

BUREAU OF CONSUMER FINANCIAL PROTECTION**12 CFR Parts 1024 and 1026**

[Docket No. CFPB–2014–0028]

RIN 3170–AA48

Amendments to the 2013 Integrated Mortgage Disclosures Rule Under the Real Estate Settlement Procedures Act (Regulation X) and Truth In Lending Act (Regulation Z) and the 2013 Loan Originator Rule Under the Truth in Lending Act (Regulation Z)**AGENCY:** Bureau of Consumer Financial Protection.**ACTION:** Proposed rule with request for public comment.

SUMMARY: The Bureau is proposing two modifications to the Truth in Lending Act and Real Estate Settlement Procedures Act Final Rule (TILA–RESPA Final Rule): An adjustment to the timing requirement for revised disclosures when the consumer locks a rate or extends a rate lock after the initial disclosures are provided; and an amendment to permit language related to new construction loans to be included on the Loan Estimate form. The Bureau also is proposing to amend the 2013 Loan Originator Final Rule to provide for placement of the Nationwide Mortgage Licensing System and Registry ID (NMLSR ID) on the integrated disclosures. Additionally, the Bureau is proposing technical corrections, including citation and cross-reference updates, and wording changes for clarification purposes to various provisions of Regulations X and Z as amended or adopted by the TILA–RESPA Final Rule.

DATES: Comments must be received on or before November 10, 2014.**ADDRESSES:** You may submit comments, identified by Docket No. CFPB–2014–0028 or RIN 3170–AA48, by any of the following methods:

- *Electronic:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.
- *Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1275 First Street NE., Washington, DC 20002.

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 1275 First Street NE., Washington, DC 20002, 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 generally will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Jaydee DiGiovanni, Policy and Procedure Analyst; Richard Arculin and David Friend, Counsels; Office of Regulations, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:**I. Summary of the Proposed Rule**

In November 2013, pursuant to sections 1098 and 1100A of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the Bureau issued the Integrated Mortgage Disclosures under the Real Estate Settlement Procedures Act (Regulation X) and Truth in Lending Act (Regulation Z) (TILA–RESPA Final Rule),¹ combining certain disclosures that consumers receive in connection with applying for and closing on a mortgage loan.

This rule proposes two amendments to Regulation Z provisions adopted by the 2013 TILA–RESPA Final Rule. First, the Bureau is proposing to amend § 1026.19(e)(3)(iv)(D), which states that, in order to revise the estimated amounts used to determine good faith pursuant to § 1026.19(e)(1), creditors must redisclose interest rate dependent charges and loan terms on the date that the rate is locked. The Bureau is proposing to relax the timing requirement to state that creditors must provide a revised disclosure no later than the next business day after the date the rate is locked, instead of the same date. Second, the Bureau is proposing to amend § 1026.37(m) to provide for the placement of language relating to certain new construction loans on the Loan Estimate form that is required in order for creditors to redisclose estimated charges.

The Bureau also is proposing several corrections, updates, and wording changes for clarification purposes that are non-substantive in nature, such as (1) technical corrections and corrected or updated citations and cross-references in the regulatory text and commentary adopted by the TILA–RESPA Final Rule; (2) minor wording changes throughout regulatory provisions and commentary adopted by the TILA–RESPA Final Rule for additional clarity; and (3) an amendment to § 1026.36(g)(2)(ii), adopted by the 2013 Loan Originator Final Rule, to provide for placement of the NMLSR ID on the integrated disclosures.

The Bureau is seeking comment on these amendments, with a 30-day comment period from the date of issuance of this proposed rule. The Bureau intends to finalize these proposed amendments quickly in order to provide industry adequate time to implement any changes that result from this proposal by the August 1, 2015 effective date.

II. Background*A. The Integrated Disclosures Rulemaking*

In July 2010, the Dodd-Frank Act was enacted by Congress, which transferred rulemaking authority under both TILA and RESPA to the Bureau and, under sections 1032(f), 1098, and 1100A, mandated that the Bureau establish a single disclosure scheme under TILA and RESPA and propose for public comment rules and model disclosures that integrate the TILA and RESPA disclosures by July 21, 2012. 12 U.S.C. 2603(a), 5532(f); 15 U.S.C. 1604(b). 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 “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 which “includes the disclosure requirements of this title in conjunction with the

¹ 78 FR 79730 (Dec. 31, 2013).

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).²

The Bureau issued proposed integrated disclosure forms and rules for public comment on July 9, 2012 (the TILA–RESPA Proposal or proposal).³ On December 31, 2013, more than 17 years after Congress first directed the Board and HUD to integrate the disclosures under TILA and RESPA, the Bureau published the TILA–RESPA Final Rule.

B. Implementation Support

In early 2014, the Bureau initiated efforts to support industry implementation of the TILA–RESPA Integrated Disclosure Final Rule. These efforts include: (1) The publication of a plain-language compliance guide and guide to forms to help industry understand the new rules, including updates to the guides, as needed; (2) an ongoing series of webinars to address common interpretive questions; (3) roundtables with industry, including creditors, settlement service providers, and vendors, to discuss implementation; (4) participation in conferences and forums; and (5) close collaboration with other regulators, including state regulators, on implementation of the Final Rule, including coordination on consistent examination procedures. More information regarding the Bureau’s TILA–RESPA implementation initiative can be found on the Bureau’s regulatory implementation Web site at

² 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. Subtitle C of the Consumer Financial Protection Act, “Specific Bureau Authorities,” codified at 12 U.S.C. chapter 53, subchapter V, part C, contains a similar provision. Specifically, section 1032(f) of the Dodd-Frank Act provides that, by July 21, 2012, the Bureau “shall propose for public comment rules and model disclosures that combine the disclosures required under [TILA] and sections 4 and 5 of [RESPA] into a single, integrated disclosure for mortgage loan transactions covered by those laws, unless the Bureau determines that any proposal issued by the [Board] and [HUD] carries out the same purpose.” 12 U.S.C. 5532(f). The Bureau issued the TILA–RESPA Proposal pursuant to that mandate and the parallel mandates established by the conforming amendments to RESPA and TILA, discussed above.

³ See the Bureau’s press release *Consumer Financial Protection Bureau proposes “Know Before You Owe” mortgage forms* (July 9, 2012), available at <http://www.consumerfinance.gov/pressreleases/consumer-financial-protection-bureau-proposes-know-before-you-owe-mortgage-forms/>; the Bureau’s blog post *Know Before You Owe: Introducing our proposed mortgage disclosure forms* (July 9, 2012), available at <http://www.consumerfinance.gov/blog/know-before-you-owe-introducing-our-proposed-mortgage-disclosure-forms/>.

www.consumerfinance.gov/regulatory-implementation.

As part of the initiative to support ongoing implementation efforts, the Bureau has conducted extensive outreach to multiple stakeholders since publication of the Final Rule. Based on that extensive outreach, the Bureau believes these proposed amendments to be relatively straightforward and mostly technical in nature. Accordingly, the Bureau expects to be able to finalize this proposal in sufficient time for creditors and other stakeholders to be able to implement the final changes prior to the August 1, 2015 effective date.

III. Legal Authority

The Bureau is issuing this proposed rule pursuant to its authority under TILA, RESPA, and the Dodd-Frank Act. Section 1061 of the Dodd-Frank Act transferred to the Bureau the “consumer financial protection functions” previously vested in certain other Federal agencies, including the Board’s consumer protection functions relating to TILA mortgage disclosures and the HUD Secretary’s consumer protection functions relating to RESPA.⁴ 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.”⁵ Title X of the Dodd-Frank Act, including section 1061 of the Dodd-Frank Act, along with TILA, RESPA, and certain subtitles and provisions of title XIV of the Dodd-Frank Act, are Federal consumer financial laws.⁶ 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

⁴ Public Law 111–203, 124 Stat. 1376, section 1061(b)(7); 12 U.S.C. 5581(b)(7).

⁵ 12 U.S.C. 5581(a)(1).

⁶ Dodd-Frank Act section 1002(14), 12 U.S.C. 5481(14) (defining “Federal consumer financial law” to include the “enumerated consumer laws” and the provisions of title X of the Dodd-Frank Act); Dodd-Frank Act section 1002(12), 12 U.S.C. 5481(12) (defining “enumerated consumer laws” to include TILA and RESPA); Dodd-Frank section 1400(b), 15 U.S.C. 1601 note (defining “enumerated consumer laws” to include certain subtitles and provisions of Title XIV).

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.⁷ 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 harmonize the underlying statutes. In particular, TILA and RESPA establish different timing requirements for disclosing mortgage credit terms and costs to consumers and require that those disclosures be provided by different parties. TILA generally requires that, within three business days of receiving the consumer’s application and at least seven business days before consummation of certain mortgage transactions, creditors must provide consumers a good faith estimate of the costs of credit.⁸ 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

⁷ 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 Act 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).

⁸ 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).

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 was required to do so. Dodd-Frank Act section 1032(f), TILA section 105(b), and RESPA section 4(a) provide the Bureau with authority to issue regulations that reconcile certain provisions of TILA and RESPA to carry out Congress' mandate to integrate the statutory disclosure requirements.

B. Other Rulemaking and Exception Authorities

This 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.

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 further provide for such adjustments and exceptions for all or any class of transactions that the Bureau judges are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. A purpose of TILA is "to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit." TILA section 102(a); 15 U.S.C. 1601(a). This stated purpose is informed by Congress' finding that "economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be

strengthened by the informed use of credit[.]” TILA section 102(a). Thus, strengthened competition among financial institutions is a goal of TILA, achieved through the effectuation of TILA's purposes.

Historically, TILA section 105(a) has served as a broad source of authority for rules that promote the informed use of credit through required disclosures and substantive regulation of certain practices. Dodd-Frank Act section 1100A clarified the Bureau's section 105(a) authority by amending that section to provide express authority to prescribe regulations that contain "additional requirements" that the Bureau finds are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance. This amendment clarified the Bureau's authority to exercise TILA section 105(a) to prescribe requirements beyond those specifically listed in the statute that meet the standards outlined in section 105(a). The Dodd-Frank Act also clarified the Bureau's rulemaking authority over certain high-cost mortgages pursuant to section 105(a). As amended by the Dodd-Frank Act, TILA section 105(a) authority to make adjustments and exceptions to the requirements of TILA applies to all transactions subject to TILA, except with respect to the provisions of TILA section 129⁹ that apply to the high-cost mortgages referred to in TILA section 103(bb), 15 U.S.C. 1602(bb).

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

⁹ 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.

Real Estate Settlement Procedures Act

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

In developing rules under RESPA section 19(a), the Bureau has considered the purposes of RESPA, including to effect certain changes in the settlement process that will result in more effective advance disclosure of settlement costs.

Dodd-Frank Act

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

the status of a person as a depository institution, in order to promote fair competition; and (5) markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation. 12 U.S.C. 5511(b). Accordingly, in developing this rulemaking, the Bureau has sought to ensure that it is consistent with the purposes of Dodd-Frank Act section 1021(a) and with the objectives of Dodd-Frank Act section 1021(b), specifically including Dodd-Frank Act section 1021(b)(1) and (3).

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

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

Dodd-Frank Act section 1032(c) provides that, in prescribing rules pursuant to section 1032, the Bureau “shall consider available evidence about

consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services.” 12 U.S.C. 5532(c). Accordingly, in developing the TILA–RESPA Final Rule under Dodd-Frank Act section 1032(a), the Bureau 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. 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 of the TILA–RESPA Final Rule for a discussion of the Bureau’s consumer testing.

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

In developing rules for residential mortgage loans under Dodd-Frank Act section 1405(b), the Bureau has considered the purposes of improving consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures, and the interests of consumers and the public.

IV. Section-by-Section Analysis

A. Regulation X

Section 1024.5—Coverage of RESPA 5(d) Partial Exemptions for Certain Mortgage Loans

The Bureau is proposing to amend § 1024.5(d) to remove the cross-references to § 1024.21(b) and (c) and replace them with the appropriate cross-reference to § 1024.33(a).

B. Regulation Z

General—Technical Corrections

In addition to the amendments to Regulation Z discussed below, the Bureau is proposing non-substantive technical corrections, including citation and cross-reference updates as well as wording changes for clarification purposes, to various provisions of Regulation Z as amended or adopted by the TILA–RESPA Final Rule. The proposed technical corrections are to §§ 1026.37(o) and 1026.38(e) and (k); to commentary to §§ 1026.37(b), (c), and (h) and 1026.38(a) and (e); and to Appendix H. Where appropriate, some of these technical corrections and wording changes are discussed in the applicable sections below.

Section 1026.19—Certain Mortgage and Variable-Rate Transactions

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

As the Bureau acknowledged in the TILA–RESPA Final Rule,¹⁰ if a loan’s interest rate has not been locked at the time the initial disclosures are made, or a locked interest rate has expired, loan terms and costs related to the interest rate may change, including the charge or credit for the interest rate chosen, the adjusted origination charges, and per diem interest. Regulation X, § 1024.7(f)(5), currently provides for redisclosure of these estimated charges in the event that a rate is locked after the initial Good Faith Estimate (GFE) has been provided: A revised GFE must be provided within three business days of the interest rate being locked or re-locked, showing the revised interest rate dependent charges and terms.

In the TILA–RESPA Proposal, proposed § 1026.19(e)(3)(iv)(D) retained the same basic approach, but the Bureau expressed concern that allowing creditors three business days to provide revised disclosures after a rate is locked could harm consumers through creditors engaging in rent-seeking behavior or attempting to circumvent RESPA and Regulation X. The Bureau

¹⁰ 78 FR 79730, 79833 (December 31, 2013).

thus proposed § 1026.19(e)(3)(iv)(D) to permit a revised disclosure in the event of a subsequent lock of the interest rate but required redisclosure on the same date that the rate is locked.

The Bureau sought comment on the frequency and magnitude of revisions to the interest rate dependent charges, the frequency of cancellations of contractual agreements related to interest rate dependent charges, such as rate lock agreements, and the reasons for such revisions and cancellations. The Bureau received few comments specific to proposed § 1026.19(e)(3)(iv)(D) and finalized § 1026.19(e)(3)(iv)(D) as proposed with some additional clarifications. The Bureau stated that, if the interest rate is set without a rate lock agreement, § 1026.19(e)(3)(iv)(D) does not apply. The Bureau further explained that it intended § 1026.19(e)(3)(iv)(D) only to apply in situations where a rate lock agreement has been entered into between the creditor and borrower or where such agreement has expired. The Bureau also stated that, in its view, creditors should not need any additional time beyond the date the rate is locked to provide revised disclosures because the creditor controls when it executes the rate lock agreement.¹¹ The Bureau added comments 19(e)(3)(iv)(D)-1 and 19(e)(4)(i)-2 to provide examples and additional explanations.

As adopted by the Final Rule, § 1026.19(e)(3)(iv)(D) provides for revised disclosures when there are changes in interest rate dependent charges due to a rate lock, extension, or re-lock. Section 1026.19(e)(3)(iv)(D) states that, in order to revise the estimated amounts used to determine good faith pursuant to § 1026.19(e)(1), the creditor shall provide a revised version of the disclosures required under § 1026.19(e)(1)(i) to the consumer with the revised interest rate, the points disclosed pursuant to § 1026.37(f)(1), lender credits, and any other interest rate dependent charges and terms, on the date the rate is locked.

As part of its regulatory implementation outreach, the Bureau has received significant feedback on this provision since the Final Rule was published. Numerous industry stakeholders have presented information that suggests that creditors may not control when a rate is locked to the same extent the Bureau believed when finalizing the rule, and have identified operational challenges due to the same-day redisclosure requirement in § 1026.19(e)(3)(iv)(D).

In light of this information and for reasons more fully discussed below, the

Bureau believes the same-day redisclosure requirement could potentially create a consumer disadvantage. Accordingly, the Bureau believes that the same-day redisclosure requirement warrants reconsideration, and is proposing to amend § 1026.19(e)(3)(iv)(D) and its commentary to adjust this timing requirement. First, the Bureau is reassessing the extent to which the creditor controls when a rate lock agreement arises in some circumstances. The Final Rule states that creditors generally should be able to control when a rate lock agreement is executed, even if a consumer requests a rate lock the business day before. However, the Bureau believes that creditors may not always control when the agreement is formed in all situations. Moreover, flexibilities that exist under existing practices may be advantageous to consumers. For example, some creditors permit the consumer, or loan originator working on behalf of the consumer, to lock the interest rate unilaterally at any point during a business day or even after business hours. Under these practices, the consumer has the flexibility to lock the rate and form that agreement late in a business day or after business hours.

The Bureau believes this flexibility may be beneficial to consumers, because it allows them to lock interest rates on a date and time of their choosing without time restrictions being imposed by the creditor. The same-day redisclosure requirement could restrict this flexibility and reduce consumers' ability to determine when their rates may be locked. If creditors are required to provide revised disclosures to consumers the same date that the rate is locked, and a consumer asks to lock a rate late in the business day or after hours, creditors may be unable to provide a revised Loan Estimate that same date. Given the potential consequences of losing the ability to reset the applicable tolerances for interest rate-dependent charges pursuant to § 1026.19(e)(3), the Bureau believes creditors may respond to the Final Rule by limiting consumers' ability to lock rates at the time of their choice. Creditors may do this either by imposing cut-off times after which consumers are unable to lock their interest rates until the next day or by refusing to lock the rate contractually until the business day after the consumer requests a rate lock. The Bureau believes that both reactions to the Final Rule could be disadvantageous to consumers.

If creditors impose cut-off times, consumers would be limited in the

times of day that they or their representatives could lock interest rates. This could be problematic or inconvenient to consumers, particularly those who are in different time zones than their creditors, and could result in consumers missing the applicable windows to lock on a day of their choice and having to wait until the next business day to do so. Alternatively, the Bureau believes some creditors may be able to provide revised disclosures on the same date that a rate lock agreement is formed if those creditors only allow consumers to request the rate at a time of their choosing, and then later execute or form a binding agreement with the consumer. However, the Bureau believes this result could present other challenges to consumers. For example, consumers may be confused if they believe they are locking an interest rate at a certain time, but in fact are merely requesting rates that are not contractually binding until the creditor accepts the request, which may not be until the next business day. Accordingly, the Bureau believes that the same-day redisclosure requirement could create implementation challenges to industry that may result in unintended reduced consumer flexibility in locking or resetting floating interest rates.

For these reasons, the Bureau believes the same-day redisclosure requirement warrants reconsideration. The Bureau maintains that there is a benefit to consumers in receiving the revised Loan Estimate as early as possible to enable the consumer to evaluate the information. The Bureau also believes that a creditor should be able to provide a revised Loan Estimate based on interest rate dependent charges more quickly in comparison to other types of disclosures, because the creditor may not need to obtain information from other parties, such as third party vendors. However, the Bureau believes that providing for redisclosure on the next business day after the rate is locked would still further these purposes but without the operational challenges presented by a same-day redisclosure requirement. Accordingly, the Bureau is proposing to revise § 1026.19(e)(3)(iv)(D) to provide that creditors shall redisclose the interest rate and interest rate dependent charges no later than the next business day after the date the interest rate is locked. The proposal also would make conforming changes to comments 19(e)(3)(iv)(D)-1 and 19(e)(4)(i)-2, which provide illustrations of the provision's application.

The Bureau seeks comment on whether there is potential for consumer

¹¹ 78 FR 79833 (December 31, 2013).

harm if creditors are allowed a business day to provide revised Loan Estimates or benefit to consumers in retaining the same-day redisclosure requirement. The Bureau also seeks comment as to whether a single business day is sufficient for creditors to deliver or place in the mail a revised Loan Estimate modifying interest rate dependent charges and terms without the unintended consequences described in this proposal and, conversely, whether there is consumer harm that would result from allowing redisclosure more than one business day after the interest rate is locked.

Section 1026.36—Prohibited Acts or Practices and Certain Requirements for Credit Secured by a Dwelling

36(g) Name and NMLSR ID on Loan Documents

36(g)(2)(ii)

The Bureau is proposing to amend § 1026.36(g)(2)(ii) to conform to the requirements adopted by the 2013 Loan Originator Compensation Final Rule. Section 1026.36(g)(2) lists the specific loan documents that must contain the loan originator's name and NMLSR ID. The Bureau explained in the 2013 Loan Originator Compensation Final Rule that it was reserving § 1026.36(g)(2)(ii) for references to the integrated disclosures the Bureau was expecting to adopt in the final rule implementing the 2012 TILA-RESPA Integration Proposal. The disclosures referenced are those required by § 1026.19(e) and (f) in the TILA-RESPA Final Rule. Accordingly, the Bureau is proposing to amend § 1026.36(g)(2)(ii) to include in the list of loan documents the disclosures described § 1026.19(e) and (f), as adopted by the TILA-RESPA Final Rule.

Section 1026.37 Content of Disclosure for Certain Mortgage Transactions (Loan Estimate)

37(b) Loan Terms

37(b)(6) Adjustments After Consummation

Section 1026.37(b)(6) requires creditors to disclose that adjustments to principal, interest, and periodic payment may occur after consummation, including the date when the adjustment may first occur. As stated in comment 37(b)(8)-1, for adjustments that occur less than 24 months after consummation, the Bureau intended that date to be disclosed as a month, whereas for adjustments that occur after 24 months, as a whole year. Thus, an adjustment that first occurs 20 months after consummation would be disclosed as occurring in "month 20,"

whereas an adjustment that occurs 37 months after consummation would be disclosed as occurring in "year 3," not in "year 3.1." Comment 37(b)(6)-1, which provides for this timing mechanism, implies that comment 37(a)(10)-3 should be used to determine all adjustments that occur in periods not in whole years. While the Bureau intended that comment 37(a)(10)-3.ii be used to guide creditors regarding how to disclose terms of less than 24 months, comment 37(a)(10)-3.i provides that decimals should be used for periods greater than 24 months. The Bureau did not intend this guidance to be applicable to § 1026.37(b)(6); rather, any such period should be disclosed in whole years as stated in comment 37(b)(8)-1. Accordingly, the Bureau is proposing to revise comment 37(b)(6)-1 to align it with the commentary 37(b)(8) and ensure consistency in the reporting of time periods. Specifically, the Bureau proposes that guidance provided in 37(a)(10)-3 only should be referenced when reporting increases that occur less than 24 months after consummation but does not equate to a number of whole years or a number of days less than a week. For all other increases, whole years should be used in accordance with comment 37(b)(8)-1.

37(c) Projected Payments

37(c)(2) Itemization

37(c)(2)(ii) and 37(c)(2)(iii)

The Bureau is proposing to move the reference to the disclosure of mortgage insurance premiums as "0" where no escrow account is established to pay charges, such as property taxes or homeowners association fees, from comment 37(c)(ii)-2 and move it to comment 37(c)(2)(iii)-1. The Bureau believes that this reference is better suited in comment 37(c)(2)(iii), which provides for escrow disclosure. The Bureau also is proposing to amend comment 37(c)(2)(iii)-1 to state that the escrow payment should be disclosed as "—" if an escrow account is established for the payment of amounts identified in § 1026.37(c)(4)(ii), but no escrow payment is required with a particular periodic payment or range of payments, consistent with the disclosure of mortgage insurance premiums in comment 37(c)(2)(ii)-1.

37(c)(4) Taxes, Insurance, and Assessments

37(c)(4)(iv)

The Bureau is proposing to revise comment 37(c)(4)(iv)-2 to remove the reference to property taxes and homeowner's insurance to clarify that the amounts disclosed pursuant to

§ 1026.37(c)(4)(ii) may be paid by the creditor using some funds from the escrow account.

37(h) Calculating Cash To Close

37(h)(1) For all Transactions

37(h)(1)(ii) Closing Costs Financed

The Bureau is proposing to revise comment 37(h)(1)(ii)-1 to reflect the intended meaning of the regulatory text in § 1026.37(h)(1)(ii), which requires disclosure, in the Loan Estimate, of the amount, expressed as a negative number, of any closing costs that are to be paid from the loan proceeds. The Bureau explained in the preamble to the Final Rule that the amount disclosed under § 1026.37(h)(1)(ii) is determined by subtracting the estimated total amount of payments to third parties not otherwise disclosed pursuant to § 1026.37(f) and (g) from the total loan amount so long as the amount is a positive number and does not exceed the total closing costs disclosed under § 1026.37(g)(6), but comment 37(h)(1)(ii)-1 referenced "lender credits" instead of "closing costs." Accordingly, the Bureau is proposing to remove the words "lender credits" and replace them with the words "closing costs" to harmonize with the preamble, which correctly reflected the Bureau's intent.

37(m) Other Considerations

Section 1026.19(e)(3)(iv)(F) governs redisclosures on new construction loans when the creditor reasonably expects settlement to occur more than 60 days after providing the initial Loan Estimate. Section 1026.19(e)(3)(iv)(F) provides that a creditor may issue a revised disclosure if the original disclosure clearly and conspicuously states the creditor may issue revised disclosures at any time prior to 60 days before consummation. If no such statement is provided, the creditor may not issue revised disclosures, except as otherwise provided in § 1026.19(f).

The Bureau intended to permit creditors that make new construction loans and reasonably expect settlement to occur more than 60 calendar days after the initial Loan Estimate is provided to state on the Loan Estimate that the creditor may issue revised disclosures. However, § 1026.37, which prescribes the content for the disclosures provided on the Loan Estimate pursuant to § 1026.19(e)(1)(i), does not permit the creditor to state that it may issue revised disclosures. The proposal would add a new provision allowing the creditor to make the statement on the Loan Estimate form. Creditors would thus be able to preserve

the ability to provide the borrower with a revised loan estimate if settlement is not expected to occur for more than 60 days after the disclosures required by § 1026.19(e) are provided.

The Bureau is proposing to add new § 1026.37(m)(8), under the master heading “Additional Information About This Loan” and under the heading “Other Considerations,” and believes the § 1026.19(e)(3)(iv)(F) language is appropriately placed in this section of § 1026.37. The Bureau also is proposing to add new comment 37(m)(8)–1 to state that placement of the language here satisfies the “clear and conspicuous” standard set forth in § 1026.19(e)(3)(iv)(F). The Bureau invites comments on whether this is the most appropriate placement or if there are other areas on the Loan Estimate form that are more appropriate.

Section 1026.38—Content of Disclosures for Certain Mortgage Transactions (Closing Disclosure)

38(a) General Information

38(a)(3) Closing Information

38(a)(3)(vi)

The Bureau is proposing to add new commentary to § 1026.38(a)(3)(vi) to clarify that, in the case of multiple properties securing the transaction, the property address for all properties must be disclosed on the Closing Disclosure. Comment 37(a)(6)–3 provides that, where more than one property secures the credit transaction, all property addresses securing the transaction must be disclosed on the Loan Estimate pursuant to § 1026.37(a)(6). The Bureau believes that the requirement to disclose all real property securing the transaction must also be applied to the Closing Disclosure to ensure consistency between the two forms.

Accordingly, the Bureau is proposing to add new comment 38(a)(3)(vi)–2 to clarify that the addresses of all properties securing the transaction must be disclosed on the Closing Disclosure. Furthermore, proposed comment 38(a)(3)(vi)–2 would clarify that additional pages may be appended to the end of the form with the real property information if there is not enough space on the Closing Disclosure.

38(e) Alternative Calculating Cash To Close Table for Transactions Without a Seller

38(e)(1) Loan Amount

38(e)(1)(iii)(A)

The Bureau is proposing to amend comment 38(e)(1)(iii)(A)–1 to clarify the statement identifying a difference between the loan amount in the Loan

Estimate and Closing Disclosure, pursuant to § 1026.38(e)(1)(iii)(A). The Bureau is proposing to amend comment 38(e)(1)(iii)(A)–1 to replace “You increased this amount” with “This amount increased.”

38(e)(2) Total Closing Costs

38(e)(2)(iii)(A)

The Bureau is proposing to add commentary to § 1026.38(e)(2) to harmonize the disclosure of increases or decreases in closing costs between the “Alternative Calculating Cash to Close” table, which may be used for transactions without a seller, and the general “Calculating Cash to Close” table. Section 1026.38(i) and comment 38(i)–4, which prescribe content for the general “Calculating Cash to Close” table, require statements regarding any excess amount and any credit to the consumer be disclosed on the table. However, a parallel comment was not adopted or incorporated by reference in § 1026.38(e) for the alternative table. The Bureau intended that the same requirement apply to the alternative table and is proposing to add comment to section 38(e)(2)(iii)(A) to reflect the intended meaning of § 1026.38(e)(2)(iii)(A) and harmonize the commentary with section 38(i)(1)–3, which interprets § 1026.38(i)(1).

38(e)(3) Closing Costs Paid Before Closing

38(e)(3)(iii)(A)

The Bureau is proposing to amend § 1026.38(e)(3)(iii)(A), which applies to the “Alternative Calculating Cash to Close” table, to harmonize it with the parallel provision in § 1026.38(i)(2)(iii)(A), which applies to the general “Calculating Cash to Close” table. The Bureau intended that that these two provisions require, among other things, a statement that the consumer “paid such amounts prior to consummation of the transaction,” as reflected in § 1026.38(i)(2)(iii)(A). However, § 1026.38(e)(3)(iii)(A), as adopted by the TILA–RESPA Final Rule contains different language. Accordingly, the Bureau is proposing to amend § 1026.38(e)(3)(iii)(A) to harmonize these two provisions.

V. Dodd-Frank Act Section 1022(b)(2)

A. Overview

In developing the proposed rule, the Bureau has considered potential benefits, costs, and impacts.¹² The

¹² Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the

Bureau requests comment on the preliminary analysis presented below as well as submissions of additional data that could inform the Bureau’s analysis of the benefits, costs, and impacts. The Bureau has consulted, or offered to consult with, the prudential regulators, the Securities and Exchange Commission, the Department of Housing and Urban Development, the Federal Housing Finance Agency, the Federal Trade Commission, the U.S. Department of Veterans Affairs, the U.S. Department of Agriculture, and the Department of the Treasury, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies.

This rule proposes two main amendments to provisions adopted by the TILA–RESPA Final Rule. First, the Bureau is proposing to amend § 1026.19(e)(3)(iv)(D) and related commentary to relax a timing requirement that currently requires creditors to redisclose the interest rate and interest rate dependent charges to the consumer on the date that the rate is locked. The proposed amendment would require creditors to redisclose the interest rate and interest rate dependent charges no later than the next business day after the rate is locked.

The Bureau believes that, absent the proposed change, this requirement is likely to result in at least some creditors limiting consumers’ ability to lock their interest rates only to times early in a business day due to the implementation costs of getting the disclosure to the consumer the same date if the consumer requested a rate lock sufficiently late during the business day or after hours. The Bureau believes that consumers are unlikely to choose creditors based on the creditors’ policies regarding interest rate locks. Moreover, consumers would be unlikely to know whether their creditors will in fact allow interest rate locks at all times until the consumer actually attempts to lock the interest rate. Consequently, consumers could experience inconvenience because creditors limit when they may lock their interest rates. Furthermore, because consumers are unlikely to know of this practice until they attempt to lock a floating interest rate, it is unlikely that this practice would be corrected or influenced by market competition.

The second proposed amendment would permit creditors to state on the Loan Estimate that the creditor may

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.

issue revised disclosures if settlement is reasonably expected to occur more than 60 calendar days after the initial Loan Estimate is provided. The proposal would add a new provision allowing the creditor to make the statement on the Loan Estimate form, and thus enable creditors to preserve their ability to provide borrowers with revised loan estimates in these circumstances. Without the proposed amendment, creditors may have lower incentives to originate construction loans, especially if they believe that the estimates provided in the Loan Estimate might need to be revised. As a result, consumers either would be unable to get construction loans until most of the uncertainty about estimated costs is resolved or consumers will be offered construction loans with a priced-in premium that reflects the possibility that the creditor is not able to redisclose estimates after the initial 60 days.

The Bureau believes that both proposed amendments would provide options that a creditor is free to undertake or not to undertake, and thus present no cost to creditors. The Bureau believes that both proposed amendments would present some benefits to creditors. The Bureau believes that the first proposed amendment could present both benefits and costs to consumers, while the second proposed amendment presents benefits to consumers.

B. Potential Benefits and Costs to Consumers and Covered Persons Relaxing the Same-Day Redisclosure Requirement for Interest Rate Locks

The proposed amendment would provide an option to creditors: Creditors may avail themselves of an extra business day to redisclose interest rate and interest rate dependent charges, but do not have to. They also may continue to provide revised disclosures on the same date that the rate is locked if they choose. Therefore, some creditors will benefit if the proposed amendment is adopted by not having to redisclose on the same date the rate is locked, while other creditors could continue to redisclose on the date the rate is locked if they choose and are as well off as they would have been without this proposed amendment. Overall, if the proposed amendment is adopted, some creditors will benefit, others may not, all creditors will enjoy increased flexibility, but no creditors will face increased costs.

Under the current rule, the Bureau believes that some creditors could continue offering flexible time periods for interest rate locks, but others, for example, might choose to limit when

consumers may lock interest rates in order to ease the compliance cost. Other creditors might continue to allow consumers to request a lock at any time but only lock the rate contractually the business day after the consumer requests a rate lock, instead of on the date the consumer requests the rate lock. Consumers of these creditors could benefit from the proposed amendment through the increased convenience of being able to lock in the interest rate at any time during the day.

Consumers of creditors that continue to allow flexibility in locking interest rates might experience a cost: Their revised disclosures might not be available until the next business day if the proposed amendment is adopted. However, some of these creditors might still provide revised disclosures on the same date that the interest rate is locked. If they do not provide the revised disclosure until the next business day, then the potential consumer harm is the time difference between when the consumers would receive revised disclosures.

The Bureau does not possess any data, and is not aware of a source to obtain data, that would enable it to report the quantitative effects of this provision, for example, the number of creditors that would not let their consumers lock the interest rate in the afternoon or in the evening if the provision is not adopted. The Bureau seeks comment on this issue.

Specific Language on Loan Estimates for New Construction Loans

The Bureau believes that, without the proposed amendment, creditors that ordinarily originate construction loans could be forced either to originate only those construction loans for which the creditor is certain that no redisclosure prior to settlement will be necessary or to price in the risk of having to cure any amounts charged over the estimates initially provided more than 60 days before settlement. Creditors that price in the risk, including the estimated cost of cure in their pricing, risk miscalibrating the pricing and losing consumers to less risk-averse competitors or facing unanticipated costs related to cure for the failure to redisclose more accurate costs. In all events, creditors risk losing consumers to other options. In all events, the proposed amendment presents benefits to the creditors that decide to originate construction loans and presents no costs.

As noted above, under the current rule, a consumer who needs a new construction loan may only be able to obtain a construction loan where the creditor has priced in the risk of having

to cure any amounts charged over the estimates initially provided over 60 days before settlement, and that is a cost to consumers. On the other hand, if the proposed amendment is not adopted, yet the consumer manages to receive a construction loan, then the Loan Estimate provides consumers more certainty, given that creditors would be limited in their ability to redisclose estimated costs and reset the applicable tolerances. In situations where creditors misgauged estimates provided in the initial Loan Estimate, consumers might be entitled to receive a cure of any differences between the initial disclosure and the final costs at closing, to the extent such differences exceed applicable tolerances. However, the Bureau believes that these benefits to consumers are marginal, given that costs associated with construction loans are inherently volatile beyond the creditor's control. As a result, the Bureau believes that creditors unable to redisclose estimates given more than 60 days prior to consummation would be less likely to originate such loans.

The Bureau does not possess any data, and is not aware of a source to obtain data, that would enable it to report the number of transactions affected or to quantify the extent of creditor and consumer benefits. The Bureau seeks comment on this issue.

C. Impact on Covered Persons With No More Than \$10 Billion in Assets

The Bureau believes that covered persons with no more than \$10 billion in assets will not be differentially affected by the proposed amendment regarding construction loans.

The proposed amendment regarding interest rate locks might have two particular effects on covered persons with no more than \$10 billion in assets. First, covered persons with no more than \$10 billion in assets are more likely to benefit from this proposed provision to the extent that redisclosure on the same business day of an interest rate lock that occurred close to the end of the business day might require software and business processes upgrade costs. Larger covered persons are more likely to originate a sufficient number of transactions to make it worth implementing these changes, as opposed to choosing to offer interest rate locks only at set times during business hours.

Secondly, creditors located in more than one time zone might have to offer a shorter preset adjustment time to some customers (for example, if the location of the rate lock operation is in the Eastern Time zone), but covered persons with no more than \$10 billion in assets

are more likely to be located in a single time zone. From this perspective, covered persons with no more than \$10 billion in assets are less likely to benefit from this proposed amendment. The Bureau does not possess data to quantify either of the two possible aforementioned effects of the proposed amendment on covered persons with no more than \$10 billion in assets.

D. Impact on Access to Credit

The Bureau does not believe that there will be an adverse impact on access to credit resulting from any of the two provisions. Moreover, it is possible that there will be an expansion of access to credit, if the proposed amendment regarding construction loans facilitates the making of new construction loans, as the Bureau anticipates.

E. Impact on Rural Areas

The Bureau believes that rural areas might benefit from these two proposed provisions more than urban areas. Competition might drive creditors to originate construction loans despite the possible redisclosure issues and to provide interest rate locks throughout the day despite the same business day redisclosure requirement. To the extent that there are fewer creditors operating in rural areas than in urban areas with correspondingly reduced competition, and to the extent that competition would actually matter for these two issues, rural areas are most likely to suffer the potential harms the proposed amendments seek to address. Therefore, rural areas may conversely see the largest benefit from the proposed amendments.

VI. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (the RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small nonprofit organizations. The RFA defines a "small business" as a business that meets the size standard developed by the Small Business Administration pursuant to the Small Business Act.

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. 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.

An IRFA is not required for this proposal because the proposal, if adopted, would not have a significant economic impact on any small entities. The Bureau does not expect the proposal to impose costs on covered persons. All methods of compliance under current law will remain available to small entities if the proposal is adopted. Thus, a small entity that is in compliance with current law need not take any additional action if the proposal is adopted.

Accordingly, the undersigned certifies that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

VII. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 et seq.), Federal agencies are generally required to seek the Office of Management and Budget (OMB) approval for information collection requirements prior to implementation. The collections of information related to Regulations Z and X have been previously reviewed and approved by OMB in accordance with the PRA and assigned OMB Control Number 3170-0015 (Regulation Z) and 3170-0016 (Regulation X). Under the PRA, the Bureau may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to an information collection unless the information collection displays a valid control number assigned by OMB.

The Bureau has determined that this Proposed Rule would not impose any new or revised information collection requirements (recordkeeping, reporting, or disclosure requirements) on covered entities or members of the public that would constitute collections of information requiring OMB approval under the PRA. The Bureau welcomes comments on this determination or any other aspect of this proposal for purposes of the PRA. Comments should be submitted as outlined in the ADDRESSES section above. All comments will become a matter of public record.

List of Subjects

12 CFR Part 1024

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

12 CFR Part 1026

Advertising, Consumer protection, Credit, Credit unions, Mortgages,

National banks, Recordkeeping and recordkeeping requirements, Reporting, Savings associations, Truth in lending.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau proposes to amend Regulation X, 12 CFR part 1024, and Regulation Z, 12 CFR part 1026, as set forth below:

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

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

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

Subpart A—General Provisions

■ 2. Section 1024.5 is amended by revising paragraph (d) introductory text to read as follows:

§ 1024.5 Coverage of RESPA.

* * * * *

(d) Partial exemptions for certain mortgage loans. Sections 1024.6, 1024.7, 1024.8, 1024.10, and 1024.33(a) do not apply to a federally related mortgage loan:

* * * * *

PART 1026—TRUTH IN LENDING (REGULATION Z)

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

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

* * * * *

Subpart C—Closed-End Credit

■ 4. Section 1026.19 is amended by revising paragraph (e)(3)(iv)(D) to read as follows:

§ 1026.19 Certain mortgage and variable-rate transactions.

* * * * *

- (e) * * *
(3) * * *
(iv) * * *

(D) Interest rate dependent charges. The points or lender credits change because the interest rate was not locked when the disclosures required under paragraph (e)(1)(i) of this section were provided. No later than the next business day after the date the interest rate is locked, the creditor shall provide a revised version of the disclosures required under paragraph (e)(1)(i) of this section to the consumer with the revised interest rate, the points disclosed pursuant to § 1026.37(f)(1), lender

credits, and any other interest rate dependent charges and terms.

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

■ 5. Section 1026.36 is amended by adding paragraph (g)(2)(ii) to read as follows:

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

* * * * *

(g) * * *

(2) * * *

(ii) The disclosures required by § 1026.19 (e) and (f);

* * * * *

■ 6. Section 1026.37 is amended by adding paragraph (m)(8) and revising paragraph (o)(4)(i)(A) to read as follows:

§ 1026.37 Content of disclosures for certain mortgage transactions (Loan Estimate).

* * * * *

(m) * * *

(8) *New construction loans.* In transactions involving new construction, where the creditor reasonably expects that settlement will occur more than 60 days after the provision of the loan estimate, at the creditor's option, a clear and conspicuous statement that the creditor may issue a revised disclosure any time prior to 60 days before consummation, pursuant to § 1026.19(e)(3)(iv)(F).

* * * * *

(o) * * *

(4) * * *

(i) * * *

(A) The dollar amounts required to be disclosed by paragraphs (b)(6) and (7), (c)(1)(iii), (c)(2)(ii) and (iii), (c)(4)(ii), (f), (g), (h), (i), and (l) of this section shall be rounded to the nearest whole dollar, except that the per diem amount required to be disclosed by paragraph (g)(2)(iii) of this section and the monthly amounts required to be disclosed by paragraphs (g)(3)(i) through (iii) and (g)(3)(v) of this section shall not be rounded.

* * * * *

■ 7. Section 1026.38 is amended by revising paragraphs (e)(3)(iii)(A), (e)(4)(ii), and (k)(2)(v) and (vi) to read as follows:

§ 1026.38 Content of disclosures for certain mortgage transactions (Closing Disclosure).

* * * * *

(e) * * *

(3) * * *

(iii) * * *

(A) If the amount disclosed under paragraph (e)(3)(ii) of this section is

different than the amount disclosed under paragraph (e)(3)(i) of this section (unless the difference is due to rounding), a statement of that fact, along with a statement that the consumer paid such amounts prior to consummation of the transaction; or

* * * * *

(4) * * *

(ii) Under the subheading “Final,” the total amount of payoffs and payments made to third parties disclosed pursuant to paragraph (t)(5)(vii)(B) of this section, to the extent known, disclosed as a negative number;

* * * * *

(k) * * *

(2) * * *

(v) The amount of any loan secured by a first lien on the property that will be paid off as part of the real estate closing, labeled “Payoff of First Mortgage Loan”;

(vi) The amount of any loan secured by a second lien on the property that will be paid off as part of the real estate closing, labeled “Payoff of Second Mortgage Loan”;

* * * * *

■ 8. Appendix H to part 1026 is amended by revising the *Description* in H–24(G) to read as follows:

Appendix H to Part 1026—Closed-End Forms and Clauses

* * * * *

H–24(G) Mortgage Loan Transaction Loan Estimate—Modification to Loan Estimate for Transaction Not Involving Seller—Model Form

Description: This is a blank model Loan Estimate that illustrates the application of the content requirements in § 1026.37, with the optional alternative tables permitted by § 1026.37(d)(2) and (h)(2) for transactions without a seller. This form provides one variation of page one, four variations of page two, and four variations of page three, reflecting the variable content requirements in § 1026.37.

* * * * *

■ 9. In Supplement I to part 1026:

■ a. Under *Section 1026.19—Certain Mortgage and Variable-Rate Transactions*:

■ i. Under paragraph 19(e)(3)(iv)(D), paragraph 1 is revised.

■ ii. Under paragraph 19(e)(4)(i), paragraph 2 is revised.

■ b. Under *Section 1026.37—Content of Disclosures for Certain Mortgage Transactions (Loan Estimate)*:

■ i. Under paragraph 37(b)(6), paragraph 1 is revised.

■ ii. Under paragraph 37(c)(2)(ii), paragraph 2 is revised.

■ ii. Under paragraph 37(c)(2)(iii), paragraph 1 is revised.

■ iii. Under paragraph 37(c)(4)(iv), paragraph 2 is revised.

■ iv. Under paragraph 37(h)(1)(ii), paragraph 1 is revised.

■ v. Under paragraph 37(m), the subheading *37(m)(8) New construction loans* and paragraph 1 are added.

■ vi. Under paragraph 37(n), paragraph 2 is revised.

■ c. Under *Section 1026.38—Content of Disclosures for Certain Mortgage Transactions (Closing Disclosure)*:

■ i. Under paragraph 38(a)(3)(vi), paragraph 2 is added.

■ ii. Under paragraph 38(e)(1)(iii)(A), paragraph 1 is revised.

■ iii. Under paragraph 38(e)(2)(iii)(A), paragraph 3 is added.

The revisions and additions read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Subpart C—Closed-End Credit

* * * * *

Section 1026.19—Certain Mortgage and Variable-Rate Transactions

* * * * *

19(e) Mortgage loans secured by real property—Early disclosures.

* * * * *

19(e)(3) Good faith determination for estimates of closing costs.

* * * * *

Paragraph 19(e)(3)(iv)(D) Interest rate dependent charges.

1. *Requirements.* If the interest rate is not locked when the disclosures required by § 1026.19(e)(1)(i) are provided, a valid reason for revision exists when the interest rate is subsequently locked. No later than the next business day after the date the interest rate is locked, § 1026.19(e)(3)(iv)(D) requires the creditor to provide a revised version of the disclosures required under § 1026.19(e)(1)(i) reflecting the revised interest rate, the points disclosed pursuant to § 1026.37(f)(1), lender credits, and any other interest rate dependent charges and terms. The following examples illustrate this requirement:

i. Assume a creditor sets the interest rate by executing a rate lock agreement with the consumer. If such an agreement exists when the original disclosures required under § 1026.19(e)(1)(i) are provided, then the actual points and lender credits are compared to the estimated points disclosed pursuant to § 1026.37(f)(1) and lender credits included in the original disclosures provided under § 1026.19(e)(1)(i) for the purpose of determining good faith pursuant to § 1026.19(e)(3)(i). If the consumer enters into a rate lock agreement with the creditor after the disclosures required under § 1026.19(e)(1)(i) were provided, then § 1026.19(e)(3)(iv)(D) requires the creditor to provide, no later than the next business day after the date that the consumer and the creditor enter into a rate lock agreement, a revised version of the disclosures required under § 1026.19(e)(1)(i) reflecting the revised interest rate, the points disclosed pursuant to § 1026.37(f)(1), lender credits, and any other

interest rate dependent charges and terms. Provided that the revised version of the disclosures required under § 1026.19(e)(1)(i) reflect any revised points disclosed pursuant to § 1026.37(f)(1) and lender credits, the actual points and lender credits are compared to the revised points and lender credits for the purpose of determining good faith pursuant to § 1026.19(e)(3)(i).

19(e)(4) Provision and receipt of revised disclosures.

Paragraph 19(e)(4)(i) General rule.

2. Relationship to § 1026.19(e)(3)(iv)(D). If the reason for the revision is provided under § 1026.19(e)(3)(iv)(D), notwithstanding the three-business-day rule set forth in § 1026.19(e)(4)(i), § 1026.19(e)(3)(iv)(D) requires the creditor to provide a revised version of the disclosures required under § 1026.19(e)(1)(i) no later than the next business day after the date the interest rate is locked. See comment 19(e)(3)(iv)(D)-1.

Subpart E—Special Rules for Certain Home Mortgage Transactions

Section 1026.37—Content of Disclosures for Certain Mortgage Transactions (Loan Estimate)

37(b) Loan terms.

37(b)(6) Adjustments after consummation.

1. Periods not in whole years. For guidance on how to disclose increases after consummation that occur after a number of months less than 24 but that do not equate to a number of whole years or within a number of days less than a week, see the guidance provided in comment 37(a)(10)-3. For all other increases that occur after more than 24 months, see the guidance provided in comment 37(b)(8)-1.

37(c) Projected payments.

37(c)(2) Itemization.

Paragraph 37(c)(2)(ii).

2. Relationship to principal and interest disclosure. The creditor discloses mortgage insurance premiums pursuant to § 1026.37(c)(2)(ii) on the same periodic basis that payments for principal and interest are disclosed pursuant to § 1026.37(c)(2)(i), even if mortgage insurance premiums are actually paid on some other periodic basis.

Paragraph 37(c)(2)(iii).

1. Escrow disclosure. The disclosure described in § 1026.37(c)(2)(iii) is required only if the creditor will establish an escrow account for the payment of some or all of the charges described in § 1026.37(c)(4)(ii). If no escrow account for the payment of some or all such charges will be established, the creditor discloses the escrow amount as “0.” If an escrow account is established for the payment of amounts described in § 1026.37(c)(4)(ii), but no escrow payment is

required with a particular periodic payment (such as with a final balloon payment) or range of payments, the escrow payment should be disclosed as “—”.

37(c)(4) Taxes, insurance, and assessments.

Paragraph 37(c)(4)(iv).

2. Amounts paid by the creditor using escrow account funds. Section 1026.37(c)(4)(iv) requires the creditor to disclose an indication of whether the amounts disclosed pursuant to § 1026.37(c)(4)(ii) will be paid by the creditor using escrow account funds. If the amount disclosed pursuant to § 1026.37(c)(4)(ii) requires the creditor to disclose a description of more than one amount and only some of those amounts will be paid by the creditor using escrow account funds, the creditor may indicate that only some of those amounts will be paid using escrow account funds, such as by using the word “some.”

37(h) Calculating cash to close.

37(h)(1)(ii) Closing costs financed.

1. Calculating amount. The amount of closing costs financed disclosed under § 1026.37(h)(1)(ii) is determined by subtracting the estimated total amount of payments to third parties not otherwise disclosed pursuant to § 1026.37(f) and § 1026.37(g) from the total loan amount disclosed pursuant to § 1026.37(b)(1). If the result of the calculation is a positive number, that amount is disclosed as a negative number under § 1026.37(h)(1)(ii), but only to the extent that it does not exceed the total amount of closing costs disclosed under § 1026.37(g)(6). If the result of the calculation is zero or negative, the amount of \$0 is disclosed under § 1026.37(h)(1)(ii).

37(m) Other considerations.

37(m)(8) New construction loans.

1. Clear and conspicuous statement regarding redisclosure for new construction loans. For new construction loans where the creditor reasonably expects the settlement date to be 60 days or more after the provision of the disclosures required under § 1026.19(e)(1)(i), providing the statement, “You may receive a revised Loan Estimate at least 60 days prior to consummation” under the master heading “Additional Information About This Loan” and under the heading “Other Considerations” pursuant to § 1026.37(m) satisfies the requirements set forth in § 1026.19(e)(3)(iv)(F) that the statement be made clearly and conspicuously on the disclosure.

37(n) Signature statement.

2. Multiple consumers. If there is more than one consumer who will be obligated in the transaction, the first consumer signs as the applicant and each additional consumer signs as a co-applicant. If there is not enough space under the heading “Confirm Receipt” to provide signature lines for every consumer

in the transaction, the creditor may add additional signature pages, as needed, at the end of the form for the remaining consumers’ signatures. However, the creditor is required to disclose the heading and statement required by § 1026.37(n)(1) on such additional pages.

Section 1026.38—Content of Disclosures for Certain Mortgage Transactions (Closing Disclosure)

38(a) General information.

38(a)(3) Closing information.

38(a)(3)(vi) Property.

2. Multiple properties. Where more than one property secures the credit transaction, § 1026.38(a)(3)(vi) requires disclosure of all property addresses. If the addresses of all properties securing the transaction do not fit in the space allocated on the Closing Disclosure, an additional page with the addresses of all real properties may be appended to the end of the form.

38(e) Alternative calculating cash to close table for transactions without a seller.

38(e)(1) Loan amount.

Paragraph 38(e)(1)(iii)(A).

1. Statements of increases or decreases.

Section 1026.38(e)(1)(iii)(A) requires a statement of whether the amount increased or decreased from the estimated amount. For § 1026.38(e)(1)(iii)(A), the statement, “This amount increased,” in which the word “increased” is in boldface font and is replaced with the word “decreased” as applicable, complies with this provision.

38(e)(2) Total closing costs.

Paragraph 38(e)(2)(iii)(A).

3. Statements regarding excess amount and any credit to the consumer. Section 1026.38(e)(2)(iii)(A) requires statements that an increase in closing costs exceeds legal limits by the dollar amount of the excess and a statement directing the consumer to the disclosure of lender credits under § 1026.38(h)(3) if a credit is provided under § 1026.19(f)(2)(v). See form H-25(F) of appendix H to this part for examples of such statements.

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Richard Cordray,

Director, Bureau of Consumer Financial Protection.

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