



August 11, 2016

The CFPB issued its long-awaited proposed rule to amend TRID on July 29, 2016. The proposal was intended to “formalize guidance in the rule, and provide greater clarity and certainty.” The press release is available at:

<http://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-proposes-updates-know-you-owe-mortgage-disclosure-rule/>.

The proposal is available on the CFPB’s website at:

<http://www.consumerfinance.gov/policy-compliance/rulemaking/rules-under-development/amendments-federal-mortgage-disclosure-requirements-under-truth-lending-act-regulation-z/>.

As a general matter, this proposal addresses many of the difficult compliance issues in the rule. It does not, however, address major policy issues such as the disclosure of title insurance, cures, or liability. But it is apparent that the CFPB put a great deal of work into this proposal, and thoughtfully considered much of the input from the public regarding compliance with the rule. The CFPB also explained the proposed changes and its reasoning for the changes in the preamble in a clear and concise manner, which is very helpful. As with any proposed rule, there are issues that the public may want to comment on to provide further input, especially considering the detailed nature of the proposed changes. But the CFPB’s effort and the quality of its proposal should be commended.

Please find below my summary of the proposal and some brief thoughts on a few of the issues in the proposal. I organized the summary by subject area. I intend this summary to provide a helpful starting point for your review of the proposal. Please let me know if I can be of any assistance in understanding the proposal or preparing a comment letter for your organization.

Comments are due on Oct. 18, 2016. You can comment by emailing FederalRegisterComments@cfpb.gov and including “Docket No. CFPB-2016-0038” or “RIN 3170-AA61” in the subject line of the email, on the <http://www.regulations.gov> website, or by mail or physical delivery to the CFPB as described in the proposal.



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1. When the CFPB Expects to Issue the Final Rule and When it May Be Effective

The CFPB stated in the preamble of the proposed rule that it expects to issue the final rule on or before April 1, 2017. The CFPB provides this date as a deadline, rather than as a target date. It appears that the CFPB is planning up to five months to review the public's comments and draft the final rule. But the CFPB also called this date "a working assumption," so the actual date can still be later.

The CFPB proposed an implementation period of 120 days (four months) for the final rule. The CFPB sought comment on what the implementation period for the final rule should be. The CFPB stated that it believes industry should be able to implement the changes "relatively quickly," but at the same time recognized that some of the changes might require "systems or procedures" changes. The CFPB specifically requested that the industry provide information on the required updates to software and other changes that would be necessary to implement the proposed changes, including the amount of time necessary to make the changes. The CFPB also requested comment on the timing of the final rule, including "whether there is a better or worse time of year for any of the changes."

Based on the CFPB's potential issue date of April 1, 2017 and its proposed 120-day implementation period together, it appears that an outside effective date for the final rule may be around August 1, 2017.

Note that when the CFPB proposed to delay the original August 1, 2015 effective date for TRID, Director Cordray stated that the proposed delay to October, "would better accommodate the interests of the many consumers and providers whose families will be busy with the transition to the new school year at that time."¹ Some may consider raising this as an issue with this proposal as well.

2. The CFPB's Purpose for the Proposal and What it Does Not Address

The CFPB stated that its focus in the proposal is on "providing additional clarity to facilitate compliance and doing so on an expedited schedule." The CFPB acknowledged that there are a "handful" of substantive changes, it stated that it "does not intend to revisit major policy decisions" in the rule. The reasons the CFPB provided for not considering major policy changes is that it is "reluctant to entertain major changes that could involve substantial reprogramming" soon after the effective date, or "otherwise distract from industry's intense and very productive

¹ CFPB Press Release (Jun. 17, 2015), available at: <http://www.consumerfinance.gov/about-us/newsroom/statement-by-cfpb-director-richard-cordray-on-know-before-you-owe-mortgage-disclosure-rule/>.



efforts” towards implementation.

The CFPB’s examples of major policy decisions that it is not addressing in this rulemaking are:

1. The disclosures of simultaneous issuance of title insurance premiums; and
2. The rule’s cure provisions.

Notably, the CFPB did not propose to adopt Director Cordray’s December 2015 letter to the Mortgage Bankers Association that addresses liability and cures, including its statement that an accurate CD can cure an LE violation.

With respect to amending the cure provisions, the CFPB stated that it “would not be practicable without substantially undermining incentives for compliance with the rule” and that it “would be extraordinarily complex.” It appears that submitting comment letters asking the CFPB to reopen these issues might not be the best use of resources.

3. Expansion of TRID’s Scope to Include Co-ops

The CFPB proposed to expand the scope of TRID to cover loans secured by cooperative units. This change would be made directly in the regulatory text of 1026.19(e) and (f), comments 19(e)(1)(i)-1 and -2, 19(f)(1)(i)-1 and 19(f)(3)(ii)-3, to cover loans secured by cooperative units, regardless of whether state or other applicable law considers them to be real or personal property.

TRID currently applies to loans secured by “real property,” which is not defined under Regulation Z and thus, under 1026.2(b)(3), it has the meaning given by state law. This means that creditors have to conduct an analysis of whether cooperative units are considered “real property” under state law to determine whether they are covered by TRID. The CFPB noted that there is “uncertainty whether loans secured by cooperative units are considered, under a given State’s law and thus for purposes of the TILA-RESPA Rule’s coverage, to be secured by real property or personal property.” The CFPB noted that the treatment of cooperative units as real or personal property can differ within a state’s law for different purposes, which can result in inconsistent treatment between creditors under TRID.

The CFPB also proposed conforming amendments to comments 17(f)-1 and -2, 18-3, 18(g)-6, and 18(s)-1 and -4, 1026.25, and other header and introductory provisions to reflect expansion of TRID’s scope to cover loans secured by co-ops.



4. The Black Hole

The CFPB's proposal does address the problem of the so-called "Black Hole," *i.e.*, the time period in which a creditor cannot use a valid changed circumstance or other reason for revision for tolerance purposes because the rule does not permit its disclosure on the CD. It is very positive that the CFPB addressed this issue in the proposal, and the change appears to eliminate the Black Hole. But there may be issues with the CFPB's proposed approach worth commenting on, which I briefly discuss below.

To deal with the Black Hole, the CFPB proposed to add a new comment to clarify that the rule allows the use of corrected CDs to revise estimates for tolerance purposes. The CFPB proposed to add a new comment 19(e)(4)(ii)-2 that states that creditors can use corrected CDs for tolerance purposes in the following two situations: (1) if there are fewer than four business days between the time the revised LE is required to be provided and consummation; (2) or the Closing Disclosure has already been provided to the consumer. It appears that this amendment would allow the use of a corrected CD for tolerance purposes without regard to when the change occurred in relation to the scheduled closing, essentially eliminating the "Black Hole." Significantly, this new comment would allow lenders to provide the initial CD on the day after providing the initial LE and then use revised CDs for changed circumstances, essentially avoiding any future complications from the requirement that the consumer receive the initial CD at least three business days before consummation.

The CFPB also stated in the preamble of the proposal that it believes that creditors can use corrected Closing Disclosures for tolerance purposes pursuant to the existing comment 19(e)(4)(ii)-1, which it did not propose to amend. This creates the question of whether the proposed addition of a new comment is necessary to deal with the "Black Hole." In addition, does the new comment specifically for revised CD create unintended consequences? For example, does it render all references to "the disclosures required under § 1026.19(f)(1)(i)" to mean only the initial CD, and what effect does this have on other provisions?

The CFPB appears to address in the proposal's preamble how it interprets the time period in which a creditor can use corrected CDs for tolerance purposes under comment 19(e)(4)(ii)-1. As you may know, this time period under comment 19(e)(4)(ii)-1 has been a source of confusion for the industry. The CFPB appears to state in the preamble that a creditor may use a corrected CD for tolerance purposes, "when there are fewer than four business days remaining before consummation or when the [CD] has already been issued." This interpretation of the time period



under comment 19(e)(4)(ii)-1 may be inconsistent with the interpretation of many in the industry.

The CFPB's proposed changes relating to the other tolerance requirements are discussed separately below.

5. Privacy Issues

The CFPB acknowledged that there has been confusion regarding the ability of lenders and settlement agents to share the combined or separate CDs with third parties involved in the mortgage transaction, including real estate agents. The CFPB appears to have attempted to clear up this confusion by addressing in the preamble the exceptions to the restrictions on disclosure of nonpublic personal information under the Gramm-Leach-Bliley Act (GLBA).

Sharing the CD. The CFPB first stated that GLBA section 502(e)(8), 15 U.S.C. 6802(e)(8), provides an exception for sharing NPI as required by federal law. This statement may have been intended for settlement agents that have refused to provide copies of separate seller's CDs to creditors based on privacy concerns, even though it is required under TRID pursuant to 1026.19(f)(4).

The CFPB continued to discuss in the preamble how the sharing of the CD with third parties may be permissible under GLBA section 502(e)(1), 15 U.S.C. 6802(e)(1), which permits disclosure of nonpublic personal information "as necessary to effect, administer, or enforce a transaction requested or authorized by the consumer." This phrase is defined under GLBA section 509(7)(A), 15 U.S.C. 6809(7)(A), to allow disclosure that is required or is a "usual, appropriate, or acceptable method" to provide "the consumer or the consumer's agent or broker with a confirmation, statement, or other record of the transaction, or information on the status or value of the financial service or financial product."

The CFPB stated that it believes the combined or separate CD is a "record of the transaction" for "both the consumer and creditor." The CFPB also stated is "usual, appropriate, and accepted" for "creditors and settlement agents" to share combined or separate CDs:

- as a "record of the transaction" to "consumers, sellers, and their agents;" or
- "information on the status or value of the financial service or financial product to their customers or their customers' agents or brokers."

Note that this discussion is very helpful, and it is very positive that the CFPB addressed this issue in the preamble. But the CFPB does not expressly state which



party may share which information, and with which party. For example, the language does not expressly state that sharing of the consumer's or seller's separate CD with the other party's real estate agent is permissible.

Separate CDs. The CFPB also acknowledged that there is confusion regarding the ability of creditors and settlement agents to use separate CDs. The CFPB proposed to make revisions to clarify the rules for the provision of separate CDs to the consumer and seller. The CFPB proposed to add comment 38(t)(5)(v)-1, which clarifies that the creditor may make the modification permitted under 1026.38(t)(5)(v) by the following methods: (i) leaving the applicable disclosure blank concerning the seller or consumer on the form provided to the other party (ii) omitting the table or label, as applicable, for the disclosure concerning the seller or consumer on the form provided to the other party; or (iii) providing to the seller, or assist the settlement agent in providing to the seller, a modified version of the form under § 1026.38(t)(5)(vi), as illustrated by form H-25(I) of appendix H to this part. The CFPB also proposed to add comments 38(t)(5)(v)-2 and -3 to provide examples where the creditor may provide separate CDs to the consumer and seller. These examples include if applicable State law prohibits sharing the information with the other party or "in any other situation where the creditor in its discretion chooses to do so, such as based on the [seller's or consumer's] request." Notably, these proposed revisions appear to state that the creditor is to provide "or assist the settlement agent in providing" the seller's CD. The CFPB did not propose to change the responsibility of the settlement agent under 1026.19(f)(4) to provide the seller's CD, and thus, the construction of these comments is confusing.

6. Down Payment Assistance (Housing Finance Agency) Loans

The CFPB proposed a couple changes to the exemption for down payment assistance loans under 1026.3(h). The current exemption provides six criteria that a down payment assistance loan must meet to be exempt from TRID. One of the criteria under this exemption is that the loan's charges only include recording fees, an application fee, and a bona fide and reasonable fee for housing counseling services, and that such charges are less than 1% of the loan amount. The CFPB proposed to include transfer taxes in the list of allowable charges, and also exclude recording fees and transfer taxes from the fees included in the 1% threshold.

Interestingly, the CFPB also sought comment on specific issues relating to such loans. Notably, the CFPB sought comment on whether it should add a criterion to the 1026.3(h) exemption that the loan is made by a housing finance agency or a creditor partnered with a housing finance agency, or if it should completely exempt loans made by housing finance agencies from TRID or Regulation Z.



7. Total of Payments - Loan Costs and a New Tolerance

Since TRID was issued, there has been confusion regarding two issues with the Total of Payments: (1) whether it includes only those Loan Costs paid by the borrower, or it also include Loan Costs paid by the seller and other parties; and (2) whether the tolerance for the finance charge and disclosures affected by the finance charge under 1026.38(o)(2) (and which tolerance applies to the TIL under 1026.18(d)(1)) applies to TRID's modified Total of Payments calculation, because the finance charge is not a component of the modified calculation.

Regarding the tolerance applicable to the Total of Payments, the CFPB stated in the preamble of its proposal that it believes, "it is appropriate to continue to apply the tolerances for the finance charge and disclosures affected by the finance charge to the modified total of payments calculation."

General tolerance. To that end, the CFPB proposed to revise the rule and other relevant provisions to expressly provide a tolerance for the Total of Payments, including a tolerance for rescission purposes. Specifically, the CFPB proposed to revise 1026.38(o)(1) to provide that the total of payment is accurate if it is: (1) understated by no more than \$100; or (2) is greater than the amount required to be disclosed. The CFPB also proposed to add comment 38(o)-1 to provide guidance clarifying that the tolerances for the finance charge and the total of payments are separate and operate independently, *i.e.*, loan costs that are not finance charges can be understated such that the total of payments is rendered inaccurate, but the finance charge remains accurate.

Rescission tolerances. In addition, the CFPB proposed to revise 1026.23(g)(1) and (2) and (h)(2) to add new provisions that expressly provide that the existing rescission tolerances for the finance charge and disclosures affected by the finance charge also apply to the total of payments (*i.e.*, the \$35, .5% and 1% understatement tolerances, and the tolerance for overstatements, as applicable). The CFPB also proposed to revise comment 23(h)(2)-1 to clarify that the new tolerance is based on the accuracy of the total of payments taken as a whole, rather than its components, and to add comment 23(h)(2) to cross-reference guidance under comment 38(o)-1.

Loan Costs. Regarding which Loan Costs are included in the Total of Payments calculation, the CFPB stated in the preamble that it is aware of the differences in interpretation on this issue and proposed to amend comment 38(o)(1)-1 to clarify that the Total of Payments calculation excludes Loan Costs that are designated on the CD as paid by the seller or paid by others, *i.e.*, it only includes borrower-paid



Loan Costs. The CFPB stated that this difference in treatment of specific credits for Loan Costs between the LE and CD is “appropriate given the difference between the information available to the creditor when it provides the [LE] and when it provides the [CD].” In addition, the CFPB stated that, “unlike the [CD] form, the [LE] form does not allow for the itemized disclosure of costs paid by the seller or others.”

8. Written List of Providers

The CFPB proposed multiple changes to the requirements regarding the written list of settlement service providers (WLSP), including its effect on the tolerances.

Failure to provide the WLSP results in 0% tolerance. Significantly, the CFPB proposed to amend comments 19(e)(3)(ii)-2 and 19(e)(3)(iii)-2 to provide that if the creditor permits the consumer to shop but fails to provide the WLSP or provides a non-compliant list, the charge would be subject to the 0% tolerance. The CFPB stated in its preamble for the proposal that, “the Bureau believes that a creditor did not permit a consumer to shop if the creditor failed to provide a written list of providers in compliance with § 1026.19(e)(1)(vi).”

Itemization of services on the list. The CFPB proposed to clarify that the WLSP does not need to identify each individual service that is part of a package or combination of settlement services offered by a single service provider. This clarification would be added to comment 19(e)(1)(vi)-2. The CFPB also proposed to provide that if a service is provided as part of a package or combination of settlement services offered by a single service provider, that the creditor does not need to identify a provider for that service on the WLSP.

It appears that the CFPB is attempting to allow the listing of a package of services on the WLSP, such as title services, rather than requiring the itemization of each individual service in the package as disclosed on the LE. But these two amendments appear to omit a requirement that creditors identify an available provider for the package of services.

Clarification that H-27 is a model form. The CFPB proposed to amend comment 19(e)(1)(vi)-3 to clarify that use of model form H-27(A) is not required for the WLSP, but if used properly will be deemed in compliance.

9. Other Tolerances Changes

The CFPB made several substantive and technical changes to the rules regarding the tolerances (in addition to the proposed changes regarding the Black Hole and the



WLSP, which are summarized separately above). The substantive changes are described below.

Charges paid by or imposed on the consumer. The CFPB proposed to add comment 19(e)(3)(i)-8 to clarify that the use of the phrase “paid by or imposed on the consumer” in reference to charges under 1026.19(e)(3) has the same meaning as the term “payable” under Regulation Z.

Clarification of the 10% tolerance. The CFPB proposed to clarify in comment 19(e)(3)(ii)-2 that the 10% threshold applies to all charges the consumer is permitted to shop for, even if such a charge was not disclosed on the LE but charged at consummation.

Charges to affiliates that are not subject to tolerances. The CFPB is proposing to amend the rule to provide that all of the categories of charges not subject to tolerances under 1026.19(e)(3)(iii) can include charges paid to affiliates of creditors, so long as the charges are bona fide. The CFPB stated that it is making this amendment because of confusion regarding whether affiliate charges are included in all of the categories of charges not subject to tolerances, or only the last category (*i.e.*, charges not required by the creditor). The CFPB also proposed to add comment 19(e)(3)(iii)-4, which would clarify what “bona fide” means for including affiliate charges in the categories of charges not subject to tolerances. This comment would define “bona fide” as “lawful and for services that are actually performed.”

Estimates for charges not subject to tolerances. The CFPB proposed to amend 1026.19(e)(3)(iii)(E) to specifically identify “property taxes” as charges not subject to the tolerances. In addition, the CFPB proposed to amend comment 19(e)(3)(iii)-3 to further clarify how property taxes are not subject to tolerances and add an example of a creditor that fails to include a charge or includes an unreasonably low estimate for property taxes.

Revised disclosures for informational purposes. The CFPB proposed to amend comment 19(e)(3)(iv)-2 and to add new comment 19(e)(3)(iv)-4 to clarify that the rule does not prohibit lenders from providing revised disclosures for informational purposes, even in situations where the creditor is not resetting the baseline for tolerances. The CFPB also proposed to add a new comment 19(e)(3)(iv)-5 to clarify that any disclosures provided for tolerance or informational purposes must be on the best information reasonably available to the creditor at the time the disclosure is provided to the consumer.

Revised CDs for interest rate locks. The CFPB proposed to add a new comment



19(e)(3)(iv)(D)-2 to clarify that, even if the interest rate is locked after the CD was provided, the creditor cannot provide a revised LE to the consumer. The proposed comment states that if interest rate is locked after a CD is provided causing inaccuracies in that CD, the creditor must provide a corrected CD at or before consummation reflecting any changed terms.

Expiration of the LE. The CFPB proposed to amend 1026.19(e)(3)(iv)(E) and add a new comment 19(e)(3)(iv)(E)-2 to permit creditors to use expiration dates that are greater than 10 business days.

Disclosing tolerance refunds. The CFPB proposed the addition of comment 38-4, which would give options for the disclosure principal curtailments throughout the various sections of the CD. These proposed changes for principal curtailments are described separately below. The CFPB proposed to revise comment 19(f)(2)(v)-1 to add a cross-reference to comment 38-4.

10. Construction Loans

The CFPB proposed multiple changes for construction loans, as described below.

Allocation of points between construction and permanent phases. The CFPB proposed to amend comment 17(c)(6)-5, which currently allows creditors to allocate points and similar charges in any manner they choose between the construction and permanent phases when they are disclosed separately. The CFPB proposed to amend the comment to state that costs should be allocated to the construction phase if they would not be imposed but for the construction financing, and that all other amounts would be allocated to the permanent financing.

Applicability of option to use combined disclosures under 1026.17(c)(6)(ii). The CFPB also proposed to add a new comment 17(c)(6)-6 to clarify the meaning of “may be permanently financed by the same creditor,” which is a condition of the ability to disclose a construction-to-permanent transaction as either a combined transaction or separate transactions under 1026.17(c)(6)(ii). The CFPB proposed to clarify that this condition is satisfied if “the creditor generally makes both construction and permanent financing available to qualifying consumers, unless a consumer expressly states that the consumer will not obtain permanent financing from the creditor.”

Timing of LE for construction-to-permanent transactions. The CFPB proposed a new comment 19(e)(1)(iii)-5 that would explain that a creditor that provides separate disclosures for the construction and permanent phases under 1026.17(c)(6)(ii)



complies with the timing requirements for the initial LE by providing the LE for both the construction and permanent phases within three days after the consumer's initial application for construction financing and not later than the seventh business day before consummation. The comment would also provide that if a consumer states that they will not obtain permanent financing after a combined LE has already been provided, the creditor can provide a revised disclosure for the construction financing in accordance with 1026.19(e)(4), which is the provision that covers revised LEs.

Construction Loan Inspection and Handling Fees. The CFPB clarified in the proposal that construction loan inspection and handling fees are loan costs associated with the construction transaction for purposes of 1026.37(f) and are required to be disclosed. The CFPB stated in the proposal's preamble that if such inspection and handling fees are collected at or before consummation, they are disclosed as Loan Costs. But if they will be collected after consummation, the CFPB proposed to add comments 37(f)-3 and 37(f)(6)-3 to provide that such fees would be disclosed in a separate addendum to the LE, and would not be counted in the Calculating Cash to Close table. The fees would need to be under a header that states, "Inspection and Handling Fees Collected After Closing." The CFPB also proposed to add a corresponding comment 38(f)-2 for the CD. In addition, the CFPB also proposed to add guidance and cross-references to these provisions under comment app. D-7.viii.

Construction Costs (Holdbacks). The CFPB proposed to require such costs to be disclosed under the "Other" section of the "Other Costs," pursuant to 1026.37(g)(4). The CFPB would add a comment app. D-7.vii.A and .B to clarify that the amount of construction costs or construction holdbacks are disclosed under 1026.37(g)(4). The CFPB acknowledged in the preamble that under the existing rule, the disclosure of such costs under 1026.37(g)(4) is one alternative (and note that the CFPB provided such guidance in its March 2016 webinar on construction loans). This change is discussed in more detail under the Loan Estimate and Closing Disclosure changes section below. The CFPB also proposed to revise comment 38(g)(4)-1 to provide that if construction costs are contracted to be paid at closing, even though they will be disbursed after closing, they are disclosed in the "At Closing" column.

Notably, proposed comment app. D-7.vii.A and .B does not discuss the ability of creditors to disclose such construction costs and holdbacks as Payoffs and Payments on the alternative form.

Other forms guidance. The CFPB proposed to revise comment app. D-7 to provide additional guidance regarding the completion of the LE and CD for construction-to-permanent transactions. The revised comment would provide the guidance as



described below.

Loan Term. Comment app. D-7.i would clarify how the Loan Term should be disclosed on the LE and CD. For combined disclosures, the loan would be the total combined term of the construction and permanent phases. For separate disclosures, the Loan Term for the permanent phase would be counted from the date that interest for the first scheduled periodic payment for the permanent phase begins to accrue.

Product. Comment app. D-7.ii would clarify how to disclose the duration of the “Interest Only” feature. The comment clarifies that for separate disclosures, the final payment will typically be a balloon payment, and as such, would not be considered an interest only payment. The comment states that this means for a construction phase of one year, the duration of the Interest Only feature would be 11 months. The comment also clarifies that for combined disclosures, the duration of the Interest Only feature would be the full term of the construction phase.

Loan Terms – Interest Rate. Comment app. D-7.iii would clarify how to disclose the Interest Rate under 1026.37(b)(2) and 1026.38(b) for the permanent phase when it is disclosed at consummation before the permanent phase begins. For separate disclosures where the permanent phase will have an adjustable rate, the Interest Rate disclosed for the permanent phase would be the fully-indexed rate. And for a fixed rate, the interest rate would be based on the best information reasonably available at the time of disclosure. The comment would also clarify that if the interest rate changes at the time of conversion to permanent financing, resulting a payment change, the creditor must provide the rate and adjustment disclosures required by 1026.20(c).

Loan Terms – Principal and Interest Payment. Comment app. D-7.iv would clarify that 1026.17(c)(3) applies to the Appendix D calculation of the initial periodic payment amount disclosed under 1026.37(b)(3) and 1026.38(b).

Comment app. D-7.v would clarify how to disclose the potential increases in the periodic payment in the Loan Terms table when the construction phase is disclosed separately. Comment app. D-7.v.A would note that the estimation of the periodic payment under Appendix D results in periodic payments that are equal in amount and that “a technically correct answer to ‘Can this amount increase after closing?’ pursuant to § 1026.37(b)(6) is ‘NO.’” But the comment would permit creditors to disclose a “YES” answer under 1026.37(b)(6), “to reflect the fact that actual payments may be more than the amount calculated using appendix D.” Comment app. D-7.v.B would further permit the creditor to omit the bullets required under



1026.37(b)(6)(iii) and the range of payments in Projected Payments required under 1026.37(c)(2)(i) in the separate construction disclosure.

In addition, comment app. D-7.v.C would provide that for an adjustable rate construction phase disclosed separately, creditors should provide disclosures reflecting changes that are due to changes in the interest rate, but may omit disclosures reflecting changes that are due to changes in the total amount advanced. The proposed comment provides as an example that a creditor would disclose “YES” under 1026.37(b)(6), because the initial periodic payment may increase based upon an increase in the interest rate, but can omit a reference to the Adjustable Payment table required by 1026.37(i), because that disclosure would reflect a change not based on the interest rate changing (*i.e.*, a change in the total amount advanced). The preamble of the proposal notes that in this case, “the creditor also discloses a range of payments in the principal and interest row of the projected payments table under 1026.37(c)(2)(i).”

Notably, comment app. D-7.v.C does not provide guidance on how to calculate the bullets required to be disclosed under 1026.37(b)(6)(iii) or the range of payments under 1026.37(c) based on changes to the interest rate, and it does not state that they can be omitted. However, the CFPB stated that, “as a practical matter, there is no method for calculating the § 1026.37(b)(6)(iii) and (c)(2)(i) disclosures as they relate to changes in the total amount advanced in construction financing when the amounts or timing of advances is unknown at or before consummation. Any method devised to take into account increases in the total amount advanced would introduce significant complexity and would have to differ from the method used for calculating the initial periodic payment under appendix D.... The Bureau does not believe that increasing the complexity of compliance would serve the purpose of this proposal, which is to provide instructions and clarity for the existing disclosure requirements.”

Projected Payments. The proposal would also restate the existing guidance in comment app. D-7.i and ii regarding the Projected Payments table in new comments app. D-7.vi.A and .B. Proposed comments app. D-7.vi.A and B would specify that the creditor determines the amount of the interest-only payment to be made during the construction phase using the assumptions in appendix D, part I.A.1 and part II.A, respectively, if interest is payable only on the amount actually advanced for the time it is outstanding. Further, comment app. D-7.vi.A would clarify that the construction phase is disclosed as a product with a balloon payment feature, as was described in original comment app. D-7.i, consistent with 1026.37(a)(10)(iii), which means that a negative amortization, interest only, or step payment feature would be disclosed first in the waterfall under that provision.



Comment app. D-7.vi.B would restate current comment app. D-7.ii, but clarify that the first column of the Projected Payments table also reflects the amortizing payments for the permanent phase if the term of the construction phase is not a full year.

Summaries of Transactions. The CFPB also proposed to revise comment 38(k)-1 to add construction purpose loans (as defined under 1026.37(a)(9)(iii)) as an example of transactions in which the seller's table is not required.

Cross-references to new construction-to-permanent guidance. The CFPB proposed to revise or add comments 37(a)(8)-3, 37(a)(10)-2.ii, 37(b)(2)-1, 37(b)(3)-2, 37(b)(6)(iii)-1, 37(c)-2, 37(f)-3, 37(g)(4)-4, 38(f)-2, 38(g)(4)-1, as applicable, to provide cross-references to the proposed new construction loan guidance added to comment app. D-7.

11. General Form Changes to the LE and CD

This section describes the proposed changes to the completion of the LE and CD, except for issues that are discussed in separate sections, such as changes relating to construction lending, the Calculating Cash to Close table, principal curtailments, and simultaneous subordinate-lien loans, which are described in separate sections.

Sale Price. The CFPB proposed to revise comment 37(a)(7)-1 to clarify that, if a creditor has performed its own estimate of the property value by the time the LE is provided to the consumer, the creditor must disclose its own estimate.

In addition, with respect to the CD for non-purchase transactions, the CFPB proposed to revise comment 38(a)(3)(vii)-1 to clarify that under 1026.38(a)(3)(vii)(B), if the creditor has performed its own estimate of the property value for purposes of approving the credit transaction by the time the disclosure is provided to the consumer, the creditor must disclose the estimate it used for purposes of approving the credit transaction.

Disbursement Date. The CFPB proposed to revise 1026.38(a)(3)(iii) to provide that in a non-purchase transaction, the disbursement date is the date that some or all of the Loan Amount is expected to be paid to the consumer or a third party.

Consumer's Name and Address in Rescindable Transactions. The CFPB proposed to add new comment 38(a)(4)-4 to clarify that, in rescindable transactions, 1026.38(a)(4)(i) requires disclosure of the name and mailing address of each



consumer with a right to rescind, regardless of whether they are an obligor.

Rate Lock. The CFPB proposed to add new comment 37(a)(13)-3 to clarify that, once the consumer has indicated an intent to proceed with the transaction, the date and time at which estimated closing costs expire would be left blank on revised Loan Estimates. The CFPB also proposed to revise comment 37(a)(13)-2 to provide guidance regarding the proposed ability of creditors to select an expiration period greater than 10 business days.

Loan Amount. The CFPB proposed to revise 1026.37(b)(1) to define the Loan Amount as “the total amount the consumer will borrow, as reflected by the face amount of the note.” The CFPB explained the purpose of this change, stating that, “to parallel the language in § 1026.32(c)(5) would make clearer that the same amount should be disclosed under both sections....”

Projected Payments. The CFPB proposed to revise one example in comment 37(c)(1)(iii)(B)-1, because it stated that there were “inconsistencies” between the example and the regulatory text of 1026.37(c)(1). The inconsistency mainly has to do with when multiple events, as defined in 1026.37(c)(1)(i), occurring in one year should be disclosed as a range. Specifically, the issue is whether after a year disclosed as a range based on multiple events occurring in that year, pursuant to 1026.37(c)(1)(iii)(B), the first payment of that immediately following year should be considered a payment change that can trigger a range of payments if there is one other payment change in that year, and thus, in turn, cause the first payment of the next year to be considered a payment change as well. The current regulatory text treats the first payment of the next year (which is called in the regulation, “the anniversary of the due date of the initial periodic payment”) as a change that does not trigger a range of payments as described. But the commentary example in comment 37(c)(1)(iii)(B)-1 treats it as such. Note that this is a highly technical issue, but it would affect how more complex products are disclosed.

Estimated Taxes, Insurance, and Assessments. The CFPB proposed to revise comment 37(c)(4)(iv)-2 to clarify that creditors may use the word “Some” to indicate that a portion of the costs disclosed in the Property Taxes and Homeowner’s Insurance line will be paid from the escrow account. The comment already states that “Some” can be used in the “Other” line in this section.

Recording Fees on the CD. The CFPB proposed to amend 1026.38(g)(1) to clarify that the total amount of fees for recording deeds and security instruments must each be disclosed on the Recording Fees. The CFPB also proposed to amend 1026.38(g)(1) to clarify that the total amount paid for recording fees, including for



documents other than the deed or security instrument, must be disclosed under Recording Fees. The CFPB also proposed to add new comment 38(g)(1)-3 to clarify this point.

Prepaid Interest disclosure on the CD. The CFPB proposed to revise comment 38(g)(2)-3 to provide that \$0.00 must be disclosed if there will be no per diem interest collected. This revises the disclosure from \$0 to \$0.00, “because the amount disclosed under § 1026.38(g)(2) is disclosed to two decimal places under § 1026.38(t)(4).” Note that this guidance to disclose a zero if no per diem interest will be collected appears to conflict with the method of disclosure for other hard-coded line items in which a blank would be used, including the other Prepaid hard-coded line items. This disparate method of disclosure for a hard-coded line item that is not charged may be confusing to consumers.

Accuracy of Prepaid Interest on the CD. In addition, the CFPB proposed to add comment 19(f)(2)(iii)-2, which would state that the creditor does not need to provide post-consummation CDs under 1026.19(f)(2)(iii) to correct the per-diem interest disclosed under 1026.38(g)(2) or disclosures affected by the per-diem interest under 1026.38(o), if such disclosures are accurate under 1026.17(c)(2)(ii). Section 1026.17(c)(2)(ii) provides that any disclosure affected by the per-diem interest is considered accurate if the disclosure is based on the information known to the creditor at the time that the disclosure documents are prepared for consummation of the transaction.

Note that current comment 17(c)(2)(ii)-1 states that, for TRID loans, creditors must “disclose the *actual amount of per diem interest* that will be collected at consummation, subject only to the disclosure rules in [§ 1026.19(e) and (f)].” Comment 17(c)(2)(ii)-1 (emphasis added). The CFPB did not propose to modify this comment. But the CFPB sought comment on the interaction between the relevant provisions. This interaction may be worth addressing in a comment letter.

Payoffs and Payments Table. The CFPB proposed comment 38(t)(5)(vii)(B)-1 to clarify that amounts paid by third parties who provide funds on behalf of the consumer can be disclosed as credits in the Payoffs and Payments table using negative numbers. The comment would provide as examples of such amounts “gift funds, grants, and proceeds from loans [exempt under 1026.3(h)].”

Payoffs of Liens, Payoffs of Other Debts, and Construction Costs (Holdbacks). The CFPB proposed to modify comments 37(g)(4)-4 and 38(g)(4)-1 to require on the standard form that such payoffs and construction costs to be disclosed under the “Other” section of the “Other Costs,” pursuant to 1026.37(g)(4) and 1026.38(g)(4).



The comments allow such costs to be disclosed on the alternative form as Payoffs and Payments.

The CFPB acknowledged in the preamble that under the existing rule, the disclosure of such costs under 1026.37(g)(4) is one alternative. The CFPB stated that it also considered requiring the disclosure of such costs under 1026.38(j)(1)(v), instead of as “Closing Costs” under 1026.37(g)(4) and 1026.38(g)(4). But the CFPB stated that it decided against this approach because it believed the approach “would not provide for comparability between the Loan Estimate and Closing Disclosure...because the Loan Estimate does not have a summaries of transactions table.” This form of disclosure would result in a very large amount for the Total Closing Costs in a transaction.

Lender Credits. The CFPB proposed to revise comment 37(g)(6)(ii)-1 to conform to comment 19(e)(3)(i)-5, which defines the Lender Credits line on the LE as representing the sum of general and specific lender credits.

Total Interest Percentage. The CFPB proposed to amend comment 37(l)(3)-1 to clarify that prepaid interest is included in the TIP.

Rounding. The CFPB acknowledged the uncertainty regarding the rounding requirements. The CFPB proposed to amend the rounding requirements for the LE in 1026.37(o)(4)(i)(A) to clarify that the per diem interest amount required to be disclosed in Prepaids under 1026.37(g)(2)(iii) and the monthly amounts required to be disclosed in the Escrows section under 1026.37(g)(3)(i) through (iii) and (g)(3)(v) are “rounded to the nearest cent and disclosed to two decimal points.”

In addition, the CFPB proposed to amend 1026.37(o)(4)(ii) to provide that percentages would be the exact amounts rounded to “three decimal places and then dropping any trailing zeros that occur to the right of the decimal place.” The CFPB proposed comment 37(o)(4)(ii)-1 to illustrate this requirement with examples.

For the CD, the CFPB proposed to provide the same simplification for the rounding of percentages. The CFPB proposed to amend 1026.38(t)(4)(ii) to require that the percentage amounts be disclosed by rounding the exact amounts to three decimal places and then dropping any trailing zeros to the right of the decimal point.

12. Calculating Cash to Close Table on the LE and CD

The CFPB proposed multiple changes to the Calculating Cash to Close table for the LE and CD. The proposed changes are described below.



Amounts in the Loan Estimate column. For the CD's table, the CFPB proposed to add comment 38(i)-5 to clarify that the estimated amounts disclosed under the Loan Estimate column are from the most recent LE provided to the consumer.

Closing Costs Paid Before Closing. The CFPB proposed to revise comment 38(i)(2)(iii)(B)-1 to clarify that the amount disclosed under the Closing Disclosure column is disclosed as \$0.00, rather than \$0 as described in the existing comment, because it is disclosed to two decimal places. Notably, the CFPB did not propose to change the disclosure of \$0 in the Loan Estimate column to include two decimal places.

Closing Costs Financed. For the LE and the CD, the CFPB proposed to revise comment 37(h)(1)(ii)-1 and add comment 37(h)(1)(ii)-2 to provide greater clarity regarding the Sale Price and Loan Amount used in the calculation. Revised comment 37(h)(1)(ii)-1 would clarify that the Sale Price may be included in the calculation as a payment to a third party not otherwise disclosed. Proposed comment 38(i)(3)-1 would also clarify that the total amount of payments to third parties in this calculation includes the Sale Price disclosed under 1026.38(j)(1)(ii), similar to the proposed commentary described above.

Proposed comments 37(h)(1)(ii)-2 and comment 38(i)(3)-2 would clarify that financed mortgage insurance premiums do not reduce the Loan Amount used in the calculation. The CFPB stated in the preamble to the proposal that this definition does not affect how other agencies may define or use similar terms, such as "base loan amount" and "total loan amount" as used by the Federal Housing Administration.

In addition, the CFPB proposed to add comment 38(i)(3)-1, which would clarify how the amount is calculated on the CD, because currently only the rules for the LE describe the calculation. This comment would clarify that the calculation subtracts the total amount of payments to third parties not otherwise disclosed as Closing Costs from the Loan Amount disclosed under 1026.38(b). The comment would also clarify that a positive result is disclosed as a negative number, but only up to the amount of closing costs disclosed under § 1026.38(h)(1). The comment would also state that if the closing costs disclosed under 1026.38(h)(1) is a negative number, the Closing Costs Financed is disclosed as \$0.00.

Down Payment and Funds from Borrower. The CFPB proposed to make certain amendments to clarify the Down Payment calculation, which is required to be used in Purchase transactions. One of the issues that came to light with the Down



Payment calculation after the TRID rule was issued is that the table did not account for Loan Amounts that were greater than the Sale Price of the property in Purchase transaction. To deal with this issue on the LE and CD, the CFPB proposed 1026.37(h)(1)(iii)(A)(2) and 1026.38(i)(4)(ii)(A)(2) to require the use of the Funds for Borrower calculation when the Down Payment is negative.

In addition, the CFPB clarified the treatment of assumptions in the Down Payment calculation in modified 1026.37(h)(1)(iii)(A)(1) and 1026.38(i)(4)(ii)(A), which would specify that the creditor should subtract the sum of the Loan Amount and any assumed loans from the Sale Price.

The CFPB proposed to revise comment 37(h)(1)(iii)-1 to clarify that the Down Payment may not reflect the minimum cash investments required of consumers under some loan programs.

The CFPB proposed to revise the Funds from Borrower for the LE and CD in proposed 1026.37(h)(1)(v), 1026.38(i)(6)(iv), and comments 37(h)(1)(v)-2 and 38(i)(4)(ii)(A)-2. The modifications would state that in Purchase transactions, the calculation would subtract the sum of the Loan Amount and any assumed loans, less any Closing Costs Financed disclosed under 1026.37(h)(1)(ii) or 1026.38(i)(3)(ii), respectively, from the total amount of all existing debt being satisfied in the transaction. If the calculation results in a positive number, that is disclosed under Down Payment/Funds from Borrower, but if it results in a negative number, it is disclosed under Funds for Borrower. If the result is zero, that is disclosed in both rows. The revisions would also clarify that the “total amount of all existing debt being satisfied by the transaction” if the sum of the amounts that are or will be disclosed, as applicable, under 1026.38(j)(1)(ii), (iii), and (v) (*i.e.*, the Sale Price, sale price of any personal property, and other amounts due from the consumer at closing).

The CFPB also proposed technical corrections in 1026.38(i)(6)(iv) to provide that \$0.00 is disclosed under the Final column, rather than the \$0 provided in the existing provisions.

Deposit. The CFPB proposed a technical correction to the Deposit provision for the CD. Specifically, the CFPB proposed a modification to comment 38(i)(5)-1 to specify that zero is disclosed as \$0.00 in the Final column, rather than \$0 as described in the existing comment, because the amount must be disclosed to two decimal places.

Seller Credits. The CFPB proposed to amend comment 37(h)(1)(vi)-2 to clarify that specific seller credits may be disclosed in the Calculating Cash to Close table under



1026.37(h)(1)(vi) or, at the creditor's option, may be reflected within the amounts disclosed for those specific items in the loan costs and other costs tables, under 1026.37(f) and (g), respectively.

For the CD's Seller Credits row, the CFPB proposed to amend 1026.38(i)(7)(iii)(A) to add to the required statement (which is required when there is a difference between the amount in the Loan Estimate and Closing Disclosure columns), that the consumer should see the seller-paid columns in the Closing Cost Details, as applicable, as well as the Seller Credit line item in Summaries of Transactions. The CFPB also proposed a new comment 38(i)(7)(iii)(A)-1 with an example of the required statement, which reads as "See Seller-Paid column on page 2 and Seller Credits in Section L," in which the words "Seller-Paid" and "Section L" are bold.

Adjustments and Other Credits. The CFPB proposed to revise 1026.37(h)(1)(vii) to eliminate the requirement that the amount be a negative number, because it acknowledged that the total amount may not be negative in all cases. The CFPB also proposed to revise: (1) comment 37(h)(1)(vii)-1 to clarify that amounts expected to be provided to consumers in advance of consummation are not required to be disclosed; (2) comment 37(h)(1)(vii)-5 to clarify that subordinate financing must be disclosed on the first-lien loan's LE; and (3) comment 37(h)(1)(vii)-6 to clarify that amounts in the calculation include additional funds required from the consumer under the real estate contract, such as the sale price of personal property, and adjustments that will be disclosed under 1026.38(j)(1)(v), if they are not already factored into the calculation as debt being satisfied in the calculation under the Down Payment or Funds for Borrower calculations under 1026.37(h)(1)(iii) and (v).

For the CD's Adjustments and Other Credits row, the CFPB proposed to amend 1026.38(i)(8)(ii) to clarify that, when amounts disclosed on the Closing Disclosure under 1026.38(j)(1)(iii) (sale price of any personal property) or adjustments disclosed on the Closing Disclosure under 1026.38(j)(1)(v) (other amounts due from the consumer at closing) are already taken into account in the Funds for Borrower calculation, they are not included in Adjustments and Other Credits.

Gift Funds. Significantly, the CFPB also proposed to clarify the treatment of "gift funds" under Adjustments and Other Credits under proposed comment 37(h)(1)(vii)-1, stating that "amounts expected to be provided to consumers in advance of consummation by third parties not otherwise involved in the transaction, including amounts paid to consumers before consummation from family members, are not required to be disclosed" under Adjustments and Other Credits.



Alternative Calculating Cash to Close Table. The CFPB proposed certain amendments to the alternative Calculating Cash to Close table to account for the ability to disclose construction costs and other payoffs of debt under Payoffs and Payments (as described above). The CFPB also proposed to revise 1026.37(h)(2)(iii) to permit the disclosure of Payoffs and Payments as a negative or positive number.

The CFPB also proposed to add comment 38(e)-6 to clarify that the amounts disclosed under the Loan Estimate heading on the CD's alternative Calculating Cash to Close table are the amounts disclosed on the most recent Loan Estimate provided to the consumer.

The CFPB also proposed to amend 1026.38(e)(2)(ii) to provide that the Total Closing Costs may be disclosed in the alternative Calculating Cash to Close table as a positive number if the amount of Lender Credits exceed the total Closing Costs resulting in a net credit to the consumer.

The CFPB also proposed to revise 1026.38(e)(4)(ii) to allow for the disclosure of a negative or positive amount for Payoffs and Payments. The CFPB proposed to allow the disclosure of amounts that offset payoffs and payments in the Payoffs and Payments table, which could exceed the payoffs and payments, resulting in a negative number. The CFPB proposed that such a negative number would be disclosed in the table as a positive number.

13. Summaries of Transactions

The CFPB proposed a number of revisions to the Summaries of Transactions. The CFPB proposed to amend comment 38(j)(1)(v)-1 to clarify that amounts disclosed under 1026.38(j)(1)(v) that are for amounts owed to the seller but payable to the consumer after the real estate closing would be listed under the heading "Adjustments."

The CFPB also proposed to amend comment 38(j)(1)(v)-2 to delete the reference to "amounts paid to any existing holders of liens on the property in a refinance transaction" from the examples of charges required to be disclosed under 1026.38(j)(1)(v), because the CFPB proposed to require such payoffs to be disclosed under 1026.38(g)(4). The only example of "other items owed by the consumer at the real estate closing not otherwise disclosed" left in comment 38(j)(1)(v)-2 would be "outstanding real estate property taxes."

The CFPB also proposed to revise 1026.38(j)(2)(vi) to provide for the disclosure of other "Adjustments," that are not attributable to a time period. Specifically, the



provision would require disclosure of “descriptions and the amounts of any additional amounts owed the consumer but payable to the seller before the real estate closing,” under the heading “Adjustments.”

The CFPB revisions to comment 38(j)(2)(vi)-5 that would clarify that amounts provided to consumers in advance of the real estate closing are not required to be disclosed as gift funds. New comment 38(j)(2)(vi)-6 would provide an example of “rent paid to the seller from a tenant before the real estate closing for a period extending beyond the real estate closing” as an item disclosed under “Adjustments” under 1026.38(j)(2)(vi). The CFPB also proposed to revise comment 38(j)(2)(xi)-1 to remove this example from the items disclosed as Adjustment for particular time periods under 1026.38(j)(2)(xi).

14. Escrow Account Disclosure

The CFPB proposed a number of changes to the Escrow Account disclosure on page 4 of the CD.

Escrow Table. The CFPB proposed to include payments for mortgage insurance in the calculations of Escrowed and Non-Escrowed Property Costs over Year 1, and the Monthly Escrow Payment in both the Escrow and No-Escrow tables. Specifically, the proposed modifications would change cross-references for the items included in the calculations from 1026.37(c)(4)(ii) to mortgage-related obligations under 1026.43(b)(8). This change would be made in 1026.38(l)(7)(i) and comments 38(l)(7)(i)(A)(2)-1, 38(l)(7)(i)(A)(4)-1, and 38(l)(7)(i)(B)(1)-1.

Note that currently many, if not most, interpret 1026.38(l)(7)(i)(A)(1), (2), and (4) (*i.e.*, the Escrowed and Non-Escrowed Property Costs over Year 1, and the Monthly Escrow Payment) to include only property costs, and not mortgage insurance costs. Also note that the CD uses the term “property costs” in this disclosure, which appears to indicate an intent to not include mortgage insurance in these calculations.

The CFPB also proposed clarifications relating to the method of calculating the total payments over the year after consummation. The CFPB proposed to add a new comment 38(l)(7)(i)(A)(5)-1 to permit the creditor to base the Escrowed Property Costs over Year 1 and Monthly Escrow Payment disclosures required by 1026.38(l)(7)(i)(A)(1) and (4) on the escrow account analysis required under Regulation X, 12 CFR 1024.17. The CFPB noted that this amount may differ than what would be required to be disclosed based on the regulatory text when there are fewer than 12 periodic payments scheduled in the first year after consummation.



The CFPB also proposed to add a new comment that would allow the use of Regulation X's escrow account analysis for the disclosure of Non-Escrowed Property Costs over Year 1 under 1026.38(l)(7)(i)(A)(2), and expressly stated in the comment that this would allow the use of a 12-month period beginning with the first payment date rather than consummation.

No Escrow Table. As noted, as noted above, the CFPB revised 1026.38(l)(7)(i)(B)(1) to include in the calculation the mortgage-related obligations described in 1026.43(b)(8), rather than only the property costs disclosed under 1026.37(c)(4)(ii). This would include mortgage insurance payments in the No Escrow table.

Significantly, the CFPB did not propose to add any provision to allow for the use of the Regulation X escrow account analysis for the Property Costs over Year 1 disclosed in the "No Escrow" table under 1026.38(l)(7)(i)(B)(1), or any method of calculation other than using the actual payment dates, as it did for the disclosure of Non-Escrowed Property Costs over Year 1 in the Escrow table. Further, the CFPB deleted the text of comment 38(l)(7)(i)(B)(1)-1 that many creditors were using as the basis for calculating this total as the Estimated Taxes, Insurance, and Assessments disclosed under 1026.38(c) multiple by 12. This change would appear to require creditors to base this calculation of Property Costs over Year 1 on the actual payment dates of property costs over the first year after consummation.

15. Principal Curtailments

The CFPB proposed to add comment 38-4 to provide options for the disclosure of tolerance cures using principal curtailments. The CFPB acknowledged in the preamble that "contractual or other legal obligations of the creditor, such as the requirements of a government loan program or the purchase criteria of an investor, may prevent the creditor from refunding cash to the consumer as lender credits." Proposed comment 38-4 provides the following options for disclosing a principal curtailment in cases where there the lender is restricted as such:

1. Disclosed under § 1026.38(g)(4), (j)(4)(i), or (t)(5)(vii)(B) marked with the phrase "Paid Outside of Closing," or the abbreviation "P.O.C.," a statement that this amount includes a refund for an amount that exceeds the limitations on increases in closing costs under § 1026.19(e)(3), and the amount of such refund under § 1026.19(f)(2)(v)." Note that the CFPB described these disclosures as negative line items elsewhere in the proposal's preamble.
2. Disclosed under § 1026.38(t)(5)(ix) (which allows an addendum for



customary recitals) with a statement that this amount includes a refund for an amount that exceeds the limitations on increases in closing costs under § 1026.19(e)(3), and the amount of such refund under § 1026.19(f)(2)(v).”

Calculating Cash to Close table. The CFPB proposed to revise the rule for the statements about tolerance refunds in the Total Closing Costs line in the Calculating Cash to Close table to accommodate principal curtailments. For the standard form, the CFPB proposed to modify 1026.38(i)(1)(iii)(A)(3) and comment 38(i)(1)(iii)(A)-3 to provide guidance regarding providing a statement to the consumer about a principal curtailment disclosed in Other Costs, Summaries of Transactions, or Payoffs and Payments, as described above. The CFPB also proposed to clarify that form H-25(F) is only a sample of the tolerance refund statement provided under the Lender Credits line under 1026.38(h)(3).

In addition, for the alternative form, the CFPB proposed to revise 1026.38(e)(2)(iii)(A)(3) and comment 38(e)(2)(iii)(A)-3 to allow a creditor to provide a statement in the Total Closing Costs line of the Calculating Cash to Close table directing the consumer to the disclosure of the principal curtailment under Other Costs or Payoffs and Payments, rather than the Lender Credits line.

Summaries of Transactions. The CFPB proposed to revise comment 38(j)(4)(i)-1 to provide a cross reference to comment 38-4, which describes the ability to disclose principal curtailments. The Bureau is also proposing to revise the comment to clarify that the POC notation “must also identify the party making the payment, such as the consumer, seller, loan originator, real estate agent, or any other person.”

Addendum for Customary Recitals. The CFPB also proposed to revise comment 38(t)(5)(ix)-1, which provides examples of customary recitals that can be disclosed on an additional page to cross-reference proposed comment 38-4 with respect to principal curtailments.

16. Simultaneous Subordinate-Lien Loans

Use of the alternative form. The CFPB proposed to amend 1026.37(d)(2) and comment 37(d)(2)-1, 1026.38(d)(2) and comment 38(d)(2)-1, 1026.37(h)(2) and comment 37(h)(2)-1, and 1026.38(e) and comment 38(e)-1 to clarify that creditors can use the alternative forms for simultaneous loans for subordinate financing in purchase transactions if the first-lien CD will record the entirety of the seller’s transaction. The CFPB also proposed to revise 1026.38(t)(5)(vii) to provide that the alternative form can be used for simultaneous subordinate-lien transactions.



Provision of CD to the Seller. The CFPB proposed a new comment 19(f)(4)(i)-2, which would provide that in a purchase transaction with a simultaneous subordinate-lien loan, the settlement agent can provide to the seller the CD for the first-lien loan only, if it records the entirety of the seller's transaction. If it doesn't, the CD for the subordinate financing must be provided to the seller, as applicable. The comment would further provide that the settlement agent can provide a combined or separate CD for the subordinate-lien loan.

Disbursement Date. The CFPB also proposed to add comment 38(a)(3)(iii)-1 to clarify the disbursement date for simultaneous subordinate-lien loans uses the disbursement date required for non-purchase transactions, even though they may be disclosed as Purchase transactions.

Seller's Name and Address. The CFPB proposed to revise comment 38(a)(4)-2 to clarify that the seller's name and address may be left blank for simultaneous loans for subordinate financing in purchase transactions if the first-lien Closing Disclosure will record the entirety of the seller's transaction.

Purpose. The CFPB proposed to revise comment 37(a)(9)-1.i to clarify that the purpose of a simultaneous subordinate-lien transaction in a purchase transaction is also disclosed as "Purchase."

Calculating Cash to Close Table. The CFPB proposed to add comment 37(h)(1)-2 to clarify that on the Loan Estimate for a simultaneous loan for subordinate financing, the Sale Price is not used in any of the calculations. The CFPB stated that "omitting the sale price from the cash to close calculations required under 1026.37(h)(1) for simultaneous loans for subordinate financing will result in a cash to close amount reflecting the proceeds of the subordinate financing."

The CFPB also proposed to revise 1026.37(h)(2)(iii) to provide for the disclosure of the proceeds of simultaneous subordinate financing as a positive number under Payoffs and payments.

Summaries of Transactions. The CFPB proposed to revise comment 38(j)(1)(ii)-1 to clarify that the Sale Price is not disclosed under 1026.38(j)(1)(ii) on the simultaneous loan for subordinate financing on the Closing Disclosure. The CFPB proposed revisions to comment 38(j)(2)(vi)-2 that would clarify that subordinate financing proceeds are disclosed on the first-lien loan's Closing Disclosure, either on line 04 under the subheading "L. Paid Already by or on Behalf of Borrower at Closing," or under the subheading "Other Credits."



The CFPB also proposed to revise comment 38(k)-1 to add simultaneous subordinate-lien loans as an example of transactions in which the seller's table is not required.

Disclosure of subordinate-lien funds on the first lien alternative form's Payoffs and Payments. Proposed comment 38(t)(5)(vii)(B)-2 would also clarify that the proceeds of a simultaneous subordinate-lien loan would be disclosed on the first-lien loan's CD in the Payoffs and Payments table as a negative number.

17. Model v. Sample Forms

The CFPB also proposed to modify comment app. H-30 to clarify that forms H-24(B) through (F), H-25(B) through (G), and H-28(B) through (E), (G), and (H) are not model forms that provide a safe harbor for compliance purposes. Specifically, the CFPB stated in the preamble that "because of the overbroad reference to 'model forms' in comment app. H-30, uncertainty exists whether creditors may rely on the integrated disclosure samples to demonstrate compliance with the requirements of § 1026.37 or § 1026.38, as applicable. Unlike the integrated disclosure model forms, whose respective titles include the designation 'Model Form,' the integrated disclosure samples are not model forms providing safe harbor protection." The proposed revisions would deem only the blank forms (H-24(A) and (G), H-25(A) and (H) through (J), and H-28(A), (F), (I), and (J)) as model forms.

The CFPB also stated in the preamble that if there are errors in the sample forms, the sample forms are not controlling authority for any purpose. "Accordingly, they should not be read as changing or overriding the requirements of §§ 1026.37 and 1026.38." The CFPB stated it provided the sample forms, "purely for illustration and as an aid to compliance." The CFPB stated it has not conducted a "systematic review" of the sample forms, "because any errors in the integrated disclosure samples have such limited legal consequences."

18. Post-Consummation Disclosures

The CFPB proposed to apply the post-consummation disclosures required under 1026.20(e) (escrow cancellation notice) and 1026.39(d)(5) (addition of the partial payment policy to the transfer notice) to all loans, regardless of whether the application was received on or after October 1, 2015 (pre-TRID loans). Although the CFPB proposed to apply these disclosures to all loans regardless of when the application was received, the CFPB clarified that the post-consummation disclosures under the current TRID rule can, but do not need to be applied to, pre-TRID loans. It



further stated that it “considers either approach compliant under existing comment 1(d)(5)-1.”

Also, the CFPB stated that it wanted to “avoid unfair surprise to creditors,” so it proposed to modify comment 1(d)(5)-1 to state that the post-consummation disclosures take effect for pre-TRID loans on October 1, 2017. Note that this date may change, depending on the effective date of the final rule.

The CFPB’s reasons for applying the post-consummation disclosures to pre-TRID loans are that it believes the post-consummation disclosures are understandable independent of the TRID disclosures and that it would simplify compliance for servicers.

19. Trusts

The CFPB proposed to modify comment 2(a)(11)-3 to clarify that credit extended to trusts established for tax or estate planning purposes is also considered to be extended to a natural person for purposes of the definition of “consumer” under Regulation Z. Note that the TRID rule originally added a paragraph to comment 3(a)-10 to clarify that credit extended to such trusts may be subject to Regulation Z if it is extended for consumer purposes.”