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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

[Docket No. CFPB-2017-0018]

RIN 3170-AA61

Amendments to Federal Mortgage Disclosure Requirements 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 of Consumer Financial Protection (Bureau) is proposing to amend Federal mortgage disclosure requirements under the Real Estate Settlement Procedures Act and the Truth in Lending Act that are implemented in Regulation Z. The proposed amendments relate to when a creditor may compare charges paid by or imposed on the consumer to amounts disclosed on a Closing Disclosure, instead of a Loan Estimate, to determine if an estimated closing cost was disclosed in good faith. Specifically, the proposed amendments would permit creditors to do so regardless of when the Closing Disclosure is provided relative to consummation.

DATES: Comments must be received on or before [**INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER***].

ADDRESSES: You may submit comments, identified by Docket No. CFPB-2017-0018 or RIN 3170-AA61, by any of the following methods:

- *Email*: FederalRegisterComments@cfpb.gov. Include Docket No. CFPB-2017-0018 or RIN 3170-AA61 in the subject line of the email.
- *Electronic*: http://www.regulations.gov. Follow the instructions for submitting comments.
- *Mail*: Monica Jackson, Office of the Executive Secretary, 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 will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Pedro De Oliveira, Counsel, and David Friend and Priscilla Walton-Fein, Senior Counsels, Office of Regulations, Consumer Financial Protection Bureau, 1700 G Street, N.W., Washington, DC 20552, at 202-435-7700.

SUPPLEMENTARY INFORMATION:

I. Summary of the Proposed Rule

The TILA-RESPA Rule[1] requires creditors to provide consumers with good faith estimates of the loan terms and closing costs required to be disclosed on a Loan Estimate. Under the rule, an estimated closing cost is disclosed in good faith if the charge paid by or imposed on the consumer does not exceed the amount originally disclosed, except as otherwise provided in § 1026.19(e)(3)(ii) through (iv).[2] Section 1026.19(e)(3)(ii) provides that, for certain types of third-party services and recording fees, estimates are considered to be disclosed in good faith if the total paid by or imposed on the consumer for those types of charges does not exceed the disclosed amount by more than 10 percent.[3] Section 1026.19(e)(3)(iii) provides that estimates of certain other types of charges are in good faith if the estimate is consistent with the best information reasonably available to the creditor at the time it was disclosed.[4]

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[1] 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 the Truth in Lending Act (Regulation Z) (2013 TILA-RESPA Final Rule), combining certain disclosures that consumers receive in connection with applying for and closing on a mortgage loan into two new forms: a Loan Estimate and Closing Disclosure. 78 FR 79730 (Dec. 31, 2013). The Bureau has since finalized amendments to the 2013 TILA-RESPA Final Rule, including in January 2015 (*see* 80 FR 8767 (Feb. 19, 2015) (January 2015 Amendments)) and in July 2015 (*see* 80 FR 43911 (July 24, 2015) (July 2015 Amendments)). The 2013 TILA-RESPA Final Rule and subsequent amendments to that rule are referred to collectively herein as the TILA-RESPA Rule.

[2] 12 CFR § 1026.19(e)(3)(i).

[3] This section also requires that, for the 10 percent tolerance to apply, the charge for the third-party service must not be paid to the creditor or an affiliate of the creditor and the creditor must permit the consumer to shop for the third-party service, consistent with § 1026.19(e)(1)(vi). *See* 12 CFR § 1026.19(e)(3)(ii)(B)-(C).

[4] Section 1026.19(e)(3)(iii) provides that an estimate of the following charges is in good faith if it is consistent with the best information reasonably available to the creditor at the time it is disclosed, regardless of whether the amount paid by the consumer exceeds the amount originally disclosed: (1) prepaid interest; (2) property insurance premiums; (3) amounts placed into an escrow, impound, reserve, or similar account; (4) 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); and (5) charges paid for third-party services not required by the creditor.

Section 1026.19(e)(3)(iv) permits creditors, in certain limited circumstances, to use revised estimates, instead of the estimate originally disclosed to the consumer, to compare to the charges actually paid by or imposed on the consumer for purposes of determining whether an estimated closing cost was disclosed in good faith. Section 1026.19(e)(4) contains rules for the provision and receipt of those revised estimates, including a requirement that any revised estimates used to determine good faith must be provided to the consumer within three business days of the creditor receiving information sufficient to establish that the reason for revision applies. If the conditions for revising the estimates used to determine good faith are met, creditors generally may provide these revised estimates on revised Loan Estimates or, in certain circumstances, on Closing Disclosures. The creditor cannot provide revised estimates on a Loan Estimate on or after the date the Closing Disclosure is provided to the consumer and the consumer must receive any revised Loan Estimate no later than four business days prior to consummation.[5] However, if there are less than four business days between the time the revised version of the disclosures is required to be provided pursuant to § 1026.19(e)(4)(i) (*i.e.*, within three business days of the time the creditor received information sufficient to establish the reason for revision) and consummation, the creditor may provide the revised estimate on a Closing Disclosure.[6] This is referred to herein as the "four-business day limit."

On July 28, 2016, the Bureau proposed amendments to make additional clarifications and technical amendments to the TILA-RESPA Rule (2016 Proposal).[7] The proposal also contained several limited substantive changes that the Bureau identified as potential solutions to specific

[5] 12 CFR § 1026.19(e)(4)(ii).
[6] *Id*. at comment 19(e)(4)(ii)-1.
[7] 81 FR 54317 (Aug. 15, 2016).

implementation challenges. Among the clarifying changes in the 2016 Proposal was the proposed addition of comment 19(e)(4)(ii)-2. When issuing the 2016 Proposal, the Bureau believed that stakeholders generally understood that, if certain conditions are met, creditors may use an initial Closing Disclosure to reflect changes in costs that will be used to determine if an estimated closing cost was disclosed in good faith. Proposed comment 19(e)(4)(ii)-2 was intended to clarify that, if the conditions for issuing a revised estimate are met, creditors may similarly use corrected Closing Disclosures under § 1026.19(f)(2)(i) or (ii) to reflect changes in costs that will be used to determine if an estimated closing cost was disclosed in good faith.

Despite the Bureau's limited intent regarding proposed comment 19(e)(4)(ii)-2, numerous commenters interpreted it as change that would broaden creditors' ability to compare charges paid by or imposed on the consumer to amounts disclosed on a Closing Disclosure to determine if an estimated closing cost was disclosed in good faith. Although commenters were not uniform in their interpretations of proposed comment 19(e)(4)(ii)-2, many interpreted it as allowing creditors to use corrected Closing Disclosures to reflect changes in costs that will be used to determine if an estimated closing cost was disclosed in good faith, irrespective of when the corrected Closing Disclosure was provided relative to the timing of consummation. These commenters generally interpreted the proposal as retaining the four-business day limit for using initial Closing Disclosures to reflect changes in costs for purposes of determining if an estimated closing cost was disclosed in good faith. Commenters who interpreted the proposal to effectuate this substantive change were broadly supportive of it.

Concurrent with issuing this proposal, the Bureau is issuing a final rule amending the TILA-RESPA Rule. The Bureau is not, however, finalizing comment 19(e)(4)(ii)-2 as it appeared in the 2016 Proposal and discussed above. Instead, the Bureau is issuing this proposal, as the Bureau now believes that it is appropriate to pose explicitly the question of whether to remove the current four-business day limit for resetting tolerances with both initial and corrected Closing Disclosures. The Bureau recognizes that some stakeholders may not have commented on proposed comment 19(e)(4)(ii)-2 in the 2016 Proposal because they understood it as a narrower change than the broader question posed here. As described below, under the current proposal, creditors could use either initial or corrected Closing Disclosures to reflect changes in costs for purposes of determining if an estimated closing cost was disclosed in good faith, regardless of when the Closing Disclosure is provided relative to consummation.

II. Legal Authority

The Bureau is issuing this proposal pursuant to its authority under TILA, RESPA, and the Dodd-Frank Act, including the authorities discussed below. In general, the provisions of Regulation Z that this proposal would amend were previously adopted by the Bureau in the TILA-RESPA Rule, in reliance on one or more of the authorities discussed below. The Bureau is issuing this proposal in reliance on the same authority and for the same reasons relied on in adopting the relevant provisions of the TILA-RESPA Rule, which are described in detail in the Legal Authority and Section-by-Section Analysis parts of the 2013 TILA-RESPA Final Rule and January 2015 Amendments, respectively.[8]

A. The Integrated Disclosure Mandate

Section 1032(f) of the Dodd-Frank Act required the Bureau to propose, for public comment, rules and model disclosures combining the disclosures required under TILA and sections 4 and 5 of RESPA into a single, integrated disclosure for mortgage loan transactions

[8] 78 FR 79730, 79753-56, 79834-37 (Dec. 31, 2013); 80 FR 8767, 8768-70 (Feb. 19, 2015).

covered by those laws, unless the Bureau determined that any proposal issued by the Federal Reserve Board (Board) and the Department of Housing and Urban Development (HUD) carried out the same purpose.[9] 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.[10] The Bureau provided additional discussion of this integrated disclosure mandate in the 2013 TILA-RESPA Final Rule.[11]

B. Truth in Lending Act

TILA section 105(a). As amended by the Dodd-Frank Act, TILA section 105(a)[12] 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 available credit terms and avoid the uninformed use of credit.[13] In enacting TILA, Congress found 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.[14] Strengthened

[9] Public Law 111-203, 124 Stat. 1376, 2007 (2010) (codified at 12 U.S.C. 5532(f)).
[10] Public Law 111-203, 124 Stat. 1376, 2108 (2010) (codified at 15 U.S.C. 1604(b)); Public Law 111-203, 124 Stat. 1376, 2103 (2010) (codified at 12 U.S.C. 2603(a)).
[11] 78 FR 79730, 79753-54 (Dec. 31, 2013).
[12] 15 U.S.C. 1604(a).
[13] *Id*. at 1601(a).
[14] *Id*.

competition among financial institutions is a goal of TILA, achieved through the meaningful disclosure of credit terms.[15] For the reasons discussed below, the Bureau proposes these amendments pursuant to its authority under TILA section 105(a). The Bureau believes the proposed amendments effectuate the purpose of TILA under TILA section 102(a) of meaningful disclosure of credit terms to consumers and facilitate compliance with the statute by clarifying when particular disclosures may be provided. The proposal would also further TILA's goals by ensuring more reliable estimates, which would foster competition among financial institutions. The proposal would also prevent circumvention or evasion of TILA.

TILA section 129B(e). Dodd-Frank Act section 1405(a) amended TILA to add new section 129B(e).[16] That section authorizes the Bureau to prohibit or condition terms, acts, or practices relating to residential mortgage loans that the Bureau finds to be abusive, unfair, deceptive, predatory, necessary, or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of sections 129B and 129C of TILA, 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. The Bureau is issuing this proposal pursuant to its authority under TILA section 129B(e). The Bureau believes the proposal is consistent with TILA section 129B(e).

[15] The Bureau provided additional discussion of the history of TILA section 105(a) and its interaction with the provisions of TILA section 129 that apply to high-cost mortgages in the 2013 TILA-RESPA Final Rule. As the Bureau explained, the Bureau's authority under TILA section 105(a) to make adjustments and exceptions applies to all transactions subject to TILA, including high-cost mortgages, except with respect to the provisions of TILA section 129 that apply uniquely to such high-cost mortgages. 78 FR 79730, 79754 (Dec. 31, 2013).
[16] Public Law 111-203, 124 Stat. 1376, 2141 (2010) (codified at 15 U.S.C. 1639B(e)).

C. Real Estate Settlement Procedures Act Section 19(a)

Section 19(a) of RESPA 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.[17] 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.[18] In addition, in enacting RESPA, Congress found that consumers are entitled to 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.[19]

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. The Bureau proposes these amendments pursuant to its authority under RESPA section 19(a). For the reasons discussed below, the Bureau believes the proposal is consistent with those purposes by fostering more effective advance disclosure to home buyers and sellers of settlement costs.

D. Dodd-Frank Act

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

[17] 12 U.S.C. 2617(a).
[18] *Id*. at 2601(b).
[19] *Id*. at 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.

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.[20] 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.[21] Accordingly, in developing the TILA-RESPA 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 2013 TILA-RESPA Final Rule for a discussion of the Bureau's consumer testing.[22] The Bureau proposes these amendments pursuant to its authority under Dodd-Frank Act section 1032(a). For the reasons discussed below, the Bureau believes that the proposal is consistent with Dodd-Frank Act section 1032(a) by promoting full, accurate, and effective disclosure of the features of consumer credit

[20] Public Law 111-203, 124 Stat. 1376, 2006-07 (2010) (codified at 12 U.S.C. 5532(a)).
[21] Public Law 111-203, 124 Stat. 1376, 2007 (2010) (codified at 12 U.S.C. 5532(c)).
[22] 78 FR 79730, 79743-50 (Dec. 31, 2013).

transactions secured by real property 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.

Dodd-Frank Act section 1405(b). Section 1405(b) of the Dodd-Frank Act provides that, notwithstanding any other provision of title XIV 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 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.[23] Section 1401 of the Dodd-Frank Act, which amends TILA section 103(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.[24] 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. The Bureau proposes these amendments pursuant to its authority under Dodd-Frank Act section 1405(b). For the reasons discussed below, the Bureau believes

[23] Public Law 111-203, 124 Stat. 1376, 2142 (2010) (codified at 15 U.S.C. 1601 note).
[24] Public Law 111-203, 124 Stat. 1376, 2138 (2010) (codified at 15 U.S.C. 1602(cc)(5)).

the proposal is in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b).

III. Proposed Implementation Period

The Bureau seeks comment on when the changes proposed should be effective. The Bureau believes that these changes should enable industry to comply with the TILA-RESPA Rule more cost-effectively and that industry should be able implement these changes relatively quickly. At the same time, the Bureau recognizes that the proposed changes could involve changes to systems or procedures. The Bureau specifically requests that technology vendors, creditors, mortgage brokers, settlement agents, and other entities affected by the proposal provide details on any updates to software and systems and other measures that would be necessary to implement the proposed changes. The Bureau further seeks comment on whether there is a particular day of the week, time of month, or time of year that would most facilitate implementation of the proposed changes.

The Bureau proposes an effective date 30 days after publication in the Federal Register of any final rule based on this proposal and seeks comment on the same.

IV. Section-by-Section Analysis

Section 1026.19 Certain Mortgage and Variable-Rate Transactions

19(e) Mortgage Loans Secured By Real Property – Early Disclosures

19(e)(4) Provision and Receipt of Revised Disclosures

The 2013 TILA-RESPA Final Rule combined certain disclosures that consumers receive in connection with applying for and closing on a mortgage loan into two new, integrated forms. The first new form, the Loan Estimate, replaced the RESPA Good Faith Estimate and the early Truth in Lending disclosure. The rule requires creditors to deliver or place in the mail the Loan

Estimate no later than three business days after the consumer submits a loan application.[25] The second form, the Closing Disclosure, replaced the HUD-1 Settlement Statement and the final Truth in Lending disclosure. The rule requires creditors to ensure that consumers receive the Closing Disclosure at least three business days before consummation.[26]

Section 1026.19(e)(1)(i) requires creditors to provide consumers with good faith estimates of the disclosures required in § 1026.37, which describes the loan terms and closing costs required to be disclosed on the Loan Estimate. Under § 1026.19(e)(3)(i), an estimated closing cost is disclosed in good faith if the charge paid by or imposed on the consumer does not exceed the amount originally disclosed, except as otherwise provided in § 1026.19(e)(3)(ii) through (iv). Section 1026.19(e)(3)(ii) further provides that estimates for certain third-party services and recording fees 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 on the Loan Estimate by more than 10 percent. Section 1026.19(e)(3)(iii) provides that certain other estimates are in good faith so long as they are consistent with the best information reasonably available to the creditor at the time they are disclosed, regardless of whether and by how much the amount paid by the consumer exceeds the disclosed estimate. The allowed variance between estimated closing costs and the actual amounts paid by or imposed on the consumer are referred to as "tolerances."

Section 1026.19(e)(3)(iv) permits creditors, in certain limited circumstances, to use revised estimates of charges, instead of the estimate of charges originally disclosed to the consumer, to compare to the charges actually paid by or imposed on the consumer for purposes

[25] 12 CFR § 1026.19(e)(1)(iii).
[26] *Id.* at § 1026.19(f)(1)(ii).

of determining whether an estimated closing cost was disclosed in good faith pursuant to § 1026.19(e)(3)(i) and (ii) (*i.e.*, whether the actual charge exceeds the allowed tolerance). This is referred to as resetting tolerances. The circumstances under which creditors may reset tolerances are: (1) a defined set of changed circumstances that cause estimated charges to increase or, in the case of certain estimated charges, cause the aggregate amount of such charges to increase by more than 10 percent,[27] (2) the consumer is ineligible for an estimated charge previously disclosed because of a changed circumstance that affects the consumer's creditworthiness or the value of the property securing the transaction, (3) the consumer requests revisions to the credit terms or the settlement that cause an estimated charge to increase, (4) points or lender credits change because the interest rate was not locked when the Loan Estimate was provided, (5) the consumer indicated an intent to proceed with the transaction more than 10 business days after the Loan Estimate was provided to the consumer, and (6) the loan is a construction loan that is not expected to close until more than 60 days after the Loan Estimate has been provided to the consumer and the creditor clearly and conspicuously states that a revised disclosure may be issued.

Section 1026.19(e)(4) contains rules for the provision and receipt of revised estimates used to reset tolerances. Section 1026.19(e)(4)(i) provides the general rule that, subject to the requirements of § 1026.19(e)(4)(ii), if a creditor uses a revised estimate to determine good faith (*i.e.*, to reset tolerances), the creditor shall provide a Loan Estimate reflecting the revised

[27] "Changed circumstance" is defined to mean: (1) an extraordinary event beyond the control of any interested party or other unexpected event specific to the consumer or transaction; (2) information specific to the consumer or transaction that the creditor relied upon when providing the Loan Estimate and that was inaccurate or changed after the disclosures were provided; or (3) new information specific to the consumer or transaction that the creditor did not rely on when providing the original Loan Estimate. 12 CFR § 1026.19(e)(3)(iv)(A).

estimate within three business days of receiving information sufficient to establish that a permissible reason for revision applies. Section 1026.19(e)(4)(ii) imposes timing restrictions on the provision of revised Loan Estimates. Specifically, § 1026.19(e)(4)(ii) states that the creditor shall not provide a revised Loan Estimate on or after the date on which the creditor provides the Closing Disclosure. Section 1026.19(e)(4)(ii) also provides that the consumer must receive any revised Loan Estimate not later than four business days prior to consummation.

Regulation Z therefore limits creditors' ability to provide revised Loan Estimates relative to the provision of the Closing Disclosure and to consummation. In issuing the 2013 TILA-RESPA Final Rule, the Bureau explained that it was aware of cases where creditors provided revised RESPA Good Faith Estimates at the real estate closing, along with the HUD-1 settlement statement.[28] The Bureau was concerned that the practice of providing both good faith estimates of closing costs and an actual statement of closing costs at the same time could be confusing for consumers and diminish their awareness and understanding of the transaction. The Bureau was also concerned about consumers receiving seemingly duplicative disclosures that could contribute to information overload. For this reason, the Bureau adopted the provision of § 1026.19(e)(4)(ii) that prohibits creditors from providing revised Loan Estimates on or after the date the creditor provides the Closing Disclosure. The Bureau adopted the provision of § 1026.19(e)(4)(ii) that requires that consumers receive the revised Loan Estimate not later than four business days prior to consummation to ensure that consumers did not receive a revised Loan Estimate on the same date as the Closing Disclosure in cases where the Loan Estimate is not provided to the consumer in person.

[28] 78 FR at 79836.

Comment 19(e)(4)(ii)-1 clarifies when creditors may reset tolerances with a Closing Disclosure instead of with a revised Loan Estimate. Specifically, the comment explains that if there are less than four business days between the time the revised version of the disclosures is required to be provided pursuant to § 1026.19(e)(4)(i) (*i.e.,* within three business days of receiving information sufficient to establish a reason for revision) and consummation, creditors can reflect revised disclosures to reset tolerances on the Closing Disclosure.

The Bureau originally proposed commentary in 2012 that would have stated that creditors may reflect the revised disclosures on the Closing Disclosure, without regard to the timing of consummation.[29] However, the 2013 TILA-RESPA Final Rule contained the four-business day limit. The Bureau understands from outreach through its implementation process, and through comments received in response to the 2016 Proposal, that there is significant confusion in the market about the timing requirements related to issuing revised disclosures for purposes of resetting tolerances and, in particular, the use of Closing Disclosures for this purpose.

The 2016 Proposal

In the 2016 Proposal, the Bureau proposed comment 19(e)(4)(ii)-2 to clarify one implementation issue related to the use of Closing Disclosures to reset tolerances. Specifically, the proposed comment was intended to clarify that creditors may use corrected Closing Disclosures provided under § 1026.19(f)(2)(i) or (ii) (in addition to the initial Closing Disclosure) to reflect changes in costs that will be used to reset tolerances.[30] As noted above, existing comment 19(e)(4)(ii)-1 clarifies that creditors may reflect revised estimates on the

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[29] *See* proposed comment 19(e)(4)-2 at 77 FR 51116, 51426 (Aug. 23, 2012) ("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).").

[30] *See* 81 FR 54317, 54334 (Aug. 15, 2016).

Closing Disclosure to reset tolerances if there are less than four business days between the time the revised version of the disclosures is required to be provided pursuant to § 1026.19(e)(4)(i) and consummation. Although comment 19(e)(4)(ii)-1 expressly references only the Closing Disclosure required by § 1026.19(f)(1)(i), the Bureau has provided informal guidance that the provision also applies to corrected Closing Disclosures provided pursuant to § 1026.19(f)(2)(i) or (ii). The Bureau proposed comment 19(e)(4)(ii)-2 to clarify this point.

A summary of the comments received on proposed comment 19(e)(4)(ii)-2 can be found in the final rule associated with the 2016 Proposal issued concurrently with this proposal. As explained in that comment summary, many commenters interpreted proposed comment 19(e)(4)(ii)-2 as allowing creditors to use corrected Closing Disclosures to reset tolerances regardless of when consummation is expected to occur, as long as the creditor provides the corrected Closing Disclosure within three business days of receiving information sufficient to establish a reason for revision applies pursuant to § 1029.19(e)(4)(i). Specifically, under this interpretation, creditors could provide initial Closing Disclosures to reset tolerances only if there are less than four business days between the time the revised version of the disclosures is required to be provided pursuant to § 1026.19(e)(4)(i) and consummation. But this interpretation would remove the four-business day limit for corrected Closing Disclosures provided pursuant to § 1026.19(f)(2) and therefore allow creditors to provide corrected Closing Disclosures to reset tolerances regardless of when consummation is expected to occur. Commenters were not uniform in their interpretation of the proposal.

Commenters who interpreted the proposal as removing the four-business day limit as it applies to corrected Closing Disclosures were generally supportive, citing uncertainty about the proper interpretation of current rules and stating that current timing rules regarding resetting tolerances with a Closing Disclosure are unworkable. In particular, some of these commenters described a situation that could occur if the creditor has already provided the Closing Disclosure and an event occurs or a consumer requests a change that causes an increase in closing costs that would be a reason for revision under § 1026.19(e)(3)(iv). In some circumstances, the creditor may be unable to provide a corrected Closing Disclosure to reset tolerances because there are four or more days between the time the revised disclosures would be required to be provided pursuant to § 1026.19(e)(4)(i) and consummation. Commenters seemed to identify this as most likely to occur where there was also a delay in the scheduled consummation date after the initial Closing Disclosure is provided to the consumer.

The Bureau understands that this situation can occur because of the intersection of current timing rules regarding the provision of revised estimates to reset tolerances. Section 1026.19(e)(4)(ii) prohibits creditors from providing Loan Estimates on or after the date on which the creditor provides the Closing Disclosure. In many cases, this limitation would not create issues for creditors because current comment 19(e)(4)(ii)-1 explains that creditors may reflect revised estimates on a Closing Disclosure to reset tolerances if there are less than four business days between the time the revised version of the disclosures is required to be provided pursuant to § 1026.19(e)(4)(i) and consummation. But there is no similar provision that explicitly provides that creditors may use a Closing Disclosure to reflect the revised disclosures if there are four or more days between the time the revised version of the disclosures is required to be provided pursuant to § 1026.19(e)(4)(i) and consummation. Commenters stated that this can lead to circumstances where creditors are unable to provide either a revised Loan Estimate (because the Closing Disclosure has been provided) or a corrected Closing Disclosure (because there are four or more days prior to consummation) to reset tolerances. Commenters referred to this situation as a “gap” or “black hole” in the rules.

Many commenters perceived the proposal as resolving this issue because they interpreted it as allowing creditors to use corrected Closing Disclosures to reset tolerances even if there are four or more business days between the time the revised version of the disclosures is required to be provided pursuant to § 1026.19(e)(4)(i) and consummation. Some commenters who interpreted the proposal in this way supported that perceived change, but also cautioned about unintended consequences. For example, some commenters stated that eliminating the four-business day limit for corrected Closing Disclosures might remove a disincentive that currently exists under the rule from providing the initial Closing Disclosure extremely early in the mortgage origination process, which these commenters stated would not be consistent with the Bureau’s intent that the Closing Disclosure be a statement of actual costs.

The Current Proposal

The Bureau understands from comments received in response to the 2016 Proposal and from outreach that current timing rules regarding resetting tolerances with Closing Disclosures have led to uncertainty in the market and created implementation challenges that could have unintended consequences for both consumers and creditors. For this reason, the Bureau is issuing this proposal to amend § 1026.19(e)(4) and associated commentary to remove the four-business day limit for providing Closing Disclosures for purposes of resetting tolerances and determining if an estimated closing cost was disclosed in good faith. Consistent with current comment 19(e)(4)(ii)-1, the proposal would allow creditors to reset tolerances by providing a Closing Disclosure (including any corrected disclosures provided under § 1026.19(f)(2)(i) or (ii)) within three business days of receiving information sufficient to establish that a reason for revision applies. Unlike current comment 19(e)(4)(ii)-1, however, the proposal would not restrict the creditor's ability to reset tolerances with a Closing Disclosure (either with the initial Closing Disclosure or any corrected Closing Disclosures provided pursuant to § 1026.19(f)(2)(i) or (ii)) to the period of less than four business days between the time the revised version of the disclosures is required to be provided pursuant to § 1026.19(e)(4)(i) and consummation.

The Bureau believes that in most cases in which a creditor learns about cost increases that are a permissible reason to reset tolerances the creditor will not have already provided a Closing Disclosure to the consumer. To the extent any increases in closing costs occur, the Bureau expects that creditors will typically provide a revised Loan Estimate (and not a Closing Disclosure) for the purpose of resetting tolerances and that these Loan Estimates will be used in determining good faith under § 1026.19(e)(3)(i) and (ii). At the same time, the Bureau understands that events that can affect closing costs may occur close to the time of consummation, even after the initial Closing Disclosure has been provided to the consumer. The Bureau also understands that events may result in consummation being delayed past the time that was expected when the creditor provided the Closing Disclosure to the consumer. Some events can both affect closing costs and lead to a delay in consummation. These events may be outside the control of the creditor or, in some cases, requested by the consumer. Possible examples include weather related events that delay closing and lead to additional appraisal or inspection costs or illness by a buyer or seller that could delay closing and lead to the imposition of additional costs, such as a rate lock extension fee. The Bureau understands that if creditors cannot pass these increased costs to consumers in the specific transactions where they arise, creditors may spread the costs across all consumers by pricing their loan products with a margin. The Bureau also understands from outreach and from comments received in response to the 2016

Proposal that creditors may seek other ways of avoiding absorbing these unexpected costs, such as rejecting applications from consumers, even after providing the consumer a Closing Disclosure.

The Bureau is therefore proposing to allow creditors to reset tolerances using a Closing Disclosure, without regard to the current four-business day limit. Under the proposal, there would be no four-business day limit for resetting tolerances with initial Closing Disclosures nor for any corrected Closing Disclosures provided pursuant to § 1026.19(f)(2)(i) or (ii). Under the proposal, as under the current rule, to reset tolerances with a Closing Disclosure, creditors would be required to provide the Closing Disclosure to the consumer within three business days of receiving information sufficient to establish a reason for revision. Further, as under the current rule, creditors would be allowed to reset tolerances only under the limited circumstances described in § 1026.19(e)(3)(iv).

The Bureau believes it may be appropriate to remove the four-business day limit for resetting tolerances with both initial and corrected Closing Disclosures. First, the Bureau is concerned that applying the four-business day limit to initial Closing Disclosures but not corrected Closing Disclosures could incentivize creditors to provide consumers with initial Closing Disclosures very early in the lending process, which in some circumstances might be inconsistent with the description of the Closing Disclosure as a "statement of the final loan terms and closing costs,"[31] and the requirement under § 1026.19(f)(1)(i) that the disclosures on the Closing Disclosure are to be a statement of "the actual terms of the transaction." Second, the

[31] *See* 12 CFR § 1026.38(a)(2).

Bureau believes that applying the four-business day limit to initial Closing Disclosures but not corrected Closing Disclosures could create operational challenges and burden for creditors.

Accordingly, the Bureau is proposing to amend § 1026.19(e)(4)(i) to provide that, subject to the requirements of § 1026.19(e)(4)(ii), if a creditor uses a revised estimate pursuant to § 1026.19(e)(3)(iv) for the purpose of determining good faith under § 1026.19(e)(3)(i) and (ii), the creditor shall provide a revised version of the disclosures required under § 1026.19(e)(1)(i) or the disclosures required under § 1026.19(f)(1)(i) (including any corrected disclosures provided under § 1026.19(f)(2)(i) or (ii)) reflecting the revised estimate within three business days of receiving information sufficient to establish that one of the reasons for revision applies.

At the same time, the Bureau proposes to amend current comment 19(e)(4)(ii)-1 to remove the reference to the current four-business day limit, for consistency with the proposed amendments to § 1026.19(e)(4)(i). The comment would also be amended to provide two additional examples, to further clarify how creditors may provide revised estimates on Closing Disclosures in lieu of Loan Estimates for purposes of determining good faith. Like the current comment, proposed comment 19(e)(4)(ii)-1 would explain that § 1026.19(e)(4)(ii) prohibits a creditor from providing a revised version of the disclosures required under § 1026.19(e)(1)(i) on or after the date on which the creditor provides the disclosures required under § 1026.19(f)(1)(i). And, like the current comment, proposed comment 19(e)(4)(ii)-1 would further explain that § 1026.19(e)(4)(ii) also requires that the consumer must receive any revised version of the disclosures required under § 1026.19(e)(1)(i) no later than four business days prior to consummation, and provides that if the revised version of the disclosures are not provided to the consumer in person, the consumer is considered to have received them three business days after the creditor delivers or places them in the mail. Unlike the current comment, proposed comment

19(e)(4)(ii)-1 would then provide that § 1026.19(e)(4)(i) permits the creditor to provide the revised estimate in the disclosures required under § 1026.19(f)(1)(i) (including any corrected disclosures provided under § 1026.19(f)(2)(i) or (ii)). The proposed comment would also add the following illustrative examples:

- The proposed example in comment 19(e)(4)(ii)-1.iii would assume that consummation is scheduled for Thursday. The proposed example would provide that the creditor hand delivers the disclosures required by § 1026.19(f)(1)(i) on Monday and, on Tuesday, the consumer requests a change to the loan that would result in a revised disclosure pursuant to § 1026.19(e)(3)(iv)(C) but would not require a new waiting period pursuant to § 1026.19(f)(2)(ii). The proposed example would clarify that the creditor complies with the requirements of § 1026.19(e)(4) by hand delivering the disclosures required by § 1026.19(f)(2)(i) reflecting the consumer-requested changes on Thursday.
- The proposed example in comment 19(e)(4)(ii)-1.iv would assume that consummation is originally scheduled for Wednesday. The proposed example would provide that the creditor hand delivers the disclosures required by § 1026.19(f)(1)(i) on the Friday before the scheduled consummation date and the APR becomes inaccurate on the Monday before the scheduled consummation date, such that the creditor is required to delay consummation and provide corrected disclosures, including any other changed terms, so that the consumer receives them at least three business days before consummation under § 1026.19(f)(2)(ii). Consummation is rescheduled for Friday. The proposed comment would clarify that the creditor complies with the requirements of § 1026.19(e)(4) by hand delivering the disclosures required by § 1026.19(f)(2)(ii) reflecting the revised APR and any other changed terms to the consumer on Tuesday. The proposed comment would

refer to § 1026.19(f)(2)(ii) and associated commentary regarding changes before consummation requiring a new waiting period and to comment 19(e)(4)(i)-1 for further guidance on when sufficient information has been received to establish an event has occurred.

The proposal would also make conforming amendments to the heading of § 1026.19(e)(4)(ii) and to comments 19(e)(1)(ii)-1 and 19(e)(4)(i)-1 in light of these proposed amendments.

Finally, the proposal would make several changes to § 1026.19(e)(4) and its commentary to reflect amendments to the rule made by the January 2015 Amendments regarding interest rate dependent charges. Section 1026.19(e)(3)(iv)(D), as adopted by the 2013 TILA-RESPA Final Rule, previously required creditors to provide the consumer with a revised disclosure 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 interest rate is locked. The January 2015 Amendments changed § 1026.19(e)(3)(iv)(D) to provide creditors with more time (three business days) to provide the revised disclosure. This amendment harmonized the timing requirement in § 1026.19(e)(3)(iv)(D) with other timing requirements for redisclosure adopted in the 2013 TILA-RESPA Final Rule and addressed operational challenges associated with the prior requirement that gave creditors less time to provide revised disclosures regarding interest rate dependent charges. To implement this change, the Bureau revised § 1026.19(e)(3)(iv)(D) to state that, no later than three business days after the date the interest rate is locked, the creditor shall provide a revised version of the disclosures required under § 1026.19(e)(1)(i) to the consumer with the revised interest rate, the points disclosed pursuant to § 1026.37(f)(1), lender credits, and any other interest rate dependent charges and terms. In the January 2015

Amendments, the Bureau also adopted modified versions of proposed comments 19(e)(3)(iv)(D)-1 and 19(e)(4)(i)-2 to reflect that change. To further reflect the changes made by the January 2015 Amendments to § 1026.19(e)(3)(iv)(D), the Bureau is proposing to amend § 1026.19(e)(4)(i) and comment 19(e)(4)(i)-1. The Bureau also proposes to remove existing comment 19(e)(4)(i)-2, regarding the relationship to § 1026.19(e)(3)(iv)(D), which the Bureau believes may no longer be necessary.

The Bureau solicits comment on the proposed changes. In particular, the Bureau requests information on the extent to which the current four-business day limit has caused situations where creditors cannot provide either a revised Loan Estimate or Closing Disclosure to reset tolerances even if a reason for revision under § 1026.19(e)(3)(iv) would otherwise permit the creditor to reset tolerances. The Bureau requests information on the frequency and the cause of such occurrences, specifically including whether the event that would have otherwise permitted the creditor to reset tolerances occurred after the Closing Disclosure had been provided to the consumer and whether there was a delay to the expected consummation date after the creditor provided the Closing Disclosure. The Bureau also requests comment on the average costs and the nature of such costs (*i.e.*, rate lock extension fees, additional appraisal or inspections fees, or other fees) associated with such occurrences.

The Bureau also requests additional information that would assist the Bureau in evaluating potential consequences of the proposal. For example, some commenters in response to the 2016 Proposal expressed concern that removal of the four-business day limit could result in some creditors providing Closing Disclosures very early in the lending process. These commenters suggested that, to the extent that occurs, it could have negative effects on some consumers. Although the Closing Disclosure is a statement of final loan terms and closing costs, the Bureau understands from comments received in response to the 2016 Proposal and from outreach that some creditors currently provide the Closing Disclosure to consumers so early in the process that the terms and costs are nearly certain to be revised. To the extent that is currently true for some creditors, commenters noted that eliminating the current four-business day limit for resetting tolerances with a Closing Disclosure could remove a disincentive that currently exists to provide Closing Disclosures before final terms and costs are reliably available (*i.e.*, under the current rule, waiting to provide the Closing Disclosure until close to the time of consummation decreases, to some extent, the likelihood of a timing issue arising with respect to resetting tolerances with corrected Closing Disclosures).

Accordingly, the Bureau requests comment on the extent to which creditors are currently providing Closing Disclosures to consumers so that they are received substantially before the required three business days prior to consummation with terms and costs that are nearly certain to be revised. To the extent this is occurring, the Bureau requests comment on the number of business days before consummation consumers are receiving the Closing Disclosure. The Bureau also requests comment on whether creditors, in those instances, are issuing revised Closing Disclosures pursuant to § 1026.19(f)(2). In addition, the Bureau requests comment on the extent to which creditors might change their current practices regarding provision of the Closing Disclosure if the proposal to remove the four-business day limit is adopted. The Bureau also requests comment on potential harms to consumers where creditors provide Closing Disclosures to consumers so that they are received more than the required three business days prior to consummation with terms and costs that are nearly certain to be revised. The Bureau additionally requests comment on whether it should consider adopting measures to prevent such harms in a future rulemaking.

The Bureau is also concerned about other potential consequences that might result from removing the four-business day limit that currently applies to resetting tolerances with a Closing Disclosure. For example, compared to current rules, the proposed changes could allow creditors to pass more costs on to consumers. The Bureau solicits comment on whether the circumstances for resetting tolerances in § 1026.19(e)(3)(iv) provide sufficient protection against potential consumer harm or whether additional limitations are appropriate for resetting tolerances after the issuance of a Closing Disclosure. For example, the Bureau requests comment on whether it would be appropriate to allow creditors to reset tolerances with a corrected Closing Disclosure in circumstances that are more limited than those described in § 1026.19(e)(3)(iv) (for example, only when the increased costs result from a consumer request or unforeseeable event, such as a natural disaster). Similarly, the Bureau requests comment on whether the rule should be more restrictive with respect to resetting tolerances with a corrected Closing Disclosure for certain third-party costs (such as appraisal fees) and creditor fees (such as interest rate lock extension fees) and the types of costs and fees that might be subject to any more restrictive rules. The Bureau also requests comment on whether removing the four-business day limit might result in confusion or information overload to the consumer as a result of receiving more corrected Closing Disclosures. The Bureau requests comment on additional consumer protections that might be appropriate to promote the purposes of the disclosures or prevent circumvention or evasion and additional potential consumer harms the Bureau has not identified.

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

A. Overview

In developing the proposed rule, the Bureau has considered the potential benefits, costs, and impacts.[32] 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 proposal would make a substantive change to the current TILA-RESPA Rule, by allowing creditors to reset tolerances with a Closing Disclosure (both initial and corrected), irrespective of the date of consummation. This new provision is restricted to circumstances where the rule currently allows creditors to reset tolerances, such as: change in costs; new information regarding eligibility of the borrower; and borrower-requested change (for instance, rate lock extension). The potential benefits and costs of the provisions contained in the proposed rule are evaluated relative to the baseline where the current provisions of the TILA-RESPA Rule remain in place. Under the current rule, there is no specific provision that allows creditors to use

[32] Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas.

a Closing Disclosure to reset tolerances if there are four or more days between the time the revised version of the disclosures is required to be provided pursuant to § 1026.19(e)(4)(i) and consummation. This can lead to circumstances where a creditor is not allowed to reset tolerances if it has already provided the Closing Disclosure to the consumer when it learns about the increase in cost. In such cases, some creditors, faced with the prospect of absorbing cost increases, may choose to reject the application.

The Bureau seeks comment on data that would help to quantify costs and benefits and any associated burden with the proposed changes. Specifically, the Bureau is seeking information on the frequency and timing of unexpected changes that occur after the Closing Disclosure was issued.

B. Potential Benefits and Costs to Consumers and Covered Persons

The Bureau believes the proposed change will benefit creditors by providing them with an option of resetting tolerances in situations where they currently do not have that option. The Bureau does not believe there would be any increased costs to creditors from the proposed change compared to the baseline where the current provisions of the TILA-RESPA Rule remain in place, as the proposed change is less restrictive for creditors than the current provisions.

The Bureau believes consumers will generally benefit from the proposed change, although several concerns remain; the Bureau is requesting comment on the merits of these concerns. It is helpful to consider benefits and costs to consumers separately in the following scenarios.

First, there may be cases where an initial Closing Disclosure has been provided to the consumer well in advance of consummation where the creditor subsequently learns about a change in cost that would be a cause to reset tolerances. The creditor may be unable to reset tolerances currently due to the four-business day limit, and may choose to absorb extra costs rather than reject the application. In these cases the proposed change will create costs for consumers because now any changes in costs due to unexpected events would be passed on to consumers. However, in some situations, such as cost increases due to a borrower-requested change, these extra costs might be avoidable. To the extent that creditors are currently pricing in the risk of having to absorb unexpected cost increases, the proposed change would remove this extra layer of risk adjustment and create a benefit to consumers in the form of lower cost of credit. The Bureau is requesting comment on the incidence of cases where creditors have to absorb the extra cost increases, and the extent to which such possibility is currently priced into loan costs.

Second, there may be cases where an initial Closing Disclosure has been provided to the consumer well in advance of consummation, where the creditor subsequently learns about a change in cost that would be a cause to reset tolerances. The creditor may be unable to reset tolerances currently due to the four-business day limit and may choose to reject the application for this reason. In such cases the proposed change would benefit borrowers by giving them an option of paying extra costs instead of having their applications rejected; the Bureau believes that some borrowers may prefer to pay extra costs rather than have their applications rejected. The Bureau is requesting comment on the incidence of cases where an application is rejected for the inability of a creditor to pass on the unexpected cost increases.

Third, there are hypothetically situations where a creditor would prefer to provide the initial Closing Disclosure well in advance of consummation, but is deterred from doing so by the risk of not being able to reset tolerances in case an unexpected change occurs. In such cases, the proposed change may result in more situations where the initial Closing Disclosure is provided well in advance of consummation; this may affect the accuracy of the disclosure if unexpected cost changes occur between the issuance and the consummation. The Bureau believes creditors themselves may generally prefer to provide the initial Closing Disclosure not too far before the consummation date, to preserve the Closing Disclosure's role as the statement of actual costs and because it is a good customer service. However, the Bureau has received feedback from industry participants indicating that some creditors may prefer to provide the initial Closing Disclosure earlier than is their current practice; for these creditors, the proposed change will provide a benefit in the form of additional flexibility as to the issuance of the Closing Disclosure. As noted previously, the Bureau is requesting comment on the extent to which creditors currently are providing Closing Disclosures substantially before the required three business days before consummation and, to the extent this is occurring, on the number of business days before consummation consumers are receiving the Closing Disclosure. The Bureau also is requesting comment on the extent to which creditors might change their current practices regarding of the timing of provision of the Closing Disclosures, if the proposal to remove the four-business day limit is adopted.

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

As discussed previously, the Bureau believes the proposed change would not create costs for creditors, including those with no more than $10 billion in assets.

D. Impact on Access to Credit

The Bureau does not believe the proposed change will have a negative effect on access to credit. On the contrary, the Bureau believes the proposed change may have a beneficial effect on access to credit. This may occur to the extent that the current restrictions on resetting tolerances using a Closing Disclosure are reflected in credit pricing, and to the extent that removing such restrictions would result in creditors reducing prices accordingly.

E. Impact on Rural Areas

The Bureau does not believe that the proposed changes will have an adverse impact on consumers in rural areas.

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.

The Bureau believes that the proposed change will not create a significant economic impact on a substantial number of small entities. As described above, the proposed rule would reduce burden in a specific set of circumstances that an individual small entity would not frequently encounter. Therefore, an IRFA is not required for this proposal.

Accordingly, the undersigned certifies that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities. The Bureau requests comment on the analysis above and requests any relevant data.

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 does not contain any information collection requirements as defined by the PRA. The Bureau welcomes comments on this determination, which may submitted to the Bureau at the Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, or by email to CFPB_PRA@cfpb.gov.

List of Subjects

Advertising, Appraisal, Appraiser, Banking, Banks, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

Authority and Issuance

For the reasons set forth above, the Bureau proposes to amend Regulation Z, 12 CFR part 1026, as set forth below:

PART 1026—TRUTH IN LENDING (REGULATION Z)

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

Authority: 12 U.S.C. 2601, 2603-2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq*.

* * * * *

Subpart C—Closed-End Credit

2. Section 1026.19 is amended by revising paragraph (e)(4)(i), paragraph (e)(4)(ii) heading, and paragraph (e)(4)(ii) to read as follows:

§ 1026.19 Certain mortgage and variable-rate transactions.

* * * * *

(e) *Mortgage loans secured by real property—early disclosures.*

* * * * *

(4) *Provision and receipt of revised disclosures.*

(i) *General rule*. Subject to the requirements of paragraph (e)(4)(ii) of this section, if a creditor uses a revised estimate pursuant to paragraph (e)(3)(iv) of this section for the purpose of determining good faith under paragraphs (e)(3)(i) and (ii) of this section, the creditor shall provide a revised version of the disclosures required under paragraph (e)(1)(i) of this section or the disclosures required under paragraph (f)(1)(i) of this section (including any corrected disclosures provided under paragraphs (f)(2)(i) or (ii) of this section) reflecting the revised estimate within three business days of receiving information sufficient to establish that one of the reasons for revision provided under paragraphs (e)(3)(iv)(A) through (F) of this section applies.

(ii) *Relationship between revised Loan Estimates and Closing Disclosures*. The creditor shall not provide a revised version of the disclosures required under paragraph (e)(1)(i) of this section on or after the date on which the creditor provides the disclosures required under paragraph (f)(1)(i) of this section. The consumer must receive any revised version of the disclosures required under paragraph (e)(1)(i) of this section not later than four business days prior to consummation. If the revised version of the disclosures required under paragraph (e)(1)(i) of this section is not provided to the consumer in person, the consumer is considered to have received such version three business days after the creditor delivers or places such version in the mail.

*   *   *   *   *

3. In *Supplement I to Part 1026—Official Interpretations*:

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

i. Under *19(e) Mortgage loans secured by real property—Early disclosures*:

A. Under *19(e)(1)(ii) Mortgage broker responsibilities*, paragraph 1is revised.

B. Under *19(e)(4)(i) General rule*, paragraph 1 is revised and paragraph 2 is removed.

C. Under *19(e)(4)(ii) Relationship to disclosures required under § 1026.19(f)(1)(i)*, the heading is revised, paragraph 1 is revised, and paragraphs 1.iii and 1.iv are added.

The revisions, additions, and removal read as follows:

Supplement I to Part 1026—Official Interpretations

*   *   *   *   *

Section 1026.19—Certain Mortgage and Variable-Rate Transactions

*   *   *   *   *

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

*   *   *   *   *

19(e)(1) Provision of disclosures.

*   *   *   *   *

19(e)(1)(ii) Mortgage broker.

1. *Mortgage broker responsibilities*. Section 1026.19(e)(1)(ii)(A) provides that if a mortgage broker receives a consumer's application, either the creditor or the mortgage broker must provide the consumer with the disclosures required under § 1026.19(e)(1)(i) in accordance with § 1026.19(e)(1)(iii). Section 1026.19(e)(1)(ii)(A) also provides that if the mortgage broker provides the required disclosures, it must comply with all relevant requirements of § 1026.19(e). This means that "mortgage broker" should be read in the place of "creditor" for all provisions of § 1026.19(e), except to the extent that such a reading would create responsibility for mortgage brokers under § 1026.19(f). To illustrate, § 1026.19(e)(4)(ii) states that if a creditor uses a revised estimate pursuant to § 1026.19(e)(3)(iv) for the purpose of determining good faith under § 1026.19(e)(3)(i) and (ii), the creditor shall provide a revised version of the disclosures required under § 1026.19(e)(1)(i) or the disclosures required under § 1026.19(f)(1)(i) (including any corrected disclosures provided under § 1026.19(f)(2)(i) or (ii)) reflecting the revised estimate. "Mortgage broker" could not be read in place of "creditor" in reference to the disclosures required under § 1026.19(f)(1)(i), (f)(2)(i), or (f)(2)(ii) because mortgage brokers are not responsible for the disclosures required under § 1026.19(f)(1)(i), (f)(2)(i), or (f)(2)(ii). In addition, § 1026.19(e)(1)(ii)(A) provides that the creditor must ensure that disclosures provided

by mortgage brokers comply with all requirements of § 1026.19(e), and that disclosures provided by mortgage brokers that do comply with all such requirements satisfy the creditor's obligation under § 1026.19(e). The term "mortgage broker," as used in § 1026.19(e)(1)(ii), has the same meaning as in § 1026.36(a)(2). See also comment 36(a)-2. Section 1026.19(e)(1)(ii)(B) provides that if a mortgage broker provides any disclosure required under § 1026.19(e), the mortgage broker must also comply with the requirements of § 1026.25(c). For example, if a mortgage broker provides the disclosures required under § 1026.19(e)(1)(i), it must maintain records for three years, in compliance with § 1026.25(c)(1)(i).

*   *   *   *   *

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

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

1. *Three-business-day requirement*. Section 1026.19(e)(4)(i) provides that, subject to the requirements of § 1026.19(e)(4)(ii), if a creditor uses a revised estimate pursuant to § 1026.19(e)(3)(iv) for the purpose of determining good faith under § 1026.19(e)(3)(i) and (ii), the creditor shall provide a revised version of the disclosures required under § 1026.19(e)(1)(i) or the disclosures required under § 1026.19(f)(1)(i) (including any corrected disclosures provided under § 1026.19(f)(2)(i) or (ii)) reflecting the revised estimate within three business days of receiving information sufficient to establish that one of the reasons for revision provided under § 1026.19(e)(3)(iv)(A) through (F) has occurred. The following examples illustrate these requirements:

i. Assume a creditor requires a pest inspection. The unaffiliated pest inspection company informs the creditor on Monday that the subject property contains evidence of termite damage, requiring a further inspection, the cost of which will cause an increase in estimated settlement charges subject to § 1026.19(e)(3)(ii) by more than 10 percent. The creditor must provide revised disclosures by Thursday to comply with § 1026.19(e)(4)(i).

ii. Assume a creditor receives information on Monday that, because of a changed circumstance under § 1026.19(e)(3)(iv)(A), the title fees will increase by an amount totaling six percent of the originally estimated settlement charges subject to § 1026.19(e)(3)(ii). The creditor had received information three weeks before that, because of a changed circumstance under § 1026.19(e)(3)(iv)(A), the pest inspection fees increased by an amount totaling five percent of the originally estimated settlement charges subject to § 1026.19(e)(3)(ii). Thus, on Monday, the creditor has received sufficient information to establish a valid reason for revision and must provide revised disclosures reflecting the 11 percent increase by Thursday to comply with § 1026.19(e)(4)(i).

iii. Assume a creditor requires an appraisal. The creditor receives the appraisal report, which indicates that the value of the home is significantly lower than expected. However, the creditor has reason to doubt the validity of the appraisal report. A reason for revision has not been established because the creditor reasonably believes that the appraisal report is incorrect. The creditor then chooses to send a different appraiser for a second opinion, but the second appraiser returns a similar report. At this point, the creditor has received information sufficient to establish that a reason for revision has, in fact, occurred, and must provide corrected disclosures within three business days of receiving the second appraisal report. In this example, in order to comply with § 1026.19(e)(3)(iv) and § 1026.25, the creditor must maintain records documenting the creditor's doubts regarding the validity of the appraisal to demonstrate that the reason for revision did not occur upon receipt of the first appraisal report.

19(e)(4)(ii) Relationship between revised Loan Estimates and Closing Disclosures.

1. *Revised Loan Estimate may not be delivered at the same time as the Closing Disclosure*. Section 1026.19(e)(4)(ii) prohibits a creditor from providing a revised version of the disclosures required under § 1026.19(e)(1)(i) on or after the date on which the creditor provides the disclosures required under § 1026.19(f)(1)(i). Section 1026.19(e)(4)(ii) also requires that the consumer must receive any revised version of the disclosures required under § 1026.19(e)(1)(i) no later than four business days prior to consummation, and provides that if the revised version of the disclosures are not provided to the consumer in person, the consumer is considered to have received the revised version of the disclosures three business days after the creditor delivers or places in the mail the revised version of the disclosures. See also comments 19(e)(1)(iv)-1 and -2. However, § 1026.19(e)(4)(i) permits the creditor to provide the revised estimate in the disclosures required under § 1026.19(f)(1)(i) (including any corrected disclosures provided under § 1026.19(f)(2)(i) or (ii)). See below for illustrative examples:

i. If the creditor is scheduled to meet with the consumer and provide the disclosures required by § 1026.19(f)(1)(i) on Wednesday, and the APR becomes inaccurate on Tuesday, the creditor complies with the requirements of § 1026.19(e)(4) by providing the disclosures required under § 1026.19(f)(1)(i) reflecting the revised APR on Wednesday. However, the creditor does not comply with the requirements of § 1026.19(e)(4) if it provided both a revised version of the disclosures required under § 1026.19(e)(1)(i) reflecting the revised APR on Wednesday, and also provides the disclosures required under § 1026.19(f)(1)(i) on Wednesday.

ii. If the creditor is scheduled to email the disclosures required under § 1026.19(f)(1)(i) to the consumer on Wednesday, and the consumer requests a change to the loan that would result in revised disclosures pursuant to § 1026.19(e)(3)(iv)(C) on Tuesday, the creditor complies with the requirements of § 1026.19(e)(4) by providing the disclosures required under § 1026.19(f)(1)(i) reflecting the consumer-requested changes on Wednesday. However, the creditor does not comply if it provides both the revised version of the disclosures required under § 1026.19(e)(1)(i) reflecting consumer requested changes, and also the disclosures required under § 1026.19(f)(1)(i) on Wednesday.

iii. Consummation is scheduled for Thursday. The creditor hand delivers the disclosures required by § 1026.19(f)(1)(i) on Monday, and, on Tuesday, the consumer requests a change to the loan that would result in a revised disclosure pursuant to § 1026.19(e)(3)(iv)(C) but would not require a new waiting period pursuant to § 1026.19(f)(2)(ii). The creditor complies with the requirements of § 1026.19(e)(4) by hand delivering the disclosures required by § 1026.19(f)(2)(i) reflecting the consumer-requested changes on Thursday.

iv. Consummation is originally scheduled for Wednesday. The creditor hand delivers the disclosures required by § 1026.19(f)(1)(i) on the Friday before the scheduled consummation date and the APR becomes inaccurate on the Monday before the scheduled consummation date, such that the creditor is required to delay consummation and provide corrected disclosures, including any other changed terms, so that the consumer receives them at least three business days before consummation under § 1026.19(f)(2)(ii). Consummation is rescheduled for Friday. The creditor complies with the requirements of § 1026.19(e)(4) by hand delivering the disclosures required by § 1026.19(f)(2)(ii) reflecting the revised APR and any other changed terms to the consumer on Tuesday. See § 1026.19(f)(2)(ii) and associated commentary regarding changes before consummation requiring a new waiting period. See comment 19(e)(4)(i)-1 for further guidance on when sufficient information has been received to establish an event has occurred.

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[THIS SIGNATURE PAGE PERTAINS TO THE PROPOSED RULE TITLED "AMENDMENTS TO FEDERAL MORTGAGE DISCLOSURE REQUIREMENTS UNDER THE TRUTH IN LENDING ACT (REGULATION Z)"]

Dated: July 6, 2017.

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