may provide consumers with the information they need to conduct the due diligence necessary to ensure that any creditor, mortgage broker, and associated loan officer selected to originate the loan are appropriately licensed. Having this information may help consumers assess the risks associated with services and service providers retained in connection with the transaction, which in turn promotes the informed use of credit (consistent with TILA section 105(a)), ensures that consumers are provided with greater and more timely information on the costs of the settlement process (consistent with RESPA section 19(a)), ensures that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the transaction in light of the facts and circumstances (consistent with Dodd-Frank Act section 1032(a)), and improves consumers' awareness and understanding of residential mortgage transactions, which is in the interest of consumers and the public (consistent with Dodd-Frank Act section 1405(b)).

Thus, under the master heading "Additional Information About This Loan," proposed § 1026.37(k)(1) requires the name and NMLSR ID, if any, for the creditor and the mortgage broker, if applicable. Proposed § 1026.37(k)(2) requires the name and NMLSR ID for the loan officer associated with the creditor and mortgage broker identified in proposed § 1026.37(k)(1), if applicable. In the event the creditor, mortgage broker, or individual loan officer has not been assigned an NMLSR ID, proposed § 1026.37(k)(1) and (2) require the license number or other unique identifier issued by the applicable jurisdiction or regulating body with which the creditor or mortgage broker is licensed and/or registered to be disclosed, if any. Proposed § 1026.37(k)(3) requires an email address and phone number for each loan officer identified in proposed § 1026.37(k)(2).

Proposed comment 37(k)-1 provides a description of the NMLSR ID. Proposed comment 37(k)-1 also references provisions of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) requiring individuals to register or obtain a license through the NMLSR, and clarifies that the information required in § 1026.37(k)(1) and (2) must be provided for any creditor, mortgage broker, and loan officer that has obtained an NMLSR ID. Proposed comment 37(k)-2 provides clarification as to the nature of the license or other unique identifier that is to be disclosed in the event the creditor, mortgage broker, or individual loan officer has not been assigned an NMLSR ID. Proposed comment 37(k)-3 clarifies that the loan officer is the individual who interacts most frequently with the consumer and who has an NMLSR identification number or, if none, a license number, or other unique identifier to be disclosed under proposed § 1026.37(k)(2), as applicable.

37(l) Comparisons

TILA generally focuses on disclosing the long-term cost of credit. However, many of the disclosures required by the statute have proven confusing for consumers. As discussed below and in part II above, Federal agencies have long recognized that certain statutorily-required disclosures, such as the finance charge and amount financed, are not effective for communicating the cost of credit to consumers and that, in some cases, the disclosures hinder consumers' ability to understand their credit terms.

One problem with the TILA disclosures is consumer confusion between common contract terms, such as interest rate and loan amount, and the required statutory disclosures. For example, as discussed below, consumer testing conducted by the Board indicates that consumers are confused about the difference between the required TILA disclosure of the "amount financed" and the amount of their loan or sale price of the property. Similarly, the Board-HUD Joint Report and consumer testing conducted by the Board and the Bureau indicates consumer confusion over the difference between the contract interest rate and the APR, in part because both are expressed in the form of a rate and in part because of the difficulty in communicating to consumers the meaning of the APR. Third, the TILA disclosures focus on the cost of credit over the entire life of the loan, which is of limited use in the context of mortgage lending since consumers generally do not hold those loans for the entire loan term. As discussed below and in part III above, the results of the Bureau's consumer testing is consistent with these concerns.

The Bureau believes that providing consumers with useful tools to compare loans is critical to carrying out the purposes of TILA, RESPA, and the Dodd-Frank Act. Accordingly, for the reasons described below, the Bureau is proposing to group several key metrics together on the first page of the Loan Estimate and shift others to the last page of the Loan Estimate. In addition, the Bureau is proposing to provide certain items only on the Closing Disclosure because they are less useful to consumers early in the lending process and create the risk of undermining the effectiveness of the Loan Estimate. The Bureau proposes this approach to the TILA disclosures because consumer testing conducted by the Bureau, as well as prior testing conducted by the Board, strongly indicates that consumers benefit from a disclosure that highlights loan terms that are useful to consumers in evaluating the cost of credit and consumers' ability to afford those costs, such as the interest rate, monthly payment amount, and amount of cash needed to close the loan, and deemphasizes terms that have proven confusing or unhelpful to consumers.

The proposed rule shifts some statutorily required disclosures from the first page because the Bureau's consumer testing shows that consumers benefit from this approach. The proposed forms focus on presenting the basic loan terms and risk features to consumers first, because these disclosures are critical to evaluating affordability and facilitating comparison of loans. The Bureau's consumer testing confirms that consumers are able to locate the longer-term measures of the cost of credit, notwithstanding the fact that the proposed forms shift those disclosures from the first page of the disclosure. Moreover, the Bureau's consumer testing suggests that moving the disclosure of the APR away from the disclosure of the loan's contract interest rate and placing the APR with other long-term metrics may reduce consumer confusion and highlight the APR as a special tool for comparing costs over time.

Accordingly, proposed § 1026.37(l) requires creditors to disclose, under the master heading “Additional Information About This Loan,” information required by TILA section 128(a)(4), (5), (8), and (19) in a separate table under the heading “Comparisons,” along with the statement, “Use these measures to compare this loan with other loans.” Specifically, the table required by proposed § 1026.37(l) must contain the total payments (of principal, interest, mortgage insurance, and loan costs) a consumer will have made through the end of the 60th month after the due date of the first periodic payment (In 5 Years), the annual percentage rate (APR), and the total interest percentage (TIP), as described in § 1026.37(l)(1) through (3). Pursuant to proposed § 1026.37(o) and proposed form H-24, the table required by proposed § 1026.37(l) will appear on the final page of the Loan Estimate, apart from the key loan terms identified on the first page of the Loan Estimate. Based on research regarding consumer comprehension and behavior and the results of the Bureau’s consumer testing, as discussed above, the Bureau believes that the disclosure of these calculations on the final page of the Loan Estimate and apart from the key loan terms may enhance the overall understanding of the disclosures.

37(l)(1) In Five Years

TILA section 128(a)(5) and (8) requires creditors to disclose the sum of the amount financed and the finance charge using the term “Total of Payments,” and a descriptive explanation of that term. 15 U.S.C. 1638(a)(5), (8). Current § 1026.18(h) implements these statutory provisions by requiring creditors to disclose the “total of payments,” using that term, and a descriptive explanation that the figure represents the amount the consumer will have paid after making all scheduled payments. Current comment 18(h)-2 provides that creditors calculate the total of payments amount for transactions subject to current § 1026.18(s) using the rules in current § 1026.18(g) and associated commentary and, for adjustable-rate transactions, comments 17(c)(1)-8 and -10. Current comment 18(g)-1 provides guidance to creditors on the amounts to be included in the total of payments calculation. Current comment 18(h)-1 allows creditors to revise the total of payments descriptive statement for variable-rate transactions to convey that the disclosed amount is based on the annual percentage rate and may change. In addition, current comments 18(h)-3 and -4 permit creditors to omit the total of payments disclosure in certain single-payment transactions and for demand obligations that have no alternate maturity rate.

The total of payments disclosure has historically been confusing for consumers. For example, consumer testing conducted for purposes of the Board's 2009 Closed-End Proposal found that many consumers did not understand the total of payments disclosure and that, even when consumers understood the meaning, most did not consider it important in their decision-making process. Macro 2009 Closed-End Report at 11, *v*. Based on the Board's testing and prior research about the total of payment disclosure, the Bureau considered alternative metrics that might prove more useful to consumers. As discussed above, one problem with the TILA-required disclosures is that they are calculated over the entire length of the loan, although the Bureau understands that consumers may typically only hold mortgage loans for five to seven years before selling the property or refinancing. Accordingly, the total of payments over the life of the loan is such a large number that consumers often find it overwhelming or unrealistic, and therefore not a meaningful disclosure of the cost of credit. Furthermore, the total of payments over the life of the loan does not provide an accurate basis for identifying the lowest cost loan for the time a consumer will realistically hold the loan.

Since the Board's testing has already shown that consumers do not understand the total of payments disclosure, the Bureau's testing focused on expressions of dollar amounts that are more likely to be understood and used by consumers. The Bureau also recognized that simply providing one disclosure would not give consumers an accurate view of how much their payments actually reduce the principal balance of the loan, which would help consumers pick the loan that puts them in the best financial position after the five to seven year mark if they do not sell the property or refinance. Accordingly, the Bureau developed a two-element disclosure.

First, proposed § 1026.37(l)(1)(i) requires the creditor to disclose the dollar amount of the total principal, interest, mortgage insurance, and loan costs (disclosed pursuant to proposed § 1026.37(f)) scheduled to be paid through the end of the 60th month after the due date of the first periodic payment, expressed as a dollar amount, along with the statement "Total you will have paid in principal, interest, mortgage insurance, and loan costs." Proposed comment 37(l)(1)(i)-1 clarifies that the amount disclosed pursuant to § 1026.37(l)(1)(i) is the sum of principal, interest, mortgage insurance, and loan costs scheduled to be paid through the end of the 60th month after the due date of the first periodic payment. The comment also clarifies that, for purposes of § 1026.37(l)(1)(i), interest is calculated using the fully-indexed rate at consummation and includes any prepaid interest. The comment further provides that, for purposes of § 1026.37(l)(1)(i), the creditor assumes that the consumer makes payments as scheduled and on time. In addition, proposed comment 37(l)(1)(i)-1 provides that, for purposes of § 1026.37(l)(1)(i), mortgage insurance is defined pursuant to comment 37(c)(1)(i)(C)-1, and includes prepaid or escrowed mortgage insurance, and that loan costs are those costs disclosed pursuant to paragraph 1026.37(f). Proposed comment 37(l)(1)(i)-2 provides guidance to creditors on calculating principal and interest disclosures for loans with negative amortization features.

Second, proposed § 1026.37(l)(1)(ii) requires the creditor to disclose the dollar amount of principal scheduled to be paid through the end of the 60th month after the due date of the first periodic payment, expressed as a dollar amount, along with the statement "Principal you will have paid off." Proposed comment 37(l)(1)(ii)-1 clarifies that the disclosure required by proposed § 1026.37(l)(1)(ii) is calculated in the same manner as the disclosure required by proposed § 1026.37(l)(1)(i), provided, however, that the disclosed amount reflects only the total payments to principal through the end of the 60th month after the due date of the first periodic payment.

Proposed § 1026.37(l)(1)(i) implements the requirements of TILA section 128(a)(5) and (8) for transactions subject to proposed § 1026.19(e). The Bureau proposes to modify the total of payments disclosure to reflect the total payments over five years, rather than the life of the loan, on the Loan Estimate provided to consumers near the time of application. The Bureau proposes this modification pursuant to its authority under TILA section 105(a), Dodd-Frank Act 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). By reducing the scope of the total of payments disclosure to five years after the due date of the first periodic payment, the disclosure more accurately reflects the typical life of a mortgage loan, thus effectuating the purposes of TILA by enhancing consumer understanding of mortgage transactions. For this same reason, the proposed modification will ensure that the features of the mortgage transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a), and will improve consumer awareness and understanding of residential mortgage loans and is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

As discussed in the Kleimann Testing Report, consumer testing conducted by the Bureau indicates that consumers can use the “In 5 Years” disclosure to compare loans they are considering and that, in some instances, these disclosures increase consumers’ understanding of loan costs. For example, some consumers who did not understand from page one of the Loan Estimate that a loan provided for interest-only payments for a specified period were able to recognize that they would be making interest-only payments as a result of the principal paid “In 5 Years” disclosure. Consumer participants understood the relationship of principal and interest and generally wanted to choose loans with more principal paid off during the first five years. Industry feedback provided in response to the Bureau’s Small Business Review Panel Outline stated that implementation of the “In 5 Years” disclosure will require additional training and systems changes, and that it unclear that the disclosure will assist consumers. The Bureau has considered this feedback but, in light of the research and consumer testing results discussed above, nevertheless believes that the “In 5 Years” disclosure will provide important benefits to consumers by disclosing the total of payments over a period that more accurately reflects the typical life of a mortgage loan.

The Bureau also proposes to exercise its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b) to include mortgage insurance and other loan costs in the “In 5 Years” calculation. TILA section 128(a)(5) defines the total of payments as the sum of the amount financed and the finance charge. However, the Bureau believes including mortgage insurance and other loan costs, rather than the finance charge, in the calculation may enhance consumer understanding of mortgage transactions because consumers can cross-reference other sections of the Loan Estimate to determine what costs are actually included in the “In 5 Years” disclosure, permitting consumers to more readily compare loans, consistent with the purposes of TILA. In contrast, as discussed below, consumers have no way to know which costs are included in the finance charge. For these same reasons, the Bureau believes that the proposed modification will ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances, consistent with section 1032(a) of the Dodd-Frank Act, and will improve consumer awareness and understanding of residential mortgage loans and be in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

Proposed § 1026.37(l)(1)(ii) requires creditors to disclose the dollar amount of principal scheduled to be paid through the end of the 60th month after the due date of the first periodic payment. The Bureau proposes this additional requirement pursuant to its authority under TILA section 105(a) and Dodd-Frank Act section 1032(a). As discussed above, the Bureau believes the proposed disclosure will enhance consumer understanding of the allocation of their payments between principal and interest and help consumers pick the loan that puts them in the best financial position after the five to seven year mark if they do not sell the property or refinance, consistent with the purposes of TILA. For these same reasons, consistent with section 1032(a) of the Dodd-Frank Act, the Bureau believes that the disclosure would ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

The Bureau recognizes, however, that the total of payments disclosure is commonly used by creditors and supervisory agencies for compliance purposes, as well as consumer advocates.

Therefore, under the proposal, creditors would be required to disclose a modified total of payments over the loan's full term in the Closing Disclosure provided to consumers at least three days prior to consummation. *See* proposed § 1026.38(o)(1).

37(l)(2) Annual Percentage Rate

TILA section 128(a)(4) and (8) requires creditors to disclose the annual percentage rate, together with a brief descriptive statement of the annual percentage rate. 15 U.S.C. 1638(a)(4), (a)(8). Current § 1026.18(e) implements these statutory provisions by requiring creditors to disclose the "annual percentage rate," using that term, and a brief description such as "the cost of your credit as a yearly rate." In addition, TILA section 122(a) requires that the annual percentage rate be more conspicuous than other disclosures, except the disclosure of the creditor's identity. 15 U.S.C. 1632(a). This requirement is also implemented in current § 1026.18(e).

Concerns have been raised repeatedly over the last two decades that consumers are confused by what the APR represents and do not use it for its intended purpose: to compare loans. The Board-HUD Joint Report noted that consumers generally do not understand what the APR represents or how to use it, and that some consumers mistake the APR with the interest rate. Board-HUD Joint Report at 10. Consumer testing conducted for purposes of the Board's 2009 Closed-End Proposal revealed these same problems with the APR. 74 FR at 43296. The Board tested alternative descriptions and formats for the APR, but the APR continued to confuse consumers. *Id.* The Board's consumer testing also indicated that consumers did not use the APR to compare loans but, instead, focused on the interest rate, monthly payment amount, and settlement costs when comparing loan offers. *Id.* at 43296-97.

As discussed in the Kleimann Testing Report, the Bureau's consumer testing similarly indicates consumer confusion regarding the APR disclosure and that consumers do not use the APR when comparing loans. Like the prior testing, the Bureau's consumer testing indicates that consumers do not grasp the concept of the APR and often confuse it with the loan's interest rate. Most consumers confused the APR with the interest rate and misinterpreted the meaning of the disclosure. In Round 3 of the Bureau's consumer testing, the statement "This is not your interest rate" was added to the description of the APR to reduce consumer confusion between the interest rate and the APR. While most consumer participants understood from that statement that the interest rate and APR were separate items, they still had trouble understanding what the APR means, how it relates to the interest rate, and how it is useful as a comparison. Participants also misunderstood the APR in other ways, such as the average interest rate of other loans, an interest rate imposed once a year, and an interest rate listed by the creditor to mislead the consumer.

Pursuant to its implementation authority under TILA section 105(a), the Bureau proposes § 1026.37(l)(2) to implement the requirements of TILA section 128(a)(4) and (8) for transactions subject to proposed § 1026.19(e) by requiring creditors to disclose the "annual percentage rate" and the abbreviation "APR," together with the following statement: "Your costs over the loan term expressed as a rate. This is not your interest rate." Further, in light of consumer confusion over the APR and the fact that consumers do not appear to use the APR in comparing loan offers, the Bureau proposes to exercise its authority under TILA section 105(a) and (f), Dodd-Frank Act section 1032(a) and, for residential mortgage loans, Dodd-Frank Act section 1405(b), to except transactions subject to § 1026.19(e) from the requirement of TILA section 122(a) that the annual percentage rate disclosure be more conspicuous than other disclosures, except the disclosure of the creditor's identity. As discussed above, testing conducted by the Board and the Bureau consistently indicate consumer confusion over the APR. When the Bureau added the statement "this is not your interest rate" to the descriptive explanation of the APR during its consumer testing, although confusion was reduced, participants still did not understand how to use the APR. Instead, participants used measures they readily understood, such as the maximum interest rates, maximum periodic payments, and closing cost details to evaluate, compare, and verify loan terms. Participants were able to use these measures to evaluate and compare loans, making sophisticated trade-offs, often based on rationales involving their personal circumstances.

Accordingly, the Bureau believes the proposed exemption may enhance consumer understanding by separating the APR disclosure from the interest rate disclosure, which could prevent consumer confusion over the two rates and reduce the possibility of information overload for consumers attempting to compare loan terms, consistent with the purposes of TILA. The Bureau believes that grouping the APR with the "In 5 Years" and Total Interest Percentage disclosures will also enhance consumer understanding by emphasizing that the APR is a special metric created specifically for comparison purposes that may help consumers think about their costs over their life of the loan. In addition, the purpose of the integrated disclosure under TILA section 105(b) and RESPA section 4(a) is to "aid the borrower…in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures." The Bureau believes that placing measures that are readily understandable to consumers on the first page of the Loan Estimate, and complex measures that consumers find confusing on latter pages, meets this statutory objective.

The Bureau has also considered the factors in TILA section 105(f) and believes that an exception is appropriate under that provision. Specifically, the Bureau believes that the proposed exemption is appropriate for all affected borrowers, regardless of their other financial arrangements and financial sophistication and the importance of the loan to them. Similarly, the Bureau believes that the proposed exemption is appropriate for all affected loans, regardless of the amount of the loan and whether the loan is secured by the principal residence of the consumer. Furthermore, the Bureau believes that, on balance, the proposed exemption will simplify the credit process without undermining the goal of consumer protection or denying important benefits to consumers. As discussed above, consumer testing and historical research indicate that consumers do not understand the APR and do not use it when shopping for a loan. Highlighting the APR on the disclosure form contributes to overall consumer confusion and information overload, complicates the mortgage lending process, and hinders consumers' ability to understand important loan terms. As such, the Bureau believes that the proposed exemption from the requirement that the APR be disclosed more conspicuously than other disclosures will not undermine the goal of consumer protection but, instead, will improve consumer understanding of the loans. For all these reasons, the Bureau believes that the proposed APR disclosure will improve consumer awareness and understanding of residential mortgage loans and is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b), and that, consistent with section 1032(a) of the Dodd-Frank Act, the disclosure would ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

In response to the Bureau's Small Business Review Panel Outline, some consumer advocacy groups expressed concern about disclosing the APR on the final page of the Loan Estimate and, as discussed below, on the final page of the Closing Disclosure. Specifically, this feedback stated that the APR is a widely recognized disclosure that is a useful tool for consumers in comparing and understanding mortgage loans, and that deemphasizing the APR is not the most effective way of dealing with known problems with the APR disclosure. Instead, these groups suggested that the APR disclosure can be improved through an all-in APR, better descriptive language of the APR, or by supplementing the APR with other disclosures. For example, consumer advocacy groups recommended that the APR be more prominent than the interest rate on the Loan Estimate and to be disclosed in a graphic format.

The Bureau has considered this feedback, but based on the long history of consumer confusion of the APR, the Board's prior efforts to improve the APR disclosure, and the Bureau's testing of various descriptive statements of the APR, described above, the Bureau believes that the proposed approach to the APR could provide important benefits to consumers by emphasizing the difference between the APR and the contract interest rate. The Bureau is, however, proposing to improve the APR disclosure through a more inclusive definition of the finance charge, as discussed above, and a descriptive statement that clearly distinguishes the APR from the interest rate. The Bureau also intends to develop supplemental educational materials in booklets and its website that will further explain how the APR differs from the interest rate, how it provides a good way of comparing the entire costs of the loan over the entire term, and why consumers may want to use both the "In 5 Years" and APR figures to think about their financial futures.

37(l)(3) Total Interest Percentage

The Dodd-Frank Act amended TILA to add new section 128(a)(19), which requires that, in the case of a residential mortgage loan, the creditor disclose the total amount of interest that the consumer will pay over the life of the loan as a percentage of the principal of the loan. That section also requires that the disclosure be computed assuming the consumer makes each monthly payment in full and on time, and does not make any over-payments.

The Bureau proposes § 1026.37(l)(3) to implement TILA section 128(a)(19) by requiring creditors to disclose the total interest percentage, using that term and the abbreviation “TIP,” and requiring creditors to disclose the descriptive statement “The total amount of interest that you will pay over the loan term as a percentage of your loan amount.” Proposed § 1026.37(l)(3) also provides that the “total interest percentage” is the total amount of interest that the consumer will pay over the life of the loan, expressed as a percentage of the principal of the loan. Proposed comments 37(l)(3)-1 through -3 provide further guidance to creditors on calculation of the total interest percentage. Proposed comment 37(l)(3)-1 provides that, when calculating the total interest percentage, the creditor assumes that the consumer will make each payment in full and on time, and will not make any additional payments. Proposed comment 37(l)(3)-2 provides that, for adjustable-rate mortgages, § 1026.37(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 provides that, for loans that permit negative amortization, § 1026.37(l)(3) requires that the creditor compute the total interest percentage using the minimum payment amount until the consumer must begin making fully amortizing payments under the terms of the legal obligation.

As discussed in the Kleimann Testing Report, the Bureau’s consumer testing indicates that consumers are able to use the total interest percentage to compare loans, and can generally recognize that better loans disclose a lower total interest percentage. Along with the “In Five Years” disclosure, total interest percentage was cited as the most useful comparative tool.

However, some consumers did not understand the total interest disclosure and questioned why it is included on the form. Even consumers who used the total interest percentage disclosure generally did not understand the more technical aspects of the total interest percentage disclosure, such as the difficulty of using the measure in an adjustable-rate loan. Concerns were also raised during the Bureau's Small Business Review Panel, by industry in feedback provided in response to the Small Business Review Panel Outline, and in feedback received through the Bureau's website that the total interest percentage could be difficult to calculate and explain to consumers, and would not likely be helpful to consumer. *See, e.g.*, Small Business Review Panel Report at 20.

In light of the Bureau's testing of the total interest percentage disclosure and the concerns about consumers' ability to understand the disclosure, the Bureau proposes to require creditors to disclose the descriptive statement, "The total amount of interest that you will pay over the loan term as a percentage of your loan amount." The Bureau proposes this pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). Based on consumer testing, the Bureau believes that consumer understanding of the total interest percentage disclosure may be enhanced through the descriptive statement of the total interest percentage, consistent with the purposes of TILA, and that the proposed descriptive statement is in the interest of consumers and the public, consistent with section 1405(b) of the Dodd-Frank Act. For these reasons, the Bureau also believes that the disclosure of the descriptive statement regarding the total interest percentage may ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances, consistent with section 1032(a) of the Dodd-Frank Act.

Notwithstanding the proposed modifications, based on concerns raised by the Small Business Review Panel, industry feedback, and its own consumer testing, the Bureau remains concerned that the total interest percentage may not be a useful tool for consumers and could create confusion and contribute to information overload. In light of these concerns, the Bureau alternatively proposes to use its exception and modification authority under TILA section 105(a) and (f), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b) to exempt transactions subject to proposed § 1026.19(e) and (f) from the requirements of TILA section 128(a)(19). The Bureau believes the proposed exemption will carry out the purposes of TILA, consistent with TILA section 105(a), by avoiding consumer confusion and information overload, thereby promoting the informed use of credit. For these same reasons, the proposed exemption will help ensure that the features of the mortgage transaction are fully, accurately and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a), and will improve consumer awareness and understanding of residential mortgage loans and is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b). Finally, the Bureau has considered the factors in TILA section 105(f) and believes that, for the reasons discussed above, an exception may be appropriate under that provision. Specifically, the Bureau believes that the proposed exemption is appropriate for all affected borrowers, regardless of their other financial arrangements and financial sophistication and the importance of the loan to them. Similarly, the Bureau believes that the proposed exemption is appropriate for all affected loans, regardless of the amount of the loan and whether the loan is secured by the principal residence of the consumer. Furthermore, the Bureau believes that, on balance, the proposed exemption will simplify the credit process without undermining the goal of consumer protection or denying important benefits to consumers. Based on these considerations, the results of the Bureau's consumer testing, and the analysis discussed elsewhere in this proposal, the Bureau believes that the proposed exemption may be appropriate. The Bureau solicits comment on the proposed exemption and, alternatively, whether the Bureau should implement the total interest percentage disclosure only in the Closing Disclosure.

Other Statutory Disclosures

As discussed above, the research regarding consumer comprehension and behavior and the results of the Board's and the Bureau's consumer testing suggest that an effective disclosure regime minimizes the risk of consumer distraction and information overload by providing only information that will assist most consumers. The Bureau therefore carefully evaluated each statutory element required under TILA, whether the element has been required for decades or is newly imposed by Dodd-Frank, as to its usefulness to consumers and others at early stages of the loan process, during the real estate closing process, and as general reference information over the life of the loan. Based on that analysis, the Bureau is proposing to use its authority under TILA section 105(a) and (f), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b), to except from and modify the timing requirements for certain disclosures required by TILA section 128. Specifically, those disclosures are: the amount financed (TILA section 128(a)(2)), the finance charge (TILA section 128(a)(3)), a statement that the creditor is taking a security interest in the consumer's property (TILA section 128(a)(9)), a statement that the consumer should refer to the appropriate contract document for information about their loan (TILA section 128(a)(12)), a statement regarding certain tax implications (TILA section 128(a)(15)), and the creditor's cost of funds (TILA section 128(a)(17)).

The Bureau believes the proposed exemptions discussed above will carry out the purposes of TILA, consistent with TILA section 105(a), by avoiding consumer confusion and information overload, thereby promoting the informed use of credit, as discussed above. For these same reasons, the proposed exemptions will help ensure that the features of the mortgage transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, consistent with Dodd-Frank Act section 1032(a), and will improve consumer awareness and understanding of residential mortgage loans and are in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b). The Bureau has considered the factors in TILA section 105(f) and believes that, for the reasons discussed above, an exception is appropriate under that provision. Specifically, the Bureau believes that the proposed exemption is appropriate for all affected borrowers, regardless of their other financial arrangements and financial sophistication and the importance of the loan to them. Similarly, the Bureau believes that the proposed exemption is appropriate for all affected loans, regardless of the amount of the loan and whether the loan is secured by the principal residence of the consumer. Furthermore, the Bureau believes that, on balance, the proposed exemption will simplify the credit process without undermining the goal of consumer protection or denying important benefits to consumers. Based on these considerations, the results of the Bureau's consumer testing, and the analysis discussed elsewhere in this proposal, the Bureau believes that the proposed exemptions are appropriate. The proposed exclusion of the finance charge and the amount financed from the Loan Estimate is discussed at length below.

Finance charge. TILA section 128(a)(3) and (8) requires creditors to disclose the "finance charge" and a brief descriptive statement of the finance charge. 15 U.S.C. 1638(a)(3), (a)(8). For transactions subject to RESPA, TILA section 128(b)(2)(A) requires creditors to provide this disclosure not later than three business days after the creditor receives the consumer's application, and at least seven business days before consummation. 15 U.S.C. 1638(b)(2)(A). Current § 1026.18(d) implements TILA section 128(a)(3) and (8) by requiring creditors to disclose the "finance charge," using that term, and a brief description such as "the dollar amount the credit will cost you." For transactions subject to RESPA, current § 1026.19(a) requires creditors to provide the finance charge disclosure not later than the third business day after the creditor receives the consumer's application.

Federal agency research has long recognized consumer confusion over the finance charge. The Board-HUD Joint Report found that TILA disclosures fall short of meeting their goal of informing consumers about the cost of credit, in part because of consumer confusion over the finance charge. Board-HUD Joint Report at III. Evidence of consumer confusion over the finance charge was echoed in the Board's 2009 Closed-End Proposal. 74 FR at 43307-08. The Board's consumer testing indicates that consumers often fail to understand that the finance charge contains both interest and fees,[172] and that consumers place very little value on the finance charge when making decisions regarding their loan.[173] The report stated that "[testing] participants . . . generally disregarded the finance charge when reading their TILA statements."[174]

[172] Macro 2009 Closed-End Report at 11, 41 (stating that, in Round 8 of the testing, "[m]ost [participants] thought the finance charges were equal to the amount of interest that the borrower would pay over time; only a few understood the finance charges shown on the form included fees as well as interest").

[173] For example, only one of the nine participants in one round of the Board's testing found the finance charge useful. *Id*. at 35. In another round, most participants said that they would not use the finance charge in their decision-making. *Id*. at 28.

[174] *Id*. at 41.

For these reasons, the Bureau proposes to exercise its authority under TILA section 105(a) and (f) and Dodd-Frank sections 1032(a) and, for residential mortgage loans, 1405(b), to except transactions subject to proposed § 1026.19(e) from the requirements of TILA section 128(a)(3) and (8) as it applies to the Loan Estimate provided to consumers within three business days of application. As discussed above, the Bureau believes that the proposed exclusion of the finance charge disclosure from the Loan Estimate effectuates the purposes of TILA by avoiding consumer confusion and information overload historically associated with the finance charge disclosure, thereby improving the informed use of credit. The Bureau has considered the factors in TILA section 105(f) and believes that, for the reasons discussed above, an exception is appropriate under that provision. Specifically, the Bureau believes that the proposed exemption is appropriate for all affected borrowers, regardless of their other financial arrangements and financial sophistication and the importance of the loan to them. Similarly, the Bureau believes that the proposed exemption is appropriate for all affected loans, regardless of the amount of the loan and whether the loan is secured by the principal residence of the consumer. Furthermore, the Bureau believes that, on balance, the proposed exemption will simplify the credit process without undermining the goal of consumer protection or denying important benefits to consumers. Based on these considerations, the results of the Bureau's consumer testing, and the analysis discussed above, the Bureau believes that the proposed exemption is appropriate.

Specifically, the Bureau does not believe that disclosure of the finance charge on the Loan Estimate provides a meaningful benefit to consumers in the form of useful information or protection. Rather, the Bureau believes that disclosure of the finance charge to consumers early in the lending process actually complicates and hinders the process of mortgage lending because consumers do not understand the disclosure. Removing the finance charge disclosure from the

Loan Estimate that consumers receive early in the lending process may assure meaningful disclosure of credit terms, facilitate consumer comparison of credit terms, and improve the informed use of credit by avoiding information overload and improving consumer understanding of loan terms, consistent with the purposes of TILA and with section 1405(b) of the Dodd-Frank Act. As consumer testing indicates that consumers generally do not use the finance charge when shopping for a loan, the absence of the finance charge from the Loan Estimate should not detract from consumers' understanding of their credit terms but, instead, will permit consumers to focus on other important terms. In addition, consistent with Dodd-Frank Act section 1032(a), removal of the finance charge from the Loan Estimate would help ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

The Bureau recognizes that creditors, consumer advocates, and State and Federal supervisory agencies use the finance charge when calculating or verifying the calculation of the APR, determining compliance with certain price thresholds, and for a range of other purposes, including the right of rescission pursuant to TILA section 125. 15 U.S.C. 1635. Accordingly, to preserve the finance charge disclosure for these purposes, proposed § 1026.38(o)(2) requires creditors to disclose the finance charge on the Closing Disclosure provided to consumers at least three days prior to prior to consummation. Although concerns regarding consumer distraction and information overload persist at the stage of the transaction where the consumer receives the Closing Disclosure, the Bureau believes that disclosing the finance charge with other loan calculations on the final page of the Closing Disclosure as a general reference for the consumer after closing will mitigate these concerns. In addition, though the finance charge is not disclosed on the Loan Estimate, creditors must, in order to comply with the record retention requirements in § 1026.25, document the finance charge used to calculate the APR disclosed on the Loan Estimate. As discussed above, the Bureau is proposing conforming amendments to § 1026.22 to reflect the accuracy standards applicable to the finance charge disclosed on the Closing Disclosure under proposed § 1026.38(o)(2). The Bureau seeks comment on whether the final rule should contain similar accuracy standards for the finance charge used in the APR calculation for the Loan Estimate.

Amount financed. TILA section 128(a)(2) and (8) requires creditors to disclose the "amount financed," using that term, and a brief descriptive statement of the amount financed. 15 U.S.C. 1638(a)(2), (a)(8). Current § 1026.18(b) implements this requirement and requires creditors to disclose the amount financed, using that term, together with a brief description that the amount financed represents the amount of credit of which the consumer has actual use. Like the finance charge disclosure, for transactions subject to RESPA, TILA section 128(b)(2)(A) requires that creditors provide a good faith estimate of this disclosure not later than three business days after the creditor receives the consumer's application, and at least seven business days before consummation. 15 U.S.C. 1638(b)(2)(A). This requirement is implemented in current § 1026.19(a).

Like the finance charge, the amount financed disclosure has historically been viewed as confusing for consumers. The Board-HUD Joint Report recommended removing the amount financed from consumer disclosures altogether because it "is probably not a useful disclosure for mortgage lending."[175] The Board-HUD Joint Report found that the primary use of the "amount financed" is to help supervisory agencies confirm APR calculations, and is not a useful shopping

[175] Board-HUD Joint Report at 16.

tool for consumers.[176] The Board's consumer testing in connection with the 2009 Closed-End Proposal also indicated consumer confusion about the "amount financed." Some testing participants incorrectly assumed that the "amount financed" was their loan amount or the sale price of the home.[177] Based on this testing, the Board concluded that the "amount financed" disclosure detracted from, rather than enhanced, consumers' understanding of other disclosures[178] and that consumers "would not consider the amount financed when shopping for a mortgage or evaluating competing loan offers."[179] The Board also found that "requiring creditors to disclose the amount financed in the loan summary with other key loan terms would add unnecessary complexity and result in 'information overload.'"[180]

For these reasons, the Bureau proposes to exercise its authority under TILA section 105(a) and (f), Dodd-Frank section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b), to modify and except transactions subject to proposed § 1026.19(e) from the requirements of TILA section 128(a)(2) and (8) as it applies to the Loan Estimate provided to consumers within three business days of application. As discussed above, the Bureau believes that the proposed exclusion of the amount financed disclosure from the Loan Estimate effectuates the purposes of TILA by avoiding consumer confusion and information overload

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[176] *Id.* at 17.

[177] Macro 2009 Closed-End Report at *v*. For example, in Round 8 of testing, participants were "confused about the difference between the 'loan amount' and the 'amount financed.'" *Id.* at 26. In Round 9, participants gave a variety of incorrect explanations of the term, including that it was "how much escrow they would have," the amount they would have to pay back, or the amount that they borrowed. *Id.* at 35. In both of these rounds, some participants believed the "amount financed" was equal to the amount of money they would be borrowing. *Id.* at 40. In Round 11, the "amount financed" was moved to the second page, under the heading "Total Payments" in the "More Information About Your Payments" section. *Id.* at 51. As in previous rounds, no participant was able to explain the meaning of "amount financed." *Id.* at 55. In Round 12, with the "amount financed" in the same place on the second page, two participants incorrectly believed they were borrowing the "amount financed." *Id.* at 55. In the final round of testing, none of the participants understood the meaning of "amount financed." *Id.* at 72.

[178] 74 FR at 43308. For example, "sample disclosures were used to try to explain that the difference between the loan amount and amount financed is attributable to prepaid finance charges, but this explanation did not appear to improve consumer comprehension." *Id.*

[179] *Id.*

[180] *Id.*

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 believes that, for the reasons discussed above, an exception is appropriate under that provision. Specifically, the Bureau believes that the proposed exemption is appropriate for all affected borrowers, regardless of their other financial arrangements and financial sophistication and the importance of the loan to them. Similarly, the Bureau believes that the proposed exemption is appropriate for all affected loans, regardless of the amount of the loan and whether the loan is secured by the principal residence of the consumer. Furthermore, the Bureau believes that, on balance, the proposed exemption will simplify the credit process without undermining the goal of consumer protection or denying important benefits to consumers. Based on these considerations, the results of the Bureau's consumer testing, and the analysis discussed above, the Bureau believes that the proposed exemption is appropriate.

The Bureau does not believe that disclosure of the amount financed on the Loan Estimate provides a meaningful benefit to consumers in the form of useful information or protection. Rather, the Bureau believes that disclosure of the amount financed to consumers early in the lending process actually complicates and hinders the process of mortgage lending because consumers do not understand the disclosure. Removing the amount financed from the Loan Estimate may improve the informed use of credit by avoiding information overload and improving consumer understanding of loan terms, consistent with the purposes of TILA and will be in the interest of consumers and the public, consistent with section 1405(b) of the Dodd-Frank Act. Enhanced consumer understanding of mortgage transactions is also in the interest of consumers and the public. In addition, consistent with Dodd-Frank Act section 1032(a), removal of the amount financed from the Loan Estimate would help ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

However, the Bureau recognizes that, like the finance charge, the amount financed is commonly used by creditors and supervisory agencies for compliance purposes, as well as by consumer advocates. Therefore, under the proposal, creditors would be required to disclose the amount financed in the Closing Disclosure provided to consumers at least three business days prior to consummation. Like the finance charge, the Bureau believes that disclosing the amount financed with other loan calculations on the final page of the Closing Disclosure as a general reference for the consumer after closing will mitigate concerns about consumer distraction and information overload at the Closing Disclosure stage.

37(m) Other Considerations

Under proposed § 1026.37(m), creditors disclose certain information pertaining to: (1) the consumer's right to receive copies of appraisals; (2) future assumability of the loan; (3) at the creditor's option, homeowner's insurance requirements; (4) the creditor's late payment policy; (5) loan refinancing; (6) loan servicing, and (7) in refinance transactions, the consumer's liability for deficiency after foreclosure. This information is provided under the master heading "Additional Information About This Loan" required by § 1026.37(k) and under the heading "Other Considerations."

As set forth below, consumers already receive most of these disclosures at or after application or prior to consummation. Thus, by incorporating all of these disclosures into the Loan Estimate, the proposed rule will reduce the number of separate disclosures that consumers receive. Instead, consumers will receive these disclosures in a single, integrated document, which will reduce the potential for information overload, promote the informed use of credit by the consumer, and facilitate compliance by industry.

37(m)(1) Appraisal

Prior to the Dodd-Frank Act, ECOA section 701(e) required creditors to provide to applicants, upon written request, a copy of the appraisal report used in connection with the consumer's application for a loan secured by a lien on residential real property. Section 1474 of the Dodd-Frank Act amended ECOA section 701(e) to remove the provision requiring consumers to request a copy of their appraisal. That section now requires the creditor to provide the consumer with a copy of any written appraisal or valuation developed in connection with an application for a loan that is or will be secured by a first lien on a dwelling promptly upon completion, and no later than three days prior to the closing of the loan, even if the creditor denies the consumer's application or the application is incomplete or withdrawn. 15 U.S.C. 1691(e)(1). Under ECOA section 701(e)(5), the creditor must notify the consumer in writing at the time of application of the right to receive a copy of any appraisal or valuation. 15 U.S.C. 1691(e)(5).

In addition, section 1471(a) of the Dodd-Frank Act added to TILA new appraisal requirements for higher-risk mortgages. Specifically, new TILA section 129H(c) requires creditors to provide consumers, at least three days prior to closing, a copy of any appraisal prepared in connection with a higher-risk mortgage. 15 U.S.C. 1639h(c). Section 1471(f) of the Dodd-Frank Act defines the term "higher-risk mortgage" generally as a residential mortgage loan, other than a reverse mortgage, that is secured by a principal dwelling with an APR that exceeds the average prime offer rate for a comparable transaction by a specified percentage. 15 U.S.C. 1639h(f). New TILA section 129H(d) contains a disclosure requirement that creditors must provide consumers, at the time of the initial mortgage application, a statement that any appraisal prepared for the mortgage is for the creditor's sole use and that the consumer may choose to have a separate appraisal conducted at his or her own expense. 15 U.S.C. 1639h(d).

ECOA section 701(e), as amended by the Dodd-Frank Act, and new TILA section 129H(c) and (d) will be implemented in separate Bureau and joint interagency rulemakings, respectively. However, the Bureau proposes to use its authority under TILA section 105(a) and Dodd-Frank Act section 1032(a) to include on the Loan Estimate disclosure of the new requirements regarding the consumer's right to appraisal copies for loans subject to ECOA section 701(e)(5) or TILA section 129H(c) and (d). In the integrated TILA-RESPA final rule, the Bureau will harmonize this proposal with its rulemaking implementing amended ECOA section 701(e) and the interagency rulemaking implementing new TILA section 129H(c) and (d), so that creditors may satisfy the ECOA section 701(e)(5) and TILA section 129H requirements in a single disclosure.

Proposed § 1026.37(m)(1) applies only to closed-end credit transactions subject to proposed § 1026.19(e) and ECOA section 701(e) or TILA section 129H, as implemented in Regulation B, 12 CFR part 1002, and Regulation Z, respectively. For such transactions, proposed § 1026.37(m)(1) requires the disclosure under the label "Appraisal." The disclosure may be omitted for other transactions. Proposed § 1026.37(m)(1)(i) requires the disclosure to state that the creditor may order an appraisal to determine the value of the property that is the subject of the transaction and may charge the consumer the cost for any such appraisal. Proposed § 1026.37(m)(1)(ii) requires the disclosure to state that the creditor will promptly provide the consumer a copy of the appraisal, even if the transaction is not consummated. Finally, proposed § 1026.37(m)(1)(iii) requires the disclosure to state that the consumer has the right to order an additional appraisal of the property for the consumer's own use. Proposed comment 37(m)(1)-1 clarifies that if a transaction subject to proposed § 1026.19(e) is not also subject to either ECOA section 701(e) or TILA section 129H, as implemented in Regulations B and Z, respectively, the disclosure required by proposed § 1026.37(m)(1) may be omitted from the Loan Estimate.

The Bureau believes that including these appraisal disclosures on the Loan Estimate is consistent with the purposes of TILA and will reduce burden on industry. Rather than requiring two separate appraisal disclosures in addition to the Loan Estimate consumers will receive after application, the Bureau believes one integrated disclosure will facilitate compliance for creditors, promote the informed use of credit by consumers, and ensure effective disclosure to consumers, consistent with the purposes of TILA and TILA section 105(a). In addition, the Bureau believes that incorporating the appraisal disclosures into the Loan Estimate in a way that is consistent with the presentation of other disclosures will ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a).

37(m)(2) Assumption

TILA section 128(a)(13) requires the creditor to disclose, in any residential mortgage transaction, a statement indicating whether a subsequent purchaser may be permitted to assume the remaining loan obligation on its original terms. 15 U.S.C. 1638(a)(13). This provision is currently implemented in § 1026.18(q), and applies only to residential mortgage transactions. TILA section 103(x) defines "residential mortgage transaction" as a "transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained against the consumer's dwelling to finance the acquisition or initial construction of a dwelling." 15 U.S.C. 1602(x).

Proposed § 1026.37(m)(2) implements TILA section 128(a)(13) for all transactions subject to § 1026.19(e) by requiring the creditor to disclose whether a subsequent purchaser of the property may be permitted to assume the remaining loan obligation on its original terms. Proposed comment 37(m)(2)-1 clarifies that the creditor must disclose whether or not a third party may be allowed to assume the loan on its original terms if the property is sold or transferred by the consumer. Proposed comment 37(m)(2)-1 also notes that in many mortgages, the creditor may be unable to determine whether the loan is assumable at the time the Loan Estimate is provided and cites to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation as examples of entities that as a common practice condition assumability on a number of factors such as the subsequent borrower's creditworthiness. Proposed comment 37(m)(2)-1 clarifies that, if the creditor can determine that such assumption is not permitted, the creditor complies with § 1026.37(m)(2) by disclosing that the loan is not assumable. In all other situations, including where assumption of a loan is permitted or is dependent on certain conditions or factors, or uncertainty exists as to the future assumability of a mortgage, the creditor complies with § 1026.37(m)(2) by disclosing that, under certain conditions, the creditor may allow a third party to assume the loan on its original terms. Proposed comment 37(m)(2)-2 clarifies that the phrase "original terms" as used in § 1027.37(m)(2) does not preclude an assumption fee but may represent different terms, and provides an example of a modified term.

The Bureau proposes § 1026.37(m)(2) to implement TILA section 128(a)(13) for transactions subject to § 1026.19(e), pursuant to its authority under TILA section 105(a), Dodd-

Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). In addition, the Bureau proposes to modify the scope of TILA section 128(a)(13), pursuant to its authority under TILA section 105(a) and Dodd-Frank Act sections 1032(a) and 1405(b), to apply to all transactions subject to proposed § 1026.19(e), even if not a "residential mortgage transaction" as defined in TILA section 103(x). The Bureau believes that consumers in transactions secured by real property would benefit from the disclosure, even if the property does not contain a dwelling. Accordingly, the proposed modification promotes the informed use of credit, consistent with the purposes of TILA. For this same reason, the proposed modification will ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a), and will improve consumer awareness and understanding of residential mortgage loans and is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b). Transactions subject to the disclosure requirements of § 1026.18 continue to be subject to § 1026.18(q).

37(m)(3) Homeowner's Insurance

TILA section 106(c) provides that premiums for homeowner's insurance written in connection with any consumer credit transaction shall be included in the finance charge unless a clear and specific statement in writing is furnished by the creditor to the person to whom credit is extended, setting forth the cost of the insurance if obtained from or through the creditor, and stating that the person to whom credit is extended may choose the insurance provider. 15 U.S.C. 1605(c). Current §§ 1026.4(d)(2)(i) and 1026.18(n) implement this provision.

The Bureau understands that many creditors provide consumers the disclosure described in TILA section 106(c) and § 1026.4(d)(2)(i) in order to exclude homeowner’s insurance premiums from the finance charge. To reduce the number of individual disclosures provided to consumers and facilitate compliance for creditors, the Bureau proposes § 1026.37(m)(3) which provides that, at the creditor’s option, the creditor may disclose a statement of whether homeowner’s insurance is required on the property and whether the consumer may choose the insurance provider, labeled “Homeowner’s Insurance.” Proposed comment 37(m)(3)-1 clarifies that the disclosure required in § 1026.37(m)(3) is optional. Proposed comment 37(m)(3)-2 clarifies that a creditor satisfies the condition for excluding homeowner’s insurance premiums from the finance charge described in § 1026.4(d)(2)(i) by disclosing the statement described in § 1026.37(m)(3).

The Bureau proposes § 1026.37(m)(3) pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). The Bureau believes that combining the optional disclosure regarding homeowner’s insurance premiums with the other disclosures on the Loan Estimate may avoid information overload and therefore promote the informed use of credit, consistent with the purposes of TILA. In addition, the proposed disclosure will help ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, consistent with Dodd-Frank Act section 1032(a), and will improve consumer awareness and understanding of residential mortgage loans, in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

37(m)(4) Late Payment

TILA section 128(a)(10) requires disclosure of "any dollar charge or percentage amount which may be imposed by a creditor solely on account of a late payment." 15 U.S.C. 1638(a)(10). This requirement is currently implemented in § 1026.18(l), which requires a statement detailing any "dollar or percentage charge that may be imposed before maturity due to a late payment."

Proposed § 1026.37(m)(4) implements TILA section 128(a)(10) for transactions subject to § 1026.19(e) and requires the creditor to disclose a statement detailing any charge that may be imposed on the consumer for a late payment and the number of days a payment must be late before a penalty for late payment may be assessed. Proposed comment 37(m)(4)-1 clarifies that the late payment disclosure is required if charges are added to an individual delinquent installment of a transaction that remains ongoing on its original terms. Proposed comment 37(m)(4)-1 also clarifies which charges and creditor actions under the legal obligation do not qualify as a late payment charge and that an increase in the interest rate is a late payment charge to the extent of the increase. Comment 37(m)(4)-2 clarifies that the creditor may make changes to the disclosure to reflect the requirements imposed and alternatives allowed under State law.

The Bureau proposes § 1026.37(m)(4) to implement TILA section 128(a)(10) for transactions subject to § 1026.19(e), pursuant to its implementation authority under TILA section 105(a). In addition, the Bureau proposes to require creditors to disclose the number of days that a payment must be late to trigger the late payment charge pursuant to its authority under TILA section 105(a) and Dodd-Frank Act section 1032(a). The Bureau believes the additional disclosure enhances the late payment disclosure by describing the conditions that may trigger a late payment charge and therefore promotes the informed use of credit, consistent with the purpose of TILA. For this same reason, the Bureau believes the proposed disclosure will ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a).

37(m)(5) Refinance

TILA section 128(b)(2)(C)(ii) requires that, for variable-rate transactions or transactions where the regular payment may otherwise be variable and that are secured by the consumer's dwelling, the borrower be provided with a disclosure that there is no guarantee to refinance to a lower amount. Current § 1026.18(t) implements this provision by requiring creditors to disclose a statement that there is no guarantee that the consumer may refinance to lower the interest rate or monthly payment. Current § 1026.18(t) also expands the no-guarantee-to-refinance disclosure to apply to, not only variable-rate or variable-payment transactions, but all closed-end transactions secured by real property or a dwelling, other than transactions secured by the consumer's interest in a timeshare.

The Bureau proposes § 1026.37(m)(5) to implement TILA section 128(b)(2)(C)(ii) for transactions subject to proposed § 1026.19(e). Based on the results of several rounds of consumer testing of language regarding the refinance disclosure, § 1026.37(m)(5) specifically requires disclosure of the following statement: "Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan." As discussed in the Kleimann Testing Report, consumers in the Bureau's consumer testing understood this language to mean that they are permitted to try, but may not be able to refinance their loan in the future.

In implementing TILA section 128(b)(2)(C)(ii), the Bureau proposes to use its authority under section TILA section 105(a) and Dodd-Frank Act sections 1032(a) and 1405(b) to expand the requirement to all transactions subject to § 1026.19(e). Like the Board, the Bureau is concerned that some consumers may accept loan terms that could present refinancing problems similar to those experienced by consumers in variable-rate or variable-payment transactions (*e.g.*, a three-year fixed rate mortgage with a balloon payment), and that all consumers would benefit from a statement that encourages consideration of possible future market rate increases on refinancing. *See* 2009 Closed-End Proposal, 74 FR at 43310. Accordingly, the Bureau believes the proposed disclosure effectuates the purpose of TILA to help consumers avoid the uninformed use of credit. In addition, the proposed disclosure helps to ensure that the features of mortgage transactions are fully and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with a financial product, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a), and will improve consumer awareness and understanding of residential mortgage loans, which is in is the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b). Transactions subject to the disclosure requirements of § 1026.18 continue to be subject to § 1026.18(t).

37(m)(6) Servicing

RESPA section 6(a) requires disclosures to loan applicants concerning the assignment, sale, or transfer of the servicing of the loan to another party. 12 U.S.C. 2605(a). Current appendix C to Regulation X implements RESPA section 6(a) and requires a statement in the GFE regarding loan servicing under the section "If your loan is sold in the future," albeit using relatively generic language that does not express the creditor's actual intent.[181] Proposed § 1026.37(m)(6) requires the creditor to disclose in the Loan Estimate whether it intends to service the loan directly or transfer its servicing. Proposed comment 37(m)(6)-1 clarifies that the disclosure required in proposed § 1026.37(m)(6) requires only that the creditor state its intent at the time the disclosure is issued.

For transactions subject to RESPA, the Bureau proposes § 1026.37(m)(6) to implement RESPA section 6(a), pursuant to its authority under RESPA section 19(a). For transactions subject the requirements of proposed § 1026.19(e) but that are not subject to RESPA, the Bureau proposes to require creditors to provide the servicing disclosure described in § 1026.37(m)(6) pursuant to its authority under TILA section 105(a) and Dodd-Frank Act 1032(a). The Bureau believes that requiring the disclosure regarding loan servicing in these transactions will improve consumer understanding and avoid the uninformed use of credit, consistent with the purposes of TILA, and that the disclosure will ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a).

37(m)(7) Liability After Foreclosure

Section 1414(c) of the Dodd-Frank Act created new TILA section 129C(g), which establishes certain requirements for residential mortgage loans subject to protection under a State anti-deficiency law. 15 U.S.C. 1639c(g). TILA section 129C(g)(2) requires that, prior to consummation, the creditor or mortgage originator provide a written notice to the consumer describing the protection provided by the anti-deficiency law and the significance to the

[181] The standard RESPA GFE form in appendix C to Regulation X reads as follows: "Some lenders may sell your loan after settlement. Any fees lenders receive in the future cannot change the loan you receive or the charges you paid at settlement."

consumer of the loss of such protection. TILA section 129C(g)(3) requires that any creditor or mortgage originator that provides an application to a consumer or receives an application from a consumer, for any type of refinancing for such loan that would cause the loan to lose the protection of an anti-deficiency law, the creditor or mortgage originator shall provide a written notice to the consumer describing the protection provided by the anti-deficiency law and the significance for the consumer of the loss of such protection before any agreement for refinancing is consummated. TILA section 129C(g)(1) defines anti-deficiency law to mean the law of any State which provides that, in the event of foreclosure on the residential property of a consumer securing a mortgage, the consumer is not liable, in accordance with the terms and limitations of such State law, for any deficiency between the sale price obtained from a foreclosure sale and the outstanding balance of the mortgage.

Proposed § 1026.37(m)(7) implements TILA section 129C(g)(3), which applies to refinance transactions. Specifically, proposed § 1026.37(m)(7) provides that, if the credit is to refinance an extension of credit as described in § 1026.37(a)(9)(ii) or (iii), the creditor must disclose a brief statement that certain State law protections against liability for any deficiency after foreclosure may be lost upon refinancing, the potential consequences of the loss of such protections, and a statement that the consumer should consult an attorney for additional information, labeled "Liability after Foreclosure."

The Bureau proposes this requirement pursuant to its implementation authority under TILA section 105(a). TILA section 129C(g)(3) requires creditors to provide the anti-deficiency disclosure prior to consummation. The Bureau believes that consumers would benefit from receiving the disclosure in the Loan Estimate provided three days after application since the disclosure informs consumers of the potentially significant consequences of refinancing and is therefore an important consideration for a consumer evaluating whether to proceed with the loan. Further, the Bureau believes that the anti-deficiency disclosure is appropriately tied to the submission of the consumer's application since TILA section 129C(g)(3) requires creditors to provide the disclosure to all consumers to whom it provides an application or from whom it receives an application. The Bureau does not believe that it is feasible to require the disclosure to be provided to any consumer to whom the creditor "provides" a loan application because, as discussed above in the section-by-section analysis of proposed § 1026.2(a)(3), "application" is defined by proposed § 1026.2(a)(3) as the consumer's submission of certain specific information to a creditor. The requirements of TILA section 129C(g)(2) are implemented in proposed § 1026.38(p)(3).

37(n) Signature Statement

TILA section 128(b)(2)(B)(i) requires the following statement in transactions that are also subject to RESPA and where the extension of credit is secured by the consumer's dwelling, other than timeshares: "You are not required to complete this agreement merely because you have received these disclosures or signed a loan application." 15 U.S.C. 1638(b)(2)(B)(i). Current § 1026.19(a)(4) implements this provision by requiring, for transactions subject to RESPA that are secured by the consumer's dwelling (other than home equity lines of credit subject to § 1026.5(b) and timeshares), the statement required by TILA section 128(b)(2)(B)(i) in the good faith estimates and corrected disclosures provided pursuant to § 1026.19(a)(1) and(2).

The Bureau proposes to implement the signature requirement of TILA section 128(b)(2)(B)(i) in proposed § 1026.37(n), for all transactions subject to proposed § 1026.19(e). Proposed § 1026.37(n)(1) states that, at the creditor's option, lines for the signatures of the consumers in the transaction may be provided. The optional signatures lines would be located under the master heading “Additional Information About This Loan” required by proposed § 1026.37(k) and under the heading “Confirm Receipt.” Proposed § 1026.37(n)(1) also states that if the creditor includes a line for the consumer’s signature, the creditor is required to disclose to that, by signing the Loan Estimate, the consumer is only confirming receipt of the form and is not required to accept the loan. For transactions where the creditor does not include a line for the consumer’s signature, proposed § 1026.37(n)(2) requires disclosure of the statement that the consumer does not have to accept the loan because the consumer received or signed the Loan Estimate. The statement required by proposed § 1026.37(n)(2) is located under the heading “Other Considerations” required by proposed § 1026.37(m), labeled “Loan Acceptance.”

Proposed comment 37(n)-1 clarifies that it is at the creditor’s discretion whether to provide a signature line for the consumer’s signature, but if a signature line is provided, the statement in proposed § 1026.37(n)(1) must be provided. Proposed comment 37(n)-2 clarifies that, if there is more than one consumer in the transaction, the first consumer signs as the applicant and each additional consumer signs as a “co-applicant.” Proposed comment 37(n)-2 also clarifies that the creditor may add an additional signature page to the back of the form if additional signature lines are necessary to accommodate the number of consumers in the transaction.

The Bureau proposes to modify the signature language required by TILA section 128(b)(2)(B)(i) pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). While the substance of the disclosure required by proposed § 1026.37(n) is the same as the statutory language, as discussed in the Kleimann Testing Report, the Bureau’s consumer testing indicated that consumers more easily understand from the proposed language that a signature does not bind them to accept the loan. Accordingly, the proposed modification promotes the informed use of credit, consistent with the purposes of TILA. For this same reason, the proposed modification will ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, consistent with Dodd-Frank Act section 1032(a), and will improve consumer awareness and understanding of residential mortgage loans and is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

The Bureau also proposes to use its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b) to expand the scope of TILA section 128(b)(2)(B)(i) to apply to all transactions subject to proposed § 1026.19(e). As discussed above, TILA section 128(b)(2)(B)(i) applies only to transactions subject to both TILA and RESPA that are secured by the consumer's dwelling, and excludes transactions secured by the consumer's interest in a timeshare. However, the Bureau believes that consumers in all transactions subject to proposed § 1026.19(e) will benefit from the disclosure because it ensures that consumers understand they are not obligated to complete the loan transaction just because they signed or received the Loan Estimate. Accordingly, the proposed disclosure promotes the informed use of credit, consistent with the purposes of TILA. For these same reasons, the Bureau believes that the proposed disclosure will ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, consistent with Dodd-Frank Act section 1032(a), and will improve consumer awareness and understanding of residential mortgage loans and is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

37(o) Form of Disclosures

TILA section 122(a) provides that the information required to be disclosed under TILA shall be disclosed clearly and conspicuously, in accordance with regulations of the Bureau. 15 U.S.C. 1632(a). TILA section 128(b)(1) provides that the disclosures required by sections 128(a) and 106(b) through (d) generally shall be conspicuously segregated from all other terms, data, or information provided in connection with a transaction, including any computations or itemization. *Id.* 1638(b)(1). Regulation Z currently implements these requirements for closed-end transactions in § 1026.17(a)(1), which provides that the disclosures shall be made clearly and conspicuously in writing, in a form that the consumer may keep. Section 1026.17(a)(1) further provides that the disclosures shall be grouped together, shall be segregated from everything else, and shall not contain any information not directly related to the disclosures under § 1026.18 (and § 1026.47 for private education loans).

As discussed above, the Bureau is proposing to exclude transactions subject to § 1026.19(e) and (f) from the coverage of § 1026.17(a) and (b). Consequently, the requirements of TILA sections 122(a) and 128(b)(1) must be implemented elsewhere. The Bureau, pursuant to its implementation authority under TILA section 105(a), therefore proposes to implement the statutory segregation and clear and conspicuous requirements of TILA sections 122(a) and 128(b)(1) for those disclosures in new §§ 1026.37(o) and 1026.38(t). The Bureau believes these requirements will effectuate the purposes of TILA by assuring a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit. In addition, § 1026.37(o) establishes a standard form requirement for transactions subject to RESPA and provides flexibility for certain aspects of the integrated disclosures.

37(o)(1) General Requirements

Proposed § 1026.37(o)(1)(i) establishes the requirements that the disclosures required by § 1026.37 be clear and conspicuous, in writing, and grouped together, segregated from everything else, and provided on separate pages that are not commingled with any other documents or disclosures, including any other disclosures required by State or other laws. Proposed comment 37(o)-1 clarifies that the clear and conspicuous standard requires that the disclosures be legible and in a readily understandable form. This guidance is adopted from existing comment 17(a)(1)-1. The comment also clarifies that proposed § 1026.37(o)(1)(i) requires that the disclosures required by § 1026.37 be provided in a form that is physically separate from any other documents or disclosures, including any other disclosures required by State or other laws. This requirement is stricter than the guidance found in existing comment 17(a)(1)-2, which provides that the disclosures may be grouped together and segregated from other information in a variety of ways other than a separate piece of paper.

The Bureau recognizes that, in certain credit sale and other non-mortgage, closed-end credit transactions, creditors include the disclosures required by § 1026.18 in the loan contract or some other document and ensure that they are grouped together and segregated by outlining them in a box or other means authorized by comment 17(a)(1)-2. The Bureau understands, however, that this approach is virtually never employed for mortgage credit, for which the new disclosures under proposed §§ 1026.19(e) and 1026.37, rather than § 1026.18 disclosures, are required. Mortgage creditors generally use a standardized note that cannot accommodate dynamically generated, transaction-specific disclosures, and they almost universally employ the model disclosure forms provided in appendix H to Regulation Z as stand-alone, separate documents for providing required TILA disclosures. The RESPA GFE and RESPA settlement statement forms required by RESPA for federally related mortgage loans currently are delivered as separate documents, in accordance with the standard form requirements of Regulation X. Moreover, the forms in this proposal were developed as stand-alone documents through an extensive outreach and consumer testing process, as discussed above, and the Bureau is concerned that much of the informative benefit of the forms could be lost or compromised if they were permitted to be included within other documents. For these reasons, it appears that requiring the § 1026.37 disclosures to be delivered as a separate document maximizes the benefits of the forms and does not present any significant new obligation that mortgage creditors do not already effectively observe. The Bureau seeks comment, however, on whether there currently are transactions subject to proposed § 1026.19(e) that may be burdened by the adoption of this requirement.

Proposed § 1026.37(o)(1)(ii) also provides that, except as provided in § 1026.37(o)(5), the disclosures shall contain only the information required by § 1026.37(a) through (n) and that they generally shall be made in the same order, and positioned relative to the master headings, headings, subheadings, labels, and similar designations in the same manner, as shown in form H-24. Proposed comment 37(o)(1)-2 clarifies that, even if a creditor elects not to use the form as a model (when so permitted because the transaction is not a federally related mortgage loan, as discussed above), failure to comply with these requirements, to designate as “estimated” all disclosures designated as such in the form, or to use letter size paper as shown in form H-24 constitutes noncompliance with the requirement of § 1026.37(o)(3)(ii) that the disclosures be made with headings, content, and format substantially similar to the model form.

37(o)(2) Estimated Disclosures

Proposed § 1026.37(o)(2) provides that, wherever form H-24 discloses the required master heading, heading, subheading, label, or similar designation for a disclosure as “estimated,” that corresponding master heading, heading, subheading, label, or similar designation required by § 1026.37 must contain the word “estimated,” even if the provision requiring such headings, label, or similar designation does not. As noted below under § 1026.38, many of the disclosure items required by that section cross-reference their estimated counterparts in § 1026.37, although the same items may not be estimates as required by § 1026.19(f). To avoid confusion over which items are estimates and which are not, the content provisions of § 1026.37 do not qualify any of the master headings, headings, subheadings, labels, and similar designations of the items disclosed as “estimated.” Instead, proposed § 1026.37(o)(2) incorporates by reference the “estimated” designations reflected on form H-24, and as discussed below, proposed § 1026.38(t)(2) incorporates by reference the “estimated” designations reflected on form H-25.

37(o)(3) Form

Proposed § 1026.37(o)(3)(i) also provides that, for a transaction that is a federally related mortgage loan, as defined in Regulation X, the disclosures must be made using form H-24, set forth in appendix H to Regulation Z. The Bureau is proposing to require that creditors use a standard form (form H-24 of appendix H) for federally related mortgage loans pursuant to RESPA section 4, as amended by the Dodd-Frank Act. 12 U.S.C. 2603(a). Section 4 has long authorized the use of standard forms. As discussed above, the Dodd-Frank Act amended section RESPA section 4(a) to require the integrated disclosures that are the subject of this proposal, which specifically include both the settlement statement under section 4 and the good faith estimate under section 5(c). Although the Dodd-Frank Act eliminated one reference in section 4(a) to a “standard” form, it left another reference in place, as well as another reference to a “standard” form in section 4(c). And by including the cross-reference to section 5(c) in section 4 in relation to the integrated disclosure mandate, Congress effectively extended RESPA's existing standard-form authority to the good faith estimate as well as the settlement statement requirement. More notably, in amending section 4(a), Congress did not include an explicit prohibition of a mandatory-use form as is found in TILA section 105(b).[182] For this reason, the Bureau does not believe that Congress intended to eliminate standard-form authority from RESPA section 4.

The Bureau also proposes a mandatory form pursuant to its authority under RESPA section 19(a) to prescribe such rules and regulations as may be necessary to achieve RESPA's purposes. 12 U.S.C. 2617(a). RESPA's purposes include the establishment of more effective advance disclosure to home buyers and sellers of settlement costs. *Id.* 2601(b)(1). The Bureau believes, based on consumer testing results, that the purpose of more effective advance disclosure of settlement costs is better achieved if all lenders provide those disclosures in a standardized format that consumers can recognize and understand. Moreover, the credit terms included in the Loan Estimate facilitate and enhance the consumer's ability to shop for the best-priced loan, including settlement charges, which have a direct relationship to, and can overlap with, credit terms. Disclosure of the settlement costs alone, without the context provided by the credit terms, is therefore far less effective. This is consistent with HUD's rationale in HUD's 2008 RESPA Final Rule for including credit terms in its good faith estimate form. *See* 73 FR 68204, 68214-15 (Nov. 17, 2008). Accordingly, the Bureau is authorized under section 19(a) to require the standard form for the disclosure of all of the information it contains, both settlement costs and credit terms alike.

[182] TILA section 105(b) states that "nothing in this title may be construed to require a creditor or lessor to use any such model form or clause prescribed by the Bureau under this section." 15 U.S.C. 1604(b).

Certain closed-end consumer credit transactions are subject to the requirements of proposed § 1026.19(e) but do not fall within the Regulation X definition of “federally related mortgage loan.” These include construction-only loans with terms of less than two years that do not finance the transfer of title to the borrower and loans secured by vacant land on which a home will not be constructed or placed using the loan proceeds within two years after settlement of the loan. *See* § 1024.5(b)(3) and (4). In addition, transactions subject to proposed § 1026.19(e) but not subject to RESPA would include loans secured by non-residential real property, provided they have a consumer purpose as required by § 1026.1(c)(1)(iv). *See* § 1024.2, definition of “federally related mortgage loan,” paragraph (1)(i) (requiring that the securing property be “residential real property”).

For such transactions that are subject to proposed § 1026.19(e) because they are subject to TILA and are secured by real property, but that are not subject to RESPA, the Bureau does not mandate the use of form H-24 as a standard form. As noted above, TILA section 105(b) explicitly provides that nothing in TILA may be construed to require a creditor to use any model form or clause prescribed by the Bureau under that section. Accordingly, proposed § 1026.37(o)(3)(ii) provides that, for transactions subject to § 1026.37 that are not federally related mortgage loans, the disclosures must be made with headings, content, and format substantially similar to form H-24 but does not mandate the use of that form. Consistent with TILA section 105(b), proposed comment 37(o)(3)-1 explains that, although use of the form as a standard form is not mandatory for such transactions, its use as a model form, if properly completed with accurate content, constitutes compliance with the clear and conspicuous and segregation requirements of § 1026.37(o). In consideration of the recommendation of the Small Business Review Panel, the Bureau seeks comment on the advantages, such as cost-saving benefits, and disadvantages of requiring a standard form for the Loan Estimate for federally related mortgage loans and model forms for other credit transactions subject to proposed § 1026.19(e). *See* Small Business Review Panel Report at 28.

Proposed § 1026.37(o)(3)(iii) also provides that the disclosures may be provided in electronic form, subject to compliance with the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 *et seq.*). This provision parallels existing § 1026.17(a)(1).

37(o)(4) Rounding

The prototype disclosure forms used in the Bureau's consumer testing displayed rounded numbers for certain information required to be disclosed by proposed § 1026.37. For example, rounded numbers were disclosed for the information required by proposed § 1026.37(b)(6) and (7), (c)(1)(iii), (c)(2)(ii) and (iii), (c)(4)(ii), (f), (g), (h), (i), and (l). In addition, the total monthly payment required by proposed § 1026.37(c)(2)(iv) was rounded if any of its component amounts were required to be rounded. The loan amount required to be disclosed by proposed § 1026.37(b)(1) and percentage amounts required to be disclosed by proposed § 1026.37(b)(2) and (6), (f)(1)(i), (g)(2)(iii), (j), and (l)(2) and (3) that did not contain cents or fractional amounts were disclosed without decimal places.

In the Bureau's consumer testing, using rounded numbers in this manner, consumers were able to see and evaluate the information required by the above-mentioned paragraphs of proposed § 1026.37 quickly. The Bureau is concerned that a large number of exact dollar amounts and percentages has the potential to cause information overload and reduce the overall effectiveness of the disclosure. The Bureau believes that rounding certain amounts on the Loan Estimate reduces the quantity of numbers on the form and the complexity of information about potential risks. For example, participants at the Bureau's testing were able to evaluate the risks of maximum payments and interest rates in the Loan Terms table using rounded numbers, as well as evaluate the rounded closing cost estimates, enhancing the utility of the disclosure for consumers. The Bureau believes the exact number of cents or decimal places for information required to be disclosed by the above-mentioned paragraphs of proposed § 1026.37 at the time the Loan Estimate is provided would not provide a benefit to consumers that would outweigh the risk of information overload.

Accordingly, the Bureau proposes to use its implementation authority under TILA section 105(a), its authority under section 1032(a) of the Dodd-Frank Act, and its authority under section 1405(b) of the Dodd-Frank Act with respect to residential mortgage loans, to require only rounded numbers and percentages without fractional amounts to be disclosed without decimal places for certain information on the Loan Estimate. Whole dollar and certain whole percentage amounts appear to be sufficient to inform consumers of the estimated periodic payment amounts, estimated closing costs, financial risks posed by maximum amounts, and ensure a meaningful disclosure of credit terms. In addition, the disclosure of exact amounts could suggest to consumers a degree of accuracy that may not be warranted for some of the estimated figures. The Bureau believes this requirement ensures the meaningful disclosure of credit terms to consumers and promotes the informed use of credit. In addition, the Bureau believes this requirement may ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances. Further, the Bureau believes this requirement may improve consumer awareness and understanding of transactions involving residential mortgage loans and is in the interest of consumers and in the public interest.

Proposed § 1026.37(o)(4)(i)(A) requires only rounded numbers for the information disclosed pursuant to proposed § 1026.37(b)(6) and (7), (c)(1)(iii), (c)(2)(ii) and (iii), (c)(4)(ii), (f), (g), (h), (i), and (l). Proposed § 1026.37(o)(4)(i)(B) requires the loan amount disclosed pursuant to proposed § 1026.37(b)(1) to be disclosed without decimal places denoting cents if the amount of cents are zero. Proposed § 1026.37(o)(4)(i)(C) requires the total monthly payment disclosed pursuant to proposed § 1026.37(c)(2)(iv) to be disclosed as a rounded number if any of its component amounts are required to be rounded. Proposed § 1026.37(o)(4)(ii) requires percentages without fractional amounts that are disclosed pursuant to proposed § 1026.37(b)(2) and (6), (f)(1)(i), (g)(2)(iii), (j), and (l)(2) and (3) to be disclosed without decimal places.

Proposed comment 37(o)(4)-1 provides clarifies that consistent with § 1026.2(b)(4) all numbers are to be disclosed as exact numbers, unless required to be rounded by proposed § 1026.37(o)(4). Proposed comments 37(o)(4)-2, 37(o)(4)(i)(A)-1, 37(o)(4)(i)(B)-1, and 37(o)(4)(ii)-1 provide guidance regarding rounding amounts on the Loan Estimate.

37(o)(5) Exceptions

The Bureau’s consumer testing has indicated that the format of information on the disclosures required by proposed § 1026.37 substantially affects the way in which a consumer interacts with and understands the information disclosed. In addition, the Bureau understands that credit and real estate transactions involve significant variability and believes that it is important to provide industry with clear guidance regarding permissible changes to the format requirements to accommodate this variability. Accordingly, the Bureau believes it must specify the changes to the format that are required and permissible, to ensure the disclosures provided to consumers convey the information required by proposed § 1026.37 in a clear, understandable, and effective manner for consumers.

As described above, pursuant to RESPA section 19(a), 12 U.S.C. 2617(a), § 1024.7 of Regulation X currently requires the use of a standard from to provide the disclosures required by section 5 of RESPA, 12 U.S.C. 2604. In contrast, TILA section 105(b), 15 U.S.C. 1604(b), provides for model disclosures instead of a standard form. However, TILA permits creditors to delete information not required under the statute, other than numerical disclosures, and rearrange the format, only if doing so does not affect the substance, clarity, or meaningful sequence of the disclosure. Pursuant to its authority under RESPA section 19(a), its implementation authority under TILA section 105(a), and its authority under section 1032(a) of the Dodd-Frank Act, the Bureau proposes § 1026.37(o)(5), which sets forth the required changes to the format required to be used by proposed § 1026.37(o)(3), illustrated by form H-24 in appendix H to Regulation Z, and the permissible changes that do not affect the substance, clarity, or meaningful sequence of the disclosure. In addition, consistent with section 1032(a) of the Dodd-Frank Act, providing specified changes to the form would ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances. The Bureau believes providing for only specified changes to the form effectuates the purposes of TILA set forth in TILA section 102(a) and the purpose of the integrated disclosure set forth in TILA section 105(b), because it would ensure meaningful disclosure of credit terms to consumers, promote the informed use of credit, and facilitate compliance by providing flexibility where warranted. In addition, the Bureau believes this requirement would effectuate the purposes of RESPA by promoting more effective advance disclosure of settlement costs.

Accordingly, proposed § 1026.37(o)(5) specifies certain changes to form H-24 that are required or that do not affect the substance, clarity, or meaningful sequence of the disclosure and therefore are permissible. Proposed § 1026.37(o)(5)(i) requires the substitution of the words "month" or "monthly" on the form H-24, where used to designate the frequency of payments or the applicable unit-period of the transaction, with a different word representing the frequency of payments or unit-period under the transaction's actual terms, if different from monthly. Proposed § 1026.37(o)(5)(ii) permits the deletion of lender credits from the Cash to Close table, required by proposed § 1026.37(d)(4), if the amount is zero. Proposed § 1026.37(o)(5)(iii) permits the use of a logo for, or addition of a slogan with, the information required by proposed § 1026.37(a)(3), and requires the information disclosed pursuant to § 1026.37(a)(3), if no logo is used, to be disclosed in a similar format as form H-24 of appendix H to Regulation Z. Proposed § 1026.37(o)(5)(iv) permits the attachment of a business card over the information required by proposed § 1026.37(a)(3). Proposed § 1026.37(o)(5)(v) permits the insertion of administrative information above the information required to be disclosed by proposed § 1026.37(a)(2) and adjacent to the information required to be disclosed by proposed § 1026.37(a)(3) to assist in the identification of the form or the information contained on the form.

Proposed § 1026.37(o)(5)(vi) permits the form to be translated into languages other than English. The Bureau understands that some State laws require versions of the disclosures required under TILA and RESPA to be provided to consumers in a language other than English when the negotiation of the transaction is conducted in that language.[183] In addition, some of the regulatory authorities in these States publish their own translations of these disclosures for use by

[183] *See* Cal. Civ. Code §§ 1632, 1632.5, Or. Rev. Stat. § 86A.198.

the public.[184] The Bureau's consumer testing included two rounds of testing with Spanish-speaking consumers of Spanish-language prototype disclosure forms to determine whether co-development of a non-English version of the disclosure would be beneficial to consumers.[185] The Bureau determined that co-development of a separate non-English version of the disclosures would likely yield little benefit to consumers, because any differences in performance with the Spanish prototypes during testing were caused more by translation than design and structure issues. This may be due, in part, because the Bureau intentionally pursued a more graphic than textual design for the Loan Estimate with as few words as possible. This design highlights key information and allows consumers to quickly recognize and find the key information about the transaction without large amounts of text. The differences in language did not necessitate changes to the design of the disclosure. Accordingly, the proposed rule only includes English-language disclosure forms and permits the translation of these forms. The Bureau plans to review issues surrounding translations of the integrated disclosures after issuance of this proposal. As discussed below with respect to appendix H, the Bureau solicits comment on whether the final rule should include sample Spanish-language or other non-English language forms.

Proposed comment 37(o)(5)-1 clarifies that creditors making any changes that are not expressly permitted may lose their protection from civil liability under TILA. Proposed comment 37(o)(5)-2 clarifies that the form may be completed by hand, typewriter, computer, or other word processing device, as long as the method produces clear and legible text and uses the

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[184] The California Department of Corporations has translated the RESPA GFE into Chinese, Korean, Tagalog, and Vietnamese, available at http://www.corp.ca.gov/Forms/Default.asp. The Oregon Division of Finance and Corporate Securities provides version of the RESPA GFE and early TILA disclosure in Russian, Spanish, and Vietnamese, available at http://www.cbs.state.or.us/dfcs/ml/mortgage_disclosures_translations.html.

[185] According to the U.S. Census Bureau, based on data from the 2007 American Community Survey, 55.4 million people spoke a language other than English at home, and of those people, 62 percent spoke Spanish. U.S. Census Bureau, *Language Use in the United States: 2007*, ACS-12 (Apr. 2010), available at http://www.census.gov/hhes/socdemo/language/data/acs/ACS-12.pdf.

required formatting, including bold font where shown on form H-24. Such completion by hand or typewriter would not exempt the creditor from the requirement to keep records in an electronic, machine readable format under proposed § 1026.25.

Proposed comment 1026.37(o)(5)-3 clarifies that if there are multiple creditors or mortgage brokers for a transaction, a creditor may alter the space provided on form H-24 and add labels to disclose additional contact information under proposed § 1026.37(m), or disclose the additional information on a separate page with an appropriate cross-reference, if the space provided does not accommodate the information to be disclosed on the page. Proposed comment 1026.37(o)(5)-4 clarifies that a creditor may add signature lines to form H-24 under the "Confirm Receipt" heading required by proposed § 1026.37(n), or an additional page with an appropriate cross-reference, if the space provided by form H-24 cannot accommodate the signature lines for multiple applicants. Proposed comment 1026.37(o)(5)-5 clarifies the requirements of proposed § 1026.37(o) as they apply to the use of a separate page.

Section 1026.38 Content of Disclosures for Certain Mortgage Transactions (Closing Disclosure)

Proposed § 1026.38 sets forth the required content of the integrated Closing Disclosure, required by proposed § 1026.19(f) to be provided to a consumer no later than three business days prior to consummation.

As discussed above, the Closing Disclosure integrates the disclosures currently provided in the RESPA settlement statement and the final TILA disclosure. In addition, the Closing Disclosure integrates several disclosures, including new disclosures under the Dodd-Frank Act, that otherwise would likely have been provided separately. The Bureau believes that the five-page Closing Disclosure integrates at least nine pages of disclosures. Specifically, the Closing Disclosure incorporates: (i) three pages of the RESPA settlement statement; (ii) two pages typically used for the final TILA disclosure; (iii) one page for the negative amortization statement under TILA section 129C(f), which was added by section 1414(a) of the Dodd-Frank Act; (iv) one page for the anti-deficiency protection notice under TILA section 129C(g)(2), which was added by section 1414(c) of the Dodd-Frank Act; (v) one page for the partial payment policy disclosure under TILA section 129C(h), which was added by section 1414(d) of the Dodd-Frank Act; and (vi) one page for the escrow account disclosures under TILA sections 129D(h) and (j), which were added by sections 1461 and 1462 of the Dodd-Frank Act. In addition, the Closing Disclosure incorporates the disclosure of: (i) the total interest percentage under TILA section 128(a)(19), which was added by section 1419 of the Dodd-Frank Act; (ii) the approximate amount of the wholesale rate of funds in connection with the loan under TILA section 128(a)(17), which was added by section 1419 of the Dodd-Frank Act; and (iii) the aggregate amount of settlement charges for all settlement services provided in connection with the loan and the aggregate amount of other fees or required payments in connection with the loan under TILA section 128(a)(17), which was added by section 1419 of the Dodd-Frank Act. In absence of the Bureau's integration of the final TILA disclosure and the RESPA settlement statement, these disclosures would have been added to the final TILA disclosure, which potentially could have increased that disclosure's typical two pages to three pages.

As in the case of the disclosure content required by proposed § 1026.37, discussed above, § 1026.38 provides that the information set forth in proposed § 1026.38(a) through (s) shall be disclosed "as applicable." Accordingly, the Bureau is proposing parallel commentary under § 1026.38 to that proposed under § 1026.37. Thus, proposed comment 38-1 clarifies that a disclosure that is not applicable to a transaction generally may be eliminated entirely or may be included and marked "not applicable" or "N/A."

38(a) General Information

As with the Loan Estimate in proposed § 1026.37(a), the Bureau proposes to use its authority under TILA section 105(a), and its authority under RESPA section 19(a), Dodd-Frank Act sections 1032(a) and (f), 1098, and 1100A, and for residential mortgage loans, Dodd-Frank Act section 1405(b), to combine and modify disclosures and related requirements currently provided under Regulations X and Z and add additional disclosures in the Closing Disclosure for transactions subject to proposed § 1026.19(f).

38(a)(1) Form Title

Like the integrated disclosure provided three business days after application, TILA, RESPA, and the Dodd-Frank Act do not expressly prescribe a title for the form that must be provided in connection with a settlement. RESPA refers to the form as the "uniform settlement statement," although § 1024.8 of Regulation X uses the titles HUD-1 and HUD-1A to refer to the forms used to document settlement charges in connection with the purchase of a property or refinancing of an existing mortgage loan, respectively. Regulation Z, however, does not prescribe a title for the disclosures that must be provided to the consumer three business days prior to settlement.

Proposed § 1026.38(a)(1) requires the creditor to use the term "Closing Disclosure" as the name of the integrated disclosures provided to consumers three business days prior to settlement pursuant to proposed § 1026.19(f). The Bureau believes the adoption of a standardized form name will effectuate the purposes of TILA and RESPA by promoting the informed use of credit and more effective advance notice of settlement costs, consistent with TILA section 105(a) and RESPA section 19(a), and will ensure that the features of the transaction are fully, accurately and effectively disclosed to consumers in a manner that permits consumers to better understand the costs, benefits, and risks associated with mortgage transactions in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). In addition, the use of standard terminology for the integrated disclosures will facilitate compliance for industry, which is a purpose of this rulemaking under Dodd-Frank Act sections 1098 and 1100A. The Bureau also believes that, consistent with section 1405(b) of the Dodd-Frank Act, the requirement of a standard form name may improve consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures, and is in the interest of consumers and in the public interest.

38(a)(2) Form Purpose

Proposed § 1026.38(a)(2) requires the creditor to include a statement regarding the purpose of the Closing Disclosure. Specifically, proposed § 1026.38(a)(2) requires creditors to provide the following statement: “This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.” Providing the purpose of the Closing Disclosure is a new requirement, as neither creditors nor settlement agents are currently required to provide this type of information in the disclosures required by TILA, RESPA, and their implementing regulations. Nonetheless, this disclosure will benefit consumers and promote the informed use of credit by encouraging consumers to use both the Loan Estimate and Closing Disclosure as tools to identify changes in costs and terms that may have occurred after issuance of the Loan Estimate. Accordingly, this disclosure will benefit consumers and effectuate the purposes of TILA and RESPA by promoting the informed use of credit and more effective advance notice of settlement costs, consistent with TILA section 105(a) and RESPA section 19(a), and will ensure that the features of the transaction are fully, accurately and effectively disclosed to consumers in a manner that permits consumers to better understand the costs, benefits, and risks associated with mortgage transactions, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a).

38(a)(3) Closing Information

Appendix A to Regulation X currently requires the settlement agent to include in the RESPA settlement statement basic information about the settlement process, including the name of the settlement agent, the place of settlement, the property location, and the settlement date. In addition to this information, with the exception of the place of settlement, proposed § 1026.38(a)(3) requires creditors to disclose: (1) the date the Closing Disclosure is issued; (2) the dates funds are disbursed to the seller and consumer, as applicable; (3) the sale price of the property that is the subject of the transaction; and (4) the file number assigned to the transaction by the closing agent. All of the aforementioned information would be located under the heading "Closing Information." The Bureau believes that this information and the additional information discussed below effectuate the purposes of TILA and RESPA by promoting the informed use of credit and more effective advance notice of settlement costs, consistent with TILA section 105(a) and RESPA section 19(a), and will ensure that the features of the transaction are fully, accurately and effectively disclosed to consumers in a manner that permits consumers to better understand the costs, benefits, and risks associated with mortgage transactions, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a).

38(a)(3)(i) Date Issued

Proposed § 1026.38(a)(3)(i) requires the creditor to disclose the date the disclosures required for transactions subject to § 1026.19(f) are issued to the consumer, labeled "Date

Issued." Proposed comment § 1026.38(a)(3)(i)-1 cross-references the commentary to proposed § 1026.37(a)(4).

38(a)(3)(ii) Closing Date

Proposed § 1026.38(a)(3)(ii) requires the creditor to disclose the consummation date for the mortgage loan transaction, labeled "Closing Date."

38(a)(3)(iii) Disbursement Date

Proposed § 1026.38(a)(3)(iii) requires the disclosure of the date the amounts disclosed pursuant to proposed § 1026.38(j)(3)(iii) and (k)(3)(iii) are expected to be paid to the consumer and seller, respectively, labeled "Disbursement Date."

38(a)(3)(iv) Agent

Proposed § 1026.38(a)(3)(iv) requires the identity of the settlement agent conducting the closing, labeled "Agent." Proposed comment 38(a)(3)(iv)-1 clarifies that the name of the agency that employs the settlement agent should be provided in the disclosure required by § 1026.38(a)(3)(iv) and that the name of the individual conducting the closing is not required.

38(a)(3)(v) File Number

Proposed § 1026.38(a)(3)(v) requires disclosure of the number assigned to the transaction by the closing agent for identification purposes, labeled "File #."

38(a)(3)(vi) Property

Proposed § 1026.38(a)(3)(vi) requires the street address of the property required to be disclosed under proposed § 1026.37(a)(6), labeled "Property." Proposed comment 38(a)(3)(iv)-1 cross-references the commentary to § 1026.37(a)(6), which provides guidance regarding the information that must be provided in response to this requirement when a standard property address is unavailable.

38(a)(3)(vii) Sale Price

In credit transactions where there is a seller, proposed § 1026.38(a)(3)(vii)(A) requires disclosure of the contract sale price for the property identified in proposed § 1026.38(a)(3)(vi), labeled "Sale Price." In transactions where there is no seller, proposed § 1026.38(a)(3)(vii)(B) requires disclosure of the appraised value of the property in proposed § 1026.38(a)(3)(vi), labeled "Appraised Prop. Value." Proposed comment 38(a)(3)(vii)-1 provides guidance regarding disclosing the property value when there is no seller that is a party to the transaction.

38(a)(4) Transaction Information

Proposed § 1026.38(a)(4) requires the creditor to disclose the names and addresses of the parties to the transaction: the borrower, seller, and lender, as applicable. This information would appear under the heading "Transaction Information." These disclosures are currently provided in the RESPA settlement statement. *See* appendix A to Regulations X. In addition, TILA section 128(a)(1) and Regulation Z § 1026.18(a) require disclosure of the identity of the creditor. The Bureau believes that these disclosures effectuate the purposes of TILA and RESPA by promoting the informed use of credit and more effective advance notice of settlement costs, consistent with TILA section 105(a) and RESPA section 19(a), and will ensure that the features of the transaction are fully, accurately and effectively disclosed to consumers in a manner that permits consumers to better understand the costs, benefits, and risks associated with mortgage transactions, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a).

Proposed comment 38(a)(4)-1 clarifies that the name and address for each consumer and seller must be provided and refers creditors to the commentary to proposed § 1026.37(a)(5) for further guidance. Proposed comment 38(a)(4)-1 also clarifies that the name and address of each consumer must be provided and that if the form does not provide enough space to include the required information for each seller, an additional page with that information may be appended to the end of the form, provided the creditor is in compliance with proposed § 1026.38(t)(3). Proposed comment 38(a)(5)-2 clarifies that, in transactions where there is no seller such as in a refinancing or home equity loan, the creditor must provide the name of the person or persons primarily liable under the obligation or who have a right of rescission. Finally, proposed comment 38(a)(4)-3 cross-references the commentary to proposed § 1026.37(a)(3) for information regarding the identification of multiple creditors.

38(a)(5) Loan Information

Proposed § 1026.38(a)(5) requires the creditor to provide certain information about the mortgage loan that is the subject of the transaction. With the exception of the mortgage insurance case number required by proposed § 1026.38(a)(5)(vi), all of the disclosures required under proposed § 1026.38(a)(5) mirror the disclosures required by proposed § 1026.37(a)(8) through (12). The Bureau believes that these disclosures effectuate the purposes of TILA and RESPA by promoting the informed use of credit and more effective advance notice of settlement costs, consistent with TILA section 105(a) and RESPA section 19(a), and will ensure that the features of the transaction are fully, accurately and effectively disclosed to consumers in a manner that permits consumers to better understand the costs, benefits, and risks associated with mortgage transactions, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a).

Proposed comment 38(a)(5)-1 refers the creditor to the commentary to proposed § 1026.37(a)(9) through (11) for further guidance on the general requirements and definitions applicable to proposed § 1026.38(a)(5)(i) through (v). The disclosures required by proposed § 1026.38(a)(5) appear under the heading "Loan Information."

38(a)(5)(i) Loan Term

Proposed § 1026.38(a)(5)(i) requires disclosure of the term of the loan, consistent with proposed § 1026.37(a)(8) and labeled "Loan Term."

38(a)(5)(ii) Purpose

Proposed § 1026.38(a)(5)(ii) requires disclosure of the purpose of the loan, consistent with proposed § 1026.37(a)(9) and labeled "Purpose."

38(a)(5)(iii) Product

Proposed § 1026.38(a)(5)(iii) requires disclosure of the loan product, consistent with proposed § 1026.37(a)(10) and labeled "Product."

38(a)(5)(iv) Loan Type

Proposed § 1026.38(a)(5)(iv) requires disclosure of the loan type, consistent with proposed § 1026.37(a)(11) and labeled "Loan Type."

38(a)(5)(v) Loan Identification Number

Proposed § 1026.38(a)(5)(v) requires disclosure of the loan identification number, consistent with proposed § 1026.37(a)(12) and labeled "Loan ID #."

38(a)(5)(vi) Mortgage Insurance Case Number

The mortgage insurance case number currently is disclosed in section B of the RESPA settlement statement. *See* appendix A to Regulation X. Proposed § 1026.38(a)(5)(vi) incorporates this disclosure into the Closing Disclosure, labeled "MIC #."

38(b) Loan Terms

For transactions subject to proposed § 1026.19(f), proposed § 1026.38(b) implements the requirements of TILA section 128(a)(6), (a)(11), and (b)(2)(C)(ii) by requiring creditors to disclose on the Closing Disclosure the table of key loan terms provided on the Loan Estimate pursuant to proposed § 1026.37(b). This information includes the loan amount; interest rate; periodic principal and interest payment; whether the loan amount, interest rate, or periodic payment may increase; and whether the loan has a prepayment penalty or balloon payment. For a detailed description of the Bureau's implementation of these statutory provisions and its legal authority for this proposal, see the section-by-section analysis to proposed § 1026.37(b).

The requirements of proposed § 1026.38(b) generally mirror those of proposed § 1026.37(b). Accordingly, proposed comment 38(b)-1 directs creditors to the commentary to proposed § 1026.37(b) for guidance on the disclosures required by proposed § 1026.38(b).

38(c) Projected Payments

Proposed § 1026.38(c) implements the requirements of TILA section 128(a)(6), (a)(16), (b)(2)(C), and (b)(4) for transactions subject to proposed § 1026.19(f), by requiring creditors to disclose on the Closing Disclosure the periodic payment or range of payments, together with an estimate of the taxes, insurance, and assessments and the payments to be made with escrow account funds. 15 U.S.C. 128(a)(6), (a)(16), (b)(2)(C), (b)(4). The requirements of proposed § 1026.38(c) generally mirror those of proposed § 1026.37(c), with certain exceptions which are discussed below. Accordingly, proposed comment 38(c)-1 directs creditors to § 1026.37(c) and its commentary for guidance on the disclosures required by § 1026.38(c). For a detailed description of the Bureau's implementation of these statutory provisions and its legal authority for this proposal, see the section-by-section analysis to proposed § 1026.37(c) above. As discussed below in the section-by-section analysis to proposed § 1026.38(t), the items required to be disclosed pursuant to § 1026.38 will be actual terms and costs, as required by § 1026.19(f).

Proposed § 1026.38(c) differs from proposed § 1026.37(c) in several ways. First, proposed § 1026.38(c)(2) requires an additional reference to the information required by proposed § 1026.38(l)(7). The Bureau believes, based on consumer testing, that this additional reference will help consumers to understand the specific payment amounts to be made with escrow funds and those that must be paid separately by the consumer. Second, proposed § 1026.38(c) contains different rules for estimating escrow payments. As discussed in the section-by-section analysis to proposed § 1026.37(c), the Dodd-Frank Act amended TILA to add new requirements regarding the disclosure of escrow payments in consumer credit transactions secured by a first mortgage on the principal dwelling of the consumer, other than an open-end credit plan or reverse mortgage. Specifically, TILA section 128(b)(4)(A) provides that the disclosures required by TILA section 128(a)(6) must take into account the amount of any monthly payment to an escrow account, in accordance with section 10(a)(2) of RESPA. 15 U.S.C. 1638(b)(4)(A); 12 U.S.C. 2609(a)(2). In addition, new TILA section 128(b)(4)(B) generally requires creditors to take into account the taxable assessed value of the property during the first year after consummation, including the value of any improvements constructed or to be constructed on the property, if known, and the replacement costs of the property for hazard or flood insurance, when disclosing estimated escrow payments pursuant to TILA section 128(b)(4)(A). 15 U.S.C. 1638(b)(4)(B). For the Loan Estimate provided to consumers near the time of application, proposed § 1026.37(c) generally incorporates these statutory provisions, but expands the requirements to all transactions subject to § 1026.37(c). However, the Bureau believes that separate treatment is required for the Closing Disclosure because the statutory requirements may conflict with certain provisions of Regulation X, which implements the provisions of RESPA sections 6(g) and 10, regarding the administration of escrow accounts. 12 U.S.C. 2605(g); 2609.

Regulation X § 1024.17(c)(7) specifies how a creditor conducting an escrow account analysis must estimate disbursement amounts. If the creditor knows the charge for a particular escrow item, the creditor must use that amount in estimating the disbursement. If the charge is unknown, the creditor may base the estimate on the preceding year's charge, but may adjust the estimate to account for inflation. The Regulation X requirement that the creditor use actual charges, if known, in estimating escrow payment amounts may conflict with the TILA section 128(b)(4)(B) requirement that the creditor take into account the replacement costs of the property for hazard insurance when determining the estimated escrow amount. Under the plain language of TILA section 128(b)(4)(B), a creditor must base estimated escrows for hazard insurance on the replacement costs of the property, even if it knows that the actual charges will be different. While the Bureau believes that the TILA requirement for estimating escrow payments is appropriate for the Loan Estimate because it requires creditors to use a uniform standard for estimates and therefore facilitates comparison, the disclosure of actual payment amounts, when known, is appropriate for the Closing Disclosure.

Accordingly, the Bureau proposes to use its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b) to modify the requirements of TILA section 128(b)(4)(B) for the estimation of escrow payment amounts on the Closing Disclosure. Proposed § 1026.38(c) provides that, in disclosing estimated escrow payments as described in § 1026.37(c)(2)(iii) and (4)(ii), the amount disclosed on the Closing Disclosure: (1) for transactions subject to RESPA, is determined under the escrow account analysis described in Regulation X, 12 CFR 1024.17, and (2) for transactions not subject to RESPA, may be determined under the escrow account analysis described in Regulation X, 12 CFR 1024.17, or in the manner set forth in § 1026.37(c)(5). Comment 38(c)(1)-1 clarifies that the amount of estimated escrow payments disclosed on the Closing Disclosure is accurate if it differs from the estimated escrow payment disclosed on the Loan Estimate due to the escrow account analysis described in Regulation X, 12 CFR 1024.17. The Bureau believes the proposed modification will effectuate the purposes of TILA by promoting the informed use of credit by allowing disclosure of actual escrow amounts for hazard insurance, when known. Additionally, the proposed modification will ease compliance burden for creditors. In particular, permitting creditors in transactions not subject to RESPA to rely on the accounting rules described in Regulation X, 12 CFR 1024.17, to calculate the escrow payment disclosure will avoid requiring creditors to follow a separate disclosure requirement for the relatively small number of transactions that are subject to TILA but not RESPA. The proposed modification will also improve consumer awareness and understanding of residential mortgage loans and is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b). The Bureau also believes that the disclosure ensures that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a).

38(d) Cash to Close

Pursuant to its authority under TILA section 105(a) and Dodd-Frank section 1032(a), the Bureau proposes to require creditors to provide the actual total closing costs imposed upon the consumer and the amount of the cash required at consummation from the consumer. This disclosure will promote the informed use of credit and consumer understanding of the costs, benefits, and risks associated with the loan because it will indicate to the consumer the amount the consumer will pay at consummation of the credit transaction and closing of the real estate transaction. Accordingly, proposed § 1026.38(d) requires the disclosure of the cash required from the consumer at consummation of the transaction, with a breakdown of the amounts of loan costs and other costs associated with the transaction.

38(d)(1) to (d)(6)

Under proposed § 1026.38(d)(1), the dollar amount due from the consumer is the same amount as calculated in accordance with proposed § 1026.38(j)(3)(iii) and is disclosed under a heading of "Cash to Close" and labeled "Cash to Close." The total dollar amount of the loan costs to be paid by the consumer at closing as calculated under proposed § 1026.38(f)(4) is disclosed under proposed § 1026.38(d)(2). The total dollar amount of the other costs to be paid by the consumer at closing as calculated under proposed § 1026.38(g)(5) is disclosed under proposed § 1026.38(d)(3). The amount of lender credits disclosed under § 1026.38(h)(3) is disclosed under § 1026.38(d)(4). The sum of the amounts disclosed under § 1026.38(d)(2), 1026.38(d)(3), and 1026.38(d)(4) is disclosed with a description of "Closing Costs" under § 1026.38(d)(5). A statement directing the consumer to refer to the page of the Closing Disclosure that contains the tables required under § 1026.38(f) and (g) is required under § 1026.38(d)(6).

38(f),(g), and (h) Closing Cost Details

Currently, RESPA section 4(a) requires that the forms published by the Bureau ". . . shall conspicuously and clearly itemize all charges imposed upon the borrower and all charges imposed upon the seller in connection with the settlement . . . ." 12 U.S.C. 2603(a). The current

RESPA settlement statement used in residential real estate transactions is promulgated under Regulation X § 1024.8, with instructions in appendix A of Regulation X.

As discussed above, Dodd-Frank Act section 1032(f) requires the Bureau to combine these RESPA disclosures with the disclosures required by TILA. However, section 1419 of the Dodd-Frank Act amended TILA section 128(a) to also require, in the case of a residential mortgage loan, disclosure of the aggregate amount of settlement charges for all settlement services provided in connection with the loan and the aggregate amount of other fees or required payments in connection with the loan. 15 U.S.C. 1638(a)(17).

Pursuant to its authority under Dodd-Frank Act section 1032(a) and (f), TILA section 105(a), and RESPA section 19(a), the Bureau proposes to require creditors to provide the loan costs and other costs imposed upon the consumer and the seller in tables as part of the integrated Closing Disclosure for closed-end transactions secured by real property (other than reverse mortgages). Based on its consumer testing, the Bureau believes that the disclosure of loan costs and other costs in the format illustrated in proposed form H-25 of appendix H to Regulation Z may improve consumer understanding of the loan costs and other costs being imposed. The Bureau tested several different prototype formats for disclosing actual closing costs on the Closing Disclosure, including prototypes that were similar in format to the current RESPA settlement statement, with a similar three and four-digit line numbering system, and other prototypes that more closely matched the Loan Estimate. Consumer participants at the Bureau's consumer testing performed better at identifying closing costs, including whether closing costs had changed between the estimated and actual amounts, when using a format for closing costs that closely matched that of the Loan Estimate. Participants gained a familiarity with the organization of closing costs on the Loan Estimate and benefited from this experience when engaging with the Closing Disclosure. In addition, consumer participants often placed the Loan Estimate and Closing Disclosure prototypes side-by-side to compare the closing costs, and this method of comparing the two disclosures was better enabled and assisted by a closely matching organization of closing costs between them. Accordingly, the Bureau is proposing a format for the disclosure of closing cost information required by proposed § 1026.38(f) and (g) that closely matches the format and organization of the closing cost information on the Loan Estimate, as required by proposed § 1026.38(t) and illustrated by proposed form H-25.

This format of form H-25 also uses a different line numbering system than that of the current RESPA settlement statement. Both consumer and industry participants at the Bureau's testing stated that line numbers would be useful to facilitate conversations between consumers, creditors, and other participants in the credit and underlying real estate transaction. However, consumer participants at the Bureau's testing appeared overwhelmed by the three and four-digit line numbers on the prototypes similar to the current RESPA settlement statement, and performed worse with prototypes containing that system. As discussed above in part III, the Bureau is particularly mindful of the potential risk of information overload for consumers, given the amount of numbers and complexity involved in the credit transaction and the underlying real estate transaction. The Bureau tested prototypes with a two-digit line numbering system, which performed better with both consumer and industry participants at the Bureau's testing, with some industry participants at the Bureau's testing preferring it over the system of the current RESPA settlement statement. Accordingly, the format for the information required by proposed § 1026.38(f) and (g), as required by proposed § 1026.38(t) and illustrated by form H-25, also contains a two-digit line numbering system that is different than the current RESPA settlement statement.

The Bureau believes that this disclosure may effectuate the purpose of TILA by promoting the informed use of credit and assuring a meaningful disclosure to consumers. The Bureau believes that this disclosure may also satisfy the purpose of RESPA to provide more effective advanced disclosure of settlement costs to both the consumer and the seller in the real estate transaction. In addition, consistent with section 1032(a) of the Dodd-Frank Act, this disclosure may ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

As discussed below, proposed § 1026.38(f), (g), and (h) require the creditor or closing agent to disclose the details of the closing costs at closing and totals of those costs. The costs related to the consummation of the credit transaction and the closing of the real estate transaction would be disclosed under § 1026.38(f), (g), and (h), as discussed below, regardless of the person responsible for paying the cost.[186]

During the Small Business Review Panel, several settlement agents and one mortgage company requested that the line numbers from the current RESPA settlement statement be retained, stating that using the revised line numbers in the prototype integrated Closing Disclosure would significantly increase programming costs. *See* Small Business Review Panel Report at 20, 28-9. Based on this feedback, the Bureau seeks comment on whether the use of line numbers will lower software-related costs on industry, and the exact amount of the savings

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[186] The permitted itemization of closing costs under § 1026.38(f) and (g) allows creditors to provide itemizations required by State law without using additional pages. *See, e.g.*, Indiana Department of Insurance, Title Insurance Division "New RESPA Rules and Indiana Code FAQs" (May 1, 2010) available at http://www.in.gov/idoi/files/Indiana_Department_of_Insurance_FAQs.pdf; North Carolina Commissioner of Banks Memorandum "Disclosure of Origination Fees under HUD's New RESPA Rules" (December 3, 2010) available at http://www.nccob.gov/public/docs/Financial%20Institutions/Mortgage/OCOB_Letter_Regarding_Disclosure_of_Origination_Fees_under_HUDs_new_RESPA_Rules.pdf.; Tex. Ins. Code Ann. art. § 2702.053 (West 2005).

given the rest of the changes in the integrated closing disclosure contemplated by this proposal, while improving consumer understanding of the loan terms and costs at the consummation of the credit transaction and the closing of the real estate transaction.

38(f) Closing Cost Details; Loan Costs

Under proposed § 1026.38(f), the closing cost details are disclosed under a master heading of "Closing Cost Details" with columns stating whether the charge is paid at or before consummation by the consumer or the seller, or paid by others. All loan costs in the credit transaction would be disclosed in a table under a heading of "Loan Costs" in three subcategories.

38(f)(1) Origination Charges

The first subcategory of loan costs would be disclosed under the label "Origination Charges," which encompasses the same items as disclosed on the Loan Estimate under proposed § 1026.37(f)(1) together with any compensation of a loan originator paid by the creditor. Each cost would be disclosed in the appropriate column designated borrower-paid at or before closing, seller-paid at or before closing, or paid by others. Proposed comment 38(f)(1)-1 clarifies that comments 37(f)(1)-1, -2 and -3 provide additional guidance for the charges listed under § 1026.38(f)(1). Proposed comment 38(f)(1)-2 clarifies that all compensation paid to a loan originator must be provided under § 1026.38(f)(1), that compensation from the creditor to a loan originator must be disclosed in the paid by others column, and that compensation from both the consumer and the creditor to the loan originator is prohibited under § 1026.36(d)(2). Proposed comment 38(f)(1)-3 clarifies that any amount disclosed as paid from the creditor to the loan originator is calculated as the dollar value of all compensation to the loan originator and refers to comments 36(d)(1)-1, -2, -3 and -6 for further guidance on the components of compensation a to loan originator. The Bureau believes that the origination charges disclosed under § 1026.38(f)(1) satisfies Dodd-Frank Act section 1419, which amended section 128(a) of TILA to add paragraph (18), requiring disclosure of the aggregate amount of fees paid to the mortgage originator, amount of those fees paid directly by the consumer, and any additional amount received by the originator from the creditor. As discussed above in part II.F, the Bureau currently is engaged in six other rulemakings that relate to mortgage credit and intends that the rulemakings function collectively as a whole. Accordingly, the Bureau may have to modify aspects of this proposed rule for consistency with determinations made in the other rulemakings. For example, the Bureau would modify the disclosure of origination charges under § 1026.38(f)(1) as appropriate for consistency with other rulemakings related to permissible mortgage loan originator compensation.

Alternatively, the Bureau invites comment on whether it should require itemization in the Closing Disclosure of fees received by loan originators from the creditor, and whether it should require itemization of any compensation paid by consumers to loan originators, which does not include creditors, in the Loan Estimate and Closing Disclosure. As discussed above with respect to proposed § 1026.37(f)(1), the Bureau is proposing to use its authority under TILA section 105(a) and (f), RESPA section 19(a), and Dodd-Frank Act section 1405(b) to exempt the disclosures required by proposed § 1026.19(e) from the TILA section 128(a)(18) requirement that creditors disclose the amount of origination fees received by loan originators from the creditor. The Bureau solicits comment on whether a similar exemption should be applied here.

38(f)(2) Services Borrower Did Not Shop For

The second subcategory of loan costs would be disclosed under the label "Services Borrower Did Not Shop For." The costs of services that were required by the creditor and provided by persons other than the creditor for which the consumer could not or did not shop would disclosed under § 1026.38(f)(2). All items that were required to be disclosed under § 1026.37(f)(2), plus those items that would be disclosed under § 1026.37(f)(3) when the consumer did not shop for the service under § 1026.19(e)(1)(vi). Any additional items that were required by the creditor but were not disclosed on the Loan Estimate under § 1026.37(f)(2) would be disclosed under § 1026.38(f)(2) when the consumer did not shop for the service under § 1026.19(e)(1)(vi). Each cost would be disclosed in the appropriate column designated borrower-paid at or before closing, seller paid charges at or before closing, or paid by others. Proposed comment 38(f)(2)-1 refers to comments 37(f)(2)-1, through -4 to provide additional guidance for the charges listed under § 1026.38(f)(2).

38(f)(3) Services Borrower Did Shop For

The third subcategory of loan costs would be disclosed under the label "Services Borrower Did Shop For." The services required by the creditor but for which the consumer independently shopped are disclosed under § 1026.38(f)(3). Each cost is disclosed in the appropriate column for borrower-paid at or before closing, seller-paid at or before closing, or paid by others. Proposed comment 38(f)(3)-1 clarifies that all items that were disclosed under § 1026.37(f)(3) that the consumer did not shop for the service under § 1026.19(e)(1)(vi) are disclosed under § 1026.38(f)(2), and not under § 1026.38(f)(3).

38(f)(4) and (5) Total Loan Costs and Subtotal of Loan Costs

With the label "Total Loan Costs (Borrower-Paid)," the total costs designated borrower-paid charges at closing and borrower-paid charges before closing would be disclosed under § 1026.38(f)(4). The costs disclosed under § 1026.38(f)(1), (2), and (3) would be subtotaled and disclosed in the appropriate column designated borrower-paid at or before closing under § 1026.38(f)(5). Proposed comment 38(f)(5)-1 clarifies that costs that are seller-paid at or before closing, or paid by others, are not subtotaled under § 1026.38(f)(5), and that the subtotal of charges that are seller-paid at or before closing, or paid by others, would be disclosed under § 1026.38(h)(2).

38(g) Closing Cost Details; Other Costs

Under proposed § 1026.38(g), all other costs in the credit transaction and the real estate transaction are disclosed in a table under the heading of "Other Costs" in four subcategories. Proposed comment 38(g)-1 would refer to comment 38(f)-1 and comment 37(g)-1 to provide guidance related to § 1026.38(g).

38(g)(1) Taxes and Other Government Fees

The first subcategory is disclosed under the label "Taxes and Other Government Fees." The amount of recording fees and an itemization of transfer taxes would be disclosed under § 1026.38(g)(1). Proposed comment 38(g)(1)-1 refers to comments 37(g)(1)-1, -2, -3 and -4 for guidance on disclosures required under § 1026.38(g)(1).

38(g)(2) Prepaids

The second subcategory is disclosed under the label "Prepaids." The items that were identified under are stated with the actual costs in the applicable columns is disclosed under § 1026.38(g)(2). Proposed comment 38(g)(2)-1 refers to comment 37(g)(2)-1 to provide guidance on disclosures required under § 1026.38(g)(2). Proposed comment 38(g)(2)-2 clarifies that the amount of prepaid interest can be disclosed as a negative number if the calculation of prepaid interest results in a negative number. Proposed comment 38(g)(2)-3 clarifies that if interest is not collected for a portion of a month or other period between closing and the date from which interest will be collected with the first monthly payment, then $0.00 must be disclosed under § 1026.38(g)(2) for prepaid interest. This guidance is consistent with instructions for RESPA settlement statement line 901 in appendix A of Regulation X.

38(g)(3) Initial Escrow Payment at Closing

The third subcategory is disclosed under the subheading "Initial Escrow Payment at Closing." The items that were identified under § 1026.37(g)(3) are stated with their actual cost and the applicable aggregate adjustment required under 12 CFR 1024.17(d)(2) and disclosed under § 1026.38(g)(3). Proposed comment 38(g)(3)-1 clarifies that the creditor would be required to state the amount that it would require the consumer to place into a reserve or escrow account at consummation to be applied to recurring charges for property taxes, homeowner's and similar insurance, mortgage insurance, homeowner's association dues, condominium dues, and other periodic charges. Each charge identified would be disclosed with a relevant label, monthly payment amount, and number of months collected at consummation. Proposed comment 38(g)(3)-2 clarifies that the method used to determine the aggregate adjustment for purposes of establishing the reserve or escrow account is described in Regulation X § 1024.17(d)(2), that examples of the calculation methodology can be found in appendix E of Regulation X, and that the result of the calculation will always be a negative number or zero, except for amounts due to rounding. This comment incorporates guidance provided in appendix A to Regulation X relating to the instructions to complete the current RESPA settlement statement section 1000.

38(g)(4) Other

The fourth subcategory would be disclosed under the label "Other." The services required to be performed or are to be obtained in the real estate closing by the consumer, seller, or other party are described and the costs for the services disclosed under § 1026.38(g)(4). The label for any cost that is a component of title insurance must include the description "Title – ".

The label for costs of premiums for separate insurance, warranty, guarantee, or event-coverage products must include the parenthetical "(optional)" at the end. Proposed comment 38(g)(4)-1 clarifies that the charges disclosed under § 1026.38(g)(4) include all real estate brokerage fees, home owner's or condominium association charges paid at closing, home warranties, inspection fees, and other fees that are part of the real estate transaction but not required by the creditor or disclosed elsewhere in § 1026.38. Proposed comment 38(g)(4)-2 clarifies that any owner's title insurance premium disclosed under § 1026.38(g)(4) in a jurisdiction that permits simultaneous issuance title insurance rates is calculated by using the full owner's title insurance premium, adding any simultaneous issuance premium for issuance of lender's coverage, and then deducting the full premium for lender's coverage disclosed under § 1026.38(f)(2) or (f)(3) and that the cost of a premium for an owner's title insurance policy will be always labeled with "Title – " at the beginning, and labeled "(optional)" at the end when designated borrower-paid at or before closing. Proposed comment 38(g)(4)-3 refers to comment 37(g)(4)-3 for additional guidance on the use of the parenthetical "(optional)" at the end of label on a cost under § 1026.38(g)(4)(ii).

38(g)(5) Total Other Costs

38(g)(6) Subtotal of Costs

With the label "Total Other Costs (Borrower-Paid)," the total of the consumer paid charges at closing and the consumer paid charges before closing would be disclosed under proposed § 1026.38(g)(5). The costs disclosed under § 1026.38(g)(1) through (4) are be subtotaled and disclosed in the appropriate column designated borrower-paid at or before closing under § 1026.38(g)(6). Proposed comment 38(g)(6)-1 would clarify that the only costs subtotaled under § 1026.38(g)(6) are those that are designated borrower-paid at or before closing. Charges that are other costs seller-paid at closing, seller-paid before closing, or paid by others are not disclosed under § 1026.38(g)(6), but are subtotaled under § 1026.38(h)(2).

38(h) Closing Cost Totals

38(h)(1) and (2)

Subtotals of closing costs and total closing costs paid by the consumer must be disclosed under proposed § 1026.38(h). With the label "Total Closing Costs (Borrower-Paid)," the total amount of consumer paid closing costs would be disclosed under § 1026.38(h)(1). With a description of "Closing Costs Subtotal (Loan Costs + Other Costs)," the subtotal of all charges disclosed under § 1026.38(f) and (g) in each column described in § 1026.38(f) would be disclosed under § 1026.38(h)(2). Comment 38(h)(2)-1 clarifies that the loan costs and other costs that are seller-paid at closing, seller-paid before closing, and paid by others are also subtotaled under § 1026.38(h)(2).

The Bureau proposes § 1026.38(h) pursuant to its authority under TILA section 105(a) and Dodd-Frank Act section 1032(a) because disclosure of this closing cost information will promote the informed use of credit and consumer understanding of the costs, benefits, and risks associated with the mortgage transaction. Furthermore, for the reasons stated above, the proposed rule is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b). In addition, proposed § 1026.38(h) implements Dodd-Frank Act Section 1419, which amended section 128(a) of TILA to add a new paragraph (17) requiring disclosure of, among other amounts, the amount of settlement charges the borrower must pay at closing and the aggregate amount of all settlement charges for all settlement services provided in connection with the loan.

38(h)(3)

Section 1026.38(h)(3) requires the creditor to disclose the amount of credits provided by the creditor to the consumer at consummation. Proposed comment 38(h)(3)-1 provides a cross reference to guidance provided in comments 17(c)(1)-19, 19(e)(3)(i)-4, and 19(e)(3)(i)-5 concerning the disclosure of lender credits, including those that are disclosed under § 1026.37(g)(6). Proposed comment 38(h)(3)-2 clarifies that any amounts disclosed under § 1026.38(h)(3) can also be used for disclosing any credits from the creditor to remediate excess costs determined under § 1026.19(e)(3)(i) or (e)(3)(ii). This comment incorporates guidance provided in the HUD RESPA Roundup dated April 2010.

38(h)(4)

Section 1026.38(h)(4) requires the creditor to use terminology describing the charges on the Closing Disclosure in a manner that is consistent with the descriptions used for charges disclosed on the Loan Estimate under § 1026.37. The creditor would also be required to list the charges on the Closing Disclosure in the same sequential order on the Loan Estimate under § 1026.37. Proposed comment 38(h)(4)-1 clarifies that the creditor would be required to use the same terminology and order to make it easier for the consumer to compare charges listed on the Loan Estimate and Closing Disclosure. Also, if charges move between subheadings under § 1026.38(f)(2) and (3), listing the charges in alphabetical order in each subheading category would be considered to be in compliance with § 1026.38(h)(4).

38(i) Calculating Cash to Close

As discussed above, the total amount of cash or other funds that the consumer must provide at consummation is commonly known as the "cash to close." Prior to the enactment of the Dodd-Frank Act, neither TILA nor Regulation Z expressly required disclosure of the cash to close amount or its critical components. The Dodd-Frank Act added section 128(a)(17) to TILA, which requires the disclosure of "the aggregate amount of settlement charges for all settlement services provided in connection with the loan, the amount of charges that are included in the loan and the amount of such charges the borrower must pay at closing . . . and the aggregate amount of other fees or required payments in connection with the loan." 15 U.S.C. 1638(a)(17).

The "Summary of Borrower's Transaction" on page 1 of the RESPA settlement statement, line 303, includes a box that shows the amount of cash due to or from the consumer. *See* appendix A to Regulation X. Page 3 of the RESPA settlement statement also includes a chart entitled "Comparison of Good Faith Estimate (GFE) and HUD-1 Charges," which highlights any changes between the estimated and actual amounts for settlement service charges that are subject to the limitations on increases under 12 CFR 1024.7(e). However, these settlement service charges comprise only a portion of the total amount of funds that the consumer would need to consummate the transaction. Thus, the cash to close box on line 303 and the comparison chart on page 3 of the RESPA settlement statement together provide an incomplete picture of how the cash to close amount is calculated and whether it is different than the consumer expects based on the GFE.

Consequently, and based on its authority under TILA section 105(a), RESPA section 19(a), and Dodd-Frank Act sections 1032(a) and, for residential mortgage loans, 1405(b), the Bureau is proposing to require that the Closing Disclosure contain a "Calculating Cash to Close" table that highlights the cash to close amount and its critical components and compares those amounts to the corresponding disclosures shown on the Loan Estimate under § 1026.37(h). The Bureau believes that this disclosure will effectuate the purposes of TILA and RESPA by facilitating the informed use of credit and ensuring that consumers are provided with greater and timelier information on the costs of the closing process. Providing consumers with information about the cash to close amount, its critical components, and how such amounts changed from the estimated amounts disclosed on the Loan Estimate helps ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to better understand the costs, benefits, and risks associated with the transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). The Bureau also believes such disclosure will improve consumers' awareness and understanding of residential mortgage transactions, which is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

The "Calculating Cash to Close" table in the Closing Disclosure under proposed § 1026.38(i) mirrors the format of, and updates the amounts shown on, the "Calculating Cash to Close" table in the Loan Estimate under proposed § 1026.37(h). The Bureau believes that including separate "Calculating Cash to Close" tables on both the Loan Estimate and the Closing Disclosure will aid the consumer in ascertaining whether the cash to close amount and its critical components changed between the Loan Estimate and the Closing Disclosure, and by how much. The two tables are similar in format and designed to be used in tandem when the consumer is reviewing the Closing Disclosure and comparing its content to that shown on the Loan Estimate. However, the table on the Closing Disclosure includes additional information under the subheading "Did this change?" which is intended to assist the consumer in identifying and understanding the reasons for any such changes.

The Bureau's consumer testing indicated that consumers were able to use the detailed comparison table to understand how and why the actual cash to close amount on the Closing Disclosure differs from the estimated amounts shown on the Loan Estimate. During testing, consumers tended to use the “Calculating Cash to Close” table in conjunction with the “Closing Cost Details” tables showing itemized charges and subtotals on the Closing Disclosure, to identify the differences between the estimated and actual cash to close amount and its critical components and to gain a better understanding of the numbers underlying the cash to close amount. The consumers also benefited from the “Did this change?” subheading containing statements that components of the cash to close changed and simple explanations as to why. The Bureau has incorporated this feedback into the design of the table and its choice of language to be used under the “Did this change?” subheading, as applicable.

Requiring disclosure of the “Calculating Cash to Close” table also complements proposed § 1026.19(f)(1)(ii), which requires delivery of the Closing Disclosure three business days prior to consummation. TILA section 128(b)(2)(D) requires that a corrected TILA disclosure be given to the consumer not later than three business days prior to consummation if the APR as initially disclosed becomes inaccurate, and the Bureau understands that the annual percentage rate changes triggering the redisclosure obligation occur so frequently that many creditors currently provide the corrected TILA disclosure as a matter of course even if redisclosure is not required. RESPA section 4 provides that the RESPA settlement statement be provided “at or before closing,” however, and the Bureau understands that it typically is given the day of closing. As discussed above, proposed § 1026.19(f)(1)(ii) merges the two provisions by requiring that consumers be given the integrated disclosures three business days prior to consummation. During this three-business-day period, the consumer can review the Closing Disclosure, contact the creditor with questions regarding the information contained on the Closing Disclosure, and correct any errors prior to consummation. Disclosing the cash to close amount and how it was calculated three business days in advance of consummation generally provides the consumer with a three-business-day window to make arrangements to have the necessary funds available for the consummation. This will help alleviate concerns that, in some cases, consumers may not know until shortly before consummation—or even the day of consummation—how much of their own funds they will be expected to bring to the closing table.

The "Calculating Cash to Close" table to be disclosed on the Closing Disclosure under § 1026.38(i) consists of four columns and nine rows. The first column, which does not have a subheading, includes labels for the amounts of cash to close (listed in the final row of the table, in more prominent fashion) and its critical components. Total closing costs, which are listed in the first row, is the sum total of creditor, third party settlement service, and other transaction-related charges disclosed on the "Closing Cost Details" tables on the Closing Disclosure. Subsequent rows list other components of the cash to close amount, such as the closing costs paid before consummation, closing costs financed, and the deposit. These component amounts are discussed in more detail under § 1026.38(i)(1) through (8), below. The second column, under the subheading "Estimate," includes the estimated amounts of cash to close and its components. These amounts match the estimates given on the "Calculating Cash to Close" table in the Loan Estimate, which are shown to the nearest whole dollar amount. The third column, under the subheading "Final," includes the actual amounts of the cash to close and its components without rounding. In both the second and the third columns, the amounts that increase the total cash to close amount are shown as positive numbers, and the amounts that reduce the total cash to close amount are shown as negative numbers. The fourth column, under the subheading "Did this change?" contains in each row (1) a statement, more prominent than other disclosures under proposed § 1026.38(i), as to whether the actual amount is different from or increased above the estimated amount and (2) if the actual amount is different from or increased over the estimated amount, a simple explanation for the difference or increase along with cross-references to other relevant information disclosed on the Closing Disclosure, as applicable.

Proposed comment 38(i)-1 discusses how, under each subparagraph (iii) of § 1026.38(i)(1) through (i)(8), the statement as to whether the "Final" amount disclosed under each subparagraph (ii) of §§ 1026.38(i)(1) through (i)(8) is greater than, equal to, or less than the corresponding "Estimate" amount disclosed under each subparagraph (i) of §§ 1026.38(i)(1) through (i)(8) is disclosed more prominently than the other disclosures under § 1026.38(i). The proposed comment clarifies that this more prominent statement can take the form, for example, of a "Yes" or "No" disclosed in capital letters and boldface font, as shown on the Closing Disclosure form H-25 set forth in appendix H to this part, the standard form or model form, as applicable, pursuant to § 1026.38(t). The comment also discusses how, in the event a difference or an increase in costs has occurred, certain words within the narrative text that are included under the subheading "Did this change?" are displayed more prominently than other disclosures, and gives an example of such a prominent statement.

Proposed comment 38(i)-2 describes how a final amount shown to two decimal places on the "Calculating Cash to Close" table disclosed under § 1026.38(i) could appear to be a larger number than its corresponding estimate shown to the nearest dollar when, in fact, the apparent increase is due solely to rounding. The comment further clarifies that any statement disclosed under the subheading "Did this change?" as to whether an actual amount is higher than its corresponding estimated amount is based on the actual, non-rounded estimate that would have been disclosed on the Loan Estimate under § 1026.37(h) if it had been shown to two decimal places rather than a whole dollar amount. The proposed comment also provides an example of how a contrary rule could result in inaccurate disclosures of increases. The proposed comment reflects the Bureau's intention that the statements of increases to be disclosed under each subparagraph (iii) under § 1026.38(i)(1) through (i)(8) capture true increases rather than increases due solely to rounding rules.

Proposed comments 38(i)-3 and 4 provide guidance regarding the statements required by each of § 1026.38(i)(4)(iii)(A), 1026.38(i)(5)(iii)(A), 1026.38(i)(6)(iii)(A), 1026.38(i)(7)(iii)(A), and 1026.38(i)(8)(iii)(A) that the consumer should see the details disclosed pursuant to another subsection or other subsections within § 1026.38, or that an amount has increased or decreased from an estimated amount, as applicable. The comments note that, for example, § 1026.38(i)(7)(iii)(A) requires a statement that the consumer should see the details disclosed pursuant to § 1026.38(j)(2)(v), and, as shown on Closing Disclosure form H-25, that statement can read: "See Seller Credits in Section L." These comments also provide guidance regarding the required statements that are not illustrated as samples in form H-25 in appendix H.

38(i)(1) Total Closing Costs

Proposed § 1026.38(i)(1)(i) and (ii) requires the disclosure of a comparison of the consumer's estimated and actual "Total Closing Costs" amounts. The estimated "Total Closing Costs" amount is the same amount that is disclosed on the Loan Estimate in the "Calculating Cash to Close" table under proposed § 1026.37(h)(1). This amount also matches the "Total Closing Costs" amount that is disclosed on the Loan Estimate under proposed § 1026.37(g)(6). The actual "Total Closing Costs" amount is the same amount disclosed on the Closing Disclosure under § 1026.38(h)(1), reduced by the amount of any lender credits disclosed under § 1026.38(h)(3). Proposed comment 38(i)(1)(i)-1 provides guidance regarding the requirement under § 1026.38(i)(1)(i) that the amount disclosed is labeled "Total Closing Costs" and that such label is accompanied by a reference to the disclosure of "Total Closing Costs" under § 1026.38(h)(1).

Proposed § 1026.38(i)(1)(iii)(A) specifies that if the actual amount of "Total Closing Costs" is different than the estimated amount of such costs as shown on the Loan Estimate (unless the difference is due to rounding), the creditor or closing agent must state, under the subheading "Did this change?", that the consumer should see the total loan costs and total other costs subtotals disclosed on the Closing Disclosure under § 1026.38(f)(4) and (g)(5), and must include a reference to such disclosures, as applicable. This language is intended to direct the consumer to the more detailed itemization on the Closing Disclosure of the costs that comprise the "Total Closing Costs."

Under proposed § 1026.38(i)(1)(iii)(A), the creditor or closing agent must also state the dollar amount of any excess amount of closing costs above the limitations on increases in closing costs under § 1026.19(e)(3), if applicable, along with language stating that the increase exceeds the legal limits by the dollar amount of the excess. The dollar amount to be disclosed must reflect the different methods of calculating such excess amounts under § 1026.19(e)(3)(i) and (ii). Proposed comment 38(i)(1)(iii)(A)-1 contains examples of how to calculate such excess amounts and clarifies that because certain closing costs, individually, are subject to the limitations on increases in closing costs under § 1026.19(e)(3)(i) (*e.g.*, origination fees, transfer taxes, charges paid by the consumer to an affiliate of the creditor), while other closing costs are collectively subject to the limitations on increases in closing costs under § 1026.19(e)(3)(ii) (*e.g.*, recordation fees, fees paid to an unaffiliated third party if the creditor permitted the consumer to shop for the service provider), the creditor or closing agent calculates subtotals for each type of excess amount, and then adds such subtotals together to yield the dollar amount to be disclosed in the table. The proposed comment also clarifies that the calculation of the excess amounts above the limitations on increases in closing costs takes into account the fact that the itemized, estimated closing costs disclosed on the Loan Estimate will not result in charges to the consumer if the service is not actually provided at or before consummation, and that certain itemized charges listed on the Loan Estimate under the subheading "Services You Can Shop For" may be subject to different limitations depending on the circumstances. Proposed comments 38(i)(1)(iii)(A)-2.i through -2.iii complement commentary to proposed § 1026.19(e)(3). Pursuant to proposed § 1026.19(f)(2)(v), the creditor or closing agent must refund to the consumer any such excess amounts at consummation or within thirty days thereafter. Accordingly, this disclosure may help the consumer identify when a refund may be required, and this information can be used by the consumer to request that the creditor or closing agent provide such refund at consummation or within thirty days thereafter.

38(i)(2) Closing Costs Subtotal Paid Before Closing

Proposed § 1026.38(i)(2) requires the disclosure of a comparison of the estimated and actual amounts of the "Total Closing Costs" that are paid before consummation of the transaction. The estimated "Closing Costs Subtotal Paid Before Closing" must be disclosed as $0. Proposed comment 38(i)(2)(i)-1 clarifies that this requirement is because the Loan Estimate does not have an equivalent disclosure under proposed § 1026.37(h). The actual "Closing Costs Subtotal Paid Before Closing" is the sum of the amount disclosed on the Closing Disclosure under proposed § 1026.38(h)(2) and designated "Borrower-Paid Before Closing." Proposed § 1026.38(i)(2)(iii) specifies that if the actual amount of "Closing Costs Subtotal Paid Before Closing" is different than the estimated amount, in this case $0 (unless the difference is due to rounding), the creditor or closing agent must state under the subheading "Did this change?" that the consumer paid such costs before consummation. This language is intended to remind the consumer that he or she paid certain transaction closing costs prior to consummation and that such costs will be subtracted from the actual cash to close amount. Proposed comment 38(i)(2)(iii)(B)-1 provides guidance regarding the requirement to disclose whether the estimated and final amounts are equal.

38(i)(3) Closing Costs Financed

Proposed § 1026.38(i)(3) requires the disclosure of a comparison of the estimated and actual amounts of the “Total Closing Costs” that are financed. The estimated “Closing Costs Financed” amount is the same amount that is disclosed in the “Calculating Cash to Close” table in the Loan Estimate under proposed § 1026.37(h)(2). The actual “Closing Costs Financed” amount reflects any changes to the amount previously disclosed on the Loan Estimate. Proposed § 1026.38(i)(3)(iii) specifies that if the actual amount of “Closing Costs Financed” is different than the estimated amount (unless the excess is due to rounding), the creditor or closing agent must state under the subheading “Did this change?” that the consumer included these closing costs in the loan amount, which increased the loan amount. The Bureau believes this explanatory language will be particularly helpful to consumers for two reasons. First, an increase in closing costs financed may trigger a sizeable decrease in the cash to close, which in turn could create a false impression that the overall transaction costs to the consumer decreased. Second, during consumer testing, when consumers were presented with a scenario involving a loan amount that increased after delivery of the Loan Estimate, some of the consumers had difficultly isolating the increase in closing costs financed as the reason for the increased loan amount. The Bureau believes this disclosure may assist consumers in understanding that the financed portion of the closing costs are paid for through the loan proceeds.

38(i)(4) Downpayment/Funds from Borrower

Proposed § 1026.38(i)(4) requires the disclosure of a comparison of the estimated and actual amounts of the "Downpayment/Funds from Borrower." Downpayment and funds from borrower are related concepts, but downpayment is applicable to a transaction that is a purchase as defined in proposed § 1026.37(a)(9)(i), while funds from borrower relates to a transaction other than a purchase. Under proposed § 1026.38(i)(4)(i), the estimated "Downpayment/Funds from Borrower" amount is the same amount that is disclosed on the "Calculating Cash to Close" table in the Loan Estimate under proposed § 1026.37(h)(3). Under proposed § 1026.38(i)(4)(ii)(A), in a transaction that is a purchase as defined in proposed § 1026.37(a)(9)(i), the actual amount of the "Downpayment/Funds from Borrower" is the actual amount of the difference between the purchase price of the property and the principal amount of the credit extended, stated as a positive number. Under proposed § 1026.38(i)(4)(ii)(B), in a transaction other than a purchase as defined in proposed § 1026.37(a)(9)(i), the actual amount of "Funds from Borrower" is determined in accordance with § 1026.38(i)(6)(iv), by subtracting from the total amount of all existing debt being satisfied in the real estate closing and disclosed under § 1026.38(j)(1)(v) (except to the extent the satisfaction of such existing debt is disclosed under § 1026.38(g)) the principal amount of the credit extended. If such calculation yields a positive number, then the positive number is disclosed under proposed § 1026.38(i)(4)(ii)(B); otherwise, $0.00 is disclosed.

Proposed comment 38(i)(4)(ii)(A)-1 provides an example of the downpayment changing in a particular transaction. Proposed comment 38(i)(4)(ii)(B)-1 provides further clarification about how the actual "Funds from Borrower" amount is determined under § 1026.38(i)(6)(iv), and gives an example of when that actual amount may change from the corresponding estimated amount.

Proposed § 1026.38(i)(4)(iii)(A) specifies that if the actual amount of "Downpayment/Funds from Borrower" is different than the estimated amount (unless the difference is due to rounding), the creditor or closing agent must state under the subheading "Did this change?" that the consumer increased or decreased the payment, as applicable, and also state that the consumer should see the details disclosed under § 1026.38(j)(1) or (j)(2), as applicable. This language is intended to remind the consumer that he or she will be contributing a different amount of his or her own funds toward the cash to close, and therefore must make arrangements prior to the date of consummation to procure any necessary funds. Comment 38(i)(4)(iii)(A)-1 clarifies the requirement under § 1026.38(i)(4)(iii)(A) that a statement be given that the consumer has increased or decreased this payment, as applicable, along with a statement that the consumer should see the details disclosed under § 1026.38(j)(1) or (j)(2), as applicable. The comment notes that, in the event the purchase price of the property increased, that statement can read, for example: "You increased this payment. See details in Section K." In the event the loan amount decreased, that statement can read, for example, "You increased this payment. See details in Section L." This language is intended to direct the consumer to the section within the Closing Disclosure containing the information that accounts for the increase in the "Downpayment/Funds from Borrower" amount.

38(i)(5) Deposit

Proposed § 1026.38(i)(5) requires the disclosure of a comparison of the estimated and actual amounts of the "Deposit." The estimated "Deposit" amount is the same amount that is disclosed in the "Calculating Cash to Close" table on the Loan Estimate under proposed

§ 1026.37(h)(4). The actual “Deposit” amount is the same amount that is disclosed on the Closing Disclosure under proposed § 1026.38(j)(2)(ii). Proposed § 1026.38(i)(5)(iii) specifies that if the actual amount of “Deposit” is different than the estimated amount (unless the difference is due to rounding), the creditor or closing agent must state, under the subheading “Did this change?”, that the consumer increased or decreased this payment, as applicable, and should see the details disclosed under § 1026.38(j)(2)(ii). This language is intended to direct the consumer to the section within the Closing Disclosure containing the itemization of the deposit in the Closing Disclosure.

38(i)(6) Funds for Borrower

Proposed § 1026.38(i)(6) requires the disclosure of a comparison of the estimated and actual amounts of the “Funds for Borrower.” Like proposed § 1026.37(h)(5), this amount is intended to generally represent the amount to be disbursed to the consumer or used at consumer’s discretion at consummation of the transaction, such as in cash-out refinance transactions. The determination of whether the transaction will result in “Funds for Borrower” is made under proposed § 1026.38(i)(6)(iv). The estimated “Funds for Borrower” amount disclosed under § 1026.38(i)(6)(i) is the same amount that is disclosed in the “Calculating Cash to Close” table in the Loan Estimate under proposed § 1026.37(h)(5). Proposed § 1026.38(i)(6)(ii) provides that the actual “Funds for Borrower” amount disclosed is determined pursuant to § 1026.38(i)(6)(iv), by subtracting from the total amount of all existing debt being satisfied in the real estate closing and disclosed under § 1026.38(j)(1)(v) (except to the extent the satisfaction of such existing debt is disclosed under § 1026.38(g)) the principal amount of the credit extended (excluding any amount disclosed under § 1026.38(i)(3)(ii)). The exclusion of any amount disclosed under § 1026.38(i)(3)(ii) is necessary since that amount of the credit extended has already been accounted for in the cash to close calculation by inclusion in § 1026.38(i)(3)(ii). If such calculation yields a negative number, then the negative number is disclosed under proposed § 1026.38(i)(6)(ii); otherwise, $0.00 is disclosed.

Proposed comment 38(i)(6)(ii)-1 provides further clarification about how the actual "Funds for Borrower" amount is determined under § 1026.38(i)(6)(iv), and to whom such amount is disbursed. Proposed § 1026.38(i)(6)(iii) clarifies that, if the actual amount of "Funds for Borrower" is different than the estimated amount (unless the difference is due to rounding), the creditor or closing agent must state in the subheading "Did this change?" that the consumer's available funds from the loan amount have increased or decreased, as applicable. This language is intended to remind the consumer that a different amount of loan proceeds will be available following payoff of existing loans.

38(i)(7) Seller Credits

Proposed § 1026.38(i)(7) requires the disclosure of a comparison of the estimated and actual amounts of the "Seller Credits." "Seller Credits" are described in proposed 1026.38(j)(2)(v) and corresponding commentary. The estimated "Seller Credits" amount is the same amount that is disclosed on the "Calculating Cash to Close" table in the Loan Estimate under proposed § 1026.37(h)(6). The actual "Seller Credits" amount is the same amount disclosed on the Closing Disclosure under proposed § 1026.38(j)(2)(v). Proposed comment 38(i)(7)(ii)-1 clarifies that the "Final" amount reflects any change, following the delivery of the Loan Estimate, in the amount of funds given by the seller to the consumer for generalized credits for closing costs or for allowances for items purchased separately, as distinguished from payments by the seller for items attributable to periods of time prior to consummation (which are considered "Adjustments and Other Credits" separately disclosed under proposed § 1026.38(i)(8)).

Proposed § 1026.38(i)(7)(iii) specifies that, if the actual amount of "Seller Credits" is different than the estimated amount (unless the difference is due to rounding), the creditor or closing agent must state that fact under the subheading "Did this change?," and state that the consumer should see the details disclosed under § 1026.38(j)(2)(v). This language is intended to direct the consumer to the section within the Closing Disclosure containing the itemization of seller credits.

38(i)(8) Adjustments and Other Credits

Proposed § 1026.38(i)(8) requires the disclosure of a comparison of the estimated and actual amounts of the "Adjustments and Other Credits." "Adjustments and Other Credits" are described in proposed § 1026.38(j)(2)(vi) through (xi) and corresponding commentary. The estimated "Adjustments and Other Credits" amount is the same amount that is disclosed on the "Calculating Cash to Close" table in the Loan Estimate under proposed § 1026.37(h)(7). The actual "Adjustments and Other Credits" amount is equal to the total amount of the adjustments and other credits due from the consumer at consummation (*i.e.*, the amounts disclosed on the Closing Disclosure under §§ 1026.38(j)(1)(v) through (x)), reduced by the total amount of the adjustments and other credits paid already by or on behalf of the consumer at consummation (*i.e.*, the amounts disclosed on the Closing Disclosure under §§ 1026.38(j)(2)(vi) through (xi)). Proposed § 1026.38(i)(8)(iii) specifies that if the actual amount of "Adjustments and Other Credits" is different than the estimated amount (unless the difference is due to rounding), the creditor or closing agent must state that fact under the subheading "Did this change?," and state that the consumer should see the details disclosed under §§ 1026.38(j)(1)(v) through (x) and (j)(2)(vi) through (xi). This language is intended to direct the consumer to the sections within the Closing Disclosure containing the itemization of the adjustments and other credits. Proposed comment 38(i)(8)(ii)-1 gives examples of items that may be adjustments and other credits, and clarifies that if the calculation required by § 1026.38(i)(8)(ii) yields a negative number, the creditor or closing agent discloses it as such.

38(i)(9) Cash to Close

Proposed § 1026.38(i)(9) requires the disclosure of a comparison of the estimated and actual amounts of the "Cash to Close." The estimated "Cash to Close" amount is the same amount that is disclosed on the "Calculating Cash to Close" table in the Loan Estimate under proposed § 1026.37(h)(8) as "Estimated Cash to Close." The actual "Cash to Close" amount is the sum of the amounts disclosed under proposed §§ 1026.38(i)(1) through (8). The label "Cash to Close" and the estimated and actual amounts listed in the table are disclosed more prominently than other disclosures in § 1026.38(i), as a means of emphasizing the importance of the cash to close amount. Proposed comment 38(i)(9)(ii)-1 clarifies that the "Final" amount of "Cash to Close" disclosed under § 1026.38(i)(9)(ii) equals the amount disclosed on the Closing Disclosure as "Cash to Close" under § 1026.38(j)(3)(iii). The proposed comment also clarifies that if the calculation required by § 1026.38(i)(9)(ii) yields a negative number, the creditor or closing agent discloses it as such. Proposed comment 38(i)(9)(ii)-2 discusses how the disclosure of the "Final" amount of "Cash to Close" under § 1026.38(i)(9)(ii) is more prominent than the other disclosures under § 1026.38(i) and clarifies that this more prominent disclosure can take the form, for example, of boldface font, as shown on the Closing Disclosure form H-25.

38(j) and (k) Summaries of Borrower's and Seller's Transactions

Currently, RESPA section 4 requires the settlement agent to clearly and conspicuously itemize all charges imposed upon the borrower and seller in connection with the settlement. *See* 12 U.S.C. 2603. Regulation X implements these requirements by requiring the settlement agent to provide summaries of the consumer's and seller's transactions on the RESPA settlement statement. *See* Regulation X § 1024.8 and appendix A. Dodd-Frank Act section 1032(f) requires that the Bureau propose disclosures that combine the disclosures required under TILA and RESPA sections 4 and 5 into a single, integrated disclosure for mortgage loan transactions covered under TILA and RESPA.

In addition to effectuating Dodd-Frank Act section 1032(f), the Bureau believes that including on the Closing Disclosure summaries of the consumer's and seller's transactions will effectuate the purposes of TILA and RESPA by promoting the informed use of credit and more effective advance notice to home buyers and sellers of settlement costs, respectively. The summaries will assist consumers in understanding of the resolution of their legal obligations to sellers under the terms of the sales contract for the property which will be used to secure the credit extended to facilitate the purchase. The summaries will also assist sellers in understanding the charges they are required to pay under the sales contract. In addition, consistent with section 1032(a) of the Dodd-Frank Act, the addition of the summaries of the consumer's and seller's transactions would ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances. Therefore, the Bureau proposes to exercise its authority under TILA section 105(a), RESPA section 19(a), and Dodd-Frank Act section 1032(a) to require the creditor or closing agent to provide the summaries of the consumer's and seller's transactions that are currently provided in the RESPA settlement statement. The required information regarding the consumer's transaction would be set forth in § 1026.38(j) and the required information regarding the seller's transaction would be set forth in § 1026.38(k). Furthermore, for the reasons stated above, the proposed rule is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b). The Bureau is not proposing to alter the current method for calculating these summaries as currently provided in appendix A to Regulation X except as specifically described below. However, based on the results of consumer testing, the Bureau is proposing to revise the wording of headings, labels, and references to make them more understandable for consumers.

In addition, the format required by proposed § 1026.38(t), as illustrated by proposed form H-25 of appendix H to Regulation Z, for the information required by proposed § 1026.38(j) and (k) contains a two-digit line numbering system, in contrast to the three digit line numbering system for this information on the current RESPA settlement statement. At the Bureau's consumer testing, consumer participants appeared overwhelmed by the three and four-digit line numbers on prototypes that contained line numbers similar to the current RESPA settlement statement. As described above in part III, the Bureau is also mindful of the risks of information overload to consumers. The Bureau believes that the increased amount of numbers on the page from the three and four-digit line numbering system may significantly detract from the consumer's ability to engage with the Closing Disclosure. The prototypes that the Bureau tested that contained only a two-digit line numbering system performed better with consumers, and were more effective at enabling them to understand their actual closing costs and the differences between the estimated and actual amounts. In addition, as described above in the analysis of proposed § 1026.38(f) and (g), the use of this two-digit line numbering system for the information required by proposed § 1026.38(f) and (g) allows the Loan Estimate and Closing Disclosure to match more closely, which the Bureau's consumer testing indicates better enables consumers to understand their transaction. See the analysis of proposed § 1026.38(f) and (g) for more detail regarding the two-digit line numbering system. During the Small Business Review Panel, several settlement agents and one mortgage company requested that the line numbers from the current RESPA settlement statement be retained, stating that using the revised line numbers in the prototype integrated Closing Disclosure would significantly increase programming costs. *See* Small Business Review Panel Report at 20, 28. Based on this feedback, the Bureau seeks comment on whether the use of line numbers will lower software-related costs on industry, and the exact amount of the savings given the rest of the changes contemplated by this proposal, while improving consumer understanding of the loan terms and costs at the consummation of the credit transaction and the closing of the real estate transaction.

38(j) Summary of Borrower's Transaction

Proposed § 1026.38(j) requires that the creditor or closing agent provide the summaries of the consumer's and seller's transactions in separate tables under the heading "Summaries of Transactions" with a statement that the purpose of the table is to summarize the transaction. Proposed § 1026.38(j) also lists the information that must be provided under the subheading "Borrower's Transaction." Proposed comment 38(j)-1 clarifies that it is permissible to give two separate Closing Disclosures to the consumer and seller. This comment incorporates guidance provided in the HUD RESPA FAQs p. 44, #4 ("HUD-1 – "General"). Comment 38(j)-2 clarifies that additional lines can be added to the Closing Disclosure to show customary recitals and information used locally in real estate closings. This comment incorporates guidance provided in HUD RESPA FAQs p. 44, #5 and #10 (“HUD-1 - General”). Proposed comment 38(j)-3 clarifies that the amounts disclosed under the following provisions of § 1026.38(j) are the same as the amounts disclosed under the corresponding provisions of § 1026.38(k): § 1026.38(j)(1)(ii) and § 1026.38(k)(1)(ii); § 1026.38(j)(1)(iii) and § 1026.38(k)(1)(iii); if the amount disclosed under § 1026.38(j)(1)(v) is attributable to contractual adjustments between the consumer and seller, § 1026.38(j)(1)(v) and § 1026.38(k)(1)(iv); § 1026.38(j)(1)(vii) and § 1026.38(k)(1)(vi); § 1026.38(j)(1)(viii) and § 1026.38(k)(1)(vii); § 1026.38(j)(1)(ix) and § 1026.38(k)(1)(viii); § 1026.38(j)(1)(x) and § 1026.38(k)(1)(ix); § 1026.38(j)(2)(iv) and § 1026.38(k)(2)(iv); § 1026.38(j)(2)(v) and § 1026.38(k)(2)(vii); § 1026.38(j)(2)(viii) and § 1026.38(k)(2)(x); § 1026.38(j)(2)(ix) and § 1026.38(k)(2)(xi); § 1026.38(j)(2)(x) and § 1026.38(k)(2)(xii); and § 1026.38(j)(2)(xi) and § 1026.38(k)(2)(xiii).

38(j)(1) Itemization of Amount Due from Borrower

Proposed § 1026.38(j)(1)(i) requires the creditor or closing agent to disclose the label “Due from Borrower at Closing” and the total amount due from the consumer at closing, calculated as the sum of items required to be disclosed under § 1026.38(j)(1)(ii) through (x), excluding items paid from funds other than closing funds defined under § 1026.38(j)(4)(i). Below this label § 1026.38(j)(ii) requires the creditor or closing agent to provide a reference to the sale price of the property and the amount of the contract sales price of the property being sold, excluding the price of any items of tangible personal property if the consumer and seller have agreed to a separate price for such items. In addition, below the same label, a reference to the subtotal of closing costs paid at closing by the consumer with adjustments for items paid by the seller in advance must also be provided by the creditor or closing agent. Proposed comment 38(j)(1)(ii)-1 clarifies that, for purposes of this disclosure, personal property is defined by state law, but could include such items as carpets, drapes, and appliances. Manufactured homes are not considered personal property for purposes of § 1026.38(j)(1)(ii). This comment incorporates guidance currently provided in the instructions for RESPA settlement statement line 102 in appendix A to Regulation X. Proposed § 1026.38(j)(1)(iii) requires the creditor or closing agent to provide a reference to the sales price of any tangible personal property included in the sale that are not included in the sales price disclosed under § 1026.38(j)(1)(ii).

Proposed § 1026.38(j)(1)(iv) requires the creditor or closing agent to provide a reference to the subtotal of closing costs paid at closing by the consumer and to disclose the amount of closing costs paid by the consumer at closing. Proposed § 1026.38(j)(1)(v) requires the creditor or closing agent to describe and disclose the amount of any additional items that the seller has already paid but are attributable to a time after closing and therefore will be used by the consumer. Also, proposed § 1026.38(j)(1)(v) requires a description and the cost of any other items owed by the consumer not otherwise disclosed under proposed § 1026.38(f), (g), or (j). Proposed comment 38(j)(1)(v)-1 clarifies that items described and disclosed under § 1026.38(j)(v) can include: any balance in the seller's reserve account held in connection with an existing loan, if assigned to the consumer in a loan assumption case; any rent the consumer would collect after closing for a time period prior to closing; or to show the treatment of a security deposit. Proposed comment 38(j)(1)(v)-2 clarifies costs owed by the consumer not otherwise disclosed under § 1026.38(f), (g), or (j) will not have a parallel amount disclosed under proposed § 1026.38(k)(1)(iv).

Proposed § 1026.38(j)(1)(vi) requires the creditor or closing agent to provide a reference to adjustments paid by seller in advance. Proposed § 1026.38(j)(1)(vii) requires the creditor or closing agent to provide a reference to city/town taxes, the time period that the consumer is responsible to reimburse the seller for any such prepaid taxes, and the prorated amount of any such prepaid taxes due from the consumer at closing. Proposed § 1026.38(j)(1)(viii) requires the creditor or closing agent to provide a reference to county taxes, the time period that the consumer is responsible for reimbursing the seller for any such prepaid taxes, and the prorated amount of any such prepaid taxes due from the consumer at closing. Proposed § 1026.38(j)(1)(ix) requires the creditor or closing agent to provide a reference to assessments, the time period that the consumer is responsible for reimbursing the seller for any such prepaid assessments, and the prorated amount of any such prepaid assessment due from the consumer at closing. Proposed § 1026.38(j)(1)(x) requires the creditor or closing agent to provide a description and amount of any additional items paid by the seller prior to closing that are due from the consumer at closing. Proposed comment 38(j)(1)(x)-1 clarifies that amounts disclosed under § 1026.38(j)(1)(x) could be for additional taxes not disclosed under § 1026.38(j)(1)(vii) and (viii), flood and hazard insurance premiums where the consumer is being substituted as an insured under the same policy, mortgage insurance in loan assumptions, planned unit development or condominium association assessments paid in advance, fuel or other supplies on hand purchased by the seller which the consumer will use when consumer takes possession of the property, and ground rent paid in advance. This comment incorporates instructions for RESPA settlement statement lines 106-112 in appendix A to Regulation X.

38(j)(2) Itemization of Amounts Already Paid by or on Behalf of Borrower

Proposed § 1026.38(j)(2)(i) requires the creditor or closing agent to disclose the label "Paid Already by or on Behalf of Borrower at Closing" and the total amount paid by or on behalf of the consumer prior to closing, calculated as the sum of items required to be disclosed under § 1026.38(j)(2)(ii) through (xi), excluding items paid from funds other than closing funds defined under § 1026.38(j)(4)(i). Below this label, § 1026.38(j)(2)(ii) requires the creditor or closing agent to provide a reference to the amount of the deposit, the consumer's loan amount, the existing loans assumed or taken subject to at closing, seller credit, other credits, and adjustments for items unpaid by seller. Proposed comment 38(j)(2)(ii)-1 clarifies that the deposit is any amount paid into a trust account by the consumer under the contract of sale for real estate. This is a change from the current definition of deposit in the instructions for RESPA settlement statement line 201 in appendix A to Regulation X, that define the deposit as any amount paid against the sales price prior to settlement, because the amount of the downpayment or funds from the consumer disclosed under § 1026.38(i)(4) may also be paid prior to closing. To differentiate between the downpayment amount and the deposit amount in § 1026.38(i)(4), the amount of the deposit needs to be specified separately from other payments by the consumer against the sales price prior to closing. Proposed comment 38(j)(2)(ii)-2 clarifies that the amount of the deposit should be reduced by a commensurate amount if any of the deposit is used to pay for a closing cost before closing. Instead, the charge for the closing cost paid from the deposit will be designated as borrower-paid before closing under § 1026.38(f)(1) or (g)(1), as applicable.

Proposed § 1026.38(j)(2)(iii) requires the creditor or closing agent to provide a reference to the principal amount of the consumer's new loan and the amount of the new loan made by the creditor or the amount of the first user loan. Proposed comment 38(j)(2)(iii)-1 clarifies that first user loan amount disclosed under § 1026.38(j)(2)(iii) is used to finance construction of a new structure or purchase of a manufactured home and that how to disclose a first user loan will depend on whether it is known if the manufactured home will be considered real property at the time of consummation. This comment incorporates guidance currently provided in the instructions for RESPA settlement statement line 202 in appendix A to Regulation X and HUD RESPA FAQs p. 47, #2 ("HUD-1 – 200 series").

Proposed § 1026.38(j)(2)(iv) requires the creditor or closing agent to provide a reference to existing loans assumed or taken subject at closing to by the consumer and the amount of those loans. Proposed comment 38(j)(2)(iv)-1 clarifies that the amount disclosed under § 1026.38(j)(2)(iv) is the outstanding amount of any loan that the consumer is assuming, or subject to which the consumer is taking title to the property, must be disclosed under § 1026.38(j)(2)(iv). This comment incorporates guidance currently provided in the instructions for RESPA settlement statement line 203 in appendix A to Regulation X.

Proposed § 1026.38(j)(2)(v) requires the creditor or closing agent to provide a reference to seller credits and the total amount of money that the seller will provide in a lump sum at closing for closing costs, designated borrower-paid at or before closing, as disclosed under § 1026.38(f)(1) and (g)(1), as applicable. Proposed comment 38(j)(2)(v)-1 clarifies that any amount disclosed under § 1026.38(j)(2)(v) is for generalized seller credits, and that seller credits attributable to a specific closing cost closing cost would be reflected with a seller-paid designation under § 1026.38(f)(1) or (g)(1), as applicable. Proposed comment 38(j)(2)(v)-2 clarifies that any other obligations of the seller to be paid directly to the consumer, such as for issues identified at a walk-through of the property prior to closing, are disclosed under § 1026.38(j)(2)(v).

Proposed § 1026.38(j)(2)(vi) requires the creditor or closing agent to provide a reference to other credits and the amount of items paid by or on behalf of the consumer and not otherwise disclosed under § 1026.38(j)(2), (f)(1), (g)(1), or (h)(3). Proposed comment 38(j)(2)(vi)-1 clarifies that any amounts disclosed under § 1026.38(j)(2)(vi) are for other credits from parties other than the seller or creditor, but credits attributable to a specific closing cost closing would be reflected with a paid by other party designation under § 1026.38(f)(1) or (g)(1). For example, a credit from a real estate agent would be listed as a credit along with a description of the rebate and include the name of the party giving the credit. This comment incorporates guidance provided by HUD RESPA FAQs p. 47-48, #4 ("HUD-1 – 200 series").

Proposed comment 38(j)(2)(vi)-2 clarifies that any amounts disclosed under § 1026.38(j)(2)(vi) can also be used for disclosing subordinate financing proceeds. For subordinate financing, the principal amount of the loan must be disclosed with a brief explanation. If the net proceeds of the loan are less than the principal amount, the net proceeds may be listed on the same lines as the principal amount. This comment incorporates guidance provided by the instructions for RESPA settlement statement lines 204 to 209 in appendix A to Regulation X and the HUD RESPA Roundup dated December 2010.

Proposed comment 38(j)(2)(vi)-3 clarifies that any amounts disclosed under § 1026.38(j)(2)(vi) can also be used for the disclosure of satisfaction of existing subordinate liens by the consumer. Any amounts paid to satisfy existing subordinate liens by the consumer with funds outside of closing funds must be disclosed with a statement that such amounts were paid outside of closing under § 1026.38(j)(4). This comment incorporates guidance provided by the instructions for completing the RESPA settlement disclosure lines 204 to 209 in appendix A to Regulation X and the HUD RESPA Roundup dated September 2010.

Proposed comment 38(j)(2)(vi)-4 clarifies that any amounts disclosed under § 1026.38(j)(2)(vi) can also be used for disclosing a transferred escrow balance in a refinance transaction as a credit along with a description of the transferred escrow balance. This comment incorporates guidance provided by the HUD RESPA FAQs p. 47, #3 ("HUD-1 – 200 series").

Proposed comment 38(j)(2)(vi)-5 clarifies that any amounts disclosed under § 1026.38(j)(2)(vi) can also be used for gift funds provided on the consumer's behalf by parties not otherwise associated with the transaction.

Proposed § 1026.38(j)(2)(vii) requires the creditor or closing agent to provide a reference to adjustments for items unpaid by seller. Proposed § 1026.38(j)(2)(viii) requires the creditor or closing agent to provide a reference to city/town taxes, the time period that the seller is responsible for the payment of any such unpaid taxes, and the prorated amount of any such taxes dues from the seller at closing. Proposed § 1026.38(j)(2)(ix) requires the creditor or closing agent to provide a reference to county taxes, the time period that the seller is responsible for the payment of any such unpaid taxes, and the prorated amount of any such unpaid taxes due from the seller at closing. Proposed § 1026.38(j)(2)(x) requires the creditor or closing agent to provide a reference to assessments, the time period that the seller is responsible for paying any such unpaid taxes, and the prorated amount of any such unpaid assessments due from the seller at closing.

Proposed § 1026.38(j)(2)(xi) requires the creditor or closing agent to provide a description and the amount of any additional items which have not yet been paid and which the consumer is expected to pay, but which are attributable to a period of time prior to closing. Proposed comment 38(j)(2)(xi)-1 clarifies that any amounts disclosed under § 1026.38(j)(2)(xi) are for other items not paid by the seller, such as utilities used by the seller, rent collected in advance by the seller from a tenant for a period extending beyond the closing date, and interest on loan assumptions.

38(j)(3) Calculation of Borrower's Transaction

Proposed § 1026.38(j)(3) requires the creditor or closing agent to disclose the label "Calculation." Proposed § 1026.38(j)(3)(i) requires the creditor or closing agent to provide a reference to the total amount due from the consumer at closing under § 1026.38(j)(1)(i). Proposed § 1026.38(j)(3)(ii) requires the creditor or closing agent to provide a reference to the total amount paid already by or on behalf of the consumer at closing as a negative number under § 1026.38(j)(2)(i).

Proposed § 1026.38(j)(3)(iii) requires the creditor or closing agent to provide a reference to cash to close, a statement of whether the disclosed amount is due from or to the consumer, and the amount due from or to the consumer at closing. Proposed comment 38(j)(3)(iii)-1 clarifies that the creditor or closing agent must state either the cash required from the consumer at closing, or cash payable to the consumer at closing. Proposed comment 38(j)(3)(iii)-2 clarifies that the amount disclosed under § 1026.38(j)(3)(iii) is the sum of the amounts disclosed under § 1026.38(j)(3)(i) and (ii). If the result is positive, the amount is due from the consumer. If the result is negative, the amount is due to the consumer.

38(j)(4) Items Paid Outside of Closing Funds

Proposed § 1026.38(j)(4)(i) requires the creditor or closing agent to state amounts paid outside of closing with the phrase "paid outside closing" or "P.O.C." Proposed comment 38(j)(4)(i)-1 clarifies that any charges not paid from closing funds but otherwise disclosed under § 1026.38(j) must be marked with the designation "paid outside of closing" or "P.O.C." with a designation of the party making the payment. This comment incorporates guidance provided by the general instructions for the RESPA settlement statement in appendix A to Regulation X. Proposed comment 38(j)(4)(i)-2 clarifies that charges paid outside of closing funds are not included in computing totals under § 1026.38(j). Proposed § 1026.38 (j)(4)(ii) would define closing funds to mean fund collected and disbursed at closing for purposes of § 1026.38(j).

38(k) Summary of Seller's Transaction

Proposed § 1026.38(k) would require that the creditor or closing agent provide the summaries of the seller's transaction in a separate tables under the heading "Summaries of Transactions" required under § 1026.38(j). Proposed § 1026.38(k) also lists the information that must be provided under the subheading "Seller's Transaction." Proposed comment 38(k)-1 clarifies that § 1026.38(k) does not apply in transaction where there is no seller, such as a refinance transaction. Proposed comment 38(k)-2 clarifies that § 1026.38(k) refers to comment 38(j)-2 related to the use of addendums to the Closing Disclosure. Proposed comment 38(k)-3 clarifies refers to comment 38(j)-3 for guidance on the amounts disclosed under certain provisions of § 1026.38(k) that are the same as the amounts disclosed under certain provisions of § 1026.38(j).

38(k)(1) Itemization of Amounts Due to Seller

Proposed § 1026.38(k)(1)(i) requires the creditor or closing agent to disclose the label "Due to Seller at Closing" and the total amount due to the seller at closing, calculated as the sum of items required to be disclosed under § 1026.38(k)(1)(ii) through (ix), excluding items paid from funds other than closing funds as described in § 1026.38(k)(4)(i). Below this label, § 1026.38(k)(1)(ii) requires the creditor or closing agent to provide a reference to the sale price of the property and the amount of the real estate contract sales price of the property being sold, excluding the price of any items of tangible personal property if the consumer and seller have agreed to a separate price for such items. In addition, below the same subheading, a reference for adjustments for items paid by seller in advance must also be provided by the creditor or closing agent.

Proposed § 1026.38(k)(1)(iii) requires the creditor or closing agent to provide a reference to the sale price of any personal property included in the sale and the amount of the sale price of any personal property excluded from the contract sales price under § 1026.38(k)(ii). Proposed comment 38(k)(1)(iii)-1 clarifies that guidance regarding the classification of personal property is provided at § 1026.38(j)(1)(ii) and comment 38(j)(1)(ii)-1.

Proposed § 1026.38(k)(1)(iv) requires the creditor or closing agent to provide a description and the amount of other items to be paid to the seller by the consumer under the contract of sale or other agreement, such as charges that were not listed on the Loan Estimate or items paid by the seller prior to closing but reimbursed by the consumer at consummation. Proposed § 1026.38(k)(1)(v) requires the creditor or closing agent to provide a reference to adjustments for items paid by the seller in advance. Proposed § 1026.38(k)(1)(vi) requires the creditor or closing agent to provide a reference to city/town taxes, the time period that the consumer is responsible for reimbursing the seller for any such prepaid taxes, and the prorated amount of any such prepaid taxes due from the consumer at closing. Proposed § 1026.38(k)(1)(vii) requires the creditor or closing agent to provide a reference to county taxes, the time period that the consumer is responsible for reimbursing the seller for any such prepaid taxes, and the prorated amount of any such prepaid taxes due from the consumer at closing.

Proposed § 1026.38(k)(1)(viii) requires the creditor or closing agent to provide a reference to assessments, the time period that the consumer is responsible for reimbursing the seller for any such prepaid assessments, and the prorated amount of any such assessments due from the consumer at closing. Proposed § 1026.38(k)(1)(ix) requires the creditor or closing agent to provide a description and amount of additional items paid by the seller prior to closing that are reimbursed by the consumer at closing.

38(k)(2) Itemization of Amounts Due from Seller

Proposed § 1026.38(k)(2)(i) requires the creditor or closing agent to disclose label "Due from Seller at Closing" and the total amount due from the seller at closing, calculated as the sum of items required to be disclosed under § 1026.38(k)(2)(ii) through (xiii), excluding items paid from funds other than closing funds as described in § 1026.38(k)(4)(i). Below this label, § 1026.38(k)(2)(ii) would require the creditor or closing agent to provide a reference to the amount of excess deposit, the consumer's loan amount, the existing loans assumed or taken subject to at closing, the payoff amount of first mortgage loan, the payoff of second mortgage loan, seller credit, and adjustments for items unpaid by seller. Proposed comment 38(k)(2)(ii)-1 clarifies that any excess deposit disbursed to the seller by a party other than the closing agent must be disclosed under § 1026.38(k)(2)(ii) if the party will provide the excess deposit directly to the seller. Proposed comment 38(k)(2)(ii)-2 clarifies that any amounts of the deposit that were disbursed to the seller prior to closing must be disclosed under § 1026.38(k)(2)(ii).

Proposed § 1026.38(k)(2)(iii) requires the creditor or closing agent to provide a reference and amount of the subtotal closing costs paid at closing by seller as calculated under § 1026.38(h)(1). Proposed § 1026.38(k)(2)(iv) requires the creditor or closing agent to provide a reference to existing loans assumed or taken subject to by the consumer and the amount of those loans. Proposed comment 38(k)(2)(iv)-1 clarifies that the amount of the outstanding balance of any lien that the consumer is assuming or taking title subject and is to be deducted from the sales price must be disclosed under § 1026.38(k)(2)(iv).

Proposed § 1026.38(k)(2)(v) would require the creditor or closing agent to provide a reference to the payoff of the first mortgage loan and the amount of any first loan that will be paid off as part of closing. Proposed § 1026.38(k)(2)(vi) would require the creditor or closing agent to provide a reference to the payoff of the second mortgage loan and the amount of any second loan that will be paid off as part of closing.

Proposed § 1026.38(k)(2)(vii) requires the creditor or closing agent to provide a reference to seller credits and the total amount of money that the seller will provide as a lump sum at closing to pay for loan costs and other costs, designated borrower-paid at or before closing, as disclosed under § 1026.38(f)(1) and (g)(1), as applicable. Any costs disclosed as seller-paid at or before closing under § 1026.38(f)(1) and (g)(1) are not disclosed under § 1026.38(k)(vii). Proposed comment (k)(2)(vii)-1 clarifies that any other obligations of the seller to be paid directly to the consumer, such as credits for issues identified at a walk-through of the property prior to closing, are disclosed under § 1026.38(k)(2)(vii).

Proposed § 1026.38(k)(2)(viii) requires the creditor or closing agent to provide a description and the amount or any and all other obligations required to be paid by the seller at closing, including any lien-related payoffs, fees, or obligations. Proposed comment 38(k)(2)(viii)-1 clarifies that amounts that must be paid in order to satisfy other seller obligations to clear title to the property must be disclosed under § 1026.38(k)(2)(viii). Proposed comment 38(k)(2)(viii)-2 clarifies that the satisfaction of existing liens by the consumer that are not deducted from the sales price are disclosed under § 1026.38(k)(2)(viii) and must be disclosed as paid outside of closing under § 1026.38(k)(4)(i). This guidance tracks comment 38(j)(2)(vi)-2, and incorporates guidance provided by the HUD RESPA Roundup dated December 2010. Proposed comment 38(k)(2)(viii)-3 clarifies that escrowed funds held by the closing agent for payment of invoices related to repairs, water, fuel, or other utility bills received after closing that cannot be prorated are disclosed under § 1026.38(k)(2)(viii), and that subsequent disclosure of the amounts paid after consummation is optional. This guidance is consistent with the instructions for RESPA settlement statement lines 506 to 509 in appendix A to Regulation X.

Proposed § 1026.38(k)(2)(ix) requires the creditor or closing agent to provide a reference to adjustments for items unpaid by seller. Proposed § 1026.38(k)(2)(x) requires the creditor or closing agent to provide a reference to city/town taxes, the time period that the seller is responsible for payment of any such unpaid taxes, and the prorated amount of any such unpaid taxes due from the seller at closing. Proposed § 1026.38(k)(2)(xi) requires the creditor or closing agent to provide a reference to county taxes, the time period that the seller is responsible for the payment of any such unpaid taxes, and the prorated amount of any such unpaid assessments due from the seller at closing. Proposed § 1026.38(k)(2)(xii) requires the creditor or closing agent to provide a reference to assessments, the time period that the seller is responsible for payment of any such unpaid assessments, and the prorated amount of any such unpaid assessments due from the seller at closing. Proposed § 1026.38(k)(2)(xiii) would require the creditor or closing agent to provide a description and the amount of any additional items that have not yet been paid, and which the seller is expected to pay at closing, but which are attributable in part to a period of time prior to the closing.

38(k)(3) Calculation of Seller's Transaction

Proposed § 1026.38(k)(3) would require the creditor or closing agent to disclose the subheading "Calculation." Proposed § 1026.38(k)(3)(i) requires the creditor or closing agent to provide a reference to total due to seller at closing and the amount described under § 1026.38(k)(1)(i). Proposed § 1026.38(ii) requires the creditor or closing agent to provide a reference to total due from seller at closing and the amount described as a negative number under § 1026.38(k)(2)(i).

Proposed § 1026.38(k)(3)(iii) requires the creditor or closing agent to provide a reference to cash, a statement of whether the disclosed amount is due from or to the seller, and the amount due from or to the seller at closing. Proposed comment 38(k)(3)(iii)-1 clarifies that the creditor or closing agent must state either the cash required from the seller at closing, or the cash payable to the seller at closing. Comment 38(k)(3)(iii)-2 clarifies that the amount disclosed under § 1026.38(k)(3)(iii) is the sum of the amounts disclosed under § 1026.38(k)(3)(i) and the amount disclosed under § 1026.38(k)(ii). If the result is positive, the amount is due to the seller. If the result is negative, the amount is due from the seller.

38(k)(4) Items Paid Outside of Closing Funds

Proposed § 1026.38(k)(4)(i) requires the creditor or closing agent to state amounts paid outside of closing with the phrase "paid outside closing" or "P.O.C." and that closing funds are funds collected and disbursed at consummation by the creditor or closing agent. Proposed § 1026.38(k)(4)(ii) would define closing funds to mean funds collected and disbursed at consummation for purposes of § 1026.38(k).

38(l) Loan Disclosures

As discussed below, TILA requires that creditors provide consumers with a variety of disclosures prior to consummation regarding requirements in or arising from the legal obligation: assumption, demand feature, late payment, negative amortization, partial payment policy, security interest, and escrow account information. For purposes of the integrated disclosure form required by proposed § 1026.19(f), these disclosure requirements must be grouped together under the master heading “Additional Information About This Loan” and under the heading “Loan Disclosures.”

38(l)(1) Assumption

Proposed § 1026.38(l)(1) implements TILA section 128(a)(13) for transactions subject to § 1026.19(f) by requiring the creditor to disclose the statement required by § 1026.37(m)(2), which describes whether a subsequent purchaser may be permitted to assume the remaining loan obligation. For a detailed description of the Bureau’s implementation of TILA section 128(a)(13) and the legal authority for this proposal, see the section-by-section analysis to proposed § 1026.37(m)(2).

38(l)(2) Demand Feature

TILA section 128(a)(12) requires the creditor to disclose a statement that the consumer should refer to the appropriate contract document for information about certain loan features, including the right to accelerate the maturity of the debt. 15 U.S.C. 1638(a)(12). Current § 1026.18(p) implements TILA section 128(a)(12) by requiring, among other things, a statement that the consumer should refer to the appropriate contract document for information about nonpayment, default, and the right to accelerate the maturity of the obligation, and prepayment rebates and penalties. In addition, current § 1026.18(i) requires the creditor to disclose whether the legal obligation includes a demand feature and, if the disclosures are based on the assumed maturity of one year as described in § 1026.17(c)(5), the creditor must state that fact.

Pursuant to the Bureau’s implementation authority under TILA section 105(a), proposed § 1026.38(l)(2) incorporates certain of the requirements of current § 1026.18(i) and (p) for transactions subject to § 1026.19(f) by requiring that the creditor disclose whether the legal obligation permits the creditor to demand early repayment of the loan and, if so, a statement that the consumer should review the loan document for more details. The information required by proposed § 1026.38(l)(2) must be labeled "Demand Feature." Proposed comment 38(l)(3)-1 provides a cross-reference to comment 18(i)-2 for a description of demand features that would trigger the disclosure requirement in proposed § 1026.38(l)(2).

Pursuant to its authority under TILA section 105(a) and (f), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b), the Bureau does not propose to incorporate into § 1026.38(l)(2) the special disclosure requirement regarding assumed maturity of one year in current § 1026.18(i) or the optional contract reference disclosures in current § 1026.18(p). By exempting disclosure of information that will not be useful to consumers, the disclosure effectuates the purposes of TILA by enhancing consumer understanding of mortgage transactions, consistent with TILA section 105(a). Similarly, the Bureau has considered the factors in TILA section 105(f) and believes that an exception is appropriate under that provision. Specifically, the Bureau believes that the proposed exemption is appropriate for all affected borrowers, regardless of their other financial arrangements and financial sophistication and the importance of the loan to them. Similarly, the Bureau believes that the proposed exemption is appropriate for all affected loans, regardless of the amount of the loan and whether the loan is secured by the principal residence of the consumer. Furthermore, the Bureau believes that, on balance, the proposed exemption will simplify the credit process without undermining the goal of consumer protection or denying important benefits to consumers. Furthermore, the proposed exemption will ensure that the features of the mortgage transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a), and will improve consumer awareness and understanding of residential mortgage loans, which is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

38(l)(3) Late Payment

TILA section 128(a)(10) requires disclosure of any dollar charge or percentage amount which may be imposed by a creditor due to a late payment, other than a deferral or extension charge. 15 U.S.C. 1638(a)(10). This requirement is currently implemented in § 1026.18(l). Proposed § 1026.38(l)(3) implements TILA section 128(a)(10) for loans subject to § 1026.19(f) by requiring the creditor to disclose the statement required by § 1026.37(m)(4), which details any charge that may be imposed for a late payment, stated as a dollar amount or percentage charge of the late payment amount, and the number of days that a payment may be late to trigger the late payment fee. For a detailed description of the Bureau's implementation of TILA section 128(a)(10) and the legal authority for this proposal, see the section-by-section analysis to proposed § 1026.37(m)(4).

38(l)(4) Negative Amortization

New TILA section 129C(f), which was added by section 1414(a) of the Dodd-Frank Act, provides that no creditor may extend credit to a borrower in connection with a transaction secured by a dwelling or residential real property that includes a dwelling, other than a reverse mortgage, that provides for or permits a payment plan that may result in negative amortization unless the creditor provides the consumer with a notice that the transaction may or will result in negative amortization. 15 U.S.C. 1639c(f). Under TILA section 129C(f), before consummation of the transaction, the creditor must provide the consumer with a statement that: (1) the pending transaction will or may, as applicable, result in negative amortization; (2) describes negative amortization in the manner prescribed by the Bureau; (3) negative amortization increases the loan balance; and (4) negative amortization decreases the consumer's equity in the property. 15 U.S.C. 1639c(f)(1).

Although TILA section 129C(f) is new, both Regulations Z and X currently contain disclosure requirements for loan products that may negatively amortize. In Regulation Z, if the loan product contains features that may cause the loan amount to increase, § 1026.18(s)(4)(C) requires a statement that warns the consumer that the minimum payment covers only some interest, does not repay any principal, and will cause the loan amount to increase, for closed-end transactions secured by real property or a dwelling. Current appendix A to Regulation X requires a similar statement in the "Loan Terms" section of the RESPA settlement statement, which discloses whether the loan balance may increase even if loan payments are made on time.

The Bureau proposes § 1026.38(l)(4) to implement TILA section 129C(f) for transactions subject to § 1026.19(f), pursuant to its implementation authority under TILA section 105(a). Specifically, proposed § 1026.38(l)(4) requires a statement of whether the regular periodic payment may cause the principal balance to increase. If the regular periodic payment does not cover all of the interest due, proposed § 1026.38(l)(4)(i) requires a statement that the principal balance will increase, that the principal balance will likely exceed the original loan amount, and that increases in the principal balance will lower the consumer's equity in the property. In transactions in which the consumer has the option of making regular periodic payments that do not cover all of the interest accrued that month, proposed § 1026.38(l)(4)(ii) requires a statement that, if the consumer chooses a periodic payment option that does not cover all of the interest due, the principal balance may exceed the original loan amount and that increases in the principal balance decrease the consumer's equity in the property. The statements required by proposed

§ 1026.38(l)(4)(i) and (ii) are located under the subheading "Negative Amortization (Increase in Loan Amount)."

38(l)(5) Partial Payment Policy

TILA section 129C(h), added by section 1414(d) of the Dodd-Frank Act, provides that, in any residential mortgage loan, the creditor must disclose, prior to consummation or at the time such person becomes the creditor for an existing loan, the creditor's policy regarding the acceptance of partial payments, and if partial payments are accepted, how such payments will be applied to the mortgage and whether such payments will be placed in escrow. 15 U.S.C. 1631c(h).

The Bureau proposes § 1026.38(l)(5) to implement the pre-consummation disclosure requirements of TILA section 129C(h), pursuant to its implementation authority under TILA section 105(a).[187] Specifically, § 1026.38(l)(5) requires the creditor to disclose, under the subheading "Partial Payment Policy," a statement of whether it will accept monthly payments that are less than the full amount due and that, if the loan is sold, the new creditor may have a different policy. If partial payments are accepted, the creditor must also provide a brief description of its partial payment policy, including the manner and order in which any partial payments are applied to the principal, interest, or an escrow account for partial payments and whether any penalties apply.

38(l)(6) Security Interest

TILA section 128(a)(9) requires the creditor to provide a statement that a security interest has been taken in the property that secures the transaction or in property not purchased as part of the transaction by item or type. 15 U.S.C. 1638(a)(9). This requirement is implemented in

[187] The disclosure requirements of TILA section 129C(h) that apply after consummation are implemented in proposed § 1026.39.

current § 1026.18(m), which requires disclosure of the fact that the creditor has or will acquire a security interest in the property purchased as part of the transaction, or in other property identified by item or type.

The Bureau proposes § 1026.38(l)(6) to implement TILA section 128(a)(9) for transactions subject to § 1026.19(f), pursuant to its implementation authority under TILA section 105(a). Specifically, if the creditor will take a security interest in the property that is the subject of a mortgage loan transaction, proposed § 1026.38(l)(6) requires the creditor to disclose that the consumer is granting it a security interest in that property, the address of the property, and a statement that the consumer may lose the property if the consumer fails to make payments or satisfy other requirements of the legal obligation. The information required by proposed § 1026.38(l)(6) is located under the subheading "Security Interest."

The Bureau proposes to require creditors to disclose the address of the property in which a security interest will be taken and a statement that the consumer may lose the property if he does not make payments or satisfy other requirements, pursuant to its authority under TILA section 105(a) and Dodd-Frank Act section 1032(a). The Bureau believes the proposed disclosures promote the informed use of credit, which is a purpose of TILA, by clearly disclosing the property in which a security interest is being granted and informing consumers of the potential consequences of the creditor's security interest in the property. In addition, the Bureau believes the proposed disclosures will ensure that the features of the mortgage transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a).

38(l)(7) Escrow Account

Sections 1461 and 1462 of the Dodd-Frank Act amended TILA to create a new section 129D, which establishes certain requirements for escrow accounts for consumer credit transactions secured by a first lien on a consumer's principal dwelling (other than a consumer credit transaction under an open-end credit plan or a reverse mortgage). 15 U.S.C. 1639d(a) through (j). In particular, new TILA section 129D(h) and (j) require certain disclosures when an escrow account is established and certain other disclosures when an escrow account is refused or cancelled by the consumer, respectively. Under TILA section 129D(b), however, application of the mandatory escrow requirements is limited to the following situations: (1) where an escrow account is required by Federal or State law; (2) where the loan is made, guaranteed, or insured by a Federal or State agency; (3) where the transaction's APR exceeds the average prime offer rate by prescribed margins; and (4) where an escrow account is required by regulation.

As discussed above, the Board's 2011 Escrows Proposal proposed to implement the new TILA escrow requirements. Although the Bureau expects to implement most aspects of that proposal in a separate rulemaking, there are certain key disclosures in the Board's 2011 Escrows Proposal that complement the integrated Closing Disclosure. Thus, the Bureau proposes to implement those disclosure requirements in proposed § 1026.38(l)(7).

Like the Board's 2011 Escrows Proposal, the Bureau proposes to apply the TILA section 129D escrow requirements to all transactions subject to proposed § 1026.19(f) even if the disclosures are not mandated by TILA section 129D(b). In doing so, the Bureau relies on its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). The Bureau believes that requiring disclosures regarding the establishment of an escrow account, as well as the non-establishment of an escrow account, will provide consumers with information needed to evaluate the costs and fees associated with mortgage loans and to understand their ongoing monthly obligations regardless of whether the transaction would include an escrow account. Disclosure of this information will ensure that consumers have the facts needed to understand a key requirement of their mortgage loan and avoid the uninformed use of credit, consistent with the purposes of TILA. In addition, the Bureau believes that the proposed disclosures will ensure that the features of the mortgage transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a), and will improve consumer awareness and understanding of residential mortgage loans, which is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

Accordingly, the Bureau proposes to implement the disclosure requirements of TILA section 129D(h) and (j) in proposed § 1026.38(l)(7), pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). Under the subheading "Escrow Account," proposed § 1026.38(l)(7) requires the creditor to disclose whether the consumer's loan will have an escrow account, and certain details about the payments made using escrow account funds and those the consumer must make directly. Under the "Escrow Account" subheading and under the reference "For now," proposed § 1026.38(l)(7)(i) requires a statement that an escrow account may also be called an "impound" or "trust" account and a statement of whether the creditor has or will establish an escrow account at or before consummation. Proposed § 1026.38(l)(7)(i)(A) requires the following disclosures under the "For now" reference: (1) a statement that the creditor may be liable for penalties and interest if it fails to make a payment for any costs for which the escrow account has been established, (2) a statement that the consumer would be required to pay such costs directly if no account is established, and (3) a table titled “Escrow” that contains, if an escrow account is or will be established, an itemization of the following: (i) the total amount the consumer will be required to pay into an escrow account over the first year after consummation for payment of the charges described in § 1026.37(c)(4)(ii), labeled “Escrowed Property Costs over Year 1,” together with a descriptive name of each such charge, calculated as the amount disclosed under § 1026.38(l)(7)(i)(A)(*4*) multiplied by the number of periodic payments scheduled to be made to the escrow account during the first year after consummation; (ii) the estimated amount the consumer is likely to pay during the first year after consummation for charges described in § 1026.37(c)(4)(ii) that are known to the creditor and that will not be paid using escrow account funds, labeled “Non-Escrowed Property Costs over Year 1,” together with a descriptive name of each such charge and a statement that the consumer may have to pay other costs that are not listed; (iii) the total amount disclosed pursuant to § 1026.37(g)(3), a statement that the payment is a cushion for the escrow account, labeled “Initial Payment,” and a reference to the information disclosed pursuant to § 1026.38(g)(3); and (iv) the amount the consumer will be required to pay into the escrow account with each periodic payment during the first year after consummation for payment of the charges described in § 1026.37(c)(4)(ii), labeled “Monthly Payment.” Proposed § 1026.38(l)(7)(i)(A)(*5*) provides that a creditor complies with the requirements of § 1026.38(l)(7)(i)(A)(*1*) and (l)(7)(i)(A)(*4*) if the creditor bases the numerical disclosures required by those paragraphs on amounts derived from the escrow account analysis required under Regulation X, 12 CFR 1024.17. Proposed comment 38(l)(7)(i)(A)(*2*)-1 and 38(l)(7)(i)(A)(*4*)-1 provide guidance to creditors on the calculation of the itemized amounts disclosed pursuant to § 1026.38(l)(7)(i)(A).

Proposed § 1026.38(l)(7)(i)(B) requires a statement of whether the loan will not have an escrow account and the reason the loan will not have an escrow account. For example, if the loan will not have an escrow account because either the consumer declined to have one or the creditor does not require or offer them, the disclosure must state that fact. Proposed § 1026.38(l)(7)(i)(B) also requires a statement that the consumer must pay all property costs, such as taxes and homeowner's insurance, directly, as well as a statement that the consumer may contact the creditor to inquire about the availability of an escrow account. Finally, proposed § 1026.38(l)(7)(i)(B) requires a table titled "No Escrow," that contains, if an escrow account will not be established, an itemization of the following: (1) the estimated total amount the consumer will pay directly for charges described in § 1026.37(c)(4)(ii) during the first year after consummation that are known to the creditor and a statement that, without an escrow account, the consumer must pay the identified costs, possibly in one or two large payments, labeled as "Estimated Property Costs over Year 1," and (2) the amount of any fee that the creditor may impose for not establishing an escrow account, labeled "Escrow Waiver Fee." The disclosures required in § 1026.38(l)(7)(i)(B) are under the "For now" reference required in § 1026.38(l)(7)(i). Proposed comment 38(l)(7)(i)(B)(*1*)-1 provides guidance to creditors on calculation of the amounts required to be disclosed pursuant to § 1026.38(l)(7)(i)(B).

Under the subheading "Escrow Account" required by proposed § 1026.38(l)(7) and under the reference "In the future," proposed § 1026.38(l)(7)(ii) requires information about future requirements for property costs. Specifically, proposed § 1026.38(l)(7)(ii)(A) requires a statement that the consumer's property costs may change and, as a result, the consumer's escrow amount may change. Proposed § 1026.38(l)(7)(ii)(B) requires a statement that the consumer may be able to cancel an established escrow account, but if the account is cancelled the consumer would be required to pay those costs directly unless a new escrow account is established. Proposed § 1026.38(l)(7)(ii)(C) requires a description of the consequences of failing to pay the property costs, including the imposition of fines and penalties or imposition of a tax lien by the consumer's State and local government, and possible actions by the creditor, such as adding the outstanding amounts to the loan balance, adding an escrow account for the loan, or purchasing property insurance on the consumer's behalf (with the statement that it is likely to be more expensive and provide fewer benefits than what the consumer could purchase directly).

38(m) Adjustable Payment Table

For transactions subject to proposed § 1026.19(f), the Bureau proposes § 1026.38(m) pursuant to TILA section 128(b)(2)(C)(ii), its implementation authority under TILA section 105(a), and its authority under section 1032(a) of the Dodd-Frank Act and RESPA section 19(a). Proposed § 1026.38(m) requires creditors to disclose on the Closing Disclosure the Adjustable Payment table required by proposed § 1026.37(i) if, under the terms of the legal obligation, the principal and interest payment may adjust without a corresponding adjustment to the interest rate or if the loan is a seasonal payment product under § 1026.38(a)(5)(iii). The information required to be disclosed in the table includes: the periodic payment at the first adjustment of the payment; the number of the earliest number payment that could reflect an adjustment to the amount of the periodic payment; the maximum possible principal and interest payment; the number of the earliest payment that could reflect the maximum possible periodic payment; an affirmative or negative statement of whether the loan has an interest-only, payment-option, step-payment period, or seasonal payment period; and the length of such a period and the payments affected. For a detailed description of the Bureau's implementation of TILA section 128(b)(2)(C)(ii) and use of its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and RESPA section 19(a), see the section-by-section analysis to proposed § 1026.37(i).

The requirements of proposed § 1026.38(m) mirror those of proposed § 1026.37(i). Accordingly, proposed comment 38(m)-1 directs creditors to the commentary to proposed § 1026.37(i) for guidance on the disclosures required by proposed § 1026.38(m). Proposed comment 38(m)-2 clarifies that, although the disclosure required by proposed § 1026.38(m) is to be presented under a different master heading than the disclosure required by proposed § 1026.37(i), the other requirements applicable to proposed § 1026.37(i) apply to proposed § 1026.38(m). Proposed comment 38(m)-3 clarifies that the prohibition against presenting the table required by proposed § 1026.37(i) except if the conditions of that paragraph are satisfied applies to proposed § 1026.38(m). Proposed comment 38(m)-4 clarifies that the final terms that will apply to the credit transaction must be disclosed pursuant to proposed § 1026.38(m).

38(n) Adjustable Interest Rate Table.

For transactions subject to proposed § 1026.19(f), proposed § 1026.38(n) uses the implementation authority of TILA section 105(a), and the authority of Dodd-Frank Act section 1032(a) and RESPA section 19(a) to require creditors to disclose on the Closing Disclosure the Adjustable Interest Rate table required by proposed § 1026.37(j) if, under the final terms of the legal obligation, the interest rate may adjust after consummation. The information required to be disclosed in the table includes: (i) the index and margin for an adjustable rate loan for which the interest rate will adjust according to an index that is beyond the control of the creditor; (ii) for a loan with an interest rate that changes based on something other than such an index, such as a "step-rate" product, the amount of the scheduled adjustments and their frequency; (iii) the interest rate at consummation; (iv) the minimum and maximum possible interest rates after consummation of the loan, after any introductory or teaser rate expires; (v) the maximum possible change in the interest rate at the first adjustment; (vi) the maximum possible change for subsequent adjustments of the interest rate; (vii) the month after consummation when the interest rate may first change, counted from the date that interest begins to accrue for the first periodic principal and interest payment; and (viii) the frequency of subsequent interest rate adjustments after consummation. For a detailed description of the Bureau's implementation of these rules and use of TILA section 105(a), Dodd-Frank Act section 1032(a), and RESPA section 19(a) authority, see the section-by-section analysis to proposed § 1026.37(j) above.

The requirements of proposed § 1026.38(n) mirror those of proposed § 1026.37(j). Accordingly, proposed comment 38(n)-1 directs creditors to the commentary to proposed § 1026.37(j) for guidance on the disclosures required by proposed § 1026.38(n). Proposed comment 38(n)-4 clarifies that, although the disclosure required pursuant to proposed § 1026.38(n) is to be presented under a different master heading than the disclosure required by proposed § 1026.37(j), the other requirements applicable to proposed § 1026.37(j) apply to proposed § 1026.38(n). Proposed comment 38(n)-3 clarifies that the prohibition against presenting the table required by proposed § 1026.37(j) if the interest rate will not change after consummation applies to proposed § 1026.38(n). Proposed comment 38(n)-4 clarifies that the final terms that will apply to the credit transaction must be disclosed pursuant to proposed § 1026.38(n).

38(o) Loan Calculations

Proposed § 1026.38(o) requires creditors to disclose in a separate table under the heading "Loan Calculations," certain information required by TILA section 128(a)(2) through (5), (8), (17), and (19). Specifically, the table required by proposed § 1026.38(o) must contain the total of payments, finance charge, amount financed, annual percentage rate, total interest percentage, and the approximate cost of funds disclosures described in proposed § 1026.38(o)(1) through (6). Pursuant to proposed § 1026.38(t) and form H-25, the table required by proposed § 1026.38(o) will appear on the final page of the Closing Disclosure, apart from key loan terms identified on the first page of the Closing Disclosure. Based on research regarding consumer comprehension and behavior and the results of the Bureau's consumer testing, the Bureau believes that the disclosure of these calculations on the final page of the Closing Disclosure and apart from key loan terms may reduce information overload and enhance the overall understanding of the Closing Disclosure.

As discussed above, research suggests that consumers can process only a finite amount of information when making complex decisions. As a result, an effective disclosure regime minimizes the risk of distraction and overload by emphasizing information that is important to consumer comprehension, while placing less emphasis on disclosures that are less useful to consumers. Consumer testing conducted by the Bureau for purposes of developing the Closing Disclosure and by the Board for purposes of its 2009 Closed-End Proposal indicates that consumer understanding is enhanced if the loan calculations in proposed § 1026.38(o) are disclosed together and less prominently than disclosures that are most important to consumers' understanding of their mortgage transactions, such as interest rate and monthly payment. 74 FR at 43293-98, 43306-09. The Bureau requests comment on whether the disclosures in § 1026.38(o) enhance consumers' ability to understand their loan transactions or serve other important purposes and, if not, whether the Bureau should use its authority under TILA section 105(a) and (f) and Dodd-Frank Act sections 1032(a) and 1405(b) to exempt transactions subject to § 1026.19(f) from certain of these requirements, as set forth below.

38(o)(1) Total of Payments

TILA section 128(a)(5) and (8) requires creditors to disclose the sum of the amount financed and the finance charge using the term "Total of Payments," and a descriptive explanation of that term. 15 U.S.C. 1638(a)(5), (8). Current § 1026.18(h) implements these statutory provisions by requiring creditors to disclose the "total of payments," using that term, and a descriptive explanation that the figure represents the amount the consumer will have paid after making all scheduled payments. Current comment 18(h)-2 provides that creditors must calculate the total of payments amount for transactions subject to § 1026.18(s) using the rules in § 1026.18(g) and associated commentary and, for adjustable-rate transactions, comments 17(c)(1)-8 and -10. Current comment 18(g)-1 provides guidance to creditors on the amounts to be included in the total of payments calculation. Current comment 18(h)-1 allows creditors to revise the total of payments descriptive statement for variable-rate transactions to convey that the disclosed amount is based on the annual percentage rate and may change. In addition, current comments 18(h)-3 and -4 permit creditors to omit the total of payments disclosure in certain single-payment transactions and for demand obligations that have no alternate maturity rate.

Proposed § 1026.38(o)(1) implements the requirements of TILA section 128(a)(5) and (8) for transactions subject to proposed § 1026.19(f), pursuant to the Bureau's implementation authority under TILA section 105(a). Specifically, proposed § 1026.38(o)(1) requires creditors to disclose on the Closing Disclosure the term "Total of Payments," and the statement that the disclosure is the total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled. Proposed comment 38(o)(1)-1 clarifies that, for purposes of § 1026.18(o)(1), the total of payments is calculated in the same manner as the "In 5 Years" disclosure pursuant to § 1026.37(l)(1)(i), except that the disclosed amount reflects the total payments through the end of the loan term. The comment also refers creditors to comment 37(1)(1)(i)-1 for guidance on the amounts included in the total of payments calculation.

As discussed in the section-by-section analysis to proposed § 1026.37(l), consumers have historically misunderstood the total of payments disclosure and do not use it when evaluating their loan. Accordingly, for the reasons set forth in the section-by-section analysis to proposed § 1026.37(l)(1)(i), the Bureau proposes to modify the requirement of TILA section 128(a)(5) that the total of payments disclose the sum of the amount financed and the finance charge. Instead, the Bureau proposes to include in the total of payments calculation principal, interest, mortgage insurance (including any prepaid or escrowed mortgage insurance), and loan costs disclosed pursuant to proposed § 1026.37(f). The Bureau proposes this modification pursuant to TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). The Bureau believes that this modification will enhance consumer understanding of mortgage transactions because including loan costs, rather than the finance charge, in the total of payments calculation will allow consumers to identify the costs that are included in the total of payments calculation. Consumers can refer to other parts of the Closing Disclosure to determine which loan costs are included in the total of payments disclosure, in contrast to the components of the finance charge, which the consumer has no way to identify. Further, the Bureau believes that including the same costs and fees in the total of payments disclosure as are in the "In 5 Years" disclosure pursuant to proposed § 1026.37(l)(1)(i) will ease compliance burden for creditors. The Bureau believes this proposed modification will improve consumer awareness and understanding of residential mortgage loans, which is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b). In addition, the Bureau believes that the disclosure ensures that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a).

The proposed rule does not allow creditors to modify the descriptive statement that accompanies the total of payments disclosure for variable-rate transactions or to omit the total of payments disclosure in single-payment transactions and for demand obligations that have no alternate maturity rate, in contrast to current comments 18(h)-1, -3, and -4. The Bureau believes that consistent disclosures will better enhance consumer understanding of credit terms and will ease compliance burden for creditors.

38(o)(2) Finance Charge

TILA section 128(a)(3) and (8) requires creditors to disclose the “finance charge” and a brief descriptive statement of the finance charge. 15 U.S.C. 1638(a)(3), (8). Current § 1026.18(d) implements these provisions by requiring creditors to disclose the “finance charge,” using that term, and a brief description such as “the dollar amount the credit will cost you.” Current comment 18(d)-1 allows creditors to modify the descriptive statement for variable rate transactions with a phrase indicating that the disclosed amount is subject to change. In addition, current § 1026.17(a)(2), which implements TILA section 122(a), requires creditors to disclose the finance charge more conspicuously than any other required disclosure, except the creditor’s identity. The rules addressing which charges must be included in the finance charge are set forth in TILA section 106, and are discussed more fully above with respect to proposed § 1026.4.

The Bureau proposes § 1026.38(o)(2) to implement TILA section 128(a)(3) and (8) for transactions subject to § 1026.19(f), pursuant to its implementation authority under TILA section 105(a). Proposed § 1026.38(o)(2) requires creditors to disclose the finance charge, using that term, and the descriptive statement "the dollar amount the loan will cost you," in the table required by proposed § 1026.38(o). Proposed comments 38(o)(2)-1 and -2 provide guidance to creditors on how to disclose and calculate the finance charge. The proposed rule does not allow creditors to modify the descriptive statement that accompanies the finance charge disclosure for variable-rate transactions, in contrast to current comment 18(d)-1, because the Bureau believes that consistent disclosures will better enhance consumer understanding of credit terms and will ease compliance burden for creditors. Proposed § 1026.38(o)(2) also provides that the disclosed finance charge and other disclosures affected by the disclosed finance charge (including the amount financed and the annual percentage rate) shall be treated as accurate if the amount disclosed as the finance charge is understated by no more than $100 or is greater than the amount required to be disclosed. However, as discussed in the section-by-section analysis to proposed § 1026.4 above, the Bureau solicits comment on whether and the amount by which this tolerance should be raised in light of the expanded definition of the finance charge for closed-end transactions secured by real property or a dwelling.

The Bureau proposes to exercise its authority under TILA section 105(a) and (f), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b) to except transactions subject to proposed § 1026.19(f) from the requirement under TILA section 122(a) that the finance charge be disclosed more conspicuously than other disclosures. The Bureau has considered the purposes for which it may exercise its authority under TILA section 105(a) and, based on that review, believes that the proposed exception is appropriate. Here, the proposed exception from the TILA section 122(a) requirement that the finance charge be more conspicuously disclosed than other disclosures effectuates TILA's purpose of achieving a meaningful disclosure of credit terms for transactions subject to proposed § 1026.19(f). As discussed in the section-by-section analysis to proposed § 1026.37(l), consumers generally do not understand the finance charge and do not use it when making decisions about their loan. Accordingly, the Bureau believes that consumer understanding is enhanced by disclosing the finance charge with other loan calculations, such as total of payments, amount financed, and total interest percentage, for transactions subject to proposed § 1026.19(f), and that a more prominent disclosure of the finance charge may not provide a meaningful benefit to consumers. Rather, disclosure of the finance charge separately from the information that is important to consumer understanding of credit terms may enhance consumer understanding by avoiding information overload.

The Bureau also proposes this exception pursuant to its authority under TILA section 105(f). 15 U.S.C. 1604(f)(1). The Bureau has considered the factors in TILA section 105(f) and believes that, for the reasons discussed above, an exception is appropriate under that provision. Specifically, the Bureau believes that the proposed exemption is appropriate for all affected borrowers, regardless of their other financial arrangements and financial sophistication and the importance of the loan to them. Similarly, the Bureau believes that the proposed exemption is appropriate for all affected loans, regardless of the amount of the loan and whether the loan is secured by the principal residence of the consumer. Furthermore, the Bureau believes that, on balance, the proposed exemption will simplify the credit process without undermining the goal of consumer protection or denying important benefits to consumers. Highlighting the finance charge on the disclosure form contributes to overall consumer confusion and information overload, complicates the mortgage lending process, and hinders consumers' ability to understand important loan terms. For these same reasons, the Bureau believes that the proposed disclosure of the finance charge would ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances, consistent with 1032(a) of the Dodd-Frank Act, and will improve consumer awareness and understanding of residential mortgage loans, which is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

38(o)(3) Amount Financed

TILA section 128(a)(2) and (8) requires creditors to disclose the "amount financed," using that term, and a brief descriptive statement. 15 U.S.C. 1638(a)(2), (8). Current § 1026.18(b) implements this provision by requiring creditors to disclose the amount financed, using that term, together with a brief description that the amount financed represents the amount of credit of which the consumer has actual use.

The Bureau proposes new § 1026.38(o)(3) to implement TILA section 128(a)(2) and (8) for transactions subject to proposed § 1026.19(f), pursuant to its implementation authority under TILA section 105(a). Proposed § 1026.38(o)(3) requires creditors to disclose the amount financed, using that term, together with the descriptive statement, "the loan amount available after paying your upfront finance charge." Based on consumer testing, the Bureau believes this approach is appropriate to serve TILA's purpose of assuring a meaningful disclosure of credit terms. Proposed comment 38(o)(3)-1 clarifies that, for purposes of § 1026.38(o)(3), the amount financed disclosure is calculated in accordance with the requirements of § 1026.18(b) and its commentary.

38(o)(4) Annual Percentage Rate

TILA section 128(a)(4) and (8) requires creditors to disclose the annual percentage rate, together with a brief descriptive statement. 15 U.S.C. 1638(a)(4), (8). Current § 1026.18(e) implements this requirement by requiring creditors to disclose the "annual percentage rate," using that term, and a brief description such as "the cost of your credit as a yearly rate." 15 U.S.C. 1632(a). In addition, TILA section 122(a) requires that the annual percentage rate be more conspicuous than other disclosures, except the disclosure of the creditor's identity. This requirement is implemented in current § 1026.18(e).

Proposed § 1026.38(o)(4) implements the requirements of TILA section 128(a)(4) and (8) for transactions subject to § 1026.19(f) by requiring creditors to disclose the "annual percentage rate" and the abbreviation "APR," together with the following statement: "Your costs over the loan term expressed as a rate. This is not your interest rate." For the reasons discussed in the section-by-section analysis to proposed § 1026.37(l)(2), the Bureau proposes to exercise its authority under TILA section 105(a) and (f), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b) to except the annual percentage rate from the conspicuous disclosure requirement under TILA section 122(a), for transactions subject to proposed § 1026.19(f).

As discussed in the section-by-section analysis to proposed § 1026.37(l), in response to the Bureau's Small Business Review Panel Outline, some consumer advocates expressed concern about disclosing the APR on the final page of the Closing Disclosure and suggested that the APR should be more prominently displayed on the disclosure. The Bureau has considered this feedback, but for the reasons discussed above, believes that the proposed approach to the APR could provide important benefits to consumers by emphasizing the difference between the APR and the contract interest rate and by deemphasizing historically confusing disclosures that contribute to information overload, and that other possible approaches to improving the APR would be less effective at improving the disclosure.

38(o)(5) Total Interest Percentage

As discussed in the section-by-section analysis to proposed § 1026.37(l)(3), section 1419 of the Dodd-Frank Act amended TILA to add new section 128(a)(19), which requires that, in the case of a residential mortgage loan, the creditor disclose the total amount of interest that the consumer will pay over the life of the loan as a percentage of the principal of the loan. 15 U.S.C. 1638(a)(19). TILA section 128(a)(19) also requires that the amount be computed assuming the consumer makes each monthly payment in full and on time, and does not make any overpayments.

Pursuant to the Bureau's implementation authority under TILA section 105(a), proposed § 1026.38(o)(5) implements this new statutory requirement by requiring creditors to disclose the "total interest percentage," using that term and the abbreviation "TIP." For guidance on disclosure and calculation of the total interest percentage on the Closing Disclosure, proposed comment 38(o)(5)-1 refers creditors to the disclosure of the total interest percentage on the Loan Estimate, found in § 1026.37(l)(3) and its commentary. In addition, for the reasons discussed in the section-by-section analysis to proposed § 1026.37(l)(3), the Bureau proposes to exercise its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b) to require creditors to disclose the following descriptive statement of the total interest percentage: "This rate is the total amount of interest that you will pay over the loan term as a percentage of your loan amount."

Concerns were raised during the Small Business Review Panel, by industry feedback provided in response to the Small Business Review Panel Outline, and in feedback received through the Bureau's website that the total interest percentage would be difficult to calculate and explain to consumers, would not likely be helpful to consumers, and may distract consumers from more important disclosures. *See* Small Business Review Panel Report at 20. In particular, industry feedback provided in response to the Bureau's Small Business Review Panel Outline noted that the disclosure will always be inaccurate in an adjustable-rate loan and in any loan that is paid off before final maturity.

Based on this feedback and consistent with the Small Business Review Panel's recommendation, the Bureau alternatively proposes to use its authority under TILA section 105(a) and (f) and Dodd-Frank Act sections 1032(a) and 1405(b) to remove the total interest percentage from the Closing Disclosure required by proposed § 1026.19(f). The Bureau's rationale for the proposed exemption is found in the section-by-section analysis to proposed § 1026.37(l)(3). The Bureau solicits comment on the proposed exemption.

38(o)(6) Approximate Cost of Funds

The Dodd-Frank Act amended TILA to add new section 128(a)(17). 15 U.S.C. 1638(a)(17). Among other things, that section requires creditors to disclose, in the case of residential mortgage loans, "the approximate amount of the wholesale rate of funds in connection with the loan."

The Bureau notes several interpretive challenges in TILA section 128(a)(17). First, the statute refers to an "amount" of a "rate," whereas amounts are typically absolute, while rates are typically expressed as percentages. Second, the intended meaning of the phrase "wholesale rate of funds" is unclear. Wholesale transactions have historically had a "wholesale rate," which is generally the rate at which a wholesale lender is willing to extend credit to a particular consumer, before any increase to recoup compensation paid to a mortgage broker. The resulting increased rate is the "retail rate" paid by the consumer. However, there are other components of overall pricing such as discount points and other up-front charges, which calls into question the use of the term “wholesale rate” as a meaningful disclosure.

The Bureau is unaware of the phrase “wholesale rate of funds” having a known standard usage in the mortgage industry. “Wholesale” generally is used by industry participants to refer to loans made through mortgage brokers, as opposed to loans made directly by the creditor through its own employees, which are commonly referred to as “retail” originations. Yet, there is nothing in TILA section 128(a)(17) limiting its applicability to wholesale transactions. In addition, the meaning of the term “rate of funds” is unclear.

In light of these uncertainties, the Bureau proposes to interpret the “wholesale rate of funds” to mean the actual cost of borrowing funds for use in mortgage lending. As discussed in the Kleimann Testing Report, the Bureau conducted consumer testing using the terms “lender cost of funds,” “average cost of funds,” and “approximate cost of funds,” along with descriptive statements of these terms. First, the Bureau conducted consumer testing using the phrase “lender cost of funds,” which was the actual cost of funds used to make mortgage loans. Consumers were generally unable to understand or use this disclosure, and the Bureau received significant negative feedback about this disclosure from industry representatives. Second, the Bureau conducted consumer testing using the phrase “average cost of funds,” which is an average or approximate cost of funds in lieu of the creditor’s actual costs. Again, consumers were unable to use or understand this disclosure, and the Bureau received negative industry feedback. In all cases, experienced and non-experienced consumers that participated in the Bureau’s consumer testing of the cost of funds disclosure questioned the disclosure and were unable to articulate how to use the information. During five rounds of consumer testing, only one consumer showed any interest in the disclosure, stating that it was “interesting,” but did not use it to evaluate the loan. All other consumers were either confused by the disclosure or simply did not find it helpful. Several consumers expressed a feeling of offense in reaction to the cost of funds. Industry participants also believed that consumers would be confused by the cost of funds disclosure.

Accordingly, the Bureau is soliciting comment on both “lender cost of funds” and “average cost of funds” pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). Proposed § 1026.38(o)(6) requires creditors to disclose the “approximate cost of funds,” using that term and the abbreviation “ACF” and expressed as a percentage, and the statement “The approximate cost of funds used to make this loan. This is not a direct cost to you.” For purposes of proposed § 1026.38(o)(6), “approximate cost of funds” means either the most recent ten-year Treasury constant maturity rate or the creditor’s actual cost of borrowing the funds used to extend the credit, at the creditor’s option. The Bureau solicits comment on whether another index, such as the London Interbank Offer Rate (LIBOR), would be a more appropriate measure of the approximate cost of funds. The Bureau also solicits comment on what would be required for creditors to disclose their actual costs of funds.

Based on consumer testing, the Bureau believes that consumer understanding of the cost of funds disclosure will be enhanced through the descriptive statement, consistent with the purposes of TILA, and will improve consumer awareness and understanding of residential mortgage loans, which is in the interest of consumers and the public, consistent with section 1405(b) of the Dodd-Frank Act. For these reasons, the Bureau also believes that the disclosure of the descriptive statement of the cost of funds disclosure may ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances, consistent with section 1032(a) of the Dodd-Frank Act.

Notwithstanding these proposed modifications, consumer testing conducted by the Bureau suggests that consumers do not understand the disclosure and that it does not provide a meaningful benefit to consumers. In addition, based on concerns raised by the Small Business Review Panel, industry feedback provided in response to the Bureau's Small Business Review Panel Outline, and feedback provided through the Bureau's website, the Bureau believes that the disclosure may be very burdensome for creditors to calculate and explain, and that consumers would not find the disclosures helpful. *See* Small Business Review Panel Report at 20. Accordingly, the Bureau remains concerned that the cost of funds disclosure may not be a useful tool for consumers and could create confusion and contribute to information overload. Consistent with the recommendation of the Small Business Review Panel, the Bureau alternatively proposes to use its exception and modification authority under TILA section 105(a) and (f), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b) to exempt transactions subject to proposed § 1026.19(e) and (f) from the cost of funds disclosure requirement in TILA section 128(a)(17). The Bureau believes the proposed exemption will carry out the purposes of TILA, consistent with TILA section 105(a), by avoiding consumer confusion and information overload, thereby promoting the informed use of credit. For these same reasons, the proposed exemption will help ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to better understand the costs, benefits, and risks associated with the mortgage transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section

1032(a), and will improve consumer awareness and understanding of residential mortgage loans, which is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b). Finally, the Bureau has considered the factors in TILA section 105(f) and believes that, for the reasons discussed above, an exception is appropriate under that provision. Specifically, the Bureau believes that the proposed exemption is appropriate for all affected borrowers, regardless of their other financial arrangements and financial sophistication and the importance of the loan to them. Similarly, the Bureau believes that the proposed exemption is appropriate for all affected loans, regardless of the amount of the loan and whether the loan is secured by the principal residence of the consumer. Furthermore, the Bureau believes that, on balance, the proposed exemption will simplify the credit process without undermining the goal of consumer protection or denying important benefits to consumers. Based on these considerations, the results of the Bureau's consumer testing, and the analysis discussed elsewhere in this proposal, the Bureau believes that the proposed exemption may be appropriate. The Bureau solicits comment on this proposed exemption.

38(p) Other Disclosures

As discussed below, proposed § 1026.38(p) implements statutory provisions requiring creditors to disclose information regarding appraisals, contract details, liability after foreclosure, refinancing, and tax deductions. Under the proposal, these disclosures would be provided under the heading "Other Disclosures."

38(p)(1) Appraisal

As noted above in the discussion of proposed § 1026.37(m)(1), the Dodd-Frank Act amended ECOA to require creditors to provide consumers with a copy of any written appraisal conducted for a loan that is or will be secured by a first lien on a dwelling, and also added a requirement that creditors disclose that right to consumers at the time of application. ECOA section 701(e); 15 U.S.C. 1691(e). In addition, the Dodd-Frank Act amended TILA to require creditors to provide consumers with an appraisal copy at least three days prior to consummation of certain "higher-risk" mortgages. TILA section 129H(c)-(d); 15 U.S.C. 1639h(c)-(d). As discussed above, these provisions are being implemented in separate Bureau and joint interagency rulemakings, respectively. Although the Bureau is not implementing these statutory provisions through this proposed rule, the Bureau is proposing appraisal disclosures similar to those required by the statutes to be included on the Loan Estimate in transactions subject to either ECOA section 701(e) or TILA section 129H, as implemented in Regulations B and Z, respectively, pursuant to its authority under TILA section 105(a) and Dodd-Frank Act section 1032(a). The Bureau intends to harmonize these requirements with the final rules implementing the statutory appraisal disclosure requirements at the time it issues a rule finalizing this proposal.

In addition, the Bureau is proposing, pursuant to its authority under TILA section 105(a) and Dodd-Frank Act section 1032(a), that creditors provide a disclosure regarding the right to receive an appraisal on the Closing Disclosure the consumer receives three days prior to consummation. Like § 1026.37(m)(1), this disclosure requirement applies only to transactions subject to either ECOA section 701(e) or TILA section 129H, as implemented in Regulations B and Z, respectively. Specifically, proposed § 1026.38(p)(1)(i) requires the creditor to disclose that, if there was an appraisal of the property in connection with the loan, the creditor is required to provide the consumer with a copy of such appraisal at no additional cost to the consumer at least three days prior to consummation. Proposed § 1026.38(p)(1)(ii) requires the creditor to disclose that, if the consumer has not yet received a copy of the appraisal, the consumer should contact the creditor using the information disclosed pursuant to proposed § 1026.38(r). Proposed

§ 1026.38(p)(1) requires these disclosures to be provided under the subheading "Appraisal." Proposed comment 38(p)(1)-1 provides guidance regarding the applicability of proposed § 1026.38(p)(1). The comment states that if a transaction is not subject to either ECOA section 701(e) or TILA section 129H, as implemented in Regulations B and Z, respectively, the disclosure required by proposed § 1026.38(p)(1) may be omitted from the Closing Disclosure.

The Bureau believes the additional disclosure reminding consumers of their right to receive a copy of an appraisal conducted for their loan will promote the informed use of credit by consumers, consistent with TILA section 105(a), and ensure that the features of mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the loans, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a).

38(p)(2) Contract Details

TILA section 128(a)(12) requires the creditor to provide a statement that "[t]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 proposes § 1026.18(p)(2) to implement TILA section 128(a)(12) for transactions subject to § 1026.19(f), pursuant to its implementation authority under TILA section

105(a). Like current § 1026.18(p), proposed § 1026.38(p)(2) requires the creditor to disclose a statement that the consumer should review the loan contract for additional information about loan terms. Specifically, under proposed § 1026.38(p)(2), the creditor is required to state that the consumer should refer to the appropriate loan document and security instrument for information about nonpayment, what constitutes a default under the legal obligation, circumstances under which the creditor may accelerate the maturity of the obligation, and prepayment rebates and penalties. Proposed § 1026.38(p)(2) requires this information to be disclosed is under the subheading "Contract Details."

38(p)(3) Liability after Foreclosure

As discussed in the section-by-section analysis to proposed § 1026.37(m)(7), section 1414(c) of the Dodd-Frank Act created new TILA section 129C(g), which establishes certain requirements for residential mortgage loans subject to protection under a State's anti-deficiency law. 15 U.S.C. 1639c(g). TILA section 129C(g)(2) generally requires the creditor to provide a written notice to the consumer describing the protection provided by the applicable State's anti-deficiency law and the significance for the consumer of the loss of such protection. For refinance transactions only, TILA section 129C(g)(3) generally requires creditors that receive from or provide to the consumer an application for refinancing that would cause the loan to lose the protection of an anti-deficiency law to provide a written notice to the consumer describing the protection provided by the anti-deficiency law and the significance for the consumer of the loss of such protection. As discussed above, TILA section 129C(g)(3), which applies to refinance transactions only, is implemented in proposed § 1026.37(m)(7).

Proposed § 1026.38(p)(3) implements the requirements of TILA section 129C(g)(2) for transactions subject to § 1026.19(f), pursuant to the Bureau's implementation authority under

TILA section 105(a). Specifically, under proposed § 1026.38(p)(3), if State law may offer consumers protection from liability, the creditor must disclose a brief statement that State law may protect the consumer from liability for the unpaid balance. The statement must also advise the consumer that any protection afforded under State law may be lost if the consumer refinances the loan or incurs additional debt on the property and that the consumer should consult an attorney for additional information. However, if State law does not protect the consumer from liability for the unpaid balance, proposed § 1026.38(p)(3) requires the creditor to disclose that fact. The information required by proposed § 1026.38(p)(3) is provided under the subheading "Liability after Foreclosure." Proposed comment 38(p)(3)-1 clarifies that whether the consumer is afforded protection from liability in a foreclosure varies by State and that proposed § 1026.38(p)(3) requires the creditor to provide a general description of the applicable State's requirements. Proposed comment 38(p)(3)-1 also clarifies that any type of protection afforded by State law, other than a statute of limitations, requires a statement that State law may protect the consumer from liability for the unpaid balance.

Pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b), the Bureau proposes to modify the statutory requirement that the creditor or loan originator must describe the protection provided by the applicable State's anti-deficiency law, for all transactions subject to proposed § 1026.19(f). The Bureau believes that the more generalized anti-deficiency disclosure required by proposed § 1026.38(p)(3) is effective at informing consumers about the existence or absence of State anti-deficiency laws, and that a more detailed state-specific disclosure could be confusing for consumers and costly and burdensome to implement. The Bureau recognizes that significant State law variations exist regarding anti-deficiency protection. For this reason, proposed § 1026.38(p)(3) requires creditors to disclose a statement that consumers should consult a lawyer for more information about any applicable anti-deficiency laws. The Bureau believes the proposed modification will ensure that the features of the transaction are fully, accurately and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage transaction, consistent with Dodd-Frank Act section 1032(a), and will improve consumer awareness and understanding of residential mortgage loans, which is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

38(p)(4) Refinance

Proposed § 1026.38(p)(4) implements TILA section 128(b)(2)(C)(ii) for transactions subject to § 1026.19(f) by requiring the creditor to disclose the statement required by proposed § 1026.37(m)(5), regarding the consumer's future ability to refinance their loan. For a detailed discussion of the Bureau's proposed implementation of TILA section 128(b)(2)(C)(ii), see the section-by-section analysis to proposed § 1026.37(m)(5).

38(p)(5) Tax Deductions

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Bankruptcy Act) amended TILA to add new section 128(a)(15), 15 U.S.C. 1638(a)(15), which requires that, in the case of a consumer credit transaction that is secured by the principal dwelling of the consumer in which the extension of credit may exceed the fair market value of the collateral, the creditor must disclose certain tax implications for the consumer. Public Law 109–8,119 Stat. 23. The Board stated its intent to implement the Bankruptcy Act amendments in an advance notice of proposed rulemaking published in October 2005 as part of its ongoing review of Regulation Z.

70 FR 60235 (Oct. 17, 2005). The issue was addressed again in the Board's 2009 Closed-End Proposal, although a final rule was not adopted. 74 FR 43232, 43310.

In the 2009 Closed-End Proposal, the Board proposed to implement TILA section 128(a)(15) by requiring creditors to provide the disclosure required by TILA section 128(a)(15) for transactions secured a dwelling. 74 FR at 43310-11. The proposed rule permitted, but did not require, creditors to provide the disclosure in transactions secured by real property that does not include a dwelling, even though the statute limits the disclosure to transactions secured by the principal dwelling of the consumer. *Id.* The Board reasoned that it would be unnecessarily burdensome to require creditors to create separate disclosures for transactions secured by real property and those secured by a dwelling and proposed that the creditor be permitted, but not required, to provide disclosures regarding Federal tax implications for transactions secured by real property. *Id.*

Proposed § 1026.38(p)(5) implements the requirements of TILA section 128(a)(15) for transactions subject to proposed § 1026.19(f), including transactions secured by real property that does not include a dwelling, pursuant to its authority under TILA section 105(a), Dodd-Frank Act section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b). Specifically, for all transactions subject to § 1026.19(f), proposed § 1026.38(p)(5) requires creditors to state that, if the consumer borrows more than the value of the property, the interest on the loan amount above the market value is not deductible from Federal income taxes. Proposed § 1026.38(p)(5) also requires a statement advising the consumer to consult a tax professional for additional information. The Bureau believes that the proposed disclosure promotes the informed use of credit in all transactions subject to § 1026.19(f), and is therefore consistent with the purposes of TILA. Moreover, requiring the disclosure for all transactions subject to proposed § 1026.19(f), whether secured by the consumer's principal dwelling or other real property, facilitates industry compliance by reducing the time and resources that would be expended to determine whether a loan transaction is subject to the disclosure requirements regarding the deductibility of Federal income taxes. In addition, the Bureau believes that the proposed disclosure ensures that the features of mortgage transactions are disclosed in manner that ensures that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the cost, benefits, and risks associated with the transaction, consistent with Dodd-Frank Act section 1032(a) and will improve consumer awareness and understanding of residential mortgage loans, which is in the interest of consumers and the public, consistent with Dodd-Frank Act section 1405(b).

38(q) Questions Notice

Proposed § 1026.38(q) requires the creditor or closing agent to provide a statement that the consumer should contact the creditor with any questions about the disclosures required under § 1026.19(f), a reference to the Bureau's website to obtain more information or to make a complaint, and a prominent question mark. Although this notice is not currently expressly required by TILA, RESPA, or their implementing regulations, the Bureau is proposing to require that the Closing Disclosure contain such a notice based on its authority under TILA section 105(a), RESPA section 19(a), and Dodd-Frank Act section 1032(a). The Bureau believes that this disclosure will effectuate the purposes of TILA and RESPA by facilitating the informed use of credit and ensuring that consumers are provided with greater and timelier information on the costs of the closing process, and will also ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to better understand the costs, benefits, and risks associated with the transaction in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a).

Requiring disclosure of this notice complements proposed § 1026.19(f)(1)(ii), which requires delivery of the Closing Disclosure three business days prior to consummation. TILA section 128(b)(2)(D) requires that a corrected TILA disclosure be given to the consumer three business days prior to consummation if the APR as initially disclosed becomes inaccurate, and the Bureau understands that because of the high frequency of annual percentage rate changes triggering the corrected TILA disclosure obligation, many creditors currently provide the corrected TILA disclosure as a matter of course even if it is not required. RESPA section 4 requires that the RESPA settlement statement be provided "at or before closing," however, and the Bureau understands that it is typically given at closing. Proposed § 1026.19(f)(1)(ii) reconciles the two provisions by requiring that consumers be given all of the RESPA- and TILA-mandated disclosures three business days prior to consummation. During this three-business-day period, the consumer can review the Closing Disclosure, contact the creditor with questions regarding the information contained on the Closing Disclosure, and correct any errors prior to consummation.

Under proposed § 1026.38(q), the required notice includes a statement directing the consumer to contact the creditor with any questions about the disclosures required under § 1026.19(f). If the alternative language proposed in § 1026.19(f)(1)(v) is adopted in a final rule, however, the closing agent may provide the disclosures required under § 1026.19(f) instead of the creditor. Notwithstanding this fact, the Bureau believes the notice required under proposed § 1026.38(q) should in all cases reference the creditor, rather than the closing agent, because the creditor is better positioned to answer the consumer's questions relating to the disclosures provided under § 1026.19(f). The creditor is familiar with the loan terms and is responsible for disclosing the aggregate amount of closing costs under TILA section 128(a)(17). Moreover, it is more likely that the creditor will have been in communication with the consumer previously. The Bureau seeks comment, however, on whether the notice required under proposed § 1026.38(q) should include a statement directing the consumer to contact the creditor or the closing agent with questions, or a statement directing the consumer to contact the closing agent, if the disclosures required under § 1026.19(f) are provided by the closing agent.

Moreover, the Bureau's website will offer important information and useful tools that consumers can access at key points in the mortgage origination process, including during the three-business-day period between the consumer's receipt of the Closing Disclosure and consummation. Directing consumers to this website therefore promotes consumer understanding of credit terms and closing costs and of benefits and risks associated with the transaction in light of the facts and circumstances.

The notice required under proposed § 1026.38(q) also includes a prominent question mark. This prominent question mark is an aspect of the Closing Disclosure form H-25 set forth in appendix H to Regulation Z, the standard form or model form, as applicable, pursuant to § 1026.38(t). Consumer testing by the Bureau indicated that use of the prominent question mark icon in the questions notice drew consumers' attention to the notice.

38(r) Contact Information

Under TILA section 128(a)(1) and Regulation Z § 1026.18(a), the TILA disclosures must include the identity of the creditor. Comment 18(a)-1 clarifies that the "identity" of the creditor must include the name of the creditor, but may also include the creditor's address and/or telephone number. As stated in appendix C to Regulation X, the RESPA GFE must include the name, address, phone number, and email address (if any) of the loan originator. As stated in appendix A to Regulation X, the RESPA settlement statement must include the name and mailing address of the lender and the name, address, and phone number of the settlement agent. Moreover, TILA section 129B(b)(1)(B), which was added to TILA by section 1402 of the Dodd-Frank Act, provides that each mortgage originator must include on all loan documents any unique identifier of the mortgage originator provided by the Nationwide Mortgage Licensing System and Registry (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 primary contact with the creditor; (3) the email address of the closing agent; (4) the name, email address, and phone number of the consumer’s and seller’s real estate brokers, if any; or (5) the license number or other unique identifier issued by the applicable jurisdiction or regulating body with which a closing agent or real estate broker is licensed and/or registered, if any.

The Bureau received feedback from the public through its Know Before You Owe initiative that requested contact information on the disclosure to appear only on one part of the Closing Disclosure. Based on this feedback, the Bureau tested a prototype design with contact information for the creditor, mortgage broker, and other parties related to the transaction in one table. During consumer testing, consumers and industry participants found the contact information table useful and easy to follow, and indicated that it contained the basic information they needed to follow up with the various parties related to the transaction.

Therefore, the Bureau is proposing to require that the Closing Disclosure contain a contact information table as set forth in proposed § 1026.38(r) based on its authority under TILA 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 believes that the contact information table required to be disclosed under proposed § 1026.38(r) will effectuate the purposes of TILA and RESPA by facilitating the informed use of credit and ensuring that consumers are provided with greater and more timely information on the costs of the closing process. Providing consumers with multiple types of contact information for the critical non-seller parties participating in the transaction will allow consumers easier access to information relevant to the transaction (including costs), which in turn enhances consumer understanding of the costs, benefits, and risks associated with the transaction in light of the facts and circumstances (which is consistent with Dodd-Frank Act section 1032(a)). The Bureau also believes such disclosure will improve consumers' awareness and understanding of residential mortgage transactions, which is in the interest of consumers and the public (which is consistent with Dodd-Frank Act section 1405(b)).

Moreover, the Bureau is proposing § 1026.38(r) based on its mandate under sections 1032(f), 1098, and 1100A of the Dodd-Frank Act to propose rules and forms that combine the disclosures required under TILA and sections 4 and 5 of RESPA into a single, integrated disclosure for mortgage loan transactions covered by those laws. As discussed above, appendix C to Regulation X states that the RESPA GFE must include the name, address, phone number, and email address (if any) of the loan originator, and pursuant to appendix A to Regulation X, the RESPA settlement statement must include the name and mailing address of the lender and the name, address, and phone number of the settlement agent. Thus, as part of the Bureau's statutory mandate to integrate the TILA and RESPA disclosures, the Bureau must integrate the disclosures currently required under Regulation X with the TILA-mandated disclosures of the creditor's identity, discussed above.

As noted above, TILA section 129B(b)(1)(B), as added by section 1402 of the Dodd-Frank Act, provides that each mortgage originator must include on all loan documents any unique identifier of the mortgage originator provided by NMLSR. New TILA section 129B(b)(1)(B) will be implemented in a separate Bureau rulemaking concerning mortgage loan origination compensation. However, the Bureau is proposing to use its authority under TILA section 105(a), Dodd-Frank Act section 1032(a) and, for residential mortgage loans, Dodd-Frank section 1405(b) to include in the contact information table to be disclosed under § 1026.38(r) the NMLSR identification number for the creditors, mortgage brokers, and the individual persons employed by such entities, as applicable, since the additional information of the NMLSR and license numbers for State regulated settlement service providers will improve consumer awareness and understanding of transactions involving residential mortgage loans and is therefore in the interest of consumers and the public by providing the consumer with information about the licensing of the settlement service providers. In the integrated TILA-RESPA final rule, the Bureau expects to harmonize this proposal with its rulemaking implementing TILA section 129B(b)(1)(B).

The Bureau also believes that the disclosure of contact information in a tabular format as required by proposed § 1026.38(r) complements proposed § 1026.19(f)(1)(ii), which requires delivery of the Closing Disclosure three business days prior to consummation. As noted above, proposed § 1026.19(f)(1)(ii) reconciles the TILA and RESPA timing provisions by requiring that consumers be given the integrated disclosures three business days prior to consummation. During this three-business-day period, the consumer can review the Closing Disclosure, contact the creditor, closing agent, mortgage broker, and real estate brokers with questions regarding the information contained on the Closing Disclosure, and correct any errors prior to consummation. Thus, the contact information table required under proposed § 1026.38(r) makes it easier for consumers to contact the critical non-seller parties participating in the transaction during the three-business-day period prior to consummation. The inclusion of primary contact email addresses in the table facilitates efficient communication between the consumer and the other parties.

As applicable, the table required by proposed § 1026.38(r) would include contact information for the creditor, the mortgage broker, the consumer's real estate broker, the seller's real estate broker, and the closing agent. The table would include the following contact information for each party, as applicable: name, address, NMLSR identification/license number, name of primary contact, NMLSR identification/license number of the primary contact, email address of primary contact, and phone number of primary contact.

Proposed comments 38(r)-1 through -6 provide additional guidance regarding these required disclosures. For instance, proposed comment 38(r)-3 clarifies that the address disclosed in the contact information table is the identified party's place of business where the primary contact for the transaction is located (usually the local office), rather than a general corporate headquarters address. Similarly, proposed comment 38(r)-6 clarifies that the primary contact working at the identified party is the individual who interacts most frequently with the consumer and who has an NMLSR identification number or, if none, a license number, or other unique identifier to be disclosed under proposed § 1026.38(r)(3) and (5), as applicable, and provides examples of the primary contact to be disclosed in a given transaction.

38(s) Signature Statement

For the reasons and based on the legal authority set forth in the section-by-section analysis to proposed § 1026.37(n), proposed § 1026.38(s) implements the requirements of TILA section 128(b)(2)(B)(i) for transactions subject to § 1026.19(f). The disclosure requirements in proposed § 1026.38(s) mirror the requirements in proposed § 1026.37(n). Proposed comment 38(s)-1 cross-references the commentary to proposed § 1026.37(n) for guidance regarding optional signature requirements and signature lines for multiple consumers.

During the Bureau's Small Business Review Panel, some industry participants expressed concern that consumers might be confused about the effect of signing the Closing Disclosure to acknowledge receipt. Small Business Review Panel Report at 29. Based on this feedback, the Panel recommended that the Bureau consider whether to revise the signature statement on the prototype form, or whether additional guidance should be provided to clarify the effect of a signature line on the consumer's legal obligation. *Id*. The Bureau has considered the Panel's recommendation and believes, based on several rounds of consumer testing, that consumers understand the disclosure in proposed § 1026.38(s) to mean that they are not obligated to complete the loan transaction just because they signed the Closing Disclosure. As a result, the Bureau believes that the proposed disclosure is appropriate, but solicits comment on this issue.

38(t) Form of Disclosures

As discussed above, the Bureau is proposing to exclude transactions subject to proposed § 1026.19(f) from the coverage of § 1026.17(a) and (b). Consequently, the implementation of TILA sections 122(a) and 128(b)(1) in § 1026.17(a)(1), requiring that the disclosures be clear and conspicuous and that they be segregated from everything else, does not apply to the integrated disclosures set forth in § 1026.38 under this proposal. As described in the analysis of proposed § 1026.37(o), the Bureau, pursuant to its implementation authority under TILA section 105(a), proposes to implement the statutory segregation and clear and conspicuous requirements of TILA sections 122(a) and 128(b)(1) for the disclosure required by proposed § 1026.38 in new § 1026.38(t). The Bureau believes these requirements will assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit.

38(t)(1) General Requirements

Similar to proposed § 1026.37(o)(1), proposed § 1026.38(t)(1) establishes the requirements that the disclosures required by § 1026.38 be clear and conspicuous, in writing, and grouped together, segregated from everything else, and provided on separate pages that are not commingled with any other documents or disclosures, including any other disclosures required by State or other laws. Proposed comment 38(t)-1 clarifies that the clear and conspicuous standard requires that the disclosures be legible and in a readily understandable form. This guidance is adopted from existing comment 17(a)(1)-1. The comment also clarifies that proposed § 1026.37(o)(1) requires that the disclosures be grouped together, segregated from everything else, and provided on separate pages that are not commingled with any other documents or disclosures, including any other disclosures required by State or other laws. This requirement is stricter than the guidance found in existing comment 17(a)(1)-2, which provides that the disclosures may be grouped together and segregated from other information in a variety of ways other than a separate piece of paper.

The Bureau recognizes that, in certain credit sale and other non-mortgage, closed-end credit transactions, creditors include the disclosures required by § 1026.18 in the loan contract or some other document and ensure that they are grouped together and segregated by outlining them in a box or other means authorized by comment 17(a)(1)-2. However, as described above in the discussion of proposed § 1026.37(o), the Bureau believes that this approach is virtually never employed for mortgage credit, for which the new disclosures under proposed §§ 1026.19(f) and 1026.38, rather than § 1026.18 disclosures, are required. For the reasons stated in that discussion, the Bureau believes that requiring the § 1026.38 disclosures to be delivered as a separate document does not present any significant new obligation that mortgage creditors do not already effectively observe and maximizes the benefits of the forms. The Bureau seeks comment, however, on whether there currently are transactions subject to § 1026.19(f) that may be burdened by the adoption of this requirement.

Also, similar to proposed § 1026.37(o)(1)(ii), proposed § 1026.38(t)(1)(ii) provides that the disclosures shall contain only the information required by § 1026.38(a) through (s) and that they generally shall be made in the same order, and positioned relative to the master headings, headings, subheadings, labels, and similar designations in the same manner, as shown in form H-25. Proposed comment 38(t)-2 clarifies that the treatment of balloon payment loans with leasing characteristics.

38(t)(2) Estimated Disclosures

Similar to proposed § 1026.37(o)(2), proposed § 1026.38(t)(2) provides that, wherever form H-25 designates the required master heading, heading, subheading, label, or similar designation for a disclosure as “estimated,” that corresponding master heading, heading, subheading, label, or similar designation required by § 1026.38 must include the word “estimated,” even if the provision requiring such heading, label, or similar designation does not contain the word. Many of the items that are required to be only good faith estimates when included in the § 1026.37 disclosures, in accordance with § 1026.19(e), will be actual terms and costs when stated in the § 1026.38 disclosures, as required by § 1026.19(f). As noted above in the section-by-section analysis of proposed § 1026.37(o), many of the disclosure items required by § 1026.38 cross-reference their counterparts in § 1026.37. To avoid confusion over which items must be designated as "estimates," the content provisions of § 1026.37 do not include in any of the master headings, headings, subheadings, labels, and similar designations the word "estimated." Instead, proposed § 1026.37(o)(2) effectively incorporates by reference the "estimated" designations reflected on form H-24 of appendix H to this part. Accordingly, proposed § 1026.38(t)(2) also incorporates by reference the "estimated" designations reflected on form H-25 of appendix H to this part. Proposed comment 38(t)(2)-1 provides guidance regarding the requirement to disclose certain amounts as estimated amounts based on the designations within form H-25.

38(t)(3) Form

Similar to proposed § 1026.37(o)(3), proposed § 1026.38(t)(3) also provides that, for a transaction that is a federally related mortgage loan, as defined in Regulation X, the disclosures must be made using form H-25 of appendix H to this part. Certain closed-end consumer credit transactions are subject to the requirements of proposed § 1026.19(f) but do not fit the Regulation X definition of "federally related mortgage loan." These include construction-only loans with terms of less than two years that do not finance the transfer of title to the consumer and loans secured by vacant land on which a home will not be constructed or placed using the loan proceeds within two years after settlement of the loan. *See* § 1024.5(b)(3) and (4). In addition, transactions subject to proposed § 1026.19(f) but not subject to RESPA would include loans secured by non-residential real property, provided they have a consumer purpose as required by § 1026.1(c)(1)(iv). *See* § 1024.2, definition of "federally related mortgage loan, paragraph (1)(i) (requiring that the securing property be "residential real property").

As with transactions subject to proposed § 1026.19(e), for such transactions that are subject to proposed § 1026.19(f), because they are subject to TILA and are secured by real property, but that are not subject to RESPA, the Bureau is not mandating the use of form H-25 as a standard form. TILA section 105(b) provides that nothing in TILA may be construed to require a creditor to use any model form or clause prescribed by the Bureau under that section. Accordingly, proposed § 1026.38(t)(3) provides that, for transactions subject to § 1026.38 that are not federally related mortgage loans, the disclosures must be made with headings, content, and format substantially similar to form H-25 but does not mandate the use of that form. Consistent with TILA section 105(b), proposed comment 38(t)(3)-1 explains that, although use of the form as a standard form is not mandatory for such transactions, its use as a model form, if properly completed with accurate content, constitutes compliance with the clear and conspicuous and segregation requirements of § 1026.38(t)(1).

As discussed in the analysis of proposed § 1026.37(o)(3), the Bureau is proposing the requirement that creditors use the standard form for federally related mortgage loans pursuant to RESPA section 4(a), as amended by the Dodd-Frank Act. 12 U.S.C. 2603(a). As discussed above, although the Dodd-Frank Act eliminated one reference in RESPA section 4(a) to a "standard" form, it left the other such reference in place, as well as another such reference in section 4(c). More notably, in amending section 4(a), Congress did not include an explicit prohibition of a mandatory-use form. For this reason, the Bureau does not believe that Congress intended to eliminate standard-form authority from RESPA section 4.

The Bureau also proposes the mandatory form pursuant to its authority in RESPA section 19(a) to prescribe such rules and regulations as may be necessary to achieve RESPA's purposes. 12 U.S.C. 2617(a). RESPA's purposes include the establishment of more effective advance disclosure to home buyers and sellers of settlement costs. *Id.* 2601(b)(1). The Bureau believes, based on consumer testing results, that the purpose of more effective advance disclosure of settlement costs is better achieved if all lenders provide those disclosures in a standardized format. In the Bureau's consumer testing, participants were able to compare the costs disclosed on the Loan Estimate and Closing Disclosure more easily when they were provided in a format that matched closely. In addition, participants better understood the costs disclosed in the Closing Disclosure after gaining experience using the matching format of the Loan Estimate. Further, disclosure of settlement costs alone, without the context provided by the credit terms, is far less effective in aiding consumer understanding of the transaction. This is consistent with HUD's rationale for including credit terms in the required GFE, in HUD's 2008 RESPA Final Rule. *See* 73 FR 68204, 68214-15 (Nov. 17, 2008). This is also the stated purpose of the integrated disclosure under RESPA section 4(a).

Accordingly, the Bureau is authorized under section 19(a) to require the standard form for the disclosure of all of the information it contains, both settlement costs and credit terms alike. The Bureau uses this authority to require a standard form for federally related mortgage loans under proposed § 1026.38(t)(3)(i). As described above, for transactions subject to proposed § 1026.19(f), proposed § 1026.38(t)(3)(ii) uses the authority TILA section 105(b) to establish a model disclosure for credit transactions subject to TILA and not RESPA. For a detailed description of the Bureau's implementation of these rules and use of TILA section 105(a) authority, see the section-by-section analysis of proposed § 1026.37(o)(3).

During the Small Business Review Panel, several settlement agents requested that the Bureau require the use of a standard integrated disclosure form. The settlement agents stated that if the forms were only models, creditors would establish inconsistent requirements, which would be more expensive for small settlement agents. *See* Small Business Review Panel Report at 19. Feedback requesting both standard and model forms was also submitted by industry trade associations in response to the Small Business Review Panel Outline. In consideration of the recommendation of the Small Business Review Panel, the Bureau seeks comment on the advantages, such as cost-saving benefits, and disadvantages of requiring a standard form for the Closing Disclosure for federally related mortgage loans and model forms for other credit transactions subject to proposed § 1026.19(f). *Id.* at 28.

Similar to proposed § 1026.37(o)(3)(iii), proposed § 1026.38(t)(3)(iii) also provides that the disclosures may be provided in electronic form, subject to compliance with the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 *et seq.*). This provision parallels existing § 1026.17(a)(1).

38(t)(4) Rounding

Similar to proposed § 1026.37(o)(4), proposed § 1026.38(t)(4) requires certain numerical amounts on the Closing Disclosure to be rounded. The Bureau proposes this requirement for the same reasons as the requirements of proposed § 1026.37(o)(4), namely to reduce information overload, aid in consumer understanding of the transaction, prevent misconceptions regarding the accuracy of certain estimated amounts (*e.g.*, estimated property costs over the life of the loan), and ensure a meaningful disclosure of credit terms. For a detailed description of the Bureau's use of its authority under TILA section 105(a), RESPA section 19(a), and section 1405(b) of the Dodd-Frank Act in requiring rounded numbers on the integrated disclosures, see the analysis of proposed § 1026.37(o)(4). Proposed comment 38(t)(4)-1 clarifies that consistent with § 1026.2(b)(4) all numbers are to be disclosed as exact numbers, unless required to be rounded by proposed § 1026.38(t)(4). Proposed comment 38(t)(4)-2 refers to commentary to proposed § 1026.37(o)(4) for guidance.

38(t)(5) Exceptions

The Bureau believes it must specify the changes to the format of the Closing Disclosure that are required and permissible, to ensure the disclosures provided to consumers convey the information required by proposed § 1026.38 in a clear, understandable, and effective manner for consumers. Accordingly, pursuant to its authority under RESPA section 19(a), TILA section 105(a), and section 1032(a) of the Dodd-Frank Act, the Bureau proposes § 1026.38(t)(5) to provide for a specific list of exceptions to the format of the Closing Disclosure, as illustrated in form H-25 of appendix H to Regulation Z. For a detailed description of the Bureau's use of its authority under TILA section 105(a), RESPA section 19(a), and section 1405(b) of the Dodd-Frank Act in providing for a list of exceptions to the required format, see the analysis of proposed § 1026.37(o)(5).

The requirements of proposed § 1026.38(t)(5) mirror those of proposed § 1026.37(o)(5), with appropriate differences for the different format, timing, and use of the two disclosures. Like proposed § 1206.37(o), proposed § 1026.38(t)(5)(i) requires modification to indicate the frequency of payment or applicable unit-period for the transaction; proposed § 1026.38(t)(5)(ii) permits lender credits to be deleted from the Cash to Close disclosure required by proposed § 1026.38(d); proposed § 1026.38(t)(5)(iii) permits the addition of administrative information in certain space on the form; and proposed § 1026.38(t)(5)(ix) permits translation of the form into languages other than English.

In contrast to proposed § 1026.37(o), unlike proposed § 1026.37(o)(5)(iii), proposed § 1026.38(t)(5) does not permit the font size or type to be altered from, or a slogan or logo to be provided for or with, the creditor information required by proposed § 1026.38(a)(4)(iii).

While proposed § 1026.37(o)(5) does not permit the deletion of lines from the proposed form H-24 in appendix H to Regulation Z for the information required to be disclosed by proposed § 1026.37(f) and (g), proposed § 1026.38(t)(5)(iv) does permit the deletions of lines in certain circumstances from proposed form H-25 in appendix H to Regulation Z. While proposed § 1026.37(o) does not permit the use of additional pages for closing cost details on the Loan Estimate, except for the services for which a consumer can shop under proposed § 1026.37(f)(3), proposed § 1026.38(t)(5)(v) does permits the expansion of the information required by proposed § 1026.38(f), (g), and (h) over two pages in certain circumstances to accommodate the closing costs and itemization required on the Closing Disclosure, provided that the Loan Costs and Other Costs under proposed § 1026.38(f) and (g), respectively, are each disclosed on a single page.

In addition, the Bureau understands that the Closing Disclosure may be provided to parties other than consumers, unlike the Loan Estimate. In light of privacy considerations that may arise, proposed § 1026.38(t)(5)(vi) permits the creditor or settlement agent preparing the disclosure to leave certain information regarding the consumer’s transaction blank in the disclosure provided to the seller and vice versa. Similarly, proposed § 1026.38(t)(5)(vii) permits the creditor or settlement agent preparing the disclosure to delete certain information regarding the consumer’s transaction from the disclosure provided to a seller or third party. For example, proposed § 1026.38(t)(5)(vii) permits the disclosures regarding the consumer’s credit transaction required by proposed § 1026.38(l) through (s) to be deleted from the form provided to a seller. An illustration of such form is provided in proposed form H-25(I) in appendix H to

Regulation Z. Further, considering that some credit transactions may not involve sellers, proposed § 1026.38(t)(5)(viii) also permits use of a modified version of the form for credit transactions that do not involve a seller, such as a refinance transaction, which is illustrated in proposed form H-25(J). Proposed § 1026.38(t)(5)(x) also permits the addition of a page for customary recitals and information used locally in real estate settlements.

Proposed comment 38(t)(5)-1 clarifies that any changes not specified in proposed § 1026.38(t)(5) may affect the substance, clarity, or meaningful sequence of the disclosure and cause the creditor to lose protection from civil liability under TILA. Similar to proposed comments 37(o)(t)-2 through -5, proposed comments 38(t)(5)-2 through -5 provide guidance regarding manual completion of the form, modifications to accommodate additional contact information, the addition of signature lines, and the formatting of additional pages permitted by § 1026.38(t)(5). In addition, because certain disclosures required by proposed § 1026.38 are permitted by proposed § 1026.38(t) to be disclosed over two pages, even though they are illustrated on form H-25 of appendix H to this part as disclosed on one page, proposed comment 38(t)(5)-6 permits modifications to the page number references illustrated on form H-25 accordingly.

Proposed comment 38(t)(5)(iv)-1 provides guidance regarding the deletion and addition of line numbers on form H-25 for the disclosures requirements of § 1026.38(f) through (h). Proposed comments 38(t)(5)(v)-1 and -2 provide guidance regarding the permission to disclose the information required by proposed § 1026.38(f) through (h) over two pages. Proposed comments 38(t)(5)(viii)-1 and -2 provide guidance regarding the effect of the modifications permitted by proposed § 1026.38(t)(5)(viii) on the Calculating Cash to Close table required by proposed § 1026.38(t)(i) and with respect to the disclosure required by proposed

§ 1026.38(a)(3)(vii)(B). Proposed comment 38(t)(5)(x)-1 provides guidance regarding the permission to add an additional page for customary recitals and information.

Section 1026.39 Mortgage Transfer Disclosures

Section 1414(d) of the Dodd-Frank Act amended TILA section 129C to add section 129C(h), which requires at the time a person becomes a creditor of an existing residential mortgage loan, disclosure of the following: (i) the creditor's policy regarding the acceptance of partial payments; and (ii) if they are accepted, how such payments will be applied to the mortgage loan and if such payments will be placed in escrow. 15 U.S.C. 1639c(h). This requirement is in addition to the identical disclosure required before settlement that was added to TILA by section 1414(d) of the Dodd-Frank Act, which the Bureau proposes to implement in proposed § 1026.38(l)(5) pursuant to its authority under TILA section 105(a), as described above.

Section 1401 of the Dodd-Frank Act amended TILA section 103 to define "residential mortgage loan" as essentially closed-end credit transactions secured by a dwelling or residential real property with a dwelling. Specifically, the definition includes any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, or residential real property that includes a dwelling, other than a consumer credit transaction under an open credit plan or, for purposes of certain sections of TILA, including TILA section 129C, timeshare plans described in section 101(53D) of title 11 of the United States Code. 15 U.S.C. 1602(cc)(5).

On May 20, 2009, the Helping Families Save Their Homes Act of 2009 was signed into law.[188] Section 404(a) of the Helping Families Save Their Homes Act of 2009 amended TILA to establish a new requirement for notifying consumers of the sale or transfer of their mortgage

[188] Pub. L. 111-22, 123 Stat. 1632 (2009).

loans. The creditor that is the new owner or assignee of a mortgage loan must provide the required disclosures no later than 30 days after the date on which it acquired the loan. This provision is contained in TILA section 131(g), 15 U.S.C. 1641(g), and applies to any consumer credit transaction secured by the principal dwelling of a consumer. The Board implemented TILA section 131(g) in Regulation Z § 1026.39.[189]

Scope of Coverage

The disclosures required by TILA sections 129C(h) and 131(g) must be provided in connection with the transfer or assignment of a mortgage loan generally. However, the disclosures apply to different types of mortgage loans. The requirements in TILA section 131(g) apply to both closed-end credit transactions and open-end home equity lines of credit secured by the principal dwelling of a consumer. But the requirement of TILA section 129C(h) applies to closed-end credit secured by a dwelling or residential real property with a dwelling, which is broader than a consumer's principal dwelling, but specifically excludes open-end credit. Further, the TILA section 131(g) disclosure is specifically required by statute to be provided no later than 30 days after the date on which a mortgage loan is sold or otherwise transferred or assigned to a third party. TILA section 129C(h), on the other hand, simply provides that a new creditor of an existing residential mortgage loan must disclose its partial payment policy at the time the person becomes a creditor. In other words, TILA section 129C(h) requires the disclosure when the person acquires the loan.

The Bureau believes that combining the partial payment policy disclosure required after consummation with the mortgage loan transfer disclosure currently required by § 1026.39, and adjusting the scope of the mortgage loan transfer disclosure to include credit transactions secured by all dwellings, rather than principal dwellings only, would promote the informed use of credit

[189] 75 FR 58489 (Sept. 24, 2010).

by consumers and facilitate compliance by persons covered by these requirements. The disclosures regarding the identity of a consumer's new creditor, and the new creditor's partial payment policy, would be just as useful to a consumer whose closed-end credit transaction is secured by a second or vacation home as it would to a consumer whose closed-end loan is secured by a principal dwelling. In addition, adjustment of the scope of § 1206.39 to include closed-end credit transactions secured by a dwelling would eliminate much of the analysis that covered persons would have to undertake to determine whether and which disclosures would be triggered when a closed-end transaction secured by a dwelling is transferred.

The Bureau also proposes to adjust the scope of the current mortgage loan transfer disclosure to include closed-end credit transactions subject to proposed § 1026.19(f) (*i.e.*, closed-end transactions secured by real estate other than reverse mortgage transactions subject to § 1026.33 of this part), as well as closed-end transactions secured by a dwelling. This adjustment would expand the coverage of the mortgage loan transfer disclosure, and the post-consummation partial payment policy disclosure, to the same types of property covered by the pre-consummation partial payment policy disclosure, which includes closed-end transactions secured by real estate but not a dwelling. The Bureau believes that requiring the post-consummation partial payment policy disclosure for the same loans as the pre-consummation partial payment policy disclosure would promote the informed use of credit, because consumers who receive the disclosure before consummation would be informed if the policy has changed with the new ownership of the loan. In addition, the Bureau believes disclosures regarding the identity of a consumer's new creditor, and the new creditor's partial payment policy, would be just as useful to a consumer whose closed-end consumer credit transaction is secured by real estate that does not include a dwelling, or non-residential real estate, as it would to a consumer whose closed-end loan is secured by a dwelling.

This adjustment to the scope does not exclude reverse mortgage transactions subject to § 1026.33, as does § 1026.19(f), as such transactions are not currently excluded from coverage under § 1026.39 generally. However, reverse mortgage transactions do not require consumers to make regular periodic payments to the creditor, and thus, the Bureau proposes to exclude reverse mortgage transactions subject to § 1026.33 from the requirement to disclose a partial payment policy. The Bureau believes this exclusion of reverse mortgage transactions from the partial payment disclosure is appropriate and facilitates compliance with the statute.

In addition, although the scope also does not contain the specific exclusion for credit transactions relating to timeshare plans as described in 11 U.S.C. 101(53D), as defined by section 1401 of the Dodd-Frank Act, that the definition of "residential mortgage loan" does under TILA section 103, such transactions would generally be covered by proposed § 1026.19(f) as transactions secured by real estate. The Bureau believes that a new creditor's partial payment policy would be just as useful to a consumer whose closed-end credit transaction is secured by a such a timeshare plan as to a consumer of a principal-dwelling secured transaction.

The Bureau proposes the aforementioned adjustments pursuant to its authority under TILA section 105(a) to effectuate the purposes of TILA and Regulation Z and facilitate compliance with the statute. The Bureau believes this adjustment effectuates the purposes of TILA under TILA section 102(a), because it would ensure meaningful disclosure of credit terms to consumers and facilitate compliance with the statute. In addition, consistent with section 1032(a) of the Dodd-Frank Act, this adjustment would ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances. Further, the Bureau proposes this modification of the disclosure requirements for residential mortgage loans on its authority under Dodd-Frank Act section 1405(b), as it believes the modification may improve consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures, and is in the interest of consumers and in the public interest.

39(a) Scope

For the reasons discussed above, the Bureau proposes amendments to § 1026.39(a) to expand the coverage of the disclosures required when ownership of a mortgage loan is transferred to closed-end credit transactions secured by a dwelling or real property. The Bureau proposes to retain the scope for open-end credit transactions to those secured by the consumer's principal dwelling.

The Bureau is not proposing to change the scope of the term "covered person" under § 1026.39(a)(1). When the Board promulgated § 1026.39, it applied the section to "covered persons," rather than "creditors" as defined under TILA and Regulation Z.[190] The Board stated that Congress did not intend the word "creditor" under section 404(a) of the Helping Families Save Their Homes Act of 2009 to have the same meaning as "creditor" under TILA and Regulation Z.[191] The term "creditor" generally refers to a person to whom the credit obligation is initially made payable and that regularly engages in extending consumer credit. 15 U.S.C. 1602(g); 12 CFR 1026.2(a)(17). However, as described above, the requirement of section 404(a) of the Helping Families Save Their Homes Act of 2009 applies to a "creditor that

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[190] *Id.*
[191] *Id.* at 58490-1.

is the new owner or assignee of the debt."[192] The Board concluded that "to give effect to the legislative purpose, the term 'creditor' in Section 404(a) must be construed to refer to the owner of the debt following the sale, transfer or assignment, without regard to whether that party would be a 'creditor' for other purposes under TILA or Regulation Z."[193] Similar to section 404(a) of the Helping Families Save Their Homes Act of 2009, the post-consummation disclosure requirement of TILA section 129C(h) applies to persons who become creditors after the transaction is consummated. The requirement under TILA section 129C applies to "a person becoming a creditor with respect to an existing residential mortgage loan."[194] The Bureau believes that, for the same reasons cited by the Board in implementing TILA section 131(g), to give effect to the legislative purpose of section 1414(d) of the Dodd-Frank Act, the post-consummation disclosure requirement of TILA section 129C(h) should apply without regard to whether the person would be a "creditor" under TILA and Regulation Z.[195] For these reasons, the Bureau proposes to retain the term "covered person" under § 1026.39(a)(1) and its definition.

39(d) Content of Required Disclosure

As discussed above, the Bureau believes the adjustment to the scope of § 1026.39 may promote the informed use of credit and facilitate compliance with the statute. The Bureau proposes amendments to § 1026.39(d) to add the additional requirement of TILA section 129C(h) to the disclosure required by that section. Pursuant to its authority under TILA Section 105(a), the Bureau proposes to integrate the timing of this disclosure requirement with the disclosure required by TILA section 131(g). The Bureau believes that consumers may be better informed regarding the transfer of ownership of their mortgage loans if the required disclosures

[192] Pub. L. 111-22, § 404(a); 15 U.S.C. 1641(g).
[193] 75 FR 58489, 58490-1.
[194] 15 U.S.C. 1639c(h).
[195] *See* 75 FR 58489, 58490-1.

integrated the information applicable to the new creditor into one single disclosure, rather than consumer having to receive separate mailings at different times. In addition, consistent with section 1032(a) of the Dodd-Frank Act, the integration of these disclosure requirements would ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

The Bureau believes this integrated mortgage transfer disclosure will also facilitate compliance with the statute. Covered persons will have to analyze the timing requirements and scope of only one transfer disclosure, rather than two separate disclosures for one transfer of a mortgage loan. However, because the partial payment policy disclosure required by TILA section 129C(h) is not required for open-end credit transactions, and the pre-consummation partial payment policy disclosure as implemented by proposed § 1026.38(l)(5) for loans subject to proposed § 1026.19(f) is not required for closed-end credit reverse mortgage transactions subject to § 1026.33, and for the aforementioned reasons, the partial payment policy disclosure requirement under proposed § 1026.39(d) is not required for these types of transactions.

The proposed amendments also add comment 39(d)-2, which clarifies that the partial payment policy disclosure is required only for closed-end mortgage loans secured by a dwelling or real property, other than reverse mortgage transactions subject to § 1026.33. Proposed comment 39(d)(5)-1 clarifies that covered persons are permitted to use the format for the disclosure that is illustrated in proposed form H-25 of appendix H to Regulation Z for the information required to be disclosed by proposed § 1026.38(l)(5), with appropriate modifications that do not affect the substance, clarity, or meaningful sequence of the disclosure.

Appendix D—Multiple Advance Construction Loans

Currently, appendix D to Regulation Z provides guidance concerning the disclosure of multiple-advance construction loans, including such loans that may be permanently financed by the same creditor. Dodd-Frank Act section 1032(f) requires that the Bureau propose rules and forms that combine the disclosures required under TILA and RESPA sections 4 and 5 into a single, integrated disclosure for mortgage loan transactions covered under TILA and RESPA. The Bureau proposes to exercise its authority under TILA section 105(a) and Dodd-Frank Act section 1405(b) to amend appendix D to Regulation Z by revising the guidance provided in that appendix D to assist in the integration of these disclosures. In addition to effectuating Dodd-Frank Act section 1032(f), the Bureau believes that these proposed revisions are necessary and proper to effectuate the purposes of TILA by promoting the informed use of credit because the proposed revisions assist consumers' understanding of their legal obligations to the creditor. In addition, consistent with section 1405(b) of the Dodd-Frank Act, these revisions will improve consumer awareness and understanding of transactions involving residential mortgage loans and are therefore in the interest of consumers and the public.

Proposed revisions to part II of appendix D exclude loans that are subject to § 1026.19(e) and (f) from the guidance provided under paragraph A.1 of part II, but include those loans in the guidance provided under paragraph A.2 of part II. Proposed revised comment app. D-6 clarifies that some home construction loans that are secured by a dwelling are subject to § 1026.18(s) and not § 1026.18(g), with a reference to proposed comment app. D-7. One illustration of the application of appendix D to transactions subject to § 1026.18(s) also clarifies that, where interest is payable on the amount actually advanced for the time it is outstanding, the construction phase must be disclosed pursuant to appendix D, part II.C.1, and the interest rate and payment summary table disclosed under § 1026.18(s) in such cases must reflect only the permanent phase of the transaction.

Proposed comment app. D-7 clarifies that some home construction loans that are secured by real property are subject to §§ 1026.37(c) and 1026.38(c) and not § 1026.18(g). Under § 1026.17(c)(6)(ii), when a multiple-advance construction loan may be permanently financed by the same creditor, the construction phase and the permanent phase may be treated as either one transaction or more than one transaction. Two illustrations further clarify the application of appendix D to transactions subject to §§ 1026.37(c) and 1026.38(c).

The first illustration clarifies that, if a creditor uses appendix D and elects pursuant to § 1026.17(c)(6)(ii) to disclose the construction and permanent phases as separate transactions, the construction phase must be disclosed according to the rules in §§ 1026.37(c) and 1026.38(c). Under §§ 1026.37(c) and 1026.38(c), the creditor must disclose the periodic payments during the construction phase in a projected payments table. The provision in appendix D, part I.A.3, which allows the creditor to omit the number and amounts of any interest payments "in disclosing the payment schedule under § 1026.18(g)" does not apply because the transaction is governed by §§ 1026.37(c) and 1026.38(c) rather than § 1026.18(g). The creditor determines the amount of the interest-only payment to be made during the construction phase using the assumption in appendix D, part I.A.1. Also, because the construction phase is being disclosed as a separate transaction and its terms do not repay all principal, the creditor must disclose the construction phase transaction as a balloon product, pursuant to §§ 1026.37(a)(10)(ii)(D) and 1026.38(a)(5)(iii), in addition to reflecting the balloon payment in the projected payments table. The second illustration clarifies that, if the creditor elects to disclose the construction and permanent phases as a single transaction, the repayment schedule must be disclosed pursuant to appendix D, part II.C.2. Under appendix D, part II.C.2, the projected payments table must reflect the interest-only payments during the construction phase in a first column, followed by the appropriate column(s) reflecting the amortizing payments for the permanent phase. The creditor determines the amount of the interest-only payment to be made during the construction phase using the assumption in appendix D, part II.A.1.

Appendix H—Closed-End Forms and Clauses

The Bureau proposes to add forms H-24, H-25, H-26, and H-27 to appendix H to Regulation Z. Forms H-24 and H-25 provide blank forms for the Loan Estimate and Closing Disclosure illustrating the inclusion or exclusion of information as required, prohibited, or applicable under §§ 1026.37 and 1026.38. In addition, form H-24 provides examples of completed Loan Estimates in whole or in relevant part for a fixed-rate transaction, an interest only adjustable-rate transaction, a refinance with a prepayment penalty, a loan with a balloon payment, and a loan with negative amortization. Form H-25 provides examples of completed Closing Disclosures in whole or in relevant part for a fixed-rate transaction, a purchase transaction with funds from a second loan, a transaction in which a second loan is satisfied outside of closing, samples of a refinance transaction, and examples of the modifications to the Closing Disclosure permitted pursuant to proposed § 1026.38(t)(5)(v) through (viii).

The Bureau proposes forms H-24 and H-25 pursuant to the authority and for the reasons described above with respect to §§ 1026.37(o) and 1026.38(t). Specifically, the Bureau proposes forms H-24 and H-25 as standard forms that are required for transactions that are subject to proposed § 1026.19(e) and (f) and are federally related mortgage loans, as defined in Regulation X. For transactions that are subject to proposed § 1026.19(e) and (f) but are not federally related mortgage loans, the forms in H-24 and H-25 are models for compliance with the applicable requirements of §§ 1026.19, 1026.37, and 1026.38.[196]

Transactions subject to § 1026.19(e) are subject to additional disclosure requirements under proposed § 1026.19(e)(1)(vi), (2)(ii), and (3)(ii)(C). Form H-26 provides a model for compliance with the statement required by proposed § 1026.19(e)(2)(ii) if a creditor provides a written estimate of terms or costs specific to a consumer before the consumer receives the disclosures required under § 1026.19(e)(1)(i) and indicates intent to proceed with the transaction. Consistent with § 1026.19(e)(2)(ii), this statement must be placed at the top of the front of the first page of the estimate in a font size that is no smaller than 12-point font.

Form H-27(A) provides a model for the written list of settlement service providers required by proposed § 1026.19(e)(1)(vi) and the statement required by § 1026.19(e)(3)(ii)(C) that the consumer may select a settlement service provider that is not on the list. Forms H-27(B) and (C) are samples for this form. The Bureau proposes forms H-26 and H-27 pursuant to its authority to publish model forms under TILA section 105(b) and (c). The Bureau also proposes to make conforming amendments to samples H-13 and H-15 and their associated comments pursuant to its authority to publish model forms under TILA section 105(b) and (c).

As noted above, during the Small Business Review Panel, several small business representatives requested that the Bureau provide detailed guidance on how to complete the integrated forms, including, as appropriate, samples of completed forms for a variety of loan transactions. *See* Small Business Review Panel Report at 28. Similar feedback was also submitted by several industry trade associations in response to the Small Business Review Panel Outline. Based on this feedback and consistent with the Small Business Review Panel's

[196] For these transactions, the Bureau also proposes these forms pursuant to its authority to publish model forms under TILA section 105(b) and (c).

recommendation, the Bureau has proposed the examples described above, which of course, have added significant length to the proposed rule. The Bureau seeks comment on whether the number and types of examples are beneficial to industry or whether certain examples should be added to or deleted from the rule, including sample forms in other languages, such as Spanish.

The Bureau has also received feedback from industry stakeholders during its outreach that samples of a construction-only transaction and a transaction with both a construction and permanent financing phase would be beneficial to industry. The Bureau has proposed amendments to appendix D to Regulation Z and its commentary, as described above, that relate to such construction financing and provide guidance regarding its disclosure on the Loan Estimate. The Bureau believes the proposed Forms H-24(C) and (E) provide the necessary illustration for such financing, because these samples contain the interest-only period and final balloon payment, respectively, which, as described above, are product features that would be disclosed in connection with such construction financing. The Bureau notes that one difference for the disclosure of such financing is that the purpose of the transaction disclosed under proposed §§ 1026.37(a)(9) and 1026.38(a)(5)(ii) would be "Construction." The Bureau seeks comment on whether, in light of the proposed amendments to appendix D and its commentary, additional samples for a construction-only or construction with permanent financing would be beneficial to industry.

VII. Section 1022(b)(2) Analysis

In developing the proposed rule, the Bureau has considered potential benefits, costs, and impacts, and has consulted or offered to consult with the prudential regulators, the Department of Housing and Urban Development, and the Federal Trade Commission, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies.[197] The Bureau also held discussions with or solicited feedback from the United States Department of Agriculture Rural Housing Service, the Farm Credit Administration, the Federal Housing Administration, the Federal Housing Finance Agency, and the Department of Veterans Affairs regarding the potential impacts of the proposed rule on those entities' loan programs.

The Bureau is proposing to implement section 1032(f) of the Dodd-Frank Act by proposing rules and forms combining the pre-consummation TILA and RESPA disclosures for loans subject to either law or to both laws by July 21, 2012. Sections 1098 and 1100A of the Dodd-Frank Act, which revise RESPA and TILA, respectively, to mandate the integrated disclosures, state that the purposes of the disclosures are to facilitate compliance with the statutes and "to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures." The Bureau is also proposing to implement several new disclosure requirements added to TILA and RESPA by the Dodd-Frank Act. In addition, the Bureau is proposing to revise current regulations implementing the pre-consummation disclosure requirements of TILA and RESPA to improve consumer understanding of mortgage transactions and upfront disclosure of loan costs and terms, consistent with the purposes of TILA and RESPA.

TILA and RESPA currently require creditors and settlement agents to give consumers who take out mortgage loans different but overlapping disclosure forms regarding the loan's terms and costs. This duplication has long been recognized as inefficient and confusing for consumers and industry. Prior to the creation of the Bureau, the Board and HUD independently took steps to address these shortcomings, but neither agency had the authority to combine the

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

duplicative disclosures. On July 21, 2011, the Dodd-Frank Act transferred authority over TILA and RESPA to the Bureau. As noted above, the Act specifically directs the Bureau to combine the TILA and RESPA mortgage disclosures.

A. Provisions to be Analyzed

The proposal contains both specific proposed provisions with regulatory or commentary language (proposed provisions) as well as requests for comment on modifications where regulatory or commentary language was not specifically included (additional proposed modifications). The analysis below considers the benefits, costs, and impacts of the following major proposed provisions and the additional proposed modifications:

1. The integration of the initial and closing disclosures (the Loan Estimate and Closing Disclosure, respectively),
2. The definition of application,
3. The disclaimer on pre-application written estimates,
4. Permissible changes to settlement costs and re-disclosure of initial disclosures,
5. Provision of the Closing Disclosure,
6. Recordkeeping,
7. The definition of the finance charge, and
8. Implementation of new disclosures mandated by the Dodd-Frank Act.

With respect to each provision, the analysis considers the benefits and costs to consumers and covered persons. The analysis also addresses certain alternative provisions that were considered by the Bureau in the development of the rule. The Bureau requests comments and data on the potential benefits, costs, and impacts of the proposal.

B. Baseline for Analysis

The analysis examines the benefits, costs, and impacts of the major provisions of the proposed rule against a pre-statutory baseline. To the extent there are benefits, costs, or other relevant impacts emanating from the relevant provisions of the Dodd-Frank Act, those costs are combined with the benefits, costs, and impact of the regulation itself in conducting this analysis. The Bureau has discretion in future rulemakings to choose the most appropriate baseline for that particular rulemaking.

C. Coverage of the Proposal

The proposed rule requires provision of the integrated disclosures for closed-end consumer credit transactions secured by real property, other than a reverse mortgage subject to § 1026.33. As discussed in part VI above, section-by-section analysis for proposed § 1026.19, the Dodd-Frank Act generally directs the Bureau to establish an integrated disclosure for "mortgage loan transactions" that are "subject to both or either provisions of" RESPA sections 4 and 5 and TILA. However, TILA and RESPA differ in the types of transactions to which their respective disclosure requirements apply. The proposed scope of the integrated disclosure provisions reconciles these differences, recognizing that certain transaction types may be inappropriate for the integrated disclosure.

Notably, the integrated disclosure provisions of the proposed rule do not apply to reverse mortgages and HELOCs, which are within the statutory scope of TILA and RESPA, because those transactions are fundamentally different from other types of mortgage credit. The integrated disclosure provisions also do not apply to dwellings that are not secured by real property, which are subject to TILA but not RESPA, nor to creditors that originate fewer than five loans in a year, who are subject to RESPA but not TILA. The integrated disclosure provisions do, however, apply to construction-only loans, vacant-land loans, and loans secured by more than 25 acres, although these transactions are currently exempt from RESPA coverage, because the Bureau believes that excluding these transactions would deprive consumers of the benefit of enhanced disclosures. The proposed revisions to the definition of finance charge, discussed below and in part VI, section-by-section analysis for § 1026.4, apply to all closed-end credit transactions secured by real property or a dwelling.

D. Potential Benefits and Costs to Consumers and Covered Persons

1. Integrated Initial and Closing Disclosures

The proposed rule requires that the Loan Estimate be provided to consumers within three business days after receipt of the consumer's application, to replace the early TILA disclosure and RESPA GFE, and that the Closing Disclosure be provided to consumers at least three business days prior to consummation, to replace the final TILA disclosure and RESPA settlement statement. As discussed above, TILA authorizes the Bureau to publish model forms for the TILA disclosures, while RESPA authorizes the Bureau to require the use of standard forms (*e.g.*, the prescribed RESPA GFE and settlement statement forms). Accordingly, the Bureau is proposing to require the use of standard Loan Estimate and Closing Disclosure forms for mortgage loan transactions that are subject to RESPA, other than reverse mortgages. For transactions that are subject only to TILA, however, the forms would be model disclosures, consistent with the provisions of that statute. The proposed rule also incorporates prior informal guidance regarding compliance with HUD's 2008 Final RESPA Rule into Regulation Z and official commentary, as necessary and appropriate.

In considering the benefits and costs of the Loan Estimate and Closing Disclosure, the Bureau notes that the costs associated with the proposal would likely be one-time costs associated with adjusting to the new requirements while the benefits would persist over time.

Some of the benefits – the benefits to consumers of reduced mortgage costs – may actually grow over time as more consumers pay off existing mortgages and take out new mortgages. The Bureau believes that because the proposed disclosures would likely lead to consumers making more informed choices, some of them would obtain mortgages that were lower cost than, or in some other way preferable to, the mortgages they would obtain otherwise. In particular, if consumers do obtain mortgages at a lower cost, these benefits accrue over time; as more borrowers take out loans with the new disclosures, the share of all mortgage borrowers receiving these benefits would grow.

a. Benefits to Consumers

i. The Loan Estimate. The integration of the early TILA disclosure and the RESPA GFE into the Loan Estimate would have several benefits to consumers. The Bureau believes that the Loan Estimate would facilitate consumer understanding of the loan terms and closing costs of possible loans. The Loan Estimate would also make it easier for consumers to compare different loans, either different products from a single creditor or loans from different creditors. In addition, the harmonization of the Loan Estimate and Closing Disclosure forms would make it easier for consumers to compare the estimated information they initially receive from creditors with the actual costs of the loan. The benefits of this third effect are discussed below, in the section on the benefits of the Closing Disclosure.

The Loan Estimate would make it easier for consumers to understand their loan in several ways. First, the Loan Estimate would make it easier for consumers to understand the loan terms and closing costs of potential loans. The Loan Estimate emphasizes information that is important to consumer understanding of the mortgage transaction, and deemphasizes information that is either confusing or unhelpful to consumers, such as the APR, which current TILA disclosures focus on as a measure of the cost of credit. As discussed in part VI above, section-by-section analysis for proposed § 1026.37(l), research conducted by the Board and HUD, as well as consumer testing conducted by the Board and Bureau, indicate that consumers do not understand the APR or how to use it when comparing loans and often confuse the APR with the loan's interest rate. Instead, the Bureau's testing indicates that consumers focus on other information that is less prominently disclosed on current Federal disclosures than the APR, or that is not required on current Federal disclosures. *See* Macro 2009 Closed-End Report at iv-v. Accordingly, the Bureau developed the proposed Loan Estimate to prioritize and clearly display the information that consumers readily understand and is most important to them in understanding the loan and the underlying transaction, such as the interest rate, monthly payment amount, and settlement costs. The design displays this key information in a manner that enables consumers to locate it quickly on the form by using highly visible headings and labels and limiting the amount of text on the form. Based on the results of its consumer testing and outreach, described in part III above and in the Kleimann Testing Report, the Bureau believes the Loan Estimate is easier for consumers to use and understand.

The Loan Estimate may also make it easier for consumers to understand the risks associated with a loan because the form emphasizes risk factors that are either less prominently disclosed or are not found on current Federal disclosures. For example, the first page of the Loan Estimate clearly discloses whether a loan will or may experience future changes to the interest rate, monthly payment amount, or to the loan's principal balance as a result of negative amortization, by using simple text and highly visible capitalized type in a bold font to indicate the possibility of such changes. These disclosures would help reduce the likelihood that consumers will experience payment shock due to future payment changes. In addition, unlike current Federal forms, the Loan Estimate prominently discloses total monthly payment amounts, including estimated amounts for taxes, insurance, and assessments, whether or not an escrow account would be established for the payment of such amounts. This disclosure would make it easier for consumers to consider the loan and underlying real estate transaction’s overall affordability, as compared to current Federal forms.

The integration of the forms would also reduce the sheer volume of paper that consumers receive, mitigating “information overload” and making it easier for consumers to identify important information. With the current Federal disclosures, consumers need to work through four separate forms to compare two loan products, which amount to a total of ten pages. But with the Loan Estimate, consumers need to work with only two forms to compare two loan products, and only six total pages. In addition, because the format of the Loan Estimate prioritizes the information that consumers actually use to understand and compare loans, placing it on the first page, consumers could potentially compare two loans using only the first page of the Loan Estimate for each. The Bureau therefore believes that the Loan Estimate would be substantially more understandable for consumers than the current TILA disclosure and RESPA GFE and would enable consumers to make more informed choices when they are considering a mortgage.

Better understanding of closing costs and loan terms would benefit consumers in several ways. It would help consumers to make better decisions about whether to take out a loan at all, which type of loan to take out, and which creditor to borrow from. Some consumers, such as those who may benefit slightly from refinancing or for whom whether to rent or buy is a difficult decision, will be close to the margin of taking out a loan or not taking out a loan. Improved understanding of the costs of borrowing will allow those consumers to make a more informed decision about whether to borrow.

For consumers that are borrowing, a better understanding of closing costs and loan terms will enable them to better pick the loan product that suits their needs and circumstances. It may also enable consumers to identify loans with features that are only suitable for some consumers, such as negative amortization or balloon payments, and evaluate whether those features make sense for them. The Bureau is concerned that, prior to the mortgage crisis, some consumers entered into loans with such features when they were not suited to them because they were unaware of such features or the risk they posed.

The forms may also facilitate shopping amongst loan offers and creditors, affecting both the evaluation of different offers and the number of offers consumers obtain. Existing research suggests that consumers arguably do not shop extensively when selecting a mortgage. Surveys of mortgage borrowers suggest that roughly 20–30 percent of borrowers contact one creditor and a similar fraction consider only two creditors.[198]

Further, available evidence indicates that some mortgage borrowers may have difficulty understanding or at least recalling details of their mortgage, particularly the terms and features of adjustable-rate mortgages.[199] Making the terms of a given loan easier to understand would make it easier for consumers to compare loans. As noted above, the Loan Estimate prioritizes on the first page the information that consumers generally use to compare loans (*e.g.*, interest rate, monthly payment, and closing costs). As discussed in part III, above, the Bureau conducted

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[198] Jinkook Lee and Jeanne M. Hogarth, Consumer Information Search for Home Mortgages: Who, What, How Much, and What Else?, Fin. Services Rev. 9, 277–293 (2000), available at http://www2.stetson.edu/fsr/abstracts/vol_9_num3_p277.pdf; *see also* Lacko and Pappalardo, *Improving Consumer Mortgage Disclosure*, available at http://www.ftc.gov/os/2007/06/P025505MortgageDisclosureReport.pdf.

[199] *See* Bucks and Pence, *Do Homeowners Know Their House Values and Mortgage Terms*, available at http://www.federalreserve.gov/Pubs/feds/2006/200603/200603pap.pdf; *see also* Lacko and Pappalardo.

extensive qualitative consumer testing of the Loan Estimate to ensure that forms enable consumers to understand and compare the terms and costs of various loans. During the testing process, consumers were able to use the form to compare loans and select the loan that best met their preferences (*e.g.*, a fixed rate or lower closing costs). In addition, Regulation Z currently uses model forms and language, not standard forms and language, so it does not ensure that consumers are presented information about loan terms and costs in the same way across multiple loans and multiple creditors. The proposed regulation would require that all creditors use a standard format for transactions that are subject to RESPA, which the Bureau understands to be the majority of mortgage transactions, making comparisons easier.

Making it easier for consumers to compare products may have two effects. It may make shopping more effective, leading consumers to make better choices for themselves amongst a given set of loans. It may also lead to more shopping, because the task of comparing loans is simpler. The estimated benefits of shopping for mortgages and for settlement services are substantial. Hall and Woodward estimate that the borrowers who obtain loans through mortgage brokers could save roughly $1,000 on the transaction through additional search.[200]

In addition to providing consumers with clear information about important loan terms and closing costs, the Loan Estimate makes clear to consumers which settlement services they can shop for. To the extent that consumers use this information to shop for some settlement services, they may identify service providers that offer better prices or better suit their needs than settlement service providers selected by the creditor. In a recently released study of title services and title insurance based on RESPA settlement statements for FHA loans, HUD and the Urban

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[200] Hall and Woodward, *Diagnosing Consumer Confusion and Sub-Optimal Shopping Effort: Theory and Mortgage-Market Evidence* (2012), available at http://www.stanford.edu/~rehall/DiagnosingConsumerConfusionJune2012. In the data used in the paper, yield spread premiums are common. As a result, the results may overstate some of the current savings from changes in shopping behavior. However, these results only include settlement charges retained by the broker and therefore any savings on other charges are additive to these.

Institute estimate that borrowers in some jurisdictions could save several hundred dollars if they searched for title services and title insurance.[201]

ii. The Closing Disclosure. The Bureau believes that the integration of the final TILA disclosure and the RESPA settlement statement would benefit consumers by allowing them to better understand the actual terms of their loan and the other costs of the loan transaction. As with the Loan Estimate, the Bureau developed the integrated Closing Disclosure through several rounds of form design and testing.

The Bureau believes that the Closing Disclosure is more understandable for consumers than the current TILA disclosure and RESPA settlement statement and, as described below, the proposal would include a requirement that the Closing Disclosure be provided to consumers three business days prior to closing, giving consumers time to review the Closing Disclosure.

The Bureau also believes the Closing Disclosure would improve the ability of consumers to compare the terms and costs on the Loan Estimate with the actual loan terms and closing costs. The Bureau designed the Loan Estimate and Closing Disclosure to work together; the two forms use consistent formatting and language to facilitate consumers' ability to identify any changes that occurred during the underwriting process. For example, the first page of the Loan Estimate, where key loan terms are disclosed to consumers, is nearly identical to the first page of the Closing Disclosure, and the first page of the Closing Disclosure specifically directs consumers to compare the two forms. The second page of the Loan Estimate and Closing Disclosure also use the same order and groupings of costs, making it easier for consumers to identify changes. At the Bureau's consumer testing, consumers were able to use the second pages of the Loan Estimate and Closing Disclosure together to identify changes in individual

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[201] U.S. Department of Housing and Urban Development and The Urban Institute, *What Explains Variation in Title Charges? A Study of Five Large Markets* (2012) (HUD Title Charge Study), available at http://www.huduser.org/portal/publications/hsgfin/title_charges_2012.html.

costs, often placing the forms side by side, which was enabled by the matching order and groupings. In addition, page three of the Closing Disclosure contains a table that identifies categories of costs that changed from the time the Loan Estimate was issued to the time of issuance of the Closing Disclosure. The Bureau believes these features would improve consumers' ability to understand their actual loan terms and costs, and compare early and final disclosures and identify changes in loan terms, which may better enable consumers to recognize and question changes in settlement costs or loan terms from the Loan Estimate. This may encourage all creditors to take care to ensure that Loan Estimates are accurate and may discourage unscrupulous creditors from attempting to "bait and switch" consumers with initial Loan Estimates that have better loan terms or lower settlement costs than the final transaction.

b. Magnitude of the Benefits to Consumers of the Revised Disclosures

Quantifying the magnitude of the benefits of the new Loan Estimate or Closing Disclosure would be very challenging. With regard to the Loan Estimate, important factors in the magnitude of the benefits to consumers would include: (1) how many consumers avoid loans that do not suit their needs; (2) how much more consumers shop; (3) how much more effective that shopping would be; and (4) how those changes in behavior would translate into changes in the overall market for mortgage loans. The Bureau is unaware of data that would make possible reliable estimates of these effects. There is some evidence showing that slight increases in shopping – just contacting one more creditor or loan originator – can lead to substantial savings for a consumer. *See* Hall and Woodward. This evidence is based on market conditions with current consumer shopping behavior, however, so it is difficult to project to the effects of shopping if many consumers shopped more.

Similarly, quantifying the magnitude of the benefits of the integrated Closing Disclosure would also be very challenging. The Bureau is unaware of any data that can provide reliable market-wide estimates of the prevalence of changes between early TILA disclosures and RESPA GFEs and final loan terms and closing costs. As described below, however, the Bureau may obtain a substantial sample of these forms from several lenders prior to finalizing the proposal. This would provide the Bureau with better information about this phenomenon. Other important factors affecting the consumer benefits of improved final disclosures include how much the Closing Disclosure would affect whether consumers recognize those changes or how they react to them and the effects on creditors' and settlement service providers' behavior.

Despite the challenges to quantifying the benefits of the Loan Estimate or Closing Disclosure, simple hypothetical calculations demonstrate that, because the mortgage market is so large, even very small effects on improving consumers' ability to make informed decisions or small effects on prices from greater shopping would lead to large savings for consumers. For example, if the new disclosures only affect ten percent of consumers, and only lower their interest rates by .125% (1/8 of a percentage point, the smallest typical unit of price difference in the mortgage market), this would lead to an annual savings of $1,250,000,000 for mortgage borrowers if all mortgages were originated with the proposed disclosures and total outstanding mortgage balances were to remain at their current level of roughly $10 trillion. If consumers were to benefit from a reduction in costs like this, some of the savings would come from reduced profits to creditors and brokers, as creditors and brokers receive lower prices from better-informed consumers, while other savings would come from a shift of business from less efficient to more efficient creditors and brokers. The reallocation to more efficient creditors and brokers that can originate loans at lower cost represents a savings to society in terms of the total resources used to originate loans.

A similar hypothetical can illustrate the potential effects of the improved ability of consumers to better understand closing costs. Bankrate.com collects information on average closing costs, as estimated on creditor RESPA GFEs, by State, for a $200,000 mortgage. It shows that average closing costs on such a mortgage, including lender fees, vary from roughly $2,300 to roughly $5,000. Taking average closing costs of $3,000, for example, if a consumer was able to use the Loan Estimate to shop more effectively for loans that came with lower closing costs or to shop for the various settlement services themselves and thereby obtain a loan with closing costs five percent lower, this would translate into savings of $150. This assumption seems reasonable, given the HUD and Urban Institute estimates that borrowers in some jurisdictions could save several hundred dollars by shopping for these services. *See* HUD Title Charge Study. The most recent year for which detailed mortgage origination information is available is 2010. The Bureau estimates that there were a total of about 8,000,000 mortgages originated that year. If ten percent of consumers saved $150 each, it would translate into roughly $120,000,000 per year. As with any savings on loan costs, these savings would come from a mix of reduced profits to settlement service providers and from shifting demand from less efficient to more efficient providers.

c. Costs to Consumers

The Bureau does not believe that adoption of the integrated Loan Estimate or Closing Disclosure would impose any direct costs on consumers. Consumers may bear some costs of the disclosures if lenders or loan originators pass through some or all of the costs that would be imposed on them by the proposal. However, the Bureau estimates that any increased cost per origination would be small and that, after one-time costs are absorbed, the proposal would likely reduce the cost per origination. Therefore, the Bureau does not anticipate any material adverse effect on credit access in the long or short term. Over the longer term, the rule could increase credit access if the expected cost savings materialize and competition forces lenders to pass the savings to consumers.

Requiring the use of standard Loan Estimate and Closing Disclosure forms has the potential to impose costs on some consumers if it supplants forms that are currently in use by creditors or mortgage brokers that are more effective at conveying information to consumers than the proposed forms, or if the requirement to use the forms prevents the development of more effective forms. The Bureau does not believe that there is a substantial risk of this occurring. Current Regulation X prescribes a standard form for the RESPA GFE and settlement statement. Although Regulation Z provides model forms and language rather than standard forms, the Bureau understands that many creditors do not provide disclosures that differ significantly from the model forms and language in Regulation Z due to the complexity of the Regulation Z disclosure requirements and the safe harbor provision in TILA section 105(b). Therefore, creditors are limited in their ability to develop forms that are substantially better at conveying information to consumers. The Bureau is unaware of any efforts by creditors of the scale undertaken by the Bureau to develop and test disclosures. And creditors that do believe that they can communicate loan terms or other important information more effectively than the required forms would not be prevented from doing so, so long as they also provide the required forms and communicate that information separately from the required forms.

d. Benefits to Covered Persons

The integration of the early TILA disclosure and the RESPA GFE, and the revised TILA disclosure and the RESPA settlement statement, may benefit creditors, mortgage brokers, and settlement agents that provide the disclosures. It will reduce the number of disclosures that covered persons need to prepare and provide and the number of disclosure-provision systems and processes that covered persons need to maintain. In addition, the three-page Loan Estimate would replace a three-page RESPA GFE, a two-page early TILA disclosure, a one-page appraisal notification provided under ECOA section 701(e), and a one-page servicing disclosure provided under RESPA section 6, as well as incorporating other new disclosure requirements in the Dodd-Frank Act that might otherwise be provided as separate documents.

Most small entities that participated in the Small Business Review Panel process stated that the integrated forms would make it easier to explain transactions to consumers. One letter from several small entity settlement agents indicated that the new forms could actually lead to more questions during a closing; however, the Bureau is alternatively proposing and soliciting comment on removing from the integrated forms certain disclosures, such as the total interest percentage and cost of funds, which may be difficult to explain to consumers. Information submitted by several settlement agents indicates that requiring the use of standard forms and providing clearer regulatory guidance could save as much as 30 minutes per closing by standardizing practices across lenders and reducing confusion. Based on industry estimates, the typical hourly wage of a settlement agent is $31 per hour; therefore, this translates into a dollar savings from the simplified closing forms of $16.50 per closing. Some portion of these savings would likely be passed on to the consumers.

The integrated disclosures also permit creditors to consolidate certain numerical calculations. For example, Regulations Z and X currently require two different calculations for the disclosure of monthly payment information on the early TILA disclosure and the RESPA GFE. The integrated Loan Estimate consolidates these calculations into one monthly payment disclosure, which may facilitate compliance and ease burden on covered persons. Other examples of overlapping but potentially different numerical disclosures required under Regulations Z and X include information about balloon payments and prepayment penalties.

e. Costs to Covered Persons

As just described, the Bureau believes that the ongoing costs of compliance with the proposed disclosure requirements would likely be equal to or less than current ongoing compliance costs. The integrated Loan Estimate and the Closing Disclosure, however, would result in certain one-time costs to revise software and compliance systems. The Bureau believes that many of the costs of complying with these requirements would be common across the two disclosures, and therefore discusses them together here. Under the proposal, responsibility for delivering the Loan Estimate would lie with the creditor. The Bureau believes that in some circumstances the Loan Estimate may be delivered by a mortgage broker acting on behalf of the creditor, as is currently the case with the RESPA GFE. The Bureau believes the costs would be similar for Loan Estimates delivered by brokers, and the estimates presented here are based on the assumption that the creditor delivers the Loan Estimate. The Bureau is proposing two alternatives for the provision of the Closing Disclosure. Under the first alternative, the creditor would be solely responsible for providing the disclosure to the consumer. Under the second alternative, the creditor and the settlement agent would be jointly responsible. For the purposes of this analysis, the Bureau is assuming that the creditor will bear the costs of revising software and compliance systems. If, instead, settlement agents bore those costs, the costs would likely be similar, although borne by different parties.[202] The Bureau requests comment on this approach to estimating costs, including whether mortgage brokers and settlement agents would incur costs that are substantially different from those incurred by creditors if they were responsible for providing the disclosures.

Creditors would need to adapt their software and compliance systems to produce the new forms. In addition to changing the format of the required forms, the new proposed forms would include numerous new disclosures that are required by the Dodd-Frank Act. The Bureau believes that this additional information would be added to the forms as part of the process of adapting software and compliance systems to produce the new forms, and therefore does not provide separate estimates for the costs of this additional information.

Based on information provided by creditors and by software vendors, the Bureau believes that, in general, larger creditors develop and maintain their own compliance software and systems, while smaller creditors primarily rely on software and compliance systems provided by outside vendors. Based on industry feedback, the Bureau believes that roughly the top 20 mortgage originators maintain their own systems, while 95 percent of smaller creditors (those outside the top 50) rely on vendors.

Mid-size creditors (those roughly ranked between 20 and 50 in origination volume) are served by a range of vendors, and in some cases have customized systems provided by these

[202] As described below, two major vendors currently provide software services to the vast majority of small mortgage originators to produce the RESPA GFE and initial TILA disclosures. RESPA settlement statements are currently issued by settlement agents using software provided by a different, but similarly small, set of vendors; however, the Bureau understands that the originators' systems are capable of producing the RESPA settlement statements. As a result, the Bureau believes that it is reasonable to measure costs assuming that the originators' vendors will provide both the Loan Estimate and the Closing Disclosure to their clients under existing contracts. Were the current software providers for settlement agents to have to update their systems (under the second alternative or under other contractual arrangements), those vendors would have to incur the stated costs.

vendors. For the purposes of this analysis, the Bureau treats all creditors outside the top 20 the same.

The use of vendors by smaller creditors will substantially mitigate the costs of revising software and compliance systems, as the efforts of a single vendor would address the needs of a large number of creditors. There are two primary vendors of this software to mortgage creditors outside the top 50. Based on discussions with vendors that provide software and compliance systems to mortgage lenders, the Bureau estimates that each of these vendors would spend roughly $500,000 to $2,000,000 to determine what changes need to be made to come into compliance and to update the software that they provide to creditors. Based on discussions with a leading origination technology provider, the Bureau believes that these updates, however, would likely be included in regular annual updates, and therefore the costs would not be directly passed on to the client creditors.[203] As many as 95 percent of creditors outside the top 20, therefore, would not pay directly for software updates to comply with the new rules.

Based on estimates from small entities that participated in the Small Business Review Panel process, the Bureau estimates that the small fraction of smaller creditors that maintain their own compliance software and systems would incur costs of roughly $100,000 to update their systems to comply with the proposal. Firms are expected to amortize this cost over a period of years. In this analysis, all costs are amortized over five years, using a simple straight-line amortization. Thus, about five percent of smaller creditors are expected to incur a cost of $20,000 per year. The Bureau estimates that there were a total of 14,374 banks, savings institutions, credit unions, and mortgage companies that originated mortgages in 2010,[204] the

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[203] Note that the vendors themselves are not covered persons.

[204] As discussed above, this analysis assumes that the creditor, rather than a mortgage broker, delivers the Loan Estimate and that the creditor also delivers the Closing Disclosure, rather than sharing responsibility for delivery

most recent year for which complete data are available, for a total of 14,354 outside the top 20.[205] The total one-time cost for the roughly five percent of smaller creditors that maintain their own compliance software and systems is therefore $100,000*14,354 *5%=$71,800,000 (rounded to the nearest $100,000). Amortized over five years, the estimated total annual cost for this small fraction of small creditors to update compliance systems is about $14,360,000 for all small creditors combined.

The largest 20 mortgage creditors would need to revise their compliance software and systems. Based on information from conversations with large creditors and with software vendors, the costs to these creditors of updating compliance software and systems would vary considerably with the size and complexity of the institution. The Bureau estimates that on average the cost per creditor for this category of creditor would be $1,000,000, for a total of $20,000,000. Amortized over five years, the estimated annual cost for large creditors to update compliance systems is $4,000,000 for the largest 20 mortgage creditors combined.

Covered persons would incur one-time costs associated with training employees to use new forms and any new compliance software and systems. The Bureau estimates that each loan officer or other loan originator will need to receive two hours of training, and that one trainer could train ten loan officers at a time, for an additional one hour of trainer time per ten hours of trainee time. The Bureau estimates that there are approximately 83,000 loan officers and other originators that would need training. Based on data from the Bureau of Labor Statistics, the Bureau estimates that the average total compensation is $46 per hour for a loan officer and $39 per hour for a trainer, for a total training cost of (83,000*2*$46) + (8,300*2*$39) = $8,300,000

with a settlement agent. Accordingly, the Bureau excludes mortgage brokers and settlement agents from this calculation.

[205] Creditors and originator estimates based on analysis of HMDA, SNL Call Reports, NCUA Call Reports, and NMLS Call Reports. See part VIII below for additional details.

(rounded to the nearest $100,000). Amortized over five years, this is an annual cost of $1,660,000 for all mortgage creditors combined.

Taken together, the Bureau estimates that the total one-time costs of complying with the proposed Loan Estimate and Closing Disclosure would be roughly $100,100,000. Amortized over five years, this is an annual cost of $20,020,000 for all mortgage creditors combined. For additional perspective, there were approximately 8,000,000 mortgage originations in 2010. The estimated one-time cost, annualized using a five-year amortization, is therefore less than three dollars per origination. Note that these costs would not recur, and the Bureau expects that ongoing costs would be equal to or less than current compliance costs.

The proposed rule also requires itemization of certain settlement charges that are not permitted to be itemized on the current RESPA GFE and settlement statement forms, which may lead to increased costs for covered persons. In its 2008 RESPA Final Rule, HUD predicted that removing itemization from the disclosures would relieve creditors from preparing lengthy lists of fees and addressing consumer questions about such fees. 73 FR at 68276. However, the Bureau understands that creditors and settlement agents often provide this itemization on separate disclosures currently to comply with State law or investor requirements, which mitigates any increased costs associated with itemization.

2. Definition of Loan Application

The proposed rule revises the regulatory definition of loan application to encourage earlier provision of the Loan Estimate to consumers.

Under TILA and RESPA, a creditor or mortgage broker is not required to provide the good faith estimates of loan terms and settlement costs in the early TILA disclosure and RESPA GFE until it has received an “application.” As discussed more fully in part VI above, section-by-section analysis for proposed § 1026.2(a)(3), under current regulations, the receipt of the following information by the creditor or mortgage broker constitutes receipt of an “application”: (1) borrower’s name; (2) monthly income; (3) social security number to obtain a credit report; (4) the property address; (5) an estimate of the value of the property; (6) loan amount sought; and (7) any other information deemed necessary by the lender. The seventh item could allow creditors and mortgage brokers to delay providing the integrated Loan Estimate until relatively late in the loan process by delaying collection of information deemed “necessary.” The Bureau understands that some creditors currently provide non-binding written estimates of loan terms or settlement charges prior to issuing the early TILA disclosure or RESPA GFE. The current rules encourage creditors and mortgage brokers to provide the good faith estimates early in the loan process by prohibiting creditors from collecting any fees from a consumer (other than a credit report fee) until the estimates are provided. To further encourage early provision of estimates, the proposed rule removes the seventh item (“any other information deemed necessary by the lender”) from the definition of “application.”

a. Benefits to Consumers

The Bureau believes that the proposed rule may benefit consumers by ensuring that consumers receive Loan Estimates early enough in the lending process to use them in shopping for their loan. Removing the seventh item may allow consumers to receive Loan Estimates that are subject to the limitations on increases discussed above with respect to proposed § 1026.19(e)(3) earlier in the lending process, whereas today consumers may receive only informal estimates that are not subject to those protections. Improved consumer shopping for mortgages may result in lower costs to consumers. As described above, the Bureau cannot estimate the magnitude of the benefits of improved shopping, but believes that they could be very large. The Bureau also believes that the Loan Estimate is a better shopping tool for consumers than informal estimates provided to consumers prior to receipt of the consumers' application, both because it was developed through an extensive testing and design process and because certain costs disclosed in the Loan Estimate are subject to limitations on increases, described below. The Bureau believes that lenders will be able to provide reliable estimates based on the six items that together would constitute an application under the proposal and that, by receiving more reliable cost estimates earlier in the mortgage lending process, consumers would be less frequently surprised by increases in costs near the time of closing. However, the Bureau seeks input and information on whether the proposed change to the definition of application would result in less accurate estimates, or in more frequent re-disclosures that could cause consumer confusion.

b. Costs to Consumers

The Bureau does not believe that eliminating the seventh item in the definition of application would lead to costs to consumers, beyond any costs that are passed through to consumers by creditors or loan originators.

c. Costs to Covered Persons

The Bureau understands that eliminating creditors' and mortgage brokers' ability to wait to provide a good faith estimate until after they receive "any other information deemed necessary" could increase the burden on creditors and mortgage brokers to the extent that it causes them to issue more Loan Estimates than they would under the current definition of application. If a creditor or mortgage broker obtains additional information from the consumer after the Loan Estimate has been issued that affects the costs of the settlement service for the loan, the creditor may need to issue a revised Loan Estimate. The Bureau is unaware of information that would allow it to estimate how often this would occur. The Bureau believes, however, if this were to impose substantial costs, creditors and mortgage brokers would mitigate this by adjusting their business practices surrounding the receipt of applications to gather other important information prior to, or at the same time as, they obtain the six items that together constitute an "application." As discussed in section F, below, the Bureau is working to obtain such data prior to issuing a final rule and is seeking comment on its plans for data analysis, as well as additional data and comment relevant to this issue.

In developing the proposed rule, the Bureau also considered removing additional items from the regulatory definition of "application." However, the Bureau does not believe the other items in the current definition of application raise similar concerns regarding creditors' ability to delay provision of the early disclosures. Furthermore, the Bureau believes that many or all of the six items may be necessary for a creditor to provide reliable estimates in many circumstances.

3. Disclaimer on Pre-Application Estimates

The Bureau is proposing to require that any pre-application, consumer-specific written estimate of loan terms or settlement charges contain a prominent disclaimer indicating that the document is not the Loan Estimate required by TILA and RESPA. This requirement would not apply to general advertisements.

a. Benefits to Consumers

The Bureau believes that the disclaimer may benefit consumers by clearly distinguishing disclosures that are subject to TILA and RESPA protections from those that are not.

b. Costs to Consumers

This new disclosure requirement could impose costs on consumers, in the form of reduced information about mortgage loan options, if it makes creditors or mortgage brokers less willing to provide written pre-application estimates of loan terms. The Bureau believes, however, that any such effect on creditors or mortgage brokers would be small or non-existent, especially when they are acting in good faith.

c. Costs to Covered Persons

To the extent covered persons currently provide such pre-application written estimates to consumers they would bear the costs of adding a disclaimer to those communications. However, the Bureau expects such costs to be *de minimis* since the Bureau is proposing a brief, standard statement for use by creditors, which should not require significant redesign of existing estimate materials or require additional pages.

4. Changes in Settlement Costs/Redisclosures

The proposed rule revises current rules regarding the circumstances in which a consumer may be charged more at closing for settlement services than the creditor estimated in the disclosure provided to the consumer three business days after application.

As discussed more fully in part VI, section-by-section analysis for proposed § 1026.19(e)(3), HUD's 2008 RESPA Final Rule limits the circumstances in which a creditor can charge the consumer more at consummation for settlement services than the creditor estimated in the RESPA GFE provided to the consumer three business days after application. These rules generally place charges into three categories: the creditor's charges for its own services, which cannot exceed the creditor's estimates unless an exception applies ("zero tolerance"); charges for settlement services provided by third parties, which cannot exceed estimated amounts by more than ten percent unless an exception applies ("ten percent tolerance"); and other charges that are not subject to any limitation on increases ("no tolerance"). The rule permits certain limited exceptions in which higher charges are permitted, such as when the consumer requests a change, when the RESPA GFE expires, or when valid changes in circumstance occur. The Bureau is aware of concerns that HUD's 2008 RESPA Final Rule is both too lax and too restrictive, and also that the rule is difficult to understand. The proposed rule attempts to address these concerns by balancing the objective of improving the reliability of the estimates creditors give consumers shortly after application with the objective of preserving creditors' flexibility to respond to unanticipated changes that occur during the loan process. Specifically, the proposed rule applies the zero tolerance category to a larger range of charges, including fees charged by an affiliate of the creditor and charges for services for which the creditor does not permit the consumer to shop. A service provider would be considered selected by the creditor if consumers are required to choose only from a list of service providers prepared by the creditor (*i.e.*, if consumers are not permitted to shop for their own provider).

In developing the proposed rule, Bureau considered narrowing the exceptions permitting increases in settlement charges in order to restrict the ability of a creditor to charge more for its own services or for third-party settlement services than the creditor initially estimated. However, the Bureau is concerned that this approach could prevent creditors from increasing settlement charges to reflect justifiable increases in costs. The Bureau also considered preserving HUD's 2008 RESPA Final Rule in its entirety. However, as discussed above, the Bureau believes that the rule can likely be improved by requiring creditors to provide consumers with more accurate estimates of settlement charges and reducing compliance burden for industry.

a. Benefits to Consumers

The Bureau believes that consumers may benefit when fewer fees are permitted to change from the Loan Estimate. Consumers that rely on the Loan Estimate to shop for a loan would be able to make decisions based on estimated costs that more closely reflect the actual costs they would bear, making shopping more effective. For some consumers, such as those considering a refinancing that they may or may not decide to take out, more reliable information may allow them to make a better-informed decision about whether to take out a loan at all. Firmer fee estimates may also reduce "gaming" by unscrupulous creditors that provide low-ball initial estimates and then impose new or different charges near the time of consummation.

The Bureau cannot quantify the magnitude of these benefits. The Bureau is unaware of any data that can provide reliable market-wide estimates of the prevalence of changes between early TILA disclosures and RESPA GFEs and final loan terms and closing costs or of the causes for those changes that occur. As noted above, the Bureau may obtain data on a sample of TILA disclosures and RESPA GFEs from several lenders, which would provide additional information about this issue.

For a sense of the scale of the potential impact, it is worth considering an extreme hypothetical example where all of the settlement services move from the ten percent tolerance category to the zero tolerance category. This is unlikely to happen in practice, but illustrates the largest possible effect of the regulatory change. For a loan with a total of $3,000 in settlement costs, the maximum effect of the proposal would be that the creditor could not pass on $300 in cost increases that occurred without an exception allowing the increase to be passed on to the consumer.

Expanding the set of costs covered by the zero tolerance may also benefit consumers by giving creditors an incentive to control the costs imposed by third parties. Currently, creditors have limited incentives to control third-party costs. By applying the zero tolerance category to a larger range of charges, including charges by affiliates of the creditor, creditors are required to absorb more increases in costs (when no exception applies), and may seek to minimize the chance that these increases would occur. Creditors are in a better position than consumers to control these costs, as they are much more familiar with these markets than are typical consumers, and they are likely to have ongoing relationships with settlement service providers that 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 could impose costs on some consumers. The restriction on changes to these costs may cause some creditors to provide higher initial estimates, making shopping less effective as consumers rely on less accurate information. The Bureau believes, however, that these effects are likely to be mitigated by competitive pressures that encourage brokers and creditors not to inflate cost estimates.

c. Benefits to Covered Persons

Covered persons may benefit from the proposed rule because it reduces compliance burden by resolving current regulatory ambiguities. For example, the proposed rule makes clear that creditors need not reissue Loan Estimates unless and until the costs that are subject to the ten percent tolerance standard increase based on valid changes in circumstance by more than ten percent in total. The proposed rule also revises the rule and provides more guidance to facilitate use of average cost pricing and reconciles certain inconsistences between RESPA and TILA terminology. The proposed rule further streamlines and clarifies HUD’s 2008 RESPA Final Rule by incorporating prior HUD guidance into Regulation Z and its commentary, as necessary and appropriate. Further, to the extent the proposed rule reduces unnecessary redisclosure of the RESPA content currently provided on the GFE, the rule would decrease costs to creditors, although the extent to which the proposed rule would have such an effect is unknown. Reducing unnecessary redisclosure may also benefit consumers, to the extent that redisclosures lead to consumer confusion.

The Bureau is unaware of reliable data showing how often creditors are providing additional disclosures that are not required by the current rule and that they would no longer send if the rules were clarified. As discussed in section F, below, the Bureau is working to obtain such data prior to issuing a final rule and is seeking comment on its plans for data analysis, as well as additional data and comment relevant to this issue. Some creditors, however, have reported that additional clarity regarding redisclosure requirements for the RESPA GFE and average cost pricing would reduce the cost of compliance, in part, by reducing confusion over when redisclosure is permitted or required, and thereby reducing the need for legal advice.

To the extent that restricting certain changes in fees reduces bait-and-switch tactics by some creditors, this provision may also benefit honest creditors that do not use these tactics.

d. Costs to Covered Persons

The Bureau understands that covered persons may experience increased costs as a result of a rule that applied the zero tolerance category to a larger range of charges. Since the proposed rule would expand the circumstances in which creditors could not pass increased costs to consumers when the initial estimate is lower than the actual costs but there is not a legitimate change in circumstances or other exception, creditors may be required to absorb more costs. This impact should be mitigated to the extent creditors are in a position to know the typical charges of affiliated firms and firms they engage repeatedly and require consumers to use, and can therefore provide estimates that are accurate when there is no changed circumstance. As discussed above, the Bureau is unaware of any data that can provide reliable market-wide estimates of the prevalence of changes between early TILA disclosures and RESPA GFEs and final loan terms and closing costs, and the causes of those changes. Therefore, the Bureau cannot provide estimates of how often creditors would have to absorb higher than expected costs that cannot be attributed to a changed circumstance. The discussion of average settlement costs provided in the "Consumer Benefits" section applies here, as well, suggesting that these costs to creditors would be quite modest.

The Bureau also understands that the proposed rule may result in increased use of affiliated service providers, so that creditors can more directly control changes in settlement costs, which could have a negative impact on independent providers. Some have argued that the negative impact on independent providers could lead to reduced competition for settlement services and ultimately higher costs. The Bureau is unaware of any evidence that the ultimate increase in costs is likely to occur. Alternatively, the proposed rule may encourage creditors to allow consumers to choose settlement service providers that are not on a list provided to the consumer (although in this case the creditor would be required to provide consumers with a list of settlement service providers that the consumers could use, if they so choose), so that the zero tolerance requirement would not apply. This would appear to benefit independent service providers, or at least be neutral relative to current practices.

5. Provision of Closing Disclosure

The proposed rule requires delivery of the integrated Closing Disclosure three business days before consummation in all cases. However, the Bureau is proposing two alternative approaches for assigning responsibility for providing the integrated Closing Disclosure to the consumer. Alternative 1 places sole responsibility for provision of the Closing Disclosure on the creditor, while Alternative 2 makes the creditor and settlement agent jointly responsible for providing the Closing Disclosure.

a. Timing of Closing Disclosure Provision

TILA and RESPA establish different timing requirements for disclosing final loan terms and costs to consumers. As discussed more fully in part VI, section-by-section analysis for proposed § 1026.19(f), TILA generally provides that, if the early disclosures contain an APR that is no longer accurate, the creditor shall furnish an additional, corrected disclosure to the consumer not later than three business days before consummation. RESPA, on the other hand, requires that the final statement of loan costs and terms is provided to the consumer at or before settlement. To meet the Dodd-Frank Act's mandate to integrate the disclosures required by TILA and RESPA, and to better facilitate consumer understanding of the costs, the proposed rule would require delivery of the integrated Closing Disclosure three business days before closing in all circumstances. However, to prevent unnecessary closing delays, the proposed rule would permit limited changes after provision of the Closing Disclosure to reflect common adjustments, such as changes to recording fees. In addition, reissuance of the Closing Disclosure and an additional three-business day waiting period would not be required if, during the three business days after issuance of the Closing Disclosure, the amount needed to close shown on the Closing Disclosure increases by $100 or less.

i. Benefits to Consumers. Consumers may benefit from the proposed rule because it would ensure that consumers receive the disclosures far enough in advance of consummation that they can review the final details of the transaction. Together with the improved clarity of the Closing Disclosure and the comparability of the Loan Estimate and the Closing Disclosure, this should allow consumers to have a better understanding of the final terms of the transaction and how and whether those terms have changed since the consumer received the Loan Estimate. Improved ability to compare early and final disclosures and identify changes in loan terms may better enable consumers to recognize and challenge increased settlement costs or loan terms that are different from the initial disclosure. This may encourage all creditors to take greater care to ensure that Loan Estimates are accurate and may discourage unscrupulous creditors from attempting to “bait and switch” consumers with initial Loan Estimates that have better loan terms or lower settlement costs than the final transaction. Some of these changes are not permissible under the current or revised regulation, but making it easier for consumers to identify these changes may provide an additional incentive for creditors to avoid such changes.

The Bureau cannot quantify the magnitude of the benefits of the three-day period for consumers to review the integrated Closing Disclosure. The Bureau is unaware of any data that can provide reliable market-wide estimates of the prevalence of changes between early TILA disclosures and RESPA GFEs and final loan terms and closing costs. The Bureau also does not know how much the three-day period would improve consumers’ ability to recognize those changes or how consumers would react to changes, or the effects on creditors’ behavior.

ii. Costs to Consumers. The proposal to require provision of the Closing Disclosure three business days prior to consummation in all circumstances may result in closing delays, which could come at a cost to consumers. In extreme cases, such delays could cause a transaction to fall through if a consumer is under a contractual obligation to close by a certain date. Creditors and closing agents, however, currently coordinate to provide RESPA closing documents at closing. Both closing agents and creditors would have incentives to complete closings as scheduled, and therefore the Bureau believes that they would adjust their business practices such that the Closing Disclosure could be provided in a timely manner and closing problems would be infrequent.

iii. Costs to Covered Persons. If the requirement does lead to delayed or canceled closings, this would impose costs on covered persons as well. Such closing delays could result in loss of revenue for transactions that fall through due to a delay. The proposed rule may also create legal and reputational risks for creditors or settlement agents that are unable to close loans as planned.

iv. Alternatives Considered. In developing the proposed rule, the Bureau considered requiring provision of the Closing Disclosure three business days before closing only when the APR in the Loan Estimate increases beyond a tolerance or certain risky features are added to the loan. In all other circumstances, the Closing Disclosure would have been provided at or before closing. However, the Bureau is concerned that this approach would allow significant increases in the cash needed to close the transaction without sufficient notice to consumers. Further, the Bureau has received feedback indicating that the APR estimates included in the early TILA disclosures typically change by more than 1/8 of 1 percent, such that most creditors provide corrected disclosures as a standard business practice, rather than analyzing the accuracy of the disclosed APR. Therefore, the Bureau believes that any additional burden associated with requiring the disclosure three business days before closing in all cases is small given current creditor practices. In addition, the Bureau considered expanding current rules allowing consumers to waive the three-business day waiting period in cases of bona fide personal financial emergency. However, the Bureau is concerned that such an expansion would be subject to abuse.

b. Responsibility for Providing the Closing Disclosure

TILA and RESPA require that different parties provide the final disclosures to consumers. Specifically, TILA requires the creditor to provide the TILA disclosures to consumers, while RESPA requires that the person conducting the settlement provide the final statement of settlement costs to the consumer. However, section 1419 of the Dodd-Frank Act amended TILA to make creditors responsible for disclosing settlement cost information. *See* TILA section 128(a)(17). To reconcile these statutory differences and implement TILA section 128(a)(17), the Bureau is proposing two alternative approaches for assigning responsibility for provision of the integrated Closing Disclosure to consumers. Under Alternative 1, the creditor would be solely responsible for delivering the Closing Disclosure to the consumer. Under Alternative 2, the creditor and settlement agent would be jointly responsible for providing the consumer with an integrated Closing Disclosure three business days before closing.

i. Benefits and Costs to Consumers. The Bureau believes that consumer benefits and costs would not differ between the two proposals, so long as disclosures are accurate and provided in a timely manner.

ii. Benefits to Covered Persons. Because the difference between Alternatives 1 and 2 is about which party would be responsible for providing a disclosure, the relative benefits of each proposal to different covered persons are likely to consist of avoided costs. The most useful way to consider these alternatives, therefore, is to consider their respective costs.

iii. Costs to Covered Persons – Alternative 1. Alternative 1 would likely place increased costs on creditors. As discussed above, RESPA and current Regulation X require that the person conducting the settlement provide the RESPA-required disclosures to consumers at or before consummation. Since, under Alternative 1, the creditor would be responsible for provision of both the TILA and RESPA content to the consumer, the creditor would incur additional logistical burden and legal risk. Creditors and settlement agents may incur one-time legal fees under Alternative 1, since those entities may need to contractually stipulate their respective duties or amend existing contractual arrangements in light of the rule. Creditors may also need to hire additional staff to handle the increased workload associated with collecting the settlement costs and coordinating with the settlement agents and third party service providers and preparing the disclosures. However, since the current regulatory scheme of split responsibility, as well as the different roles of creditors and settlement agents in the transaction, already requires a great deal of coordination, it is not clear that giving the creditor sole responsibility for providing the disclosures would impose much additional burden. As a general matter, shifting responsibility for delivery of final RESPA disclosures from settlement agents to creditors may change the role of settlement agents, though the exact impact of such a rule is unclear. Settlement agents play a unique role in working through local real estate transaction requirements and practices, which creditors may be unlikely to take on.

iv. Costs to Covered Persons – Alternative 2. The costs to creditors and to settlement agents under the proposed alternative that gives joint responsibility for provision of the Closing Disclosure to creditors and settlement agents would depend on how creditors and settlement agents go about fulfilling the joint requirement. Joint provision would likely require coordination on the part of creditors and settlement agents similar to what is done today. One additional cost, however, may entail re-working that coordination to adjust to the new forms and timing requirement (discussed above).

v. Alternative considered. In developing the proposed rule, the Bureau also considered an alternative under which the settlement agent would have sole responsibility for providing the Closing Disclosure to the consumer. However, the Bureau is concerned that settlement agents do not have access to much of the information regarding loan terms that must be included in the Closing Disclosure. In addition, in response to industry feedback, the Bureau considered an approach that would bifurcate the Closing Disclosure into TILA-required and RESPA-required disclosures. However, the Bureau is concerned that such an approach would be confusing for consumers, would be impracticable and result in additional regulatory burden because of the amount of overlap between TILA and RESPA disclosures, and is inconsistent with the Dodd-Frank Act requirement to integrate the disclosures.

6. Recordkeeping of Machine Readable Data

The proposed rule imposes new data retention requirements for the Loan Estimate and the Closing Disclosure by requiring creditors to maintain evidence of compliance in machine readable, electronic format. The proposed retention period is three years for the Loan Estimates and five years for the Closing Disclosures. *See* proposed § 1026.25.

a. Benefits to Consumers

The proposed rule may benefit consumers because comprehensive data on the extent to which settlement costs and loan terms change between the initial and final disclosures may improve the ability of the Bureau and other regulators to monitor compliance with applicable requirements and to evaluate whether the rules adequately protect consumers against impermissible changes in settlement costs and loan terms.

b. Costs to Consumers

The Bureau does not believe the recordkeeping requirements would lead to costs to consumers, beyond any costs that are passed through to consumers by creditors or loan originators.

c. Benefits to Covered Persons

A prescribed electronic format may reduce costs across the entire mortgage loan origination industry due to the efficiency gains associated with a standardized data format. Based on industry feedback, the Bureau understands that creditors, mortgage brokers, title companies, investors, and other mortgage technology providers use systems with proprietary data formats. As a result, data must be translated between formats as it is transmitted from one point to another throughout the mortgage loan origination process. A standard format should lower those coordination costs. In addition, a standard format may also facilitate innovation in the financial services industry by making it easier for technology companies to create new programs that improve the mortgage origination process and lower industry costs, instead of tailoring programs to each firm's unique proprietary data format; may lower ongoing costs by facilitating industry adoption of mortgage documentation technology and reducing industry's reliance on paper files; and may ease the burden of staff time and resources devoted to on-site supervisory examinations by allowing for remote examinations of compliance. All of these benefits may reduce industry cost and burden in the long run, thereby reducing costs to consumers as well.

The Bureau is aware that there are various efforts currently underway to standardize the format for storage and transmission of mortgage origination-related data. To the extent that the Bureau’s proposal may advance these efforts toward a standard electronic record format, the proposal may help eliminate multiple data formats, thereby increasing efficiency in the origination process, reducing industry costs in the long term, and reducing costs to consumers. Also, the Bureau is aware that many firms currently face significant internal costs for maintaining multiple internal technological systems. To the extent the Bureau’s efforts reduce uncertainly regarding the eventual standard, a single data format specified by the Bureau may lower costs by enabling creditors to migrate from older data formats to a single, standard data format.

d. Costs to Covered Persons

The proposed rule may result in costs to covered persons. Under current rules, creditors must retain evidence of compliance with the disclosure requirements in Regulation X (*i.e.*, a copy of the RESPA settlement statement) and Regulation Z (*i.e.*, evidence of compliance generally) for five years and two years, respectively, but are not required to maintain such evidence an electronic, readable format. 12 CFR 1024.10(e); 1026.25. Based on industry feedback, the Bureau understands that firms currently rely on electronic systems for most aspects of the mortgage loan origination process, including electronic record creation and storage. Not all lenders currently maintain data in a machine-readable format, and those who do may not retain it in the format that may ultimately be adopted. To comply with the proposed record retention provisions, therefore, creditors may be required to reconfigure existing document production and retention systems. For creditors that maintain their own compliance systems and software, the Bureau does not believe that adding the capacity to maintain data in a standard machine readable format will impose a substantial burden, as the only requirement will be to output existing data to a new format and then store that data. The Bureau believes that the primary cost will be one-time systems changes that could be accomplished at the same time that systems changes are carried out to comply with the new proposed Loan Estimate and Closing Disclosure. Similarly, creditors that rely on vendors would likely rely on vendor software and systems to comply with the data retention requirement; at least one vendor already offers indefinite data storage to customers that use their web-based origination services.

The Bureau estimates that creditors with existing electronic storage systems would need to expend 40 hours of software and IT staff time to develop the ability to export data from existing systems to a standardized format. This would apply to the creditors that maintain their own systems – the 20 largest and five percent of other creditors (14,354*0.05 = 718, rounded to the nearest whole entity) – for a total of (718+20)*40 = 29,520 hours. Assuming an hourly labor cost of software and IT staff of $54, based on information from the Bureau of Labor Statistics, gives a total dollar cost of 29,520*$54 = $1,600,000 (rounded to nearest $100,000). Amortized over five years, this is an annual cost of roughly $320,000 for all mortgage creditors combined. Compared to total mortgage originations of 8,000,000 per year, this amounts to pennies per origination.

The Bureau understands that requiring standardized, electronic records may be a significant burden for covered persons that do not currently have such electronic filing systems. To reduce the burden on small entities, the Bureau is considering an exemption from the electronic data retention requirements. *See* part VI, section-by-section analysis for proposed § 1026.25.

7. Expanded Definition of Finance Charge

The proposed rule expands the definition of the finance charge for closed-end transactions secured by real property or a dwelling, consistent with the Board's 2009 Closed-End Proposal.

As discussed more fully in part VI, section-by-section analysis for proposed § 1026.4, TILA and current Regulation Z exclude many types of charges from the finance charge, particularly for mortgage transactions. Concerns have long been raised that these exclusions undermine the potential usefulness of the finance charge and corresponding APR as a tool for consumers to compare the total cost of one loan to another. In addition, these exclusions create compliance burden and litigation risk for creditors and may encourage creditors to shift the cost of credit to excluded fees, a practice that is inefficient.

a. Proposed Definition of Finance Charge and Other Federal Regulation

The Bureau recognizes that the proposed more inclusive finance charge could affect coverage under other laws, such as higher-priced mortgage loan and HOEPA protections, and that a more inclusive finance charge has implications for the HOEPA, Escrows, Appraisals, and Ability to Repay rulemakings identified in part II.F above. Absent further action by the Bureau, the more inclusive finance charge would:

- Cause more closed-end loans to trigger HOEPA protections for high-cost loans.[206] The protections include special disclosures, restrictions on certain loan features and lender practices, and strengthened consumer remedies. The more inclusive finance charge would affect both the points and fees test (which currently uses the finance charge as its starting point) and the APR test (which under Dodd-Frank will depend on comparisons to the average prime offer rate (APOR)) for defining what constitutes a high-cost loan.

[206] Under the Dodd-Frank Act, a loan is defined as a high-cost mortgage, subject to HOEPA protections, if the total points and fees payable in connection with the transaction exceed specified thresholds (points and fees coverage test); the transaction's APR exceeds the applicable APOR by a specified threshold (APR coverage test); or if the transaction has certain prepayment penalties. First, under the points and fees coverage test, the definition of points and fees includes, as its starting point, all items included in the finance charge. Therefore, a potential consequence of the more inclusive finance charge is that more loans might exceed HOEPA's points and fees threshold because new categories of charges would be included in the calculation of total points and fees for purposes of that coverage test. In addition, under the APR coverage test, the more inclusive finance charge could result in some additional loans being covered as high-cost mortgages because closed-end loans would have higher APRs. There are currently some differences between APR and the average prime offer rate, which is generally calculated using data that includes only contract interest rate and points but not other origination fees. *See* 75 FR 58660-58662. The current APR includes not only discount points and origination fees but also other charges the creditor retains and certain third-party charges. The more inclusive finance charge, which would also include most third-party charges, would widen the disparity between the APR and APOR and cause more closed-end loans to qualify as a high-cost mortgage. The Bureau notes that substantially similar implications would apply to each respective rulemaking in which coverage depends on comparing a transaction's APR to the applicable APOR. In addition, the Bureau notes that the Dodd-Frank Act expands HOEPA to apply to more types of mortgage transactions, including purchase money mortgage loans and open-end credit plans secured by a consumer's principal dwelling. However, the proposed more inclusive finance charge applies only to closed-end loans. Therefore, the Bureau notes that the more inclusive finance charge would not affect the potential coverage of open-end credit plans under HOEPA.

- Cause more loans to trigger Dodd-Frank Act requirements to maintain escrow accounts for first-lien higher-priced mortgage loans. Coverage depends on comparing a transaction's APR to the applicable APOR.
- Cause more loans to trigger Dodd-Frank Act requirements to obtain one or more interior appraisals for "higher-risk" mortgage loans. Coverage depends on comparing a transaction's APR to the applicable APOR.
- Reduce the number of loans that would otherwise be "qualified mortgages" under the Dodd-Frank Act Ability to Repay requirements, given that qualified mortgages cannot have points and fees in excess of three percent of the loan amount. Also, more loans could be required to comply with separate underwriting requirements applicable to higher-priced balloon loans, and could be ineligible for certain exceptions authorizing creditors to offer prepayment penalties on fixed-rate, non-higher-priced qualified mortgage loans.[207] Again, status as a higher-priced mortgage loan depends on comparing APR to APOR.

As discussed above in part VI, section-by-section analysis for proposed § 1026.4, and below in section F, the Bureau is seeking data to model the impact of the more expansive definition of finance charge on coverage of each of these regulatory regimes or the impact of potential modifications that the Bureau could make to the triggers to more closely approximate existing coverage levels prior to issuing a final rule and is seeking comment on its plans for data

[207] Specifically, the Dodd-Frank Act generally prohibits prepayment penalties on closed-end, dwelling-secured mortgage loans, except on fixed-rate qualified mortgages that are not higher-priced mortgage loans. For balloon loans, the Dodd-Frank Act generally requires creditors to assess consumers' ability to repay a higher-priced loan with a balloon payment using the scheduled payments required under the terms of the loan including any balloon payment, and based on income and assets other than the dwelling itself. Only consumers with substantial income or assets would likely qualify for such a loan. A separate Dodd-Frank Act provision authorizing balloon loans made by creditors that operate predominantly in rural or underserved areas is not affected by the finance charge issue.

analysis, as well as additional data and comment on the potential impacts of a broader finance charge definition and potential modifications to the triggers.[208]

The Board previously proposed to address these effects by adopting an adjusted points and fees definition and a new metric for determining coverage under APR thresholds, known as the "transaction coverage rate" (TCR). The TCR would be based on a modified prepaid finance charge that would include only finance charges retained by the creditor, mortgage broker, or their affiliates, and would therefore more closely approximate existing coverage levels than a more inclusive finance charge. *See* 76 FR 27390, 27411-12 (May 11, 2011); 76 FR 11598, 11608-09 (Mar. 2, 2011); 75 FR 58539, 58660-61 (Sept. 24, 2010).[209] The Bureau has incorporated these measures into its 2012 HOEPA Proposal, and is seeking comment both in that proposal and this rulemaking on additional trigger modifications that could approximate coverage levels under the existing definition of finance charge, such as adjusting the numeric percentage point triggers for APR under HOEPA or other regimes.

If the adjusted points and fees definition, the TCR, or other trigger modifications were adopted in the other rules, the more inclusive finance charge definition would have little or no effect on coverage under those rules although there might still be effects from the expanded

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[208] In its 2009 proposal, the Board relied on a 2008 survey of closing costs conducted by Bankrate.com that contains data for hypothetical $200,000 loans in urban areas. Based on that data, the Board estimated that the share of first-lien refinance and home improvement loans that are subject to HOEPA would increase by .6 percent if the definition of finance charge was expanded, and that the share of first-lien loans in the range of typical home purchases or refinancings ($175,000 to $225,000) that qualified as higher-priced mortgage loans would increase by 3 percent. The Board also looked at the impact on two states and the District of Columbia because their anti-predatory lending laws had triggers below the level of the historical HOEPA APR threshold, which is benchmarked to U.S. Treasury securities. The Board concluded that the percentage of first-lien loans subject to those laws would increase by 2.5 percent in the District of Columbia and 4.0 percent in Illinois, but would not increase in Maryland. The Bureau is considering the 2010 version of the Bankrate.com survey, but as described in this notice the Bureau is also seeking additional data that would provide more representative information regarding closing and settlement costs that would allow for a more refined analysis of the proposals.

[209] The wording of the Board's proposed definition of "transaction coverage rate" varied slightly between the 2010 Mortgage Proposal and the 2011 Escrows Proposal as to treatment of charges retained by mortgage broker affiliates. In its 2012 HOEPA Proposal, the Bureau proposes to use the 2011 Escrows Proposal version, which would include charges retained by broker affiliates.

definition of finance charge on the coverage of various State mortgage laws and regulations. In addition, because the TCR excludes fees to unaffiliated third-parties, the TCR might result in some loans not triggering one or more of the regulatory regimes discussed above that would qualify under an APR threshold using the current definition of finance charge.[210] The discussion of the costs and benefits of a more inclusive definition of finance charge, below, assumes that the Bureau does not adopt the adjusted points and fees definition, the TCR, or other methods of addressing the impact of a more inclusive approach to the finance charge in the other rulemakings. If the Bureau does adopt those measures, the effects of the proposed definition of finance charge would be muted. For instance, the benefits of a simpler APR calculation may be lessened if creditors are required to use different metrics for purposes of disclosure and for determining coverage under various regulatory regimes, although as discussed below with regard to transaction coverage rate both metrics would be easier to calculate than APR using the existing definition of finance charge. In addition, the effects (both benefits and costs) through expanded coverage of those other rules would be eliminated or (in the case of TCR) somewhat reduced.

b. Benefits to Consumers

The proposed rule may benefit consumers by making the finance charge and corresponding APR more meaningful disclosures of the cost of credit for closed-end transactions secured by real property or a dwelling. Certain limitations on the usefulness of APR as a price comparison tool, however, such as the assumption in the calculation that the loan will be paid as

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[210] As discussed above in part VI, section-by-section analysis for proposed § 1026.4, the Bureau believes that the margin of differences between the TCR and current APR is significantly smaller than the margin between the current APR and the APR calculated using the expanded finance charge definition because relatively few third-party fees would be excluded by the TCR that are not already excluded under current rules. The Bureau is considering ways to supplement the data analysis described above to better assess this issue, and seeks comment and data regarding the potential impacts of the TCR relative to APR calculated using the current and proposed definitions of finance charge.

according to the note to maturity and not pre-paid, may limit this benefit. Consumers may benefit from the expanded finance charge definition to the extent it discourages the proliferation of certain "junk fees," such as fees for preparing loan-related documents, which are currently excluded from the finance charge.

As discussed above, if the expanded definition of finance charge is adopted without modifications to the triggers, the more inclusive finance charge definition would cause more loans to be classified as high-cost mortgages under HOEPA, higher-priced mortgage loans under the Escrows and Ability to Repay rulemakings, and/or higher-risk mortgage loans under the Appraisals rulemaking. The more inclusive finance charge could also affect the number of mortgages that meet the definition of a qualified mortgage under the Ability to Repay rulemaking.

Absent modifications to the triggers, this would result in more consumers receiving the benefits of one or more of the regulatory regimes described above. In the context of the HOEPA rulemaking, the benefits to consumers could include, for example, a better understanding of the risks associated with the loan through additional disclosures (which, in turn, may reduce the likelihood a consumer takes out a mortgage he or she cannot afford), better loan terms due to increased shopping, and an absence of loan features whose associated risks may be difficult for consumers to understand. Consumers could also benefit from more loans being classified as higher-priced under the Escrows or Ability to Repay rulemakings. Under the Escrows rulemaking, more transactions would be required to include escrow accounts for the payment of recurring costs such as taxes and hazard insurance, which could assist more consumers in planning for such costs. Under the Ability to Repay rulemaking, fewer loans could be permitted to have prepayment penalties whose associated risks may be difficult for consumers to understand, more loans could be subject to the separate underwriting standards required for higher-priced balloon loans, which could help to ensure consumers' ability to repay such loans, and fewer loans would be classified as "qualified mortgages." Finally, in the Appraisals rulemaking, an increase in the number of loans classified as higher-risk could benefit consumers because more transactions would be subject to the requirement that creditors obtain one or more interior appraisals before extending credit.

Alternatively, the expanded definition of finance charge may benefit consumers if creditors lower the fees or interest rate on the loan a consumer receives so as to maintain eligibility as a qualified mortgage or to avoid coverage by those other consumer protection laws.

c. Costs to Consumers

Without modifications to the triggers, the proposed more inclusive finance charge could impose direct costs on some consumers. For instance, the cost of obtaining an initial interior appraisal may be passed on to consumers under the Dodd-Frank Act requirements for higher-risk mortgages. The additional protections required under the various regulations may also lead to higher cost of credit for some consumers or reduced access to credit if creditors choose not to make loans that would be classified as high-cost, higher-priced, or higher-risk, or if consumers cannot qualify for credit as a result of the separate underwriting standards that could apply to higher-priced balloon loans.

d. Benefits to Covered Persons

The proposed rule may benefit covered persons by easing regulatory burden and litigation risk associated with the current complex rules for determining which fees are part of the finance charge. Because the current rules for determining which fees are part of the finance charge are complicated and unclear, creditors will benefit from a simpler, more inclusive definition. In particular, feedback received by the Bureau and comments on a similar proposal issued by the Board in the 2009 indicate that, because a failure to calculate the finance charge and the APR accurately gives rise to the right of rescission, creditors incur substantial compliance costs attempting to make accurate calculations and incur substantial litigation costs defending against claims of inaccurate calculations.

e. Costs to Covered Persons

To comply with the proposed rule, creditors may be required to update compliance systems to reflect changes to the finance charge calculation. These updates may involve one-time costs associated with software updates, legal expenses, and personnel training time. As discussed above, if the Bureau adopts the proposal, it expects to provide an implementation period that would coincide either with implementation of the disclosure modifications or with implementation of certain changes to coverage of HOEPA and other regulatory regimes that would be affected by the change in definition. Accordingly, the Bureau believes that software changes and other expenses would be incurred as part of the overall software and compliance system revisions required to comply with the other simultaneous changes, and therefore would not impose a substantial additional burden.

As discussed above, the proposed rule if it were implemented without modifications to the triggers for various regulatory regimes might cause more loans to cross Federal and State high-cost or high-priced loan thresholds based on APR or points and fees. With respect to the HOEPA and Appraisals rulemakings, creditors may incur costs associated with generating and providing HOEPA and appraisal disclosures for additional loans. Creditors may incur additional costs in the context of the Appraisals rulemaking because the Dodd-Frank Act prohibits creditors from charging consumers for second appraisals conducted in connection with certain properties that have been sold in the last 180 days. Similarly, in the context of the Escrows rulemaking, creditors may incur costs associated with maintaining escrow accounts on more transactions if not subject to other exceptions provided by the Dodd-Frank Act. With respect to the Ability to Repay rulemaking, creditors may incur costs associated with making fewer loans with prepayment penalties, or may incur costs from the additional underwriting requirements and/or liability associated with making more loans that are higher-priced balloon loans or that are not qualified mortgages.

In addition, a small number of creditors may also lose a very small fraction of revenue if they are reluctant to make high-cost, higher-priced, or higher-risk mortgage loans and cannot offer alternatives that are as profitable as those loans.

As discussed in more detail in the 2012 HOEPA Proposal, modifying the triggers would require some one-time implementation costs and would create some additional compliance complexity if creditors must use different metrics for disclosure purposes and for determining coverage under particular regulatory regimes. However, with regard to the TCR, the Bureau believes that such impacts would be addressed by the fact that both TCR and APR using the expanded definition of finance charge would be easier to calculate than APR under the current definition. On balance, the Bureau believes adoption of the proposed trigger modifications would reduce the economic impacts on creditors of the more expansive definition of finance charge.

8. Implementation of New Disclosures Mandated by the Dodd-Frank Act

The proposed rule exempts creditors temporarily from compliance with certain new disclosure requirements added to TILA and RESPA by the Dodd-Frank Act until the TILA-RESPA rule takes effect.

As discussed more fully in part V.B, above, title XIV of the Dodd-Frank Act adds new disclosure requirements to TILA and RESPA for mortgage transactions. Although the Dodd-Frank Act does not specifically require inclusion of all of these new disclosures in the Loan Estimate and the Closing Disclosure, the Bureau believes these disclosures should be included in the integrated forms because doing so would improve the overall effectiveness of the integrated disclosure, which may benefit consumers and covered persons, and also reduce burden on covered persons. Finalizing the rules implementing these title XIV disclosures simultaneously with the final TILA-RESPA rule would avoid unnecessary regulatory burden by preventing creditors from having to implement multiple rounds of disclosure rules. The Bureau does not anticipate additional costs to covered persons as a result of delayed implementation of the new disclosure requirements, although, as noted above, covered persons may incur additional recurring costs associated with calculating and disclosing this additional information to consumers once the implementing rules take effect.

9. Other Costs of Complying with the Proposed Regulation

Covered persons will need to learn about the requirements of the regulation and determine what changes to their business practices they would be required to make to come into compliance. These costs will vary considerably across institutions, depending on the size and complexity of their operations. In addition, some firms will rely on their own staff to conduct this analysis, while others will rely on outside counsel, industry sources, or compliance firms. Firms that use compliance systems provided by outside vendors, especially smaller creditors, will likely rely in large part on those vendors to determine what changes they need to make, reducing the burden on those creditors.

E. Potential Specific Impacts of the Proposed Rule

1. Depository Institutions and Credit Unions with $10 Billion or Less in Total Assets, As Described in Section 1026

Other than as noted here, the Bureau believes that the impact of the rule on depository institutions and credit unions with $10 billion or less in total assets will be similar to those for creditors as a whole. The primary difference in the impact on these institutions is likely to come from differences in the compliance systems and software of these institutions.

As discussed above, based on information provided by creditors and by software vendors, the Bureau believes that, in general, larger creditors develop and maintain their own compliance software and systems, while 95 prercent of smaller creditors, which includes the vast majority of those with assets less than $10 billion, primarily rely on software and compliance systems provided by outside vendors. As described above, the use of vendors by smaller creditors will substantially mitigate the costs of revising software and compliance systems, as vendor software updates would likely be included in regular annual updates, and therefore the costs would not be directly passed on to the client creditors.

As discussed above, based on small entities that participated in the Small Business Review Panel process, the Bureau estimates that the small fraction of smaller creditors that maintain their own compliance software and systems would incur costs of roughly $100,000 to update their systems to comply with the proposal. The Bureau estimates that there were a total of 11,749 banks, savings institutions, and credit unions with assets less than $10 billion that originated mortgages in 2010, the most recent year for which complete data are available, and that all but one of them was outside the top twenty mortgage originators.[211] The total estimated cost for these few smaller creditors that maintain their own compliance software and systems is

[211] Estimate based on analysis of HMDA, SNL Call Reports, NCUA Call Reports, and NMLS Call Reports.

therefore $100,000*11,749*5% = $58,700,000 (rounded to the nearest $100,000). Amortized over five years, the annual costs are $11,750,000 for all smaller depository mortgages lenders and credit unions that make mortgages combined.

The one creditor in the largest 20 mortgage creditors that is a depository institution and has assets under $10,000,000 would need to revise its compliance software and systems. The Bureau estimates that the cost for this creditor would be $1,000,000; amortized over five years this is an annual cost of $200,000.

Covered persons would incur one-time costs associated with training employees to use new forms and any new compliance software and systems. The Bureau estimates that each loan officer or other loan originator will need to receive two hours of training, and, as described above, each ten hours of trainee time would require an additional hour of trainer time. Assuming the same ratio of loan officers to originations at these institutions as for the industry as a whole, the Bureau estimates that there are roughly 28,000 loan officers that would need training at these institutions.[212] Based on data from the Bureau of Labor Statistics, the Bureau estimates that the average total compensation is $46 per hour for a loan officer and $39 per hour for a trainer, for a total training cost of (28,000*2*$46)+(2,800*2*$39) = 2,800,000 (rounded to the nearest $100,000). Amortized over five years, this is an annual cost of $560,000 for all smaller depository mortgage lenders and credit unions that make mortgage loans combined.

Taken together, the Bureau estimates that the total one-time costs of complying with the proposed Loan Estimate and Closing Disclosure for these institutions would be roughly $62,500,000. Amortized over five years, this is an annual cost of $12,500,000 for all smaller depository mortgage lenders and credit unions that make mortgage loans combined. The Bureau

[212] Originations estimates based on analysis of HMDA, SNL Call Reports, NCUA Call Reports, and NMLS Call Reports.

estimates that these creditors made roughly 2.6 million originations in 2010. The estimated one-time cost is therefore less than $5.00 per origination.

As discussed above, to comply with the proposed record retention provisions, creditors may be required to reconfigure existing document production and retention systems. The Bureau estimates that creditors with existing electronic storage systems would need to expend 40 hours of software and IT staff time to develop the ability to export data from existing systems to a standardized format. This would apply to the creditors that maintain their own systems – the one depository institution with assets less than $10 billion that is one of the 20 largest mortgage creditors and five percent of other institutions, for a total of 40+(11,749*.05*40) = 23,538 hours. Assuming an hourly labor cost for software and IT staff of $54, based on information from the Bureau of Labor Statistics, gives a total dollar cost of 23,538*$54 = $1,300,000 (rounded to nearest $100,000). Amortized over five years, this is an annual cost of $260,000 for all smaller depository mortgage lenders and credit unions that make mortgage loans combined.

The Bureau understands that requiring standardized, electronic records may be a significant burden for covered persons that do not currently have such electronic filing systems. To reduce the burden on small entities, which will include some depository institutions and credit unions with $10 billion or less in total assets, the Bureau is considering an exemption from the electronic data retention requirements. *See* part VI, section-by-section analysis for proposed § 1026.25.

2. Impact of the Proposed Provisions on Consumers in Rural Areas

Consumers in rural areas may experience benefits and costs from the proposed rule that are different in certain respects to those experienced by consumers in general. The extent to which rural consumers shop for mortgages and the ways in which they shop may differ than the extent to which other consumers shop, which may affect the benefits of the revised Loan Estimate. The Bureau is unaware of information on these differences, however. To the extent that the impacts of the proposal on creditors differ by type of creditor, this may affect the costs and benefits of the proposal on consumers in rural areas.

The Bureau will further consider the impact of the proposed rule on consumers in rural areas. The Bureau therefore asks interested parties to provide data, research results and other factual information on the impact of the proposed rule on consumers in rural areas.

F. Additional Analysis Being Considered and Request for Information

The Bureau will further consider the benefits, costs, and impacts of the proposed provisions before finalizing the proposal. As noted above, there are a number of areas where additional information would allow the Bureau to better estimate the benefits, costs, and impacts of this proposal and more fully inform the rulemaking. In particular, the Bureau seeks additional data to analyze the frequency, magnitude, and type of differences between initial estimates of settlement costs and actual costs. This will enable the Bureau to better estimate the effects of the various aspects of this proposal that relate to settlement costs and how they change between the initial RESPA GFE and closing. In addition, the Bureau asks interested parties to provide general information, data, and research results on:

- How consumers might respond to better mortgage costs disclosures;
- The benefits to consumers of clearer information about their mortgages;
- The potential impact on the functioning of the market and on creditors if consumers better understood their loan;
- The potential impact on creditors of the elimination of the ten percent tolerance for cost changes for certain settlement fees;

- The effects on the role of different market participants of various aspects of the proposal, such as the elimination of the ten percent tolerance for cost changes on certain settlement fees and the alternative proposal that creditors be solely responsible for the provision of the Closing Disclosure;
- The effects of adopting a more inclusive finance charge, including with respect to the rulemakings on HOEPA, Escrows, Appraisals, and Ability to Repay;
- The costs to covered persons of complying with the proposal, such as revising compliance software and systems;
- How often creditors or mortgage brokers obtain additional information from the consumer after the Loan Estimate has been issued that affects the costs of settlement services for the loan and that may cause the creditor or broker to issue a revised Loan Estimate; and
- How often creditors are providing additional disclosures that are not required by the current rules and that they would no longer send if the rules are clarified.

To supplement the information discussed in this preamble and any information that the Bureau may receive from commenters, the Bureau is currently working to gather additional data that may be relevant to this and other mortgage related rulemakings. These data may include additional data from the National Mortgage License System (NMLS) and the NMLS Mortgage Call Report, loan file extracts from various lenders, and data from the pilot phases of the National Mortgage Database. The Bureau expects that each of these datasets will be confidential. This section now describes each dataset in turn.

First, as the sole system supporting licensure/registration of mortgage companies for 53 agencies for states and territories and mortgage loan originators under the SAFE Act, NMLS contains basic identifying information for nondepository mortgage loan origination companies. Firms that hold a State license or State registration through NMLS are required to complete either a standard or expanded Mortgage Call Report (MCR). The Standard MCR includes data on each firm's residential mortgage loan activity including applications, closed loans, individual mortgage loan originator (MLO) activity, line of credit and other data repurchase information by State. It also includes financial information at the company level. The expanded report collects more detailed information in each of these areas for those firms that sell to Fannie Mae or Freddie Mac.[213] To date, the Bureau has received basic data on the firms in the NMLS and de-identified data and tabulations of data from the Mortgage Call Report. These data were used, along with HMDA data, to help estimate the number and characteristics of nondepository institutions active in various mortgage activities. In the near future, the Bureau may receive additional data on loan activity and financial information from the NMLS including loan activity and financial information for identified lenders. The Bureau anticipates that these data will provide additional information about the number, size, type, and level of activity for nondepository lenders engaging in various mortgage origination and servicing activities. As such, it supplements the Bureau's current data for nondepository institutions reported in HMDA and the data already received from NMLS. For example, these new data will include information about the number and size of closed-end first and second loans originated, fees earned from origination activity, levels of servicing, revenue estimates for each firm and other information. The Bureau may compile some simple counts and tabulations and conduct some basic statistical modeling to better model the levels of various activities at various types of firms. In particular, the information from the NMLS and the MCR may help the Bureau refine its

[213] More information about the Mortgage Call Report can be found at http://mortgage.nationwidelicensingsystem.org/slr/common/mcr/Pages/default.aspx.

estimates of benefits, costs, and impacts for each of the revisions to the RESPA GFE and settlement statement forms, changes to the HOEPA thresholds, changes to requirements for appraisals, updates to loan originator compensation rules, proposed new servicing requirements, and the new ability to repay standards.

Second, the Bureau is working to obtain a random selection of loan-level data from several lenders. The Bureau intends to request loan file data from lenders of various sizes and geographic locations to construct a representative dataset. In particular, the Bureau will request a random sample of RESPA GFE and RESPA settlement statement forms from loan files for closed-end loans. These forms include data on some or all loan characteristics including settlement charges, origination charges, appraisal fees, flood certifications, mortgage insurance premiums, homeowner's insurance, title charges, balloon payments, prepayment penalties, origination charges, and credit charges or points. Through conversations with industry, the Bureau believes that such loan files exist in standard electronic formats allowing for the creation of a representative sample for analysis. The Bureau may use these data to further measure the impacts of certain proposed changes. Calculations of various categories of settlement and origination charges may help the Bureau calculate the various impacts of proposed changes to the definition of finance charge and other aspects of the proposal, including proposed changes in the number and characteristics of loans that exceed the HOEPA thresholds, loans that would meet the high rate or high risk definitions mandating additional consumer protections, and loans that meet the points and fees thresholds contained in the ability to repay provisions of Dodd-Frank.

Third, the Bureau may also use data from the pilot phases of the National Mortgage Database (NMDB) to refine its proposals and/or its assessments of the benefits, costs, and impacts of these proposals. The NMDB is a comprehensive database, currently under development, of loan-level information on first lien single-family mortgages. It is designed to be a nationally representative sample (1 percent) and contains data derived from credit reporting agency data and other administrative sources along with data from surveys of mortgage borrowers. The first two pilot phases, conducted over the past two years, vetted the data development process, successfully pretested the survey component and produced a prototype dataset. The initial pilot phases validated that sampled credit repository data are both accurate and comprehensive and that the survey component yields a representative sample and a sufficient response rate. A third pilot is currently being conducted with the survey being mailed to holders of five thousand newly originated mortgages sampled from the prototype NMDB. Based on the 2011 pilot, a response rate of fifty percent or higher is expected. These survey data will be combined with the credit repository information of non-respondents, and then de-identified. Credit repository data will be used to minimize non-response bias, and attempts will be made to impute missing values. The data from the third pilot will not be made public. However, to the extent possible, the data may be analyzed to assist the Bureau in its regulatory activities and these analyses will be made publically available.

The survey data from the pilots may be used by the Bureau to analyze consumers' shopping behavior regarding mortgages. For instance, the Bureau may calculate the number of consumers who use brokers, the number of lenders contacted by borrowers, how often and with what patterns potential borrowers switch lenders, and other behaviors. Questions may also assess borrowers' understanding of their loan terms and the various charges involved with origination. Tabulations of the survey data for various populations and simple regression techniques may be used to help the Bureau with its analysis.

The Bureau requests commenters to submit data and to provide suggestions for additional data to assess the issues discussed above and other potential benefits, costs, and impacts of the proposed rule. The Bureau also requests comment on the use of the data described above.

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by SBREFA, requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations. 5 U.S.C. 601 *et seq*. The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603, 604. The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required. 5 U.S.C. 609.

The Bureau has not certified that the proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. Accordingly, the Bureau convened and chaired a Small Business Review Panel to consider the impact of the proposed rule on small entities that would be subject to that rule and to obtain feedback from representatives of such small entities. The Small Business Review Panel for this rulemaking is discussed below in part VIII.A.

The Bureau is publishing an IRFA. Among other things, the IRFA estimates the number of small entities that will be subject to the proposed rule and describe the impact of that rule on those entities. The IRFA for this rulemaking is set forth below in part VIII.B.

A. Small Business Review Panel

Under section 609(b) of the RFA, as amended by SBREFA and the Dodd-Frank Act, the Bureau seeks, prior to conducting the IRFA, information from representatives of small entities that may potentially be affected by its proposed rules to assess the potential impacts of that rule on such small entities. 5 U.S.C. 609(b). Section 609(b) sets forth a series of procedural steps with regard to obtaining this information. The Bureau first notifies the Chief Counsel for Advocacy (Chief Counsel) of the U.S. Small Business Administration (SBA) and provides the Chief Counsel with information on the potential impacts of the proposed rule on small entities and the types of small entities that might be affected. 5 U.S.C. 609(b)(1). Not later than 15 days after receipt of the formal notification and other information described in section 609(b)(1) of the RFA, the Chief Counsel then identify individuals representative of affected small entities for the purpose of obtaining advice and recommendations from those individuals about the potential impacts of the proposed rule (the small entity representatives, or SERs). 5 U.S.C. 609(b)(2). The Bureau convenes a review panel for such rule consisting wholly of full time Federal employees of the office within the Bureau responsible for carrying out the proposed rule, the Office of Information and Regulatory Affairs (OIRA) within the U.S. Office of Management and Budget (OMB), and the Chief Counsel (collectively, the Small Business Review Panel or Panel). 5 U.S.C. 609(b)(3). The Panel reviews any material the Bureau has prepared in connection with the SBREFA process and collects advice and recommendations of each individual small entity representative identified by the Bureau after consultation with the Chief Counsel on issues related to sections 603(b)(3) through (b)(5) and 603(c) of the RFA.[214] 5 U.S.C. 609(b)(4). Not

[214] As described in the IRFA in part VIII.B, below, sections 603(b)(3) through (b)(5) and 603(c) of the RFA, respectively, require a description of and, where feasible, provision of an estimate of the number of small entities to which the proposed rule will apply; a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the

later than 60 days after the date the Bureau convenes the Small Business Review Panel, the Panel reports on the comments of the SERs and its findings as to the issues on which the Panel consulted with the SERs, and the report is made public as part of the rulemaking record. 5 U.S.C. 609(b)(5). Where appropriate, the Bureau modifies the rule or the IRFA in light of the foregoing process. 5 U.S.C. 609(b)(6).

On February 7, 2012, the Bureau provided the Chief Counsel with the formal notification and other information required under section 609(b)(1) of the RFA. To obtain feedback from small entity representatives to inform the Panel pursuant to sections 609(b)(2) and 609(b)(4) of the RFA, the Bureau, in consultation with the Chief Counsel, identified six categories of small entities that may be subject to the proposed rule for purposes of the IRFA: commercial banks/savings institutions, credit unions, mortgage brokers, mortgage companies (non-bank lenders), settlement (closing) agents, and nonprofit organizations. These are the categories of entities that may be required to provide, and maintain related records on, the integrated mortgage disclosures, either because they may make mortgage loans subject to the proposed rule or because they may be responsible for completing or providing required disclosures. Part VIII.B.3, below, describes in greater detail the Bureau's analysis of the number and types of entities that may be affected by the proposed rule. Having identified the categories of small entities that may be subject to the proposed rule for purposes of an IRFA, the Bureau, in consultation with the Chief Counsel, selected 16 SERs to participate in the SBREFA process. As described in chapter 7 of the Panel's report (described below), the SERs included representatives

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requirement and the type of professional skills necessary for preparation of the report or record; an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule; and a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. 5 U.S.C. 603(b)(3)-(5), 603(c).

from each of the categories identified by the Bureau and comprised a diverse group of individuals with regard to geography and type of locality (*i.e.*, rural, urban, or suburban areas).

On February 21, 2012, the Bureau convened the Panel pursuant to section 609(b)(3) of the RFA. To collect the advice and recommendations of the SERs under section 609(b)(4) of the RFA, the Panel held an outreach meeting/teleconference with the SERs on March 6, 2012 (the Panel Outreach Meeting). To help the SERs prepare for the Panel Outreach Meeting, the Panel circulated briefing materials prepared in connection with section 609(b)(4) of the RFA that summarized the proposals under consideration at that time, posed discussion issues, and provided information about the SBREFA process generally.[215] All 16 SERs participated in the Panel Outreach Meeting either in person or by telephone. The Panel also provided the SERs with an opportunity to submit written feedback. In response, the Panel received written feedback from 12 of the representatives.[216]

On April 23, 2012, the Panel submitted to the Director of the Bureau, Richard Cordray, a written report (the Small Business Review Panel Report) that includes the following: background information on the proposals under consideration at the time; information on the types of small entities that would be subject to those proposals and on the SERs who were selected to advise the Panel; a summary of the Panel's outreach to obtain the advice and recommendations of those SERs; a discussion of the comments and recommendations of the

[215] The Bureau posted these materials on its website and invited the public to email remarks on the materials. *See* http://www.consumerfinance.gov/pressreleases/consumer-financial-protection-bureau-convenes-small-business-panel-for-know-before-you-owe-mortgage-disclosures/ (the materials are accessible via the links within this document).
[216] This written feedback is attached as appendix A to the written report of the Panel, discussed below.

SERs; and a discussion of the Panel findings, focusing on the statutory elements required under section 603 of the RFA. 5 U.S.C. 609(b)(5).[217]

In preparing this proposed rule and the IRFA, the Bureau has carefully considered the feedback from the SERs participating in the SBREFA process and the findings and recommendations in the Small Business Review Panel Report. The section-by-section analysis of the proposed rule in part VI, above, and the IRFA discuss this feedback and the specific findings and recommendations of the Panel, as applicable. The SBREFA process provided the Panel and the Bureau with an opportunity to identify and explore opportunities to minimize the burden of the rule on small entities while achieving the rule's purposes. It is important to note, however, that the Panel prepared the Small Business Review Panel Report at a preliminary stage of the proposal's development and that the Panel Report—in particular, the Panel's findings and recommendations—should be considered in that light. Also, the Small Business Review Panel Report expressly stated that options it identified for reducing the proposed rule's regulatory impact on small entities were subject to further consideration, analysis, and data collection by the Bureau to determine if the options identified were practicable, enforceable, and consistent with TILA, RESPA, the Dodd-Frank Act, and their statutory purposes. The proposed rule and the IRFA reflect further consideration, analysis, and data collection by the Bureau.

B. Initial Regulatory Flexibility Analysis

Under section 603(a) of the RFA, an IRFA "shall describe the impact of the proposed rule on small entities." 5 U.S.C. 603(a). Section 603(b) of the RFA sets forth the required elements of the IRFA. Section 603(b)(1) requires the IRFA to contain a description of the reasons why action by the agency is being considered. 5 U.S.C. 603(b)(1). Section 603(b)(2)

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[217] *Final Report of the Small Business Review Panel on the CFPB's Proposals Under Consideration for Integration of TILA and RESPA Mortgage Disclosure Requirements*, dated April 23, 2012. As discussed above, this report is available on the Bureau's website.

requires a succinct statement of the objectives of, and the legal basis for, the proposed rule. 5 U.S.C. 603(b)(2). The IRFA further must contain a description of and, where feasible, provision of an estimate of the number of small entities to which the proposed rule will apply. 5 U.S.C. 603(b)(3). Section 603(b)(4) requires a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the types of professional skills necessary for the preparation of the report or record. 5 U.S.C. 603(b)(4). In addition, the Bureau must identify, to the extent practicable, all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule. 5 U.S.C. 603(b)(5). The Bureau, further, must describe any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. 5 U.S.C. 603(b)(6). Finally, as amended by the Dodd-Frank Act, section 603(d) of the RFA requires that the IRFA include a description of any projected increase in the cost of credit for small entities, a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any increase in the cost of credit for small entities (if such an increase in the cost of credit is projected), and a description of the advice and recommendations of representatives of small entities relating to the cost of credit issues. 5 U.S.C. 603(d)(1); Dodd-Frank Act section 1100G(d)(1).

1. Description of the Reasons Why Agency Action Is Being Considered

As discussed in part II, above, for more than 30 years, TILA and RESPA have required lenders and settlement agents to give to consumers who take out a mortgage loan different but overlapping disclosure forms regarding the loan's terms and costs. This duplication has long been recognized as inefficient and confusing for consumers and industry. The following two paragraphs briefly summarize the statutory differences, which are described in more detail in part I and part II, above.

a. TILA/Regulation Z

In connection with any closed-end credit transaction secured by a consumer's dwelling and subject to RESPA, TILA and Regulation Z require creditors to provide good faith estimates of loan terms (such as the APR) within three business days after receiving the consumer's mortgage application (*i.e.*, the early TILA disclosure). If the APR on the early TILA disclosure becomes inaccurate, TILA requires the creditor to provide a corrected disclosure at least three business days before closing (*i.e.*, the corrected TILA disclosure). TILA requires that the disclosures be provided in final form at the time of consummation (*i.e.*, the final TILA disclosure). *See* part II.C, above.

b. RESPA/Regulation X

In connection with any federally related mortgage loan, RESPA and Regulation X require that lenders provide a good faith estimate of the amount or range of charges for certain settlement services the borrower is likely to incur in connection with the settlement (such as fees for an appraisal or a title search) and related loan information within three business days after receiving the consumer's application (*i.e.*, the RESPA GFE). RESPA also requires that "the person conducting the settlement" (typically, the settlement or closing agent) provide the consumer with a completed, itemized statement of settlement charges at or before settlement (*i.e.*, the RESPA settlement statement). *See* part II.B above.

Furthermore, the recent mortgage crisis highlighted deficiencies in consumer understanding of mortgage transactions, which may be attributed in part to shortcomings in mortgage disclosures. Part II.A above discusses in greater detail the background of the mortgage market. Prior to the creation of the Bureau, other government agencies took steps to address these shortcomings. Specifically, HUD, which was previously responsible for implementing RESPA, finalized rules in 2008 that substantially revised the RESPA mortgage disclosures (*i.e.*, HUD's 2008 RESPA Final Rule). In addition, the Board, which was previously responsible for TILA, proposed rules in 2009 that would have substantially revised the TILA mortgage disclosures (*i.e.*, the Board's 2009 Closed-End Proposal). However, neither HUD nor the Board had the authority to combine the TILA and RESPA disclosures.

As noted above, the Dodd-Frank Act consolidated rulemaking authority for RESPA and TILA in the Bureau. In addition, the Dodd-Frank Act amended both statutes to mandate specifically that the Bureau propose rules and forms combining the TILA and RESPA disclosures for mortgage loans subject to either law or both laws by July 21, 2012. Dodd-Frank Act sections 1032(f), 1098, 1100A. The Dodd-Frank Act establishes two goals for the consolidation: to improve consumer understanding of mortgage loan transactions; and to facilitate industry compliance with TILA and RESPA. The Dodd-Frank Act also made several amendments to the disclosure requirements in TILA and RESPA. In particular, the Dodd-Frank Act amended TILA to require the creditor to disclose in the early and final TILA disclosures the aggregate amount of settlement charges provided in connection with the loan, which was previously disclosed only by the settlement agent in the RESPA settlement statement.[218]

The proposed rule, therefore, both follows on the prior efforts of HUD and the Board to address shortcomings in the mortgage market with regard to mortgage disclosures and effectuates Congress's specific mandate to the Bureau to integrate the mortgage disclosures

[218] Section 1419 of the Dodd-Frank Act, adding section 128(a)(17) to TILA.

under TILA and RESPA. For a further description of the reasons why agency action is being considered, see the background discussion for the proposed rule in part II, above.

2. Statement of the Objectives of, and Legal Basis for, the Proposed Rule

As described above, the proposed rule effectuates Congress's mandate to integrate the mortgage disclosures required under TILA and RESPA. In particular, sections 1098 and 1100A of the Dodd-Frank Act state that the purposes of the integrated disclosures are to facilitate compliance with TILA and RESPA and "to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures." The integrated disclosures also effectuate the underlying statutory purposes of RESPA and TILA. One of the statutory purposes of RESPA is "more effective advance disclosure to home buyers and sellers of settlement costs." 12 U.S.C. 2601(b)(1). And one statutory purpose of TILA is to "to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit." 15 U.S.C. 1601(a).

Furthermore, this rulemaking promotes consumer comprehension of financial disclosures. Section 1021(b) of the Dodd-Frank Act authorizes the Bureau to exercise its authorities to ensure that, with respect to consumer financial products and services, "consumers are provided with timely and understandable information to make responsible decisions about financial transactions." 12 U.S.C. 5511(b). Section 1032(a) of the Dodd-Frank Act provides the Bureau with the authority to "prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances." 12 U.S.C. 5532(a).

The proposed rule also is intended to provide other benefits for consumers. First, the new prototype disclosure forms are simpler and more comprehensible, and their design has been refined to incorporate extensive consumer and industry feedback gathered through online tools and one-on-one testing across the country. *See* part III, above. By conveying information on key loan terms clearly, the redesigned disclosure forms may improve the ability of consumers to shop for and compare mortgage terms across loan offers and improve their understanding of mortgage loan transactions. Second, the proposed rule seeks to improve consumers' ability to shop by more clearly delineating between estimates regulated by TILA and RESPA and non-binding preapplication estimates. Third, the proposed rule may reduce the magnitude and frequency of changes in costs between application and consummation and may decrease the likelihood that consumers will face unexpected changes in costs due to "bait and switch" tactics.[219]

Lastly, the Bureau is seeking to reconcile differences in the scope, terminology, and requirements of TILA, RESPA, and their current implementing regulations. As discussed above, the Dodd-Frank Act did not reconcile a number of statutory differences between TILA and RESPA (*e.g.*, the different requirements on the timing of disclosures and which party is responsible for providing the disclosures), which the Bureau needs to do in order to satisfy the mandate to integrate the disclosures. Moreover, the proposed rule clarifies and streamlines aspects of the current rules that have been identified as confusing by lenders, mortgage brokers, mortgage companies, and settlement agents, as well as for consumers who receive the

[219] This discussion of the proposed rule's benefits to consumers is intended to be illustrative, not exhaustive. Additional consumer benefits that may result from the proposed rule are discussed in other sections of the proposed rule.

disclosures. The Bureau believes that 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 proposed rule is discussed in detail in the legal authority analysis in part IV and in the section-by-section analysis in part VI, above.

3. Description and, Where Feasible, Provision of an Estimate of the Number of Small Entities to which the Proposed Rule Will Apply

As discussed in the Small Business Review Panel Report, for purposes of assessing the impacts of the proposed rule on small entities, "small entities" is defined in the RFA to include small businesses, small nonprofit organizations, and small government jurisdictions. 5 U.S.C. 601(6). A "small business" is determined by application of SBA regulations and reference to the North American Industry Classification System (NAICS) classifications and size standards.[220] 5 U.S.C. 601(3). Under such standards, banks and other depository institutions are considered "small" if they have $175 million or less in assets, and for other financial businesses, the threshold is average annual receipts (*i.e.*, annual revenues) that do not exceed $7 million.[221]

During the Small Business Review Panel process, the Bureau identified six categories of small entities that may be subject to the proposed rule for purposes of the RFA. These are the categories of entities that may be required to provide, and maintain related records on, the integrated disclosures, either because they may make residential mortgage loans or because they may be responsible for completing or providing required disclosures. The categories and the

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[220] The current SBA size standards are found on SBA's website at http://www.sba.gov/content/table-small-business-size-standards.

[221] *See id.*

SBA small entity thresholds for those categories are: (1) commercial banks[222] with up to $175,000,000 in assets, (2) credit unions with up to $175,000,000 in assets, (3) mortgage brokers with up to $7,000,000 in annual revenue, (4) mortgage companies (non-bank lenders) with up to $7,000,000 in annual revenue, (5) settlement (closing) agents with up to $7,000,000 in annual revenue, and (6) nonprofit organizations that are not for profit, independently owned and operated, and not dominant in the field.

Since the time the Small Business Review Panel Report was completed, some of the data sources that the Bureau used to estimate the numbers of small entities of different types have released updated information and the Bureau has revised some aspects of the estimation procedure. The following table provides the Bureau's revised estimates of the number and types of entities that may be affected by the proposed rule:[223]

[222] For purposes of the Bureau's Small Business Review Panel Outline circulated in advance of the Panel Outreach Meeting, the categories of commercial banks and savings institutions were combined under the label "commercial banks." The list of SERs identified in chapter 7 of the Small Business Review Panel Report includes one representative of a savings institution.

[223] In the Small Business Review Panel Report, chapter 9.1, a preliminary estimate of affected entities and small entities was included in a similar format (a chart with clarifying notes). *See* Small Business Review Panel Report at 26-27.

Table 1: TILA-RESPA Integrated Disclosures: Estimated number of affected entities and small entities by NAICS code and engagement in closed-end mortgage transactions

Category	NAICS	Small entity Threshold	Total entities	Small entities	Entities engaged in closed-end mortgage transactions	Small entities engaged in closed-end mortgage transactions
Commercial banks & savings institutions[a]	522110, 522120	$175,000,000 assets	7,741	4,255	7,500	4,084
Credit unions[b]	522130	$175,000,000 assets	7,491	6,569	4,359	3,441
Mortgage companies (Non-bank lenders)[c]	522292	$7,000,000 revenues	2,515	2,282	2,515	2,282
Mortgage brokers[c]	522310	$7,000,000 revenues	8,051	8,049	8,051	8,049
Settlement agents[d]	541191	$7,000,000 revenues	8,261	8,131	8,261	8,131

a. Asset size obtained from December 2010 Call Report data as compiled by SNL Financial. Savings institutions include thrifts, savings banks, mutual banks, and similar institutions. Estimated number of lenders originating any closed-end mortgages is based on 2010 HMDA data and, for entities that do not report to HMDA, loan counts are projected based on Call Report data and counts for HMDA filers.

b. Asset size and engagement in closed-end mortgage loans was obtained from December 2010 National Credit Union Administration Call Report. Count of credit unions engaged in closed-end mortgage transactions may include some institutions that make only first-lien, open-end loans.

c. Total number of entities and small entities was estimated based on the Nationwide Mortgage Licensing System and Registry Mortgage Call Report (MCR) data for Q2 and Q3 of 2011. Entities that report to MCR are considered to be engaged in closed-end mortgage transactions if they report either: (1) originating or brokering at least one closed-end mortgage; or (2) a positive dollar value of originated or brokered loans. Revenue was not available for over 90 percent of entities considered to be engaged in closed-end mortgage transactions. To estimate the number of small entities, revenue for entities that did not report revenue is estimated based on the dollar value and number of loans originated and the dollar value and number of loans brokered. Because such a large share of observations are missing revenue information, the estimated number of small entities may contain substantial estimation uncertainty and may be more sensitive to model specification than if revenue were available for a larger fraction of entities. Entities that are considered to have brokered but not originated any closed-end mortgages and that did not report revenue are assumed to be small entities because nearly every entity that reported revenue that brokered but did not originate loans had revenue less than $7 million.

d. Total number of entities and small entities estimated based on 2007 Economic Census data for firms operated for the entire year. All entities are assumed to engage in closed-end mortgage transactions.

4. Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities which Will be Subject to the Requirement and the Type of Professional Skills Necessary for the Preparation of the Report

The proposed rule does not impose new reporting requirements. The proposed rule does, however, impose new recordkeeping and compliance requirements on certain small entities. The requirements to integrate the TILA and RESPA disclosures and the imposition of new disclosure requirements under the Dodd-Frank Act, title XIV, appear specifically in the Dodd-Frank Act, while the recordkeeping requirements do not. Thus, to a large extent, the impacts discussed below are impacts of the statute, not of the regulation *per se*—that is, the Bureau discusses impacts against a pre-statute baseline.

a. Reporting Requirements

The proposed rule does not impose new reporting requirements.

b. Recordkeeping Requirements

The proposed rule imposes new data retention requirements for the Loan Estimate and the Closing Disclosure by requiring creditors to maintain evidence of compliance in machine readable, electronic format. The proposed retention period is three years for the Loan Estimates and five years for the Closing Disclosures. *See* part VI above, section-by-section analysis for proposed § 1026.25.

i. Benefits to Small Entities

A prescribed electronic format may reduce costs across the entire mortgage loan origination industry due to the efficiency gains associated with a standardized data format. Based on industry feedback, the Bureau understands that creditors, mortgage brokers, title companies, investors, and other mortgage technology providers use systems with proprietary data formats. As a result, data must be translated between formats as it is transmitted from one point to another throughout the mortgage loan origination process. A standard format should lower those coordination costs. In addition, a standard format may also facilitate innovation in the financial services industry by making it easier for technology companies to create new programs that improve the mortgage origination process and lower industry costs, instead of tailoring programs to each firm's unique proprietary data format; may lower ongoing costs by facilitating industry adoption of mortgage documentation technology and reducing industry's reliance on paper files; and may ease the burden of staff time and resources devoted to on-site supervisory examinations by allowing for remote examinations of compliance. All of these benefits may reduce industry cost and burden in the long run, thereby reducing costs to consumers as well.

The Bureau is aware that there are various efforts currently underway to standardize the format for storage and transmission of mortgage origination related data. To the extent that the Bureau's proposal may advance these efforts toward a standard electronic record format, the proposal may help eliminate multiple data formats, thereby increasing efficiency in the origination process, reducing industry costs in the long term, and reducing costs to consumers. Also, the Bureau is aware that many firms currently face significant internal costs for maintaining multiple internal technological systems. To the extent the Bureau's efforts reduce uncertainly regarding the eventual standard, a single data format specified by the Bureau may lower costs by enabling creditors to migrate from older data formats to a single, standard data format.

ii. Costs to Small Entities

The proposed rule may result in costs to small entities. Under current rules, creditors must retain evidence of compliance with the disclosure requirements in Regulation X (*i.e.*, a copy of the RESPA settlement statement) and Regulation Z (*i.e.*, evidence of compliance generally) for five years and two years, respectively, but are not required to maintain such evidence an electronic, machine readable format. 12 CFR 1024.10(e); 1026.25. Based on industry feedback, the Bureau understands that firms currently rely on electronic systems for most aspects of the mortgage loan origination process, including electronic record creation and storage. Not all small creditors currently maintain data in a machine-readable format, however, and those who do may not retain it in the format that may ultimately be adopted. To comply with the proposed record retention provisions, therefore, creditors may be required to reconfigure existing document production and retention systems. For small creditors that maintain their own compliance systems and software, the Bureau does not believe that adding the capacity to maintain data in a standard machine readable format will impose a substantial burden, as the only requirement will be to output existing data to a new format and then store that data. The Bureau believes that the primary cost will be one-time systems changes that could be accomplished at the same time that systems changes are carried out to comply with the new proposed Loan Estimate and Closing Disclosure. Similarly, small creditors that rely on vendors would likely rely on vendor software and systems to comply with the data retention requirement; at least one vendor already offers indefinite data storage to customers that use their web-based compliance tool.

The Bureau understands, however, that requiring standardized, electronic records may be a significant burden for small creditors that do not currently have such electronic filing systems or use vendor software. To reduce the burden on small entities, the Bureau is considering an exemption from the electronic data retention requirements. *See* part VI above, section-by-section analysis for proposed § 1026.25.

c. Compliance Requirements

The proposal contains both specific proposed provisions with regulatory or commentary language (proposed provisions) as well as requests for comment on modifications where regulatory or commentary language was not specifically included (additional proposed modifications). The analysis below considers the benefits, costs, and impacts of the following major proposed provisions and the additional proposed modifications on small entities:

1. The integration of the initial and closing disclosures (the Loan Estimate and Closing Disclosure, respectively),
2. The definition of application,
3. The disclaimer on pre-application written estimates,
4. Permissible changes to settlement costs and re-disclosure of initial disclosures,
5. Provision of the Closing Disclosure,
6. The definition of the finance charge, and
7. Implementation of new disclosures mandated by the Dodd-Frank Act.

The analysis examines the benefits, costs, and impacts of the major provisions of the proposed rule against a pre-statutory baseline. This means that to the extent there are benefits, costs, or other relevant impacts emanating from the relevant provisions of the Dodd-Frank Act, those are combined with the benefits, costs, and impact of the regulation itself in conducting this analysis. The Bureau has discretion in future rulemakings to choose the most appropriate baseline for that particular rulemaking.

The Bureau generally requests comment on the proposed provisions and additional proposed modifications and on the Bureau's assessment of the benefits, costs, and impacts on small entities of the major proposed provisions and additional proposed modifications.

i. Integrated Initial and Closing Disclosures

The proposed rule requires that the Loan Estimate be provided to consumers within three business days after receipt of the consumer's application, to replace the early TILA disclosure and RESPA GFE, and that the Closing Disclosure be provided to consumers at least three business days prior to consummation, to replace the final TILA disclosure and RESPA settlement statement. As discussed above, TILA authorizes the Bureau to publish model forms for the TILA disclosures, while RESPA authorizes the Bureau to require the use of standard forms (*e.g.*, the prescribed RESPA GFE and settlement statement forms). Accordingly, the Bureau is proposing to require the use of standard Loan Estimate and Closing Disclosure forms for mortgage loan transactions that are subject to RESPA, other than reverse mortgages. For transactions that are subject only to TILA, however, the forms would be model disclosures, consistent with the provisions of that statute. The proposed rule also incorporates prior informal guidance regarding compliance with HUD's 2008 Final RESPA Rule into Regulation Z and official commentary, as necessary and appropriate.

Benefits to Small Entities. The integration of the early TILA disclosure and the RESPA GFE, and the revised TILA disclosure and the RESPA settlement statement, may benefit small entities, including small creditors, mortgage brokers, and settlement agents that provide the disclosures. It will reduce the number of disclosures that covered persons need to prepare and provide and the number of disclosure-provision systems and processes that covered persons need to maintain. In addition, the three-page Loan Estimate would replace a three-page RESPA GFE and two-page early TILA disclosure, as well as incorporate other new disclosure requirements in the Dodd-Frank Act that might otherwise be provided separately.

Most small entities that participated in the Small Business Review Panel process stated that the integrated forms would make it easier to explain transactions to consumers. One letter from several small entity settlement agents indicated that the new forms could actually lead to more questions during a closing; however, the Bureau is alternatively proposing and soliciting comment on removing from the integrated forms certain disclosures, such as the total interest percentage and costs of funds, which may be difficult to explain to consumers. Information submitted by several settlement agents indicates that requiring the use of standard forms and providing clearer regulatory guidance could save as much as 30 minutes per closing by standardizing practices across lenders and reducing confusion. Based on an industry estimate of a typical hourly wage of a settlement agent of $31 per hour, this translates into a dollar savings from the simplified closing forms of $16.50 per closing. Some portion of these savings would likely be passed on to the consumers.

The integrated disclosures also permit creditors to consolidate certain numerical calculations. For example, Regulations Z and X currently require two different calculations for the disclosure of monthly payment information on the early TILA disclosure and the RESPA GFE. The integrated Loan Estimate consolidates these calculations into one monthly payment disclosure, which may facilitate compliance and ease burden on small entities. Other examples of overlapping but potentially different numerical disclosures required under Regulations Z and X include information about balloon payments and prepayment penalties.

Costs to Small Entities. The integrated Loan Estimate and the Closing Disclosure would result in certain compliance costs to small entities. The Bureau believes that many of the costs of complying with these requirements would be common across the two disclosures, and therefore discusses them together here. In addition, the Bureau believes that these costs would consist primarily of one-time costs to revise software and compliance systems, as other costs of compliance should not vary significantly from the costs of complying with existing regulations.

Small entities would need to adapt their software and compliance systems to produce the new forms. In addition to changing the format of the required forms, the new proposed forms would include several new disclosures that are required by the Dodd-Frank Act. The Bureau believes that this additional information would be added to the forms as part of the process of adapting software and compliance systems to produce the new forms, and therefore does not provide separate estimates for the costs of this additional information.

Based on information provided by creditors and by software vendors, the Bureau believes that, in general, small creditors primarily rely on software and compliance systems provided by outside vendors. Based on industry feedback, the Bureau believes that that 95 percent of creditors outside the top 20 rely on vendors, and it is likely the case that the percentage of small creditors using vendors is even higher than this. The use of vendors by small creditors will substantially mitigate the costs of revising software and compliance systems, as the efforts of a single vendor would address the needs of a large number of creditors. Based on discussions with a leading mortgage origination technology provider, the Bureau believes that these updates would likely be included in regular annual updates, and therefore the costs would not be directly passed on to the client creditors. More than 95 percent of small creditors, therefore, would not pay directly for software updates to comply with the new rules.

Based on small entities that participated in the Small Business Review Panel process, the Bureau estimates that smaller creditors that maintain their own compliance software and systems would incur costs of roughly $100,000 to determine what changes need to be made and to update their systems to comply with the proposal.[224] The total cost for these smaller creditors that maintain their own compliance software and systems is therefore $100,000*9,807*5%=$49,000,000 (rounded to the nearest $100,000). As noted above, the share of small entities that maintain their own compliance software and systems is likely less than five percent, so this is likely an over-estimate of the costs of revising these systems.

[224] Small entities that participated in the Small Business Review Panel process provided a wide range of estimates. *See* Small Business Review Panel Report at 17-20.

Covered persons would incur one-time costs associated with training employees to use new forms and any new compliance software and systems. The Bureau estimates that each loan officer or other loan originator will need to receive two hours of training, and that one trainer would be needed for each ten trainees. Assuming the same ratio of loan officers to originations at small creditors as for the industry as a whole, the Bureau estimates that there are 20,000 loan officers that would need training at these institutions.[225] Based on data from the Bureau of Labor Statistics, the Bureau estimates that the average total compensation is $46 per hour for a loan officer and $39 per hour for a trainer, for a total training cost of (20,000*2*$46)+(2,000*2*$39) = $2,000,000 (rounded to the nearest 100,000).

Taken together, the Bureau estimates that the total one-time costs for small entities of complying with the proposed Loan Estimate and Closing Disclosure would be roughly $51,000,000. As discussed above, firms are expected to amortize this cost over a period of years and in this analysis all costs are amortized over five years, using a simple straight-line amortization. Amortizing this one-time cost of compliance over five years yields an annual cost of $10,200,000. The Bureau estimates that these creditors made roughly 1.4 million originations in 2010. The estimated annualized one-time cost is therefore less than $8 per origination.

ii. Definition of Loan Application

The proposed rule revises the regulatory definition of loan application to encourage earlier provision of the Loan Estimate to consumers.

Under TILA and RESPA, a creditor or mortgage broker is not required to provide the good faith estimates of loan terms and settlement costs in the early TILA disclosure and RESPA GFE until it has received an "application." As discussed more fully in part VI above, section-by-

[225] Originations estimates based on analysis of HMDA, SNL Call Reports, NCUA Call Reports, and NMLS Call Reports.

section analysis for proposed § 1026.2(a)(3), under current regulations, the receipt of the following information by the creditor or mortgage broker constitutes receipt of an "application": (1) borrower's name; (2) monthly income; (3) social security number to obtain a credit report; (4) the property address; (5) an estimate of the value of the property; (6) loan amount sought; and (7) any other information deemed necessary by the lender. The seventh item could allow creditors and mortgage brokers to delay providing the integrated Loan Estimate until relatively late in the loan process by delaying collection of information deemed "necessary." The Bureau understands that some creditors currently provide non-binding written estimates of loan terms or settlement charges prior to issuing the early TILA disclosure or RESPA GFE. The current rules encourage creditors and mortgage brokers to provide the good faith estimates early in the loan process by prohibiting creditors from collecting any fees from a consumer (other than a credit report fee) until the estimates are provided. To further encourage early provision of estimates, the proposed rule removes the seventh item ("any other information deemed necessary by the lender") from the definition of "application."

Costs to Small Entities. The Bureau understands that eliminating creditors' and mortgage brokers' ability to wait to provide a good faith estimate until after they receive "any other information deemed necessary" could increase the burden on small creditors and mortgage brokers to the extent that it causes them to issue more Loan Estimates than they would under the current definition of application. If a creditor or mortgage broker obtains additional information from the consumer after the Loan Estimate has been issued that affects the costs of the settlement service for the loan, the creditor may need to issue a revised Loan Estimate. The Bureau is unaware of information that would allow it to estimate how often this would occur. The Bureau believes, however, if this were to impose substantial costs, creditors and mortgage brokers would mitigate this by adjusting their business practices surrounding the receipt of applications to gather other important information prior to, or at the same time as, they obtain the six items that together constitute an "application." As discussed in part VII.F, above, the Bureau is working to obtain such data prior to issuing a final rule and is seeking comment on its plans for data analysis, as well as additional data and comment relevant to this issue.

iii. Disclaimer on Pre-Application Estimates

The Bureau is proposing to require that any pre-application, consumer-specific written estimate of loan terms or settlement charges contain a prominent disclaimer indicating that the document is not the Loan Estimate required by TILA and RESPA. This requirement would not apply to general advertisements.

Costs to Small Entities. To the extent small creditors and mortgage brokers currently provide such pre-application written estimates to consumers they would bear the costs of adding a disclaimer to those communications. However, the Bureau expects such costs to be *de minimis* since the Bureau is proposing a brief, standard statement for use by creditors, which should not require significant redesign of existing estimate materials or require additional pages.

iv. Changes in Settlement Costs/Redisclosures

The proposed rule revises current rules regarding the circumstances in which a consumer may be charged more at closing for settlement services than the creditor estimated in the disclosure provided to the consumer three business days after application.

As discussed more fully in part VI, section-by-section analysis for proposed § 1026.19(e)(3), HUD's 2008 RESPA Final Rule limits the circumstances in which a creditor can charge the consumer more at consummation for settlement services than the creditor estimated in the RESPA GFE provided to the consumer three business days after application.

These rules generally place charges into three categories: the creditor's charges for its own services, which cannot exceed the creditor's estimates unless an exception applies ("zero tolerance"); charges for settlement services provided by third parties, which cannot exceed estimated amounts by more than ten percent unless an exception applies ("ten percent tolerance"); and other charges that are not subject to any limitation on increases ("no tolerance"). The rule permits certain limited exceptions in which higher charges are permitted, such as when the consumer requests a change, when the RESPA GFE expires, or when valid changes in circumstance occur. The Bureau is aware of concerns that HUD's 2008 RESPA Final Rule is both too lax and too restrictive, and also that the rule is difficult to understand. The proposed rule attempts to address these concerns by balancing the objective of improving the reliability of the estimates creditors give consumers shortly after application with the objective of preserving creditors' flexibility to respond to unanticipated changes that occur during the loan process. Specifically, the proposed rule applies the zero tolerance category to a larger range of charges, including fees charged by an affiliate of the creditor and charges for services for which the creditor does not permit the consumer to shop. A service provider would be considered selected by the creditor if consumers are required to choose only from a list of service providers prepared by the creditor (*i.e.*, if consumers are not permitted to shop for their own provider).

For a sense of the scale of the potential impact, it is worth considering an extreme hypothetical example where all of the settlement services move from the ten percent tolerance category to the zero tolerance category. This is unlikely to happen in practice, but illustrates the largest possible effect of the regulatory change. For a loan with a total of $3,000 in settlement costs the maximum effect of the proposal would be that the creditor could not pass on $300 in cost increases that occurred without an exception allowing the increase to be passed on the consumers.

Benefits to Small Entities. Small entities may benefit from the proposed rule because it reduces compliance burden by resolving current regulatory ambiguities. For example, the proposed rule makes clear that creditors need not reissue Loan Estimates unless and until the costs that are subject to the ten percent tolerance standard increase based on valid changes in circumstance by more than ten percent in total. The proposed rule also revises the rule and provides more guidance to facilitate use of average cost pricing and reconciles certain inconsistences between RESPA and TILA terminology. The proposed rule further streamlines and clarifies HUD's 2008 RESPA Final Rule by incorporating prior HUD guidance into Regulation Z and its commentary, as necessary and appropriate. Further, to the extent the proposed rule reduces unnecessary redisclosure of the RESPA content currently provided on the GFE, the rule would decrease costs to creditors, although the extent to which the proposed rule would have such an effect is unknown. Reducing unnecessary redisclosure may also benefit consumers, to the extent that redisclosures lead to consumer confusion.

The Bureau is not aware of reliable data showing how often creditors are providing additional disclosures that are not required by the current rule and that they would no longer send if the rules are clarified. As discussed in part VII.F, above, the Bureau is working to obtain such data prior to issuing a final rule and is seeking comment on its plans for data analysis, as well as additional data and comment relevant to this issue. Some creditors, however, have reported that additional clarity regarding redisclosure requirements for the RESPA GFE and average cost pricing would reduce the cost of compliance, in part, by reducing confusing over when redisclosure is permitted or required, and thereby reducing the need for legal advice.

Costs to Small Entities. The Bureau understands that small entities may experience increased costs as a result of the proposal to apply the zero tolerance category to a larger range of charges. Since the proposed rule would expand the circumstances in which creditors could not pass increased costs to consumers when the initial estimate is lower than the actual costs but there is not a legitimate change in circumstances or other exception, creditors may be required to absorb more costs. This impact should be mitigated to the extent creditors are in a position to know the typical charges of affiliated firms and firms they engage repeatedly and require consumers to use, and can therefore provide estimates that are accurate when there is no changed circumstance. As discussed above, the Bureau is unaware of any data that can provide reliable market-wide estimates of the prevalence of changes between early TILA disclosures and RESPA GFEs and final loan terms and closing costs, and the causes of those changes. Therefore, the Bureau cannot provide estimates of how often creditors would have to absorb higher than expected costs that cannot be attributed to a changed circumstance. As discussed above, however, even in circumstances where settlement costs increase substantially and the creditor is unable to pass those charges on to the consumer, the difference between a ten percent tolerance and a zero tolerance will be limited.

The Bureau also understands that the proposed rule may result in increased use of affiliated service providers, so that creditors can more directly control changes in settlement costs, which could have a negative impact on independent providers who are typically small entities. Some have argued that the negative impact on independent providers could lead to reduced competition for settlement services and ultimately higher costs. The Bureau is unaware of any evidence to suggest that that costs are likely to increase in this way. Alternatively, the proposed rule may encourage creditors to allow consumers to choose settlement service providers that are not on a list provided to the consumer (although in this case the creditor would be required to provide consumers with a list of settlement service providers that the consumers could use, if they so choose), so that the zero tolerance requirement would not apply. This would appear to benefit independent service providers, or at least be neutral relative to current practices.

v. Provision of Closing Disclosure

The proposed rule requires delivery of the integrated Closing Disclosure three business days before consummation in all cases. However, the Bureau is proposing two alternative approaches for assigning responsibility for providing the integrated Closing Disclosure to the consumer. Alternative 1 places sole responsibility for provision of the Closing Disclosure on the creditor, while Alternative 2 makes the creditor and settlement agent jointly responsible for providing the Closing Disclosure.

Timing of Closing Disclosure Provision

TILA and RESPA establish different timing requirements for disclosing final loan terms and costs to consumers. As discussed more fully in part VI above, section-by-section analysis for proposed § 1026.19(f), TILA generally provides that, if the early disclosures contain an APR that is no longer accurate, the creditor shall furnish an additional, corrected disclosure to the consumer not later than three business days before consummation. RESPA, on the other hand, requires that the final statement of loan costs and terms is provided to the consumer at or before settlement. To meet the Dodd-Frank Act's mandate to integrate the disclosures required by TILA and RESPA, and to better facilitate consumer understanding of the costs, the proposed rule would require delivery of the integrated Closing Disclosure three business days before closing in all circumstances. However, to prevent unnecessary closing delays, the proposed rule would permit limited changes after provision of the Closing Disclosure to reflect common adjustments, such as changes to recording fees. In addition, reissuance of the Closing Disclosure and an additional three-business day waiting period would not be required if, during the three business days after issuance of the Closing Disclosure, the amount needed to close shown on the Closing Disclosure increases by $100 or less.

Costs to Small Entities. The proposal to require provision of the Closing Disclosure three business days prior to consummation in all circumstances may result in closing delays. In extreme cases, such delays could cause a transaction to fall through if a consumer is under a contractual obligation to close by a certain date. Creditors and closing agents, however, currently coordinate to provide RESPA closing documents at closing. Both closing agents and creditors would have incentives to complete closings as scheduled, and therefore the Bureau believes that they would adjust their business practices such that the Closing Disclosure could be provided in a timely manner and closing problems would be infrequent. If the requirement does lead to delayed or canceled closings, this would impose costs on small entities. Such closing delays could result in loss of revenue for transactions that fall through due to a delay. The proposed rule may also create legal and reputational risks for creditors or settlement agents that are unable to close loans as planned.

Responsibility for Providing the Closing Disclosure

TILA and RESPA require that different parties provide the final disclosures to consumers. Specifically, TILA requires the creditor to provide the TILA disclosures to consumers, while RESPA requires that the person conducting the settlement provide the final statement of settlement costs to the consumer. However, section 1419 of the Dodd-Frank Act amended TILA to make creditors responsible for disclosing settlement cost information. *See* TILA section 128(a)(17). To reconcile these statutory differences and implement TILA section

128(a)(17), the Bureau is proposing two alternative approaches for assigning responsibility for provision of the integrated Closing Disclosure to consumers. Under Alternative 1, the creditor would be solely responsible for delivering the Closing Disclosure to the consumer. Under Alternative 2, the creditor and settlement agent would be jointly responsible for providing the consumer with an integrated Closing Disclosure three business days before closing.

Benefits to Small Entities. Because the difference between Alternatives 1 and 2 is about which party would be responsible for providing a disclosure, the relative benefits of each proposal to different small entities are likely to consist of avoided costs. The most useful way to consider these alternatives, therefore, is to consider their respective costs.

Costs to Small Entities – Alternative 1. Alternative 1 would likely place increased costs on creditors, including small creditors. As discussed above, RESPA and current Regulation X require that the person conducting the settlement provide the RESPA-required disclosures to consumers at or before consummation. Since, under Alternative 1, the creditor would be responsible for provision of both the TILA and RESPA content to the consumer, the creditor would incur additional logistical burden and legal risk.[226] Small creditors and settlement agents may incur one-time legal fees under Alternative 1, since those entities may need to contractually stipulate their respective duties or amend existing contractual arrangements in light of the rule. Small creditors may also need to hire additional staff to handle the increased workload associated with collecting the settlement costs and coordinating with the settlement agents and third party service providers and preparing the disclosures. Since the current regulatory scheme of split

[226] As described in part VII, above, two major vendors currently provide software services to the vast majority of small mortgage originators to produce the RESPA GFE and initial TILA disclosures. RESPA settlement statements are currently issued by settlement agents using software provided a different, but similarly small, set of vendors; however, the Bureau understands that the originators' systems are capable of producing the RESPA settlement statements. As a result, the Bureau believes that it is reasonable to measure costs assuming that the originators' vendors will provide both the Loan Estimate and the Closing Disclosure to their clients under existing contracts. Were the current software providers for settlement agents to have to update their systems (under the second alternative or under other contractual arrangements), those vendors would have to incur the stated costs.

responsibility, as well as the different roles of creditors and settlement agents in the transaction, already requires a great deal of coordination, it is not clear that giving the creditor sole responsibility for providing the disclosures would impose much additional burden. As a general matter, shifting responsibility for delivery of final RESPA disclosures from settlement agents to creditors may change the role of settlement agents, though the exact impact of such a rule is unclear. Settlement agents play a unique role in working through local real estate transaction requirements and practices, which creditors may be unlikely to take on.

Costs to Small Entities – Alternative 2. The costs to creditors and to settlement agents under the proposed alternative that gives joint responsibility for provision of the Closing Disclosure to creditors and settlement agents would depend on how creditors and settlement agents go about fulfilling the joint requirement. Joint provision would likely require coordination on the part of creditors and settlement agents similar to what is done today. One additional cost, however, may entail re-working that coordination to adjust to the new forms and timing requirement (discussed above).

vi. Expanded Definition of Finance Charge

The proposed rule expands the definition of the finance charge for closed-end transactions secured by real property or a dwelling, consistent with the Board's 2009 Closed-End Proposal.

As discussed more fully in part VI above, section-by-section analysis for proposed § 1026.4, TILA and current Regulation Z exclude many types of charges from the finance charge, particularly for mortgage transactions. Concerns have long been raised that these exclusions undermine the potential usefulness of the finance charge and corresponding APR as a tool for consumers to compare the total cost of one loan to another. In addition, these exclusions create compliance burden and litigation risk for creditors and may encourage creditors to shift the cost of credit to excluded fees, a practice that is inefficient.

The Bureau recognizes that the proposed more inclusive finance charge could affect coverage under other laws, such as such as higher-priced mortgage loan and HOEPA protections, and that a more inclusive finance charge has implications for the HOEPA, Escrows, Appraisals, and Ability to Repay rulemakings identified in part II.F above. Absent further action by the Bureau, the more inclusive finance charge would:

- Cause more closed-end loans to trigger HOEPA protections for high-cost loans.[227] The protections include special disclosures, restrictions on certain loan features and lender practices, and strengthened consumer remedies. The more inclusive finance charge would affect both the points and fees test (which currently uses the finance charge as its starting point) and the APR test (which under Dodd-Frank will depend on comparisons to APOR) for defining what constitutes a high-cost loan.
- Cause more loans to trigger Dodd-Frank Act requirements to maintain escrow accounts for first-lien higher-priced mortgage loans. Coverage depends on comparing a transaction's APR to the applicable APOR.
- Cause more loans to trigger Dodd-Frank Act requirements to obtain one or more interior appraisals for "higher-risk" mortgage loans. Coverage depends on comparing a transaction's APR to the applicable APOR.
- Reduce the number of loans that would otherwise be "qualified mortgages" under the Dodd-Frank Act Ability to Repay requirements, given that qualified

[227] See part VII.D.7 above, for a detailed description of the potential effects of an expanded finance charge on the HOEPA rulemaking.

mortgages cannot have points and fees in excess of three percent of the loan amount. Also, more loans could be required to comply with separate underwriting requirements applicable to higher-priced balloon loans, and could be ineligible for certain exceptions authorizing creditors to offer prepayment penalties on fixed-rate, non-higher-priced qualified mortgage loans.[228] Again, status as a higher-priced mortgage loan depends on comparing APR to APOR.

As discussed above in part VI, section-by-section analysis for proposed § 1026.4 and in part VII, the Bureau is seeking data to model the impact of the more expansive definition of finance charge on coverage of each of these regulatory regimes or the impact of potential modifications that the Bureau could make to the triggers to more closely approximate existing coverage levels.[229] The Bureau is working to obtain such data prior to issuing a final rule and is seeking comment on its plans for data analysis, as well as additional data and comment on the potential impacts of a broader finance charge definition and potential modifications to the triggers.

[228] Specifically, the Dodd-Frank Act generally prohibits prepayment penalties on closed-end, dwelling-secured mortgage loans, except on fixed-rate qualified mortgages that are not higher-priced mortgage loans. For balloon loans, the Dodd-Frank Act generally requires creditors to assess consumers' ability to repay a higher-priced loan with a balloon payment using the scheduled payments required under the terms of the loan including any balloon payment, and based on income and assets other than the dwelling itself. Only consumers with substantial income or assets would likely qualify for such a loan. A separate Dodd-Frank Act provision authorizing balloon loans made by creditors that operate predominantly in rural or underserved areas is not affected by the finance charge issue.

[229] In its 2009 proposal, the Board relied on a 2008 survey of closing costs conducted by Bankrate.com that contains data for hypothetical $200,000 loans in urban areas. Based on that data, the Board estimated that the share of first-lien refinance and home improvement loans that are subject to HOEPA would increase by .6 percent if the definition of finance charge was expanded, and that the share of first-lien loans in the range of typical home purchases or refinancings ($175,000 to $225,000) that qualified as higher-priced mortgage loans would increase by 3 percent. The Board also looked at the impact on two states and the District of Columbia because their anti-predatory lending laws had triggers below the level of the historical HOEPA APR threshold, which is benchmarked to U.S. Treasury securities. The Board concluded that the percentage of first-lien loans subject to those laws would increase by 2.5 percent in the District of Columbia and 4.0 percent in Illinois, but would not increase in Maryland. The Bureau is considering the 2010 version of the Bankrate.com survey, but as described in this notice, the Bureau is also seeking additional data that would provide more representative information regarding closing and settlement costs that would allow for a more refined analysis of the proposals.

The Board previously proposed to address these effects by adopting an adjusted points and fees definition and a new metric for determining coverage under APR thresholds, known as the "transaction coverage rate" (TCR). The TCR would be based on a modified prepaid finance charge that would include only finance charges retained by the creditor, mortgage broker, or their affiliates, and would therefore more closely approximate existing coverage levels than a more inclusive finance charge. *See* 76 FR 27390, 27411-12 (May 11, 2011); 76 FR 11598, 11608-09 (Mar. 2, 2011); 75 FR 58539, 58660-61 (Sept. 24, 2010).[230] The Bureau has incorporated these measures into its 2012 HOEPA Proposal, and is seeking comment both in that proposal and this rulemaking on additional trigger modifications that could approximate coverage levels under the existing definition of finance charge, such as adjusting the numeric percentage point triggers for APR under HOEPA or other regimes.

If the adjusted points and fees definition, the TCR, or other trigger modifications were adopted in the other rules, the more inclusive finance charge definition would have little or no effect on coverage under those rules although there might still be effects from the expanded definition of finance charge on the coverage of various State mortgage laws and regulations. In addition, because the TCR excludes fees to unaffiliated third parties, the TCR might result in some loans not triggering one or more of the regulatory regimes discussed above that would qualify under an APR threshold using the current definition of finance charge.[231] The discussion

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[230] The wording of the Board's proposed definition of "transaction coverage rate" varied slightly between the 2010 Mortgage Proposal and the 2011 Escrows Proposal as to treatment of charges retained by mortgage broker affiliates. In its 2012 HOEPA Proposal, the Bureau proposes to use the 2011 Escrows Proposal version, which would include charges retained by broker affiliates.

[231] As discussed above in part VI, section-by-section analysis for proposed § 1026.4, the Bureau believes that the margin of differences between the TCR and current APR is significantly smaller than the margin between the current APR and the APR calculated using the expanded finance charge definition because relatively few third-party fees would be excluded by the TCR that are not already excluded under current rules. The Bureau is considering ways to supplement the data analysis described above to better assess this issue, and seeks comment and data regarding the potential impacts of the TCR relative to APR calculated using the current and proposed definitions of finance charge.

of the costs and benefits of a more inclusive definition of finance charge, below, assumes that the Bureau does not adopt the adjusted points and fees definition, the TCR, or other methods of addressing the impact of a more inclusive approach to the finance charge in the other rulemakings. If the Bureau does adopt those measures, the effects of the proposed definition of finance charge would be muted. For instance, the benefits of a simpler APR calculation may be lessened if creditors are required to use different metrics for purposes of disclosure and for determining coverage under various regulatory regimes, although as discussed below with regard to transaction coverage rate both metrics would be easier to calculate than APR using the existing definition of finance charge. In addition, the effects (both benefits and costs) through expanded coverage of those other rules would be eliminated or (in the case of TCR) somewhat reduced.

Benefits to Small Entities

The proposed rule may benefit small entities by easing regulatory burden and litigation risk associated with the current complex rules for determining which fees are part of the finance charge. Because the current rules for determining which fees are part of the finance charge are complicated and unclear, creditors will benefit from a simpler, more inclusive definition. In particular, feedback received by the Bureau and comments on a similar proposal issued by the Board in the 2009 indicate that, because a failure to calculate the finance charge and the APR accurately gives rise to the right of rescission, creditors incur substantial compliance costs attempting to make accurate calculations and incur substantial litigation costs defending against claims of inaccurate calculations.

Costs to Small Entities

To comply with the proposed rule, small entities may be required to update compliance systems to reflect changes to the finance charge calculation. These updates may involve one-time costs associated with software updates, legal expenses, and personnel training time. As discussed above, if the Bureau adopts the proposal, it expects to provide an implementation period that would coincide either with implementation of the disclosure modifications or with implementation of certain changes to coverage of HOEPA and other regulatory regimes that would be affected by the change in definition. Accordingly, the Bureau believes that software changes and other expenses would be incurred as part of the overall software and compliance system revisions required to comply with the other simultaneous changes, and therefore would not impose a substantial additional burden.

As discussed above, the proposed rule if it were implemented without modifications to the triggers for various regulatory regimes might cause more loans to cross Federal and State high cost or high priced loan thresholds based on APR or points and fees. With respect to the HOEPA and Appraisals rulemakings, creditors may incur costs associated with generating and providing HOEPA and appraisal disclosures for additional loans. Creditors may incur additional costs in the context of the Appraisals rulemaking because the Dodd-Frank Act prohibits creditors from charging consumers for second appraisals conducted in connection with certain properties that have been sold in the last 180 days. Similarly, in the context of the Escrows rulemaking, creditors may incur costs associated with maintaining escrow accounts on more transactions if not subject to other exceptions provided by the Dodd-Frank Act. With respect to the Ability to Repay rulemaking, creditors may incur costs associated with making fewer loans with prepayment penalties, or may incur costs from the additional underwriting requirements and/or liability associated with making more loans that are higher-priced balloon loans or that are not qualified mortgages.

In addition, a small number of creditors may also lose a very small fraction of revenue if they are reluctant to make high-cost, higher-priced, or higher-risk mortgage loans and cannot offer alternatives that are as profitable as those loans.

As discussed in more detail in the 2012 HOEPA Proposal, modifying the triggers would require some one-time implementation costs and would create some additional compliance complexity if creditors must use different metrics for disclosure purposes and for determining coverage under particular regulatory regimes. However, with regard to the transaction coverage rate, the Bureau believes that such impacts would be addressed by the fact that both TCR and APR using the expanded definition of finance charge would be easier to calculate than APR under the current definition. On balance, the Bureau believes adoption of the proposed trigger modifications would reduce the economic impacts on small entities of the more expansive definition of finance charge.

vii. Implementation of New Disclosures Mandated by the Dodd-Frank Act

The proposed rule exempts creditors temporarily from compliance with certain new disclosure requirements added to TILA and RESPA by the Dodd-Frank Act until the TILA-RESPA rule takes effect.

As discussed more fully in part V.B, above, title XIV of the Dodd-Frank Act adds new disclosure requirements to TILA and RESPA for mortgage transactions. Although the Dodd-Frank Act does not specifically require inclusion of all of these new disclosures in the Loan Estimate and the Closing Disclosure, the Bureau believes these disclosures should be included in the integrated forms because doing so would improve the overall effectiveness of the integrated disclosure, which may benefit consumers and covered persons, and also reduce burden on covered persons. Finalizing the rules implementing these title XIV disclosures simultaneously with the final TILA-RESPA rule would avoid unnecessary regulatory burden by preventing creditors from having to implement multiple rounds of disclosure rules. The Bureau does not anticipate additional costs to covered persons as a result of delayed implementation of the new disclosure requirements, although, as noted above, small entities may incur additional recurring costs associated with calculating and disclosing this additional information to consumers once the implementing rules take effect.

viii. Costs Associated with Reviewing the Regulation

Small entities will need to learn about the requirements of the regulation and determine what changes to their business practices they would be required to make to come into compliance. These costs will vary considerably across institutions, depending on the size and complexity of their operations. In addition, some firms will rely on their own staff to conduct this analysis, while others will rely on outside counsel, industry sources, or compliance firms. Firms that use compliance systems provided by outside vendors, especially smaller creditors, will likely rely in large part on those vendors to determine what changes they need to make, reducing the burden on those creditors.

d. Estimate of the Classes of Small Entities which Will be Subject to the Requirement and the Type of Professional Skills Necessary for the Preparation of the Report or Record

Section 603(b)(4) of the RFA requires an estimate of the classes of small entities which will be subject to the requirement. The classes of small entities which will be subject to the recordkeeping and compliance requirements of the proposed rule are the same classes of small entities that are identified above in part VIII.B.3.

Section 603(b)(4) of the RFA also requires an estimate of the type of professional skills necessary for the preparation of the reports or records. The Bureau does not anticipate that, except in certain rare circumstances, any professional skills will be required for recordkeeping and other compliance requirements of this proposed rule that are not otherwise required in the ordinary course of business of the small entities affected by the proposed rule. Part VIII.B.4.b and 4.c summarize the recordkeeping and compliance requirements of the proposed rule that would affect small entities.

With regard to the proposed recordkeeping requirements, the SERs reported that they generally use vendor-supplied computer systems to prepare the TILA and RESPA disclosures and retain scanned images of those disclosures electronically, but they do not retain those records in a machine readable format.[232] As discussed above, however, the Bureau believes that vendors will update their software and provide small creditors with the ability to retain the required data. The one situation in which a small entity would require professional skills that are not otherwise required in the ordinary course of business would be if a small creditor does not use computerized systems to store loan information and therefore will either need to hire staff with the ability to implement a machine-readable data retention system or contract with one of the vendors that provides this service.

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[232] *See* Small Business Review Panel Report at 25.

With regard to the proposed compliance requirements, as discussed above, the Bureau understands that, based on feedback from the SERs, the small entities that will be affected by the proposed rule will continue to perform the basic functions that they perform today: generating disclosure forms (and answering consumers' questions about them), taking loan applications, redisclosing estimates of settlement costs, providing final disclosures, maintaining recordkeeping systems that store documents electronically (but not necessarily in a machine readable format), and maintaining systems to calculate the APR. The major elements of the proposed rule, described earlier in this part VIII, relate to these continuing functions. Therefore, the Bureau believes that small entities will have the professional skills necessary to comply with the proposed rule.

Specifically with regard to the requirement to use the integrated disclosure forms, the SERs identified potentially significant one-time costs associated with changing software systems to produce the forms and provided a wide range of estimates of one-time costs of training staff and related parties to use the new integrated forms and update systems and processes.[233] The SERs also reported that they typically contract out to third party software vendors the design of the disclosure forms provided to consumers, and pay annual fees to such vendors for upgrades. The SERs did not express any concerns that the design and implementation of the forms or the use of the integrated disclosure forms on an ongoing basis would require their staff to possess a different set of professional skills than that required in the ordinary course of business currently. Furthermore, while the SERs identified potential upfront and ongoing training costs as a result of the proposals under consideration at the time, the Bureau believes efforts to train small entity staff on the updated software and compliance systems would be reinforcing existing professional skills sets above those needed in the ordinary course of business and to comply with HUD's

[233] *See id.* at 18.

2008 Final RESPA Rule (which, as discussed above, significantly overhauled the design and content of the RESPA GFE and settlement statement disclosures given to consumers).

In addition, although the Bureau acknowledges the possibility that certain small entities may have to hire additional staff as a result of certain aspects of the proposed rule, the Bureau has no evidence that such additional staff will have to possess a qualitatively different set of professional skills than small entity staff employed currently. The Bureau presumes that additional staff that small entities may need to hire would generally be of the same professional skill set as current staff. For example, if the Bureau were to adopt the Alternative 1 proposal regarding responsibility for who provides the Closing Disclosure (*i.e.* making creditors responsible), small creditors may need to hire additional staff to handle the increased work load resulting from the reallocation of existing responsibilities between creditors and settlement agents. As a more general matter, to the extent the proposed rule adds new disclosures that will need to be generated and explained to consumers, the Bureau anticipates that any incremental increase in the complexity of such tasks for small entity staff will be counterbalanced by the regulatory streamlining and clearer guidance provided by the proposed rule.

5. Identification, to the Extent Practicable, of All Relevant Federal Rules which May Duplicate, Overlap, or Conflict with the Proposed Rule.

The proposed rule is intended to consolidate the overlapping and, in some cases, duplicative mortgage disclosure regulations under TILA and RESPA into a single set of requirements and to resolve conflicts between the two. The Bureau is not aware of any other Federal regulations that currently duplicate, overlap, or conflict with the proposed rule.

However, the Bureau is currently developing other proposed or final rules required by title XIV of the Dodd-Frank Act, including rules addressing ability-to-pay standards for qualified mortgages, mortgage loan originator compensation, mortgage loans subject to HOEPA, mortgage servicing, and appraisal practices. As discussed above, the Bureau is aware of concerns that aspects of the proposed rule could affect the Bureau's rulemakings concerning HOEPA, Escrows, Appraisals, and Ability-to-Repay. In particular, some SERs expressed concern that an unintended consequence of a more inclusive approach to the finance charge could be that more loans would qualify as high-cost loans subject to additional requirements under HOEPA or similar State statutes that use the finance charge or the APR as a trigger.[234] As a result, the SERs generally requested that the Bureau adjust these thresholds, to the extent possible, to account for the more inclusive finance charge. In response to this feedback, the Panel recommended in the Small Business Review Panel Report that, before issuing a final rule, the Bureau consider the impact of the more inclusive finance charge on its other rulemakings, and that it adopt any alternatives or adjustments in the final rule or the Bureau's other rulemakings that would reduce burden on small entities while still accomplishing the goals of the more inclusive finance charge.

Based on this feedback and consistent with the Small Business Review Panel's recommendation, the Bureau has considered the requirements of TILA section 129 (high-cost mortgages) and TILA section 129C (qualified mortgages), including the Dodd-Frank Act amendments to those provisions, as well as State predatory lending laws, in proposing the amendments to § 1026.4. For example, the Board previously proposed two means of reconciling an expanded definition of the finance charge with existing thresholds for loan APR and points and fees. The Bureau believes that it is helpful to analyze any threshold adjustments on a rule-by-rule basis, so in addition to seeking general comment in this rulemaking it has incorporated these adjustments into its 2012 HOEPA Proposal and is seeking comment on additional

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[234] The Bureau acknowledged this possible effect in the Small Business Review Panel Outline.

adjustments that could approximate coverage levels under the existing definition of finance charge, such as adjusting the numeric percentage point triggers for APR under HOEPA.

The Bureau will consider any final or proposed rules implementing the regulatory regimes that rely on APR and points and fees triggers prior to issuing a final rule on definition of finance charge. As discussed above, the Bureau believes that it would be preferable to make any change to the definition of finance charge and any related adjustments in regulatory triggers take effect at the same time, in order to provide for consistency and efficient systems modification, and is seeking comment on the best sequencing for implementation periods in light of the related rulemakings.

In addition, title XIV of the Dodd-Frank Act amends TILA and RESPA to add new disclosures that must be provided in the Loan Estimate or Closing Disclosure (*e.g.*, disclosure of escrow payment amounts and aggregate settlement charges). In addition, title XIV adds other new mortgage disclosure requirements (*e.g.*, warnings regarding negative amortization and State anti-deficiency laws). Although the Dodd-Frank Act does not specifically mandate inclusion of these new disclosures in the Loan Estimate and Closing Disclosure, the Bureau is proposing that, to avoid duplication, overlaps, and conflicts, these new disclosures be included in the integrated forms. *See* part V.B above for further discussion.

6. Description of Any Significant Alternatives to the Proposed Rule which Accomplish the Stated Objectives of Applicable Statutes and Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities.

a. Initial and Final Disclosures

As noted above, under the proposed rule, the Loan Estimate would be provided to consumers within three business days after application and replace the early TILA disclosure and

RESPA GFE, and the Closing Disclosure would be provided to consumers at least three business days prior to the closing of the loan transaction and replace the final TILA disclosure and RESPA settlement statement. In the Small Business Review Panel Report, the Panel made a number of recommendations regarding the Loan Estimate and Closing Disclosure that could potentially reduce the impact of the proposed rule on small entities, while accomplishing the stated objectives of applicable statutes.

i. Prototype Forms

As discussed in the Small Business Review Panel Report, on the whole, the SERs strongly preferred the Bureau's prototype integrated disclosure forms to the current TILA and RESPA disclosure forms, but expressed concerns about the one-time costs and ongoing costs associated with generating the prototype integrated forms. In particular, the SERs anticipated significant one-time software upgrade and training costs, though their estimates varied greatly. (These costs are described in greater detail in part VIII.B.4.c.i, above.) SERs generally stated that these costs would be less burdensome if the Bureau provided a substantial compliance period to upgrade systems and to train staff, but SERs requested a variety of periods. The Panel recommended that the Bureau provide a compliance period that permits sufficient time for small entities to make necessary system upgrades and provide training, and that the Bureau solicit public comment on the amount of time needed for such upgrades and training.

In part V.A, above, the Bureau discusses the mandatory compliance period for the proposed rule and notes that, although Bureau wishes to make the rule effective as soon as possible because it will provide important benefits to consumers, the Bureau understands that the final rule will require lenders, mortgage brokers, and, under Alternative 2 regarding provision of the Closing Disclosure, settlement agents to make extensive revisions to their software and to retrain their staff. The Bureau is seeking comment on how much time industry needs to make these changes, and specifically requests details on the required updates and changes to systems and other measures that would be required to implement the rule and the amount of time needed to make those changes. Furthermore, with respect to small entities, the Bureau is following the Panel's recommendation and soliciting comment on whether small entities affected by the rule should have additional time to comply with the final rule.

ii. Testing

As discussed in the Small Business Review Panel Report, the SERs suggested that the prototype forms could be further improved through testing on actual loan transactions. The Panel recognized that the Bureau has developed the prototype forms through qualitative, one-on-one testing with consumers, lenders, mortgage brokers, and settlement agents and that the Bureau has solicited extensive public feedback on the prototype forms through its website, but recommended that the Bureau explore the feasibility of conducting such testing before issuing a final rule. Based on this recommendation, the Bureau plans to explore the feasibility of conducting such testing before issuing a final rule.

iii. Clear Guidance

As discussed in the Small Business Review Panel Report, the Bureau indicated in the Small Business Review Panel Outline that it was considering proposing to require the use of standard forms for mortgage loan transactions that are subject to RESPA and to promulgate model forms for TILA-only transactions, and sought feedback from the SERs regarding their preference for promulgation of standard or model disclosure forms. Moreover, the Bureau indicated that it was considering providing additional guidance regarding compliance with the regulations affecting mortgage disclosures. On both issues, however, the Bureau sought feedback from SERs. As discussed in the Small Business Review Panel Report, the SERs generally stated a preference for standard forms and clearer guidance. In response to this feedback, the Panel recommended that the Bureau provide more detailed guidance on how to complete the integrated forms (including, as appropriate, samples of completed forms for a variety of loan transactions) and that the Bureau consider whether mandating use of the integrated forms would result in more consistent disclosures for consumers while also easing the compliance burden on small entities. The Panel also recommended that, in the proposed rule, the Bureau solicit public comment on mandating use of the integrated forms. As discussed above, the Bureau is proposing to require the use of standard forms for mortgage loan transactions that are subject to RESPA, but for transactions that are subject only to TILA, the forms would be models, consistent with the provisions of that statute.

iv. Total Interest Percentage and Average Cost of Funds

As discussed in the Small Business Review Panel Report, the SERs expressed concerns that the total interest percentage and average cost of funds disclosures required under the Dodd-Frank Act would be difficult to calculate, difficult to explain to consumers, and likely not helpful to consumers.[235] The Panel recognized that these disclosures are required by the Dodd-Frank Act, but recommended that the Bureau consider revisions to these disclosures that would minimize the burden on small entities while still ensuring that consumers receive important information about mortgage transactions. The Panel also recommended that the Bureau solicit comment on whether these disclosures would be helpful to consumers and the costs, if any, these disclosures would impose on small entities. The prototype disclosure forms appended to the proposed rule include the total interest percentage and average cost of funds disclosures.

[235] However, as the Small Business Review Panel Report notes on page 28, the SERs did not provide specific estimates of the costs to calculate these amounts or to explain these amounts to consumers, nor did they provide evidence to support the claim that this information would be unhelpful to consumers.

However, following the Panel's recommendation, the Bureau is alternatively proposing to exempt transactions subject to this proposal from disclosing the total interest percentage disclosure and the lender cost of funds, as discussed in part VI above, section-by-section analysis for proposed §§ 1026.37(l)(3) and 1026.38(o)(5) and (6).

v. Use of Line Numbers

As discussed in the Small Business Review Panel Report, several SERs stated that removing the current RESPA settlement statement line numbers from the integrated Closing Disclosure would significantly increase the cost of software upgrades. The Panel recognized that the prototype Closing Disclosure was developed through consumer testing to enable consumers to compare the final costs to those provided in the Loan Estimate and that the proposed form of the Closing Disclosure would necessitate reordering and relabeling of many of the line numbers on the current disclosures (*e.g.*, due to the proposed revisions being considered to the tolerance rules). The Panel recommended that the Bureau solicit comment on whether an alternative design or numbering format (including incorporating the current RESPA settlement statement line numbers to the extent consistent with the proposals) would impose a lower amount of software-related costs on lenders, mortgage brokers, mortgage companies, and settlement agents while enabling consumers to compare loan terms to the same extent as the current prototype forms. Following the Panel's recommendation, the Bureau is soliciting comment on these issues in part VI above, section-by-section analysis for proposed § 1026.37(f).

vi. Optional Signature Line

As discussed in the Small Business Review Panel Report, page five of the prototype Closing Disclosure includes a signature block for the consumer to acknowledge receipt of the Closing Disclosure. Some SERs were concerned that consumers might be confused about the effect of signing to acknowledge receipt of the Closing Disclosure. In response to these concerns, the Panel recommended that the Bureau consider whether the language on the prototype forms should be revised, or whether additional guidance should be provided to clarify the effect of a signature on the consumer's legal obligations. Following the Panel's recommendation, the Bureau is soliciting comment on such issues in part VI above, section-by-section analysis for proposed § 1026.38(s).

b. Definition of Loan Application

As discussed in the Small Business Review Panel Report, the Bureau has considered eliminating the seventh element of the application definition and replacing it with additional items that would, along with the six specific items in the current definition that the Bureau proposes to retain, enable the creditor or mortgage broker to provide a reasonably accurate Loan Estimate. The Panel recognized that the SERs disagreed about whether the seventh item in the application definition was necessary to provide a reasonably accurate Loan Estimate, and there was a lack of consensus among the SERs who opposed elimination of the seventh item about what additional information would be needed. Following the Panel's recommendation, the Bureau is soliciting public comment in part VI above, section-by-section analysis for the proposed § 1026.2(a)(3) on what, if any, additional specific information beyond the six specific items included under the proposed definition of application is needed to provide a reasonably accurate Loan Estimate.

c. Changes in Settlement Costs; Redisclosure

As discussed in the Small Business Review Panel Report, the Bureau indicated in the Small Business Review Panel Outline that it has considered preserving HUD's 2008 RESPA Final Rule in its entirety. However, as mentioned in such materials and as discussed further in part VI above, section-by-section analysis for proposed § 1026.19(e), above, the Bureau believes that the current rules can likely be improved by requiring creditors to provide consumers with more accurate estimates of settlement charges and reducing compliance burden for industry.

As discussed in the Small Business Review Panel Report, the SERs generally expressed concern about the potential unintended consequences of applying the proposed zero percent tolerance standard (instead of the current ten percent tolerance) to affiliate fees and fees charged by creditor-selected providers. However, the SERs generally supported additional clarifications and guidance regarding the current tolerance rules. In response to this feedback, the Panel recommended that the Bureau consider alternatives to expanding application of the zero percent tolerance that would increase the reliability of cost estimates while minimizing the impacts on small entities. The Panel also recommended that the Bureau solicit comment on whether the current tolerance rules have sufficiently improved the reliability of the estimates that creditors give consumers, while preserving creditors' flexibility to respond to unanticipated changes that occur during the loan process. The Bureau has adopted these recommendations in the proposed rule. *See* part VI, section-by-section analysis for proposed § 1026.19(e).

As discussed in the Small Business Review Panel Report, the Bureau also considered narrowing the exceptions permitting increases in settlement charges in order to restrict the ability of a creditor to charge more for its own services or for third-party settlement services than the creditor initially estimated. Such an approach, if adopted, would have likely reduced the ability of creditors, including small entity creditors, to pass on changes in settlement costs to consumers and, accordingly, increased the extent to which creditors bore the associated risk. However, the Bureau chose not to incorporate this approach into the proposal because of its concern that it could prevent creditors from increasing settlement charges to reflect justifiable increases in costs.

d. Provision of the Closing Disclosure

As discussed in the Small Business Review Panel Report, the Bureau has also considered requiring provision of the Closing Disclosure three business days before closing *only* when, after the Loan Estimate is given, the APR in the Loan Estimate increases by more than one-eighth of one percent or an adjustable-rate feature is added to the loan. In all other circumstances, the Closing Disclosure would have been provided at or before consummation. However, the Bureau is concerned that this approach would allow significant increases in the cash needed to close without sufficient notice to the consumer.

In addition, the Bureau has considered expanding the current rules allowing consumers to waive the three-business-day waiting period in cases of *bona fide* personal financial emergency. However, the Bureau is concerned that such an expansion would enable creditors to pressure consumers into waiving the waiting period because consumers may be unwilling or unable to challenge a cost increase that occurs shortly before consummation.

As noted in the Small Business Review Panel Report, the SERs generally opposed requiring provision of the integrated Closing Disclosure three business days before consummation. The Panel acknowledged this feedback, but recognized that statutory requirements limit the discretion of the Bureau to shorten the three-business-day waiting period. Therefore, the Panel recommended that the Bureau continue to explore whether the potential impact of the three-business-day requirement on small entities can be mitigated while maintaining the benefits to consumers by, for example, permitting limited changes after provision of the Closing Disclosure. Following the Panel's recommendation, the Bureau has included in proposed § 1026.19(f)(2) a list of permitted changes after provision of the Closing Disclosure.

Regarding which party is responsible for providing the Closing Disclosure to the consumer, the Bureau has also considered making the settlement agent solely responsible for this task. However, the Bureau understands that settlement agents may not have access to much of the information regarding loan terms that must be disclosed in the Closing Disclosure.

e. Recordkeeping and Data Collection

The issues regarding the Bureau's proposed record retention requirements and the alternatives the Bureau has considered (*i.e.*, a small entity exemption) are discussed in part VIII.B.4.b, above.

f. Annual Percentage Rate

As discussed in the Small Business Review Panel Report, most lender SERs supported the more-inclusive definition of finance charge, but some expressed concern about including taxes and insurance that are required to be paid to an escrow account in the finance charge. In response to this feedback, the Panel recommended that the Bureau consider excluding escrowed taxes and insurance from the more inclusive finance charge, unless those amounts would otherwise be considered finance charges under the expanded definition. The Bureau has proposed a revised definition of finance charge in § 1026.4 that incorporates the Panel's recommendation.

Moreover, the Panel recommended that, before issuing a final rule to integrate the TILA and RESPA mortgage disclosure requirements, the Bureau consider the impact of the more inclusive finance charge on its other rulemakings, and that it adopt any alternatives or adjustments in the final TILA-RESPA rule or the Bureau's other rulemakings that would reduce burden on small entities while still accomplishing the goals of the more inclusive finance charge. As discussed above in part II.F, in the section-by-section analysis for proposed § 1026.4 in part VI, and in part VIII.B.5, the Bureau has carefully considered alternatives that would mitigate the impact of the more inclusive finance charge on all entities subject to the proposed rule, including small entities. Addition discussion will be provided in other proposed and final rules issues by the Bureau. Furthermore, the Bureau will carefully consider the comments received on this issue and perform further analysis prior to issuing a final rule.

7. Discussion of Impact on Cost of Credit for Small Entities

Section 603(d) of the RFA requires the Bureau to consult with small entities regarding the potential impact of the proposed rule on the cost of credit for small entities and related matters. 5 U.S.C. 603(d). To satisfy these statutory requirements, the Bureau provided notification to the Chief Counsel on February 7, 2012, that the Bureau would collect the advice and recommendations of the same small entity representatives identified in consultation with the Chief Counsel through the Small Business Review Panel process concerning any projected impact of the proposed rule on the cost of credit for small entities.[236] The Bureau sought to collect the advice and recommendations of the small entity representatives during the Small Business Review Panel Outreach Meeting regarding the potential impact on the cost of business credit because, as small financial service providers, the SERs could provide valuable input on any such impact related to the proposed rule.[237]

At the time the Bureau circulated the Small Business Review Panel Outline to the SERs in advance of the Panel Outreach Meeting, it had no evidence that the proposals then-under consideration would result in an increase in the cost of business credit for small entities. Instead, the summary of the proposals stated that the proposals would apply to only mortgage loans

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[236] *See* 5 U.S.C. 603(d)(2)(A). The Bureau provided this notification as part of the notification and other information provided to the Chief Counsel with respect to the Small Business Review Panel process pursuant to section 609(b)(1) of the RFA.

[237] *See* 5 U.S.C. 603(d)(2)(B).

obtained by consumers primarily for personal, family, or household purposes, and the proposals would not apply to loans obtained primarily for business purposes.[238]

At the Panel Outreach Meeting, the Bureau asked the SERs a series of questions regarding cost of business credit issues.[239] The questions were focused on two areas. First, the SERs from commercial banks/savings institutions, credit unions, and mortgage companies were asked whether, and how often, they extend to their customers closed-end mortgage loans to be used primarily for personal, family, or household purposes but that are used secondarily to finance a small business, and whether the proposals then-under consideration would result in an increase in their customers' cost of credit. Second, the Bureau inquired as to whether, and how often, the SERs themselves take out closed-end, home-secured loans to be used primarily for personal, family, or household purposes and use them secondarily to finance their small businesses, and whether the proposals under consideration would increase the SERs' cost of credit.

In general, the lender SERs reported making few mortgage loans that are used primarily for personal, family, or household purposes (and therefore are covered by TILA and RESPA) but that are used, secondarily, to finance a small business. In addition, the few loans they described making would appear to fall within the TILA and RESPA exceptions for loans made primarily for business purposes,[240] and therefore would not be subject to the proposed rule.

The Bureau recognizes that some mortgages, especially second lien mortgages or cash-out refinancings, may be used in part or in whole to finance small businesses, without the knowledge of the creditor. Based on the overall impact of the proposal, however, the Bureau

[238] *See* TILA section 104(1); RESPA section 7(a)(1).
[239] *See* the Small Business Review Panel Report at appendix D, 154-155 (PowerPoint slides from the Panel Outreach Meeting, "Topic 7: Impact on the Cost of Business Credit")
[240] *See* TILA section 104(1); RESPA section 7(a)(1).

does not believe that the proposal would lead to an increase in the cost of mortgage lending. As discussed above in part VII, the Bureau estimates that the most burdensome aspect of the proposal, the systems revision required to provide the new Loan Estimate and Closing Disclosure, would lead to a one-time cost that, on an annualized basis, is equivalent to less than $3 dollars per mortgage origination. The proposal, therefore would not lead to an increase in the cost of credit to small businesses even if small businesses were to use closed-end mortgages credit for financing.

As discussed in the Small Business Review Panel Report, the Bureau considered various alternatives regarding the regulatory definition of application, permissible changes in settlement costs, timing and provision of the Closing Disclosure, and recordkeeping requirements, and consulted with the Small Business Review Panel on those alternatives. *See* Small Business Review Panel Report at 9-12. For example, the Bureau considered an exemption for small entities from the electronic data recordkeeping requirements in proposed § 1026.25. *Id.* at 12. The Bureau consulted on alternatives that would achieve the statutory objectives while minimizing the cost of credit for small entities.

IX. Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking, and identified as such, will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (Paperwork Reduction Act or PRA). Under the PRA, the Bureau may not conduct or sponsor, and a person is not required to respond to, this information collection unless the information collection displays a currently valid control number.

This proposed rule would amend 12 CFR part 1024 (Regulation X) and 12 CFR part 1026 (Regulation Z). Both Regulations X and Z currently contain collections of information approved by OMB. The Bureau's OMB control number for Regulation X is 3170-0016 and for Regulation Z is 3170-0015. As described below, the proposed rule would amend the collections of information currently in Regulation X and Regulation Z. As previously discussed, the Dodd-Frank Act amended TILA and RESPA to mandate specifically that the Bureau propose rules and forms combining the TILA and RESPA disclosures for mortgage loans subject to either law or both laws. Dodd-Frank Act sections 1098, 1100A. The Dodd-Frank Act requires the Bureau to publish proposed rules and forms combining the disclosures by July 21, 2012. Dodd-Frank Act section 1032(f). The Dodd-Frank Act also made several amendments to the disclosure requirements in TILA and RESPA. Based on the specific statutory mandate to combine the disclosures under TILA and RESPA, the Bureau is proposing to amend Regulation X and Regulation Z to establish new disclosure requirements and forms in Regulation Z for closed-end consumer credit transactions secured by real property, other than reverse mortgages. Accordingly, the proposed rule requires that an integrated Loan Estimate be provided to consumers within three business days after receipt of the consumer's application to replace the early TILA disclosure and RESPA GFE, and that an integrated Closing Disclosure be provided to consumers at least three business days prior to consummation to replace the final TILA disclosure and RESPA settlement statement. The proposed rule also contains new electronic recordkeeping requirements.

The information collection in the proposed rule is required to provide benefits for consumers and would be mandatory. *See* 15 U.S.C. 1601 *et seq.*; 12 U.S.C. 2601 *et seq.*, 5532(f). Because the Bureau does not collect any information under the proposed rule, no issue of confidentiality arises. The likely respondents would be commercial banks/savings institutions, credit unions, mortgage companies (non-bank lenders), mortgage brokers, and settlement agents[241] that would be required under the proposed amendments to Regulations Z and X, to provide to consumers, and maintain related electronic records on, the integrated TILA-RESPA mortgage disclosures, either because they make mortgage loans subject to the proposed rule or because they may be responsible for completing or providing required disclosures.[242]

Under the proposed rule, the Bureau would account for the entire paperwork burden for respondents under Regulation X. The Bureau generally would also account for the paperwork burden associated with Regulation Z for the following respondents pursuant to its administrative enforcement authority: insured depository institutions with more than $10 billion in total assets, their depository institution affiliates, and certain nondepository institutions. The Bureau and the FTC generally both have enforcement authority over nondepository institutions for Regulation Z. Accordingly, the Bureau has allocated to itself half of the estimated burden to nondepository institutions. Other Federal agencies are responsible for estimating and reporting to OMB the total paperwork burden for the institutions for which they have administrative enforcement authority. They may, but are not required to, use the Bureau's burden estimation methodology.

For purposes of this analysis, the Bureau assumes that any burden increase associated with the proposed rule is allocated to Regulation Z. As discussed in part IX.B.2, below, under the proposed rule there would be no burden increase associated with Regulation X, and in fact there is a burden reduction attributed to Regulation X because the RESPA GFE and settlement

[241] Although respondents under PRA for Regulation Z also include mortgage brokers and settlement agents, for purposes of the PRA analysis, the Bureau assumes that the creditor takes on the obligation to deliver the Loan Estimate and Closing Disclosure. Accordingly, there is minimal burden attributed to brokers and settlement agents.

[242] For purposes of this PRA analysis, references to "creditors" or "lenders" shall be deemed to refer collectively to commercial banks, savings institutions, credit unions, and mortgage companies (*i.e.*, nondepository lenders), unless otherwise stated. Moreover, reference to "respondents" shall generally mean all categories of entities identified in the sentence to which this footnote is appended, except as otherwise stated or if the context indicates otherwise.

statement disclosures would be eliminated for all of the mortgage market, other than reverse mortgages, and replaced by the Loan Estimate and Closing Disclosures, under Regulation Z. Using the Bureau's burden estimation methodology, the total estimated burden for the approximately 14,354 banks, savings institutions, credit unions, and mortgage companies subject to the proposed rule,[243] including Bureau respondents, would be approximately 2.12 million hours for one-time changes and 2.35 million hours annually. The estimates presented in this part IX represent weighted averages across respondents. The Bureau expects that the amount of time required to implement each of the proposed changes for a given institution may vary based on the size, complexity, and practices of the respondent.

[243] For the reasons described above, this figure excludes mortgage brokers and settlement agents.

A. Information Collection Requirements

The Bureau believes the following aspects of the proposed rule would be information collection requirements under the PRA: (1) the development, implementation, and continuing use of new, integrated Loan Estimate and Closing Disclosure forms required for closed-end mortgage transactions subject to the proposed rule and the generation and provision of additional Loan Estimates in particular transactions as a result of increases in the closing costs that were included in the initial Loan Estimate,[244] and (2) the imposition of new requirements to maintain evidence of compliance in standardized, machine readable, electronic format.[245]

1. Initial and Final Disclosures

As discussed above in part VII, the integrated Loan Estimate and the Closing Disclosure would result in certain compliance costs to covered persons. The Bureau believes that many of the costs of complying with these requirements would be common across the two disclosures, and therefore discusses them together here. Under the proposal, responsibility for delivering the Loan Estimate would lie with the creditor. The Bureau believes that in some circumstances the Loan Estimate may be delivered by a mortgage broker acting on behalf of the creditor. The Bureau believes the costs would be similar for Loan Estimates delivered by creditors and brokers, and the estimates presented here are based on the assumption that the creditor delivers

[244] The proposal also provides that, if the creditor permits a consumer to shop for a settlement service, the creditor shall provide the consumer with a written list identifying available providers of that service and stating that the consumer may choose a different provider for that service. Accordingly, creditors must comply with this additional requirement in certain transactions where consumers are permitted to shop for settlement services. This is an existing requirement under current Regulation X, 12 CFR 1024 app. C, but is not specifically itemized as a separate information collection under Regulation X. Because the timing of this requirement coincides with the provision of the initial Loan Estimate to consumers, the burden associated with the written list of providers requirement under the proposed rule is included in the burden calculation for the Loan Estimate.

[245] Under the proposal, these information collections apply to closed-end transactions secured by real property, other than reverse mortgages subject to § 1026.33. As discussed in part VI, section-by-section analysis for § 1026.19, above, construction-only loans, vacant-land loans, and loans secured by more than 25 acres, are subject to the integrated disclosure provisions although these transactions are currently exempt from RESPA coverage, because the Bureau believes that excluding these transactions would deprive consumers of the benefit of enhanced disclosures. However, the Bureau believes that the number of such transactions is negligible as compared to the entire mortgage market.

the Loan Estimate. Similarly, the Bureau is proposing two alternatives with respect to the responsibility to deliver the Closing Disclosure. Under the first alternative, the creditor would be solely responsible for delivering the Closing Disclosure; under the second alternative, the creditor and settlement agent would be jointly responsible. These estimates assume that the creditor takes on the obligation to deliver the Closing Disclosure. The Bureau believes that if settlement agents were to take on a substantial portion of the responsibility for delivering the Closing Disclosure the costs would be similar, although they may be borne by different parties.

a. One-time costs

Covered persons would incur one-time costs associated with training and reviewing the regulation. In addition, covered persons who maintain their own software and compliance systems would incur one-time costs to adapt their software and compliance systems to produce the new forms.[246] Based on information provided by creditors and by software vendors, the Bureau believes that, in general, larger creditors develop and maintain their own compliance software and systems, while smaller creditors primarily rely on software and compliance systems provided by outside vendors. The Bureau estimates that the top 20 creditors typically maintain their own systems, while 95 percent of smaller creditors rely on vendors.

The use of vendors would substantially mitigate the costs of revising software and compliance systems, as the efforts of a single vendor would address the needs of a large number of creditors. Based on discussions with a leading mortgage origination technology provider, the Bureau believes that these updates, however, would likely be included in regular annual updates, and therefore the costs would not be directly passed on to the client creditors. Based on small

[246] In addition to changing the format of the required forms, the new proposed forms include numerous new disclosures that are required by the Dodd-Frank Act. The Bureau believes that this additional information would be added to the forms as part of the process of adapting software and compliance systems to produce the new forms, and therefore does not provide separate estimates for the costs of adding this additional information.

entities that participated in the Small Business Review Panel process, the Bureau estimates that creditors that maintain their own compliance software and systems would incur costs of roughly $100,000 to determine what changes need to be made and to update their systems to comply with the proposal. Larger creditors with proprietary systems would need to revise their compliance software and systems. Based on information from conversations with large creditors and with software vendors, the Bureau estimates that the cost per creditor for this category of creditor would be $1,000,000.

Covered persons would incur one-time costs associated with training employees to use new forms and any new compliance software and systems. The Bureau estimates that each loan officer or other loan originator will need to receive two hours of training. The Bureau further estimates that a trainer will spend an hour for every ten hours of trainee time.

The Bureau estimates that, for each covered person, one attorney and one compliance officer would each take seven hours to read and review the sections of the proposed regulation that describe the contents of the Loan Estimate and Closing Disclosure requirements, based on the length of each of the sections.

The Bureau estimates the total one-time costs of reading the relevant sections of the Federal Register, revising systems to provide the new disclosures, and training personnel for the Bureau respondents to be approximately $30.9 million, which corresponds to approximately 574,600 hours. Annualized over five years, this is an annual cost of $6.2 million. The Bureau estimates the one-time costs to the 128 depository institutions (including their depository affiliates) that are mortgage originator respondents of the Bureau under Regulation Z[247] would be $20.1 million, or 391,000 hours. For the estimated 2,515 nondepository institutions that are

[247] There are 154 depository institutions (and their depository affiliates) that are subject to the Bureau's administrative enforcement authority. For purposes of this PRA analysis, the Bureau has calculated its burden hours and costs based on the estimated 128 depository institutions subject to Regulation Z that are mortgage originators.

subject to the Bureau's administrative enforcement authority, the Bureau is taking the burden of half of those nondepository institutions for purposes of this PRA analysis.[248] The Bureau estimates the one-time costs would be $10.8 million, or 183,700 hours.[249]

b. Ongoing costs

In addition to one-time costs to revise systems and train employees, covered persons will have ongoing costs from providing the disclosures. Based on industry feedback, the Bureau understands that most disclosures will be generated by automated systems that use data collected by covered entities in the normal course of business. The Bureau believes that a small number of the disclosures in the Loan Estimate and Closing Disclosure would be generated using data that may not otherwise be collected in the normal course of business, and has considered this in calculating the ongoing burden associated with the information collection. However, the Bureau may adjust its calculation in a final rule if it determines that such information is collected in the normal course of business or that automated sources of such data exist that would make any burden associated with collecting that data negligible. The Bureau's estimates also account for the time covered persons would spend to review the forms for accuracy.

In calculating the total burden of providing Loan Estimates and Closing Disclosures, the Bureau assumes that Loan Estimates will be provided in response to applications for mortgages and Closing Disclosures will be provided three business days before mortgages are consummated. The Bureau further estimates entities will reissue on average two Loan Estimates per loan originated.

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[248] Unless otherwise specified, all references to burden hours and costs for the Bureau respondents are based on a calculation of half of the estimated 2,515 nondepository institutions.

[249] For additional information, please see the proposed amended Supporting Statement for OMB Control Number 3170-0016, available at www.reginfo.gov.

Table 2 summarizes these ongoing costs, which total an estimated $68.4 million per year. This represents an average cost of approximately $15 per origination.[250]

Table 2: Ongoing Costs for Integrated Disclosures for CFPB Respondents

	Loan Estimate	Closing Disclosure	Total
CFPB share of responses	17,900,000	4,800,000	22,700,000
Annual Burden (hrs):			
Time per response (minutes)	3	6	
Total (hours)	**895,000**	**480,000**	**1,375,000**
Annual Burden ($):			
Labor costs	$41,170,000	$22,080,000	$63,250,000
Production and distribution costs	$7,129,000	$2,280,000	$9,409,000
Total	**$48,299,000**	**$24,360,000**	**$72,659,000**

2. Recordkeeping

The proposed rule imposes new data retention requirements on certain respondents. As discussed above in part VII, the proposed rule will require creditors and mortgage brokers to retain evidence of compliance with the Loan Estimate and Closing Disclosure requirements in machine readable,[251] electronic format. The proposed retention period is three years for the Loan Estimates and five years for the Closing Disclosures. *See* part VI above, section-by-section analysis for proposed § 1026.25.

The proposed rule may result in costs to covered persons. Under current rules, creditors must retain evidence of compliance with the disclosure requirements in Regulation X (*i.e.*, a

[250] Bureau respondents are estimated to originate approximately 4.8 million mortgages per year that would be subject to these information collections.
[251] As discussed in part VI, section-by-section analysis for proposed § 1026.25(c), "machine readable" means a format where the individual data elements comprising the record can be transmitted, analyzed, and processed by a computer program, such as a spreadsheet or database program. Data formats for image reproductions (*e.g.*, PDF) or document text, such as those used by word processing programs, are not machine readable for purposes of this proposal.

copy of the RESPA settlement statement) and Regulation Z (*i.e.*, evidence of compliance generally), but are not required to maintain such evidence an electronic, machine readable format. 12 CFR 1024.10(e); 1026.25. Based on industry feedback, the Bureau understands that firms currently rely on electronic systems for most aspects of the mortgage loan origination process, including electronic record creation and storage. Not all creditors currently maintain data in a machine-readable format, and those who do may not retain it in the format that may ultimately be adopted. To comply with the proposed record retention provisions, therefore, creditors may be required to reconfigure existing document production and retention systems. For creditors that maintain their own compliance systems and software, the Bureau does not believe that adding the capacity to maintain data in a standard machine readable format will impose a substantial burden, as the only requirement will be to output existing data to a new format and then store that data.

The Bureau believes that the primary cost will be one-time systems changes that could be accomplished at the same time that systems changes are carried out to comply with the new proposed Loan Estimate and Closing Disclosure. The Bureau estimates that creditors that maintain their own compliance systems will need to expend 40 hours of software and IT staff time to develop the capacity to export data from existing data formats to the standard format. As discussed above, the Bureau estimates that 2,643 creditors are its respondents for purposes of the PRA, of which 152 creditors maintain their own compliance systems. At 40 hours each, the one-time burden is an estimated 6,080 hours.

Additionally, for each covered person, the Bureau estimates that one attorney and one compliance officer would each take 7.5 minutes to read and review the portion of the regulation pertaining to data retention, based on the length of that section. Accordingly, the total one-time burden associated with the data retention provision of the proposed rule would be 6,400 hours, or $376,400.

Creditors that rely on vendors would likely rely on vendor software and systems to comply with the data retention requirement; at least one vendor already offers indefinite data storage to customers that use their web-based origination services.

The Bureau understands that requiring standardized, electronic records may be a significant burden for covered persons that do not currently have such electronic filing systems. To reduce the burden on small entities, the Bureau is considering an exemption from the electronic data retention requirements. *See* part VI above, section-by-section analysis for proposed § 1026.25.

In addition, the proposed rule requires creditors and mortgage brokers to retain documentation sufficient to show their supervisory agencies that one of the exceptions applies whenever a cost for a service provided by a company that is owned by or affiliated with the creditor proves to be higher than estimated in the Loan Estimate, similar to the current document retention requirements under Regulation X for when the RESPA GFE is reissued. This retention requirement may result in additional cost to respondents that are creditors and mortgage brokers.

B. Summary of Burden Hours

1. Regulation Z

The below table summarizes the one time and annual burdens under Regulation Z associated with information collections affected by the proposal for Bureau respondents under the PRA.

Table 3: Regulation Z One-Time and Annual Burdens Impacted by Proposal for Bureau Respondents

	Loan Estimate	Closing Disclosure	Recordkeeping	Total
Number of respondents	2,643	2,643	2,643	2,643
Number of responses	17,900,000	4,800,000	n/a	22,700,000
One-Time Burden				
Labor hours	287,000	287,000	6,400	580,400
Labor cost	$15,442,000	$15,442,000	$376,000	$31,260,000
Annual Burden				
Labor (hrs)	895,000	480,000	n/a	**1,375,000**
Labor cost ($)	$41,170,000	$22,080,000	n/a	**$63,250,000**
Production and distribution costs ($)	$7,129,000	$2,280,000	n/a	**$9,409,000**
Total annual costs ($)	**$48,299,000**	**$24,360,000**	**n/a**	**$72,659,000**

2. Regulation X

The proposal does not increase PRA burden associated with Regulation X, and instead removes the majority of the burden associated with two information collections: (i) the RESPA GFE and (ii) the RESPA settlement statement. Currently, the RESPA GFE and settlement statement disclosures account for approximately 10.9 million annual burden hours.[252] Under the proposal, the majority of this burden would be eliminated, with only reverse mortgage transactions remaining subject to the RESPA GFE and settlement statement requirements. The

[252] The annual burdens attributed to the RESPA GFE and settlement statement (HUD-1 / HUD-1A) are 3,612,500 hours and 7,250,000 hours, respectively. *See* Supporting Statement for OMB Control Number 3170-0016, available at http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201110-3170-013 (CFPB); Supporting Statement for OMB Control Number 2502-0265, available at http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=200810-2502-001 (HUD).

remaining burden associated with these disclosures in Regulation X would total approximately 62,400 hours, assuming no change in the time required to respond. The below table summarizes the annual burdens under Regulation X associated with information collections affected by the proposal.

Table 4: Regulation X Annual Burdens Impacted by Proposal

	GFE	HUD-1	Total
Number of responses	122,400	72,000	194,400
Annual Burden (hrs):			
Time per response (minutes)	10	35	
Total (hours)	**20,400**	**42,000**	**62,400**
Annual Burden ($):			
Labor costs	$938,400	$1,932,000	$2,870,400

3. Net Effect on PRA Estimates of Ongoing Burden

As discussed above, by integrating the TILA and RESPA disclosures, the proposal eliminates the majority of the ongoing PRA burden under Regulation X for the RESPA GFE and settlement statement disclosures, while simultaneously creating ongoing burden attributable to the integrated disclosures in Regulation Z. On a market-wide basis, annual PRA burden in Regulation X decreases by approximately 10.8 million hours. The Bureau cannot similarly quantify the change in ongoing burden under Regulation Z, because current burden estimates neither itemize the burden hours attributable to the early, revised, and final TILA disclosures nor limit burden hours to mortgage transactions (but, instead, estimate for closed-end credit, generally). However, the total PRA burden associated with the new integrated disclosures for all institutions subject to Regulation Z is estimated to be 2.35 million hours annually. These changes reflect the decrease in the number of mortgages originated, increased systems automation, changes in methodology for calculating burden under the PRA, and the effects of the proposal.

C. Comments

Comments are specifically requested concerning: (i) whether the proposed collections of information are necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (ii) the accuracy of the estimated burden associated with the proposed collections of information; (iii) how to enhance the quality, utility, and clarity of the information to be collected; and (iv) how to minimize the burden of complying with the proposed collections of information, including the application of automated collection techniques or other forms of information technology. Comments on the collection of information requirements should be sent to the Office of Management and Budget (OMB), Attention: Desk Officer for the Consumer Financial Protection Bureau, Office of Information and Regulatory Affairs, Washington, D.C., 20503, or by the internet to http://oira_submission@omb.eop.gov, with copies to the Bureau at the Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552, or by the internet to CFPB_Public_PRA@cfpb.gov.