There's More to "Know" in "Know Before You Owe": CFPB Finalizes TRID Changes and Clarifications

On July 7, 2017, nearly a year after issuing a Notice of Proposed Rulemaking ("NPRM"), the Consumer Financial Protection Bureau ("CFPB" or the "Bureau") announced regulations to finalize changes and clarifications to the TILA-RESPA Integrated Disclosure rule ("TRID or the "Rule"). For the most part, the CFPB finalizes its proposals with modifications here and there to address issues and questions raised by public comments. The CFPB also declines to finalize certain proposals based on concerns for unintended consequences or borrower confusion. And, in one instance— perhaps the most important proposal in the NPRM—the CFPB declines to finalize its proposal to address the "black hole" on resetting fee tolerances. Instead, the CFPB offers a new proposal with a 60-day comment period.

While the "black hole" remains for the time being and the CFPB still has not formally addressed important issues (like a lender's ability to cure errors and the disclosure of title insurance premiums where a simultaneous discount applies), the industry will likely be pleased with the final regulations. The CFPB appears to have attempted to strike a balance between the disclosure burdens on lenders and closing agents and the CFPB's commitment to ensuring consumers receive clear and useful disclosures.

The final regulations will take effect 60 days after publication in the Federal Register (which has yet to occur), and creditors may opt to comply at that time. However, compliance with the final Loan Estimate and Closing Disclosure regulations becomes mandatory with respect to transactions for which a creditor or mortgage broker receives an application on or after October 1, 2018.[1] The CFPB appears to have been sensitive to the level of reprogramming, retraining and testing that technology vendors, creditors and settlement agents will need to fully implement the changes.

This Legal Update summarizes and highlights certain of the significant final regulations and how they differ from the CFPB's NPRM. These include:

(1) Additional Official Interpretation guidance ("Commentary") to provide instruction on disclosing construction-to-permanent mortgage loans;

(2) Tolerances for the Total of Payments disclosure;

(3) Regulatory amendments to make loans secured by cooperatives expressly subject to the rule;

(4) A revised exemption for certain subordinate-lien housing finance loans; and

(5) Several other revisions that provide the regulatory certainty on issues that had otherwise been ambiguous under the rule.

This Legal Update also summarizes the CFPB's new proposal for the infamous "black hole," as

well as the reasons the CFPB believes it needs additional time to consider this issue.

Before getting into the details, we provide a summary of a few of the final regulations and the CFPB's proposal for the "black hole" on resetting fee tolerances.

- While the NPRM did not address a lender's ability to cure errors on the disclosures and the CFPB does not address this important topic in the final regulations, the CFPB had proposed to make existing tolerances for disclosures affected by the finance charge applicable to the Total of Payments disclosure. The CFPB finalizes this proposal, which means that minor errors in calculating the Total of Payments disclosure should not raise liability concerns if the errors are within tolerance.
- The threat of borrower refunds due to increased fees in the zero tolerance category would have been expanded under the NPRM. The NPRM would have added fees to the zero tolerance category if the borrower could shop for the services and the lender did not provide the borrower with the required written list of settlement service providers. The CFPB declines to make this proposed change. In the final regulations, fees for services for which the borrower can shop (and that are not paid to a lender's affiliate) will continue to be subject to the 10 percent tolerance category if a creditor fails to provide the borrower with a written list of settlement service providers.
- Certain of the calculations written into TRID and the Calculating Cash to Close table would have been modified under the NPRM, allowing the table to more accurately reflect a figure for cash needed by the consumer to close the mortgage transaction. The CFPB finalizes these proposals with some modifications based on public comments.
- The CFPB proposed to require Loan Estimate and Closing Disclosure forms for all closed-end consumer credit transactions secured by cooperatives, regardless of whether state law treats cooperatives as real estate or personal property. Creditors will be happy to hear that the CFPB finalized this proposal.
- When closings are delayed and changes occur in the transaction, lenders may be required to absorb increases in settlement charges, like a rate lock extension fee, if a creditor is unable to use a revised Closing Disclosure to reset tolerances. This is the so-called "black hole." The NPRM would have revised the Commentary to make clear that a lender can revise a Closing Disclosure based on changed circumstances and use that subsequent disclosure to reset tolerances. Many public comments interpreted the proposed language to permit a revised Closing Disclosure to be used to reset tolerances at any time and without regard to the date of consummation, which would have eliminated the "black hole" that currently restricts a lender's ability to increase charges after a Closing Disclosure has been provided. The CFPB, however, indicates in the final regulations that its proposed language was not intended to extend as far as many interpreted. Rather than finalize the proposed language in the NPRM, the CFPB is proposing new language for the public to consider. This new proposal reflects the result the industry desired—that creditors be allowed to reset tolerances with a revised Closing Disclosure at any time prior to consummation and avoid liability for unforeseen changes in the transaction.

Construction and Construction-to-Permanent Loans

Construction loans and construction-to-permanent loans have proven difficult and confusing to disclose under the current regulations. Under the Rule, when a multiple-advance construction loan may be permanently financed by the same creditor, the creditor may treat the construction phase and the permanent phase as either one transaction or more than one

transaction.[2] Since a construction loan that may be permanently financed has two distinct phases, a creditor may provide the consumer with either one combined disclosure for both the construction financing and the permanent financing, or a separate set of disclosures for the two phases.[3]

The unique aspects of construction-to-permanent loans, including the two phases of financing and multiple advances, have caused confusion in the industry under TRID's disclosure requirements. Although the CFPB issued a Construction Loan Factsheet in January 2016 and held a webinar on Construction Lending on March 1, 2016, many questions remained concerning construction-to-permanent lending. The NPRM included proposals to address several of the issues, including the allocation of costs between the two financing phases, the meaning of the "may be permanently financed by the same creditor" condition in the Rule, and the optional disclosure instructions in Appendix D of Regulation Z. The CFPB's final regulations adopt certain of these proposals.

ALLOCATION OF COSTS

When a creditor relies on Section 1026.17(c)(6)(ii) to disclose the construction-to-permanent loan as multiple transactions, buyers points and similar amounts imposed on the consumer must be allocated between the two transactions for purposes of calculating disclosures.[4] Currently, the creditor has flexibility in how such amounts are allocated between the transactions, subject to the restriction that the amounts are not taken into account more than once.[5] In certain circumstances, however, it can be difficult to allocate these costs without running afoul of the prohibition on dividing a loan into multiple transactions to avoid high-cost mortgage restrictions.

The CFPB proposed to clarify the proper allocation of points and similar amounts by adding a "but for" test to the Commentary.[6] Specifically, the NPRM proposed that the creditor allocate amounts to the construction phase if those amounts would not be imposed on the consumer "but for" the construction financing.[7] All other amounts would be allocated to the permanent financing, including all amounts that would not be imposed "but for" the permanent financing and all amounts that are not imposed solely because of the construction financing.[8]

In the final regulations, the CFPB keeps the "but for" test. However, under the new Commentary, the "but for" allocation applies only to finance charges under Section 1026.4 of Regulation Z and the points and fees under Section 1026.32(b)(1), which the CFPB says are the amounts most relevant in determining whether a loan is a high-cost mortgage, a higher-priced mortgage loan or a qualified mortgage.[9] Stated differently, if a creditor originates a construction-to-permanent loan that it discloses as multiple transactions, the creditor must allocate to the construction transaction those finance charges and points and fees, as defined in Regulation Z, that would not be imposed but for the construction financing. All other finance charges and points and fees must be allocated to the permanent financing transaction. Moreover, under the final regulations, a creditor may allocate any fees and charges that are *not* finance charges under Section 1026.4 or points and fees under Section 1026.32(b)(1) between the construction and the permanent transaction disclosures in any manner the creditor chooses.[10]

"MAY BE PERMANENTLY FINANCED BY THE SAME CREDITOR"

As stated above, a creditor may treat a construction-to-permanent loan as one transaction or more than one transaction when the multiple-advance loan to finance the construction "may be permanently financed by the same creditor."[11] The Rule and Commentary do not define this phrase. The CFPB had proposed to add a new Comment to Section

1026.17(c)(6) to state that a loan to finance the construction "may be permanently financed by the same creditor" if the creditor generally makes both construction and permanent financing available to qualified consumers, unless a consumer expressly indicates to the creditor that he or she will not obtain the permanent financing from the creditor.[12]

Public comments, however, generally opposed the CFPB's proposed definition. Some commenters did not believe the phrase required clarification. Other commenters suggested the new definition would obligate lenders to provide disclosures for permanent financing, even if the consumer does not apply for permanent financing, which could lead to borrower confusion and be perceived as a sales tactic by the lender to push the consumer into permanent financing.[13] Commenters also suggested the creditor would have a difficult time creating an accurate disclosure for permanent financing at the time an application for construction-only financing is received.[14] Based on these comments, the CFPB did not adopt its proposed definition as part of the final regulations. Instead, "the Bureau concludes that proposed comment 17(c)(6)-6 would not provide enough benefit to outweigh the potential consumer confusion and compliance burdens that may result."[15]

APPENDIX D

Appendix D provides creditors with optional instructions concerning the disclosure of construction-to-permanent loans when the actual schedule of advances is not known at consummation.[16] Appendix D is divided into two parts—(i) if the construction phase is separately disclosed; and (ii) if the construction and permanent phases are disclosed as one transaction.[17] In each part, current Appendix D provides methods for calculating and determining the estimated interest, estimated APR, repayment schedule and amount financed.[18]

As discussed by the CFPB in the NPRM, creditors have experienced difficulty making the disclosures under the Rule for construction financing because of characteristics unique to a construction loan that differ from a typical mortgage loan.[19] To alleviate some of the uncertainty, the CFPB proposed to revise the Commentary to Appendix D to provide additional explanations for the disclosure of construction-to-permanent loans, including guidance regarding the disclosure of the loan term, product, interest rate, initial periodic payment, increase in periodic payment, projected payments table, construction costs, and construction loan inspection and handling fees.[20] Generally, the CFPB finalizes its proposals on these topics with modifications to the language in certain situations to account for issues raised in public comments. The CFPB declines to adopt its proposed Commentary language related to the initial periodic payment.[21]

As a specific example, proposed Commentary language would have clarified that if the creditor discloses the construction and permanent financing as a single transaction, the disclosed loan term should be the total combined term of the construction phase and the permanent phase.[22] However, if the construction phase and permanent phase are disclosed as separate transactions, the loan term of the permanent financing would be counted from the date that interest for the first scheduled periodic payment of the permanent financing begins to accrue (regardless of when the permanent phase is disclosed).[23] The CFPB finalizes this proposed Commentary guidance.[24]

CONSTRUCTION LOAN INSPECTION AND HANDLING FEES

Sections 1026.37(f) and 1026.38(f) require the disclosure of all loan costs associated with the transaction. Construction loan inspection and handling fees are loan costs associated with the construction transaction for purposes of these sections.[25] The NPRM would have clarified that if the fees are collected at or before

consummation, the fees should be disclosed in the loan costs table on the Loan Estimate and Closing Disclosure.[26] If the construction loan inspection and handling fees are collected after consummation, however, the fees would instead be disclosed in a separate addendum to the Loan Estimate and Closing Disclosure under the heading "Inspection and Handling Fees Collected After Closing."[27]

The CFPB finalizes these proposals with minor modifications to make clear that the total of inspection and handling fees is disclosed in the loan costs table or in a separate addendum.[28] The proposed language had not clearly specified that the *total* amount of fees is to be disclosed.

Cooperatives

Loan Estimate and Closing Disclosure forms are required for all closed-end consumer credit transactions secured by real property.[29] With no definition of "real property" in Regulation Z, a lender must defer to state law to determine what constitutes real property.[30] Generally, that determination is straightforward, unless the property to be purchased or refinanced is a cooperative unit. Some states treat ownership of a share in a cooperative as real property, while other states treat it as personal property. Still other states deem a cooperative unit to be real property for certain purposes and personal property for others. As a result, lenders have been left to determine whether they would use the Loan Estimate and Closing Disclosure forms in connection with mortgage loans secured by cooperative units, which resulted in inconsistent use of the disclosure forms for these loans.[31]

To remove all uncertainty, the NPRM proposed to require the provision of the TRID disclosures in all closed-end consumer credit transactions secured by cooperative units, regardless of whether state law classifies the interests as real or personal property.[32] Public comments generally supported this proposed change, and the CFPB finalizes this amendment as proposed. On the October 1, 2018 mandatory compliance date, lenders will be required to issue the Loan Estimate and Closing Disclosure in connection with all closed-end consumer credit transactions secured by cooperative units, even if the cooperative unit is classified under state law as personal property.[33] Lenders may opt to comply with the final regulation as soon as it takes effect.

Written List of Service Providers

The NPRM was intended to propose minor modifications and clarifications to the existing Rule without tackling policy changes. However, the CFPB made a proposal concerning the written list of settlement service providers ("WLSP") that appeared to represent a policy shift related to consumer shopping and tolerance categories. As discussed below, the CFPB abandons that proposed change in the final regulations, which should be welcomed by lenders.

By way of background, a creditor must identify on the Loan Estimate the settlement services for which the consumer is permitted to shop, which requires the creditor to disclose an itemization of each amount the consumer will pay for such settlement services.[34] A creditor permits a consumer to shop for a settlement service if the creditor allows the consumer to select the provider for the settlement service, subject to reasonable requirements.[35] When the creditor permits the consumer to shop for a settlement service, the creditor must provide the consumer with a WLSP identifying at least one available provider of the settlement service and stating that the consumer is not required to choose the provider on the list and may select a different provider for the service.[36] The settlement service providers identified on the WLSP must correspond to the settlement services for which the consumer may shop that are disclosed on the Loan Estimate pursuant to Section 1026.37(f)(3).[37]

TOLERANCES

Currently, fees paid for settlement services for which the creditor permits the consumer to shop will fall into one of two tolerance categories: (i) fees that may increase by 10 percent in the aggregate (10 percent tolerance category);[38] or (ii) fees that may increase by any amount (no tolerance category).[39] Fees paid for settlement services fall under the 10 percent tolerance category if the creditor permitted the consumer to shop for the service provider and disclosed that the consumer may do so, and the consumer either selected the provider that the creditor disclosed on the WLSP or did not select any provider.[40] If, however, the consumer chooses a provider that is not on the WLSP, then the fee will fall into the no tolerance category.[41] Finally, if the creditor permits the consumer to shop for settlement services, but fails to provide the WLSP or provides a noncompliant WLSP, then fees for such services will be subject to the 10 percent tolerance category, regardless of the provider the consumer ultimately selected.[42]

The CFPB proposed in the NPRM to revise the Commentary regarding the WLSP and tolerances to align with its belief that a creditor did not permit a consumer to shop for a settlement service if the creditor failed to provide a WLSP in compliance with the regulations.[43] To this end, the CFPB proposed to revise Comment 2 to Section 1026.19(e)(3)(iii) to reflect that good faith is determined under the 0 percent tolerance category if the creditor fails to provide the WLSP or provides a noncompliant WLSP, regardless of the service provider selected by the consumer.[44]

Public comments did not support this proposed change. Many commenters raised questions about the scope of noncompliance that could cause a WLSP to be noncompliant under the regulations and subject fees to the 0 percent tolerance. For instance, public comments questioned whether inadvertent mistakes and typographical errors that technically made the WLSP "noncompliant" should result in creditor liability for 0 percent tolerance fees. In response to these comments, the CFPB is not finalizing this proposed change in tolerances. Rather, the CFPB revises the existing Commentary to provide that good faith is determined according to the 10 percent tolerance even if the creditor fails to issue the WLSP, as long as the fee for the creditor-required settlement service is paid to an unaffiliated third party and the creditor permits the consumer to shop consistent with the regulations.[45] Because the current Rule requires a 0 percent tolerance to be applied to fees charged by an affiliate of the creditor, this final Commentary language is consistent with existing requirements.

IDENTIFICATION OF SETTLEMENT SERVICE PROVIDERS

The listing of settlement services on the WLSP has been a source of confusion for many creditors because the existing Rule and Commentary do not clearly explain whether creditors must itemize each individual settlement service for which the consumer may shop, or whether creditors may combine related settlement services on the WLSP if the same provider offers those services. For example, when a creditor itemizes on the Loan Estimate four title-related services as services for which the consumer may shop, it is unclear whether the creditor must itemize on the WLSP each of the four title-related services along with a provider for those services, or whether the creditor may combine all four title-related services into a single disclosed title service with a corresponding provider (assuming that the disclosed provider covers all four services).

The CFPB addressed this issue in the NPRM, and proposed clarifying that creditors must specifically identify on the WLSP each settlement service for which the consumer is permitted to shop. However, this requirement would not have applied if, based on the best information reasonably available to the creditor at the time of disclosure, the creditor knew that the settlement service was provided as part of a

package or combination of services offered by a single service provider and all such services in the package were services for which the consumer was permitted to shop.[46] Public comments questioned what it means to offer a package of services, how a package of services is treated for title and closing services when different providers are involved, and how to handle a package of services if it would include settlement services with fees subject to different tolerance thresholds.

The CFPB abandons this proposal for a new disclosure scheme and, instead, revises existing Commentary to clarify the current itemization requirements.[47] Notably, the CFPB revises the Commentary to provide that a creditor who permits a consumer to shop for settlement services must identify the settlement services required by the creditor for which the consumer is permitted to shop. In identifying these services, the WLSP need not include all settlement services that may be charged to the consumer, but must include at least those settlement services required by the creditor for which the consumer may shop.[48] The final regulations offer an example.

> For example, if a creditor requires a consumer to purchase lender's title insurance and the creditor permits the consumer to shop for lender's title insurance, the creditor is required … to disclose the lender's title insurance on the Loan Estimate and at least one provider of the required settlement service on the written list, capable of coordinating or performing the services necessary to provide the required lender's title insurance. However, the creditor is not required by the provisions under Section 1026.19(e)(1)(vi) to provide a detailed breakdown of all related fees that are not themselves required by the creditor but that may be charged to the consumer such as a notary fee, title search fee, or other ancillary and administrative services needed to perform or provide the settlement service required by the creditor.[49]

As the disclosure of various title fees often causes the confusion as to how to itemize settlement services on the WLSP, this final clarification should be welcomed guidance to the industry.

USE OF THE CFPB'S MODEL WRITTEN LIST OF SERVICE PROVIDERS FORM

The CFPB promulgated Form H-27 as a model WLSP.[50] According to the CFPB in the NPRM, creditors have expressed uncertainty as to whether compliance with the WLSP provisions requires use of the model form,[51] as the use of other CFPB model forms is mandatory in some circumstances (*e.g.*, with respect to Form H-24 for the Loan Estimate and Form H-25 for the Closing Disclosure[52]). The NPRM proposed that the use of Form H-27(A) is not required, but creditors that use a compliant model Form H-27(A) would be deemed to comply with the WLSP requirements.[53]

The CFPB finalizes this proposal.[54] In addition to stating that creditors using a model Form H-27(A) will be deemed to comply with the regulations, the CFPB states in the final language that deleting the column on the WLSP for estimated fee amounts is an acceptable change to the form that will not cause creditors to lose the safe harbor protection.[55]

Tolerances for the Total of Payments Disclosure

For certain credit transactions secured by real property, the Truth in Lending Act ("TILA") sets forth the tolerances for accuracy for disclosure of "the finance charge and other disclosures affected by any finance charge."[56] TILA states that "the finance charge and other disclosures affected by any finance charge" will be considered accurate, other than for rescission purposes (for which separate tolerances apply),[57] if the amount disclosed as the finance charge:

(a) does not vary from the actual finance charge by more than $100; or (b) is greater than the amount required to be disclosed.[58] TRID implements these tolerance requirements explicitly.[59]

TILA also requires a creditor to disclose "[t]he sum of the amount financed and the finance charge," and to title that disclosure "total of payments."[60] Prior to TRID, Regulation Z provided that the Total of Payments disclosure required a creditor to disclose the sum of the amount financed and the finance charge.[61] Because this disclosure was "affected by" the finance charge, it was subject to the tolerances discussed above.

The Rule altered how the Total of Payments disclosure was calculated. TRID currently states that the disclosure requires a creditor to disclose the sum of the "principal, interest, mortgage insurance, and loan costs."[62] This has caused confusion in the industry as to whether the revised Total of Payments disclosure is still subject to the finance charge tolerances. Loan costs, which are now required to be part of the Total of Payments disclosure, may or may not be part of the finance charge. Furthermore, components of the finance charge are not included in the Total of Payments disclosure if those components are not interest, loan costs, or included in the principal amount of the loan. Accordingly, the Total of Payments disclosure is arguably not a disclosure "affected by any finance charge," and so is not subject to the finance charge tolerances. Because the Total of Payments disclosure is a material disclosure for purposes of liability under TILA,[63] any misdisclosure is a significant concern for creditors and secondary market investors.

The NPRM sought to clarify that the finance charge tolerances also apply to the Total of Payments disclosure.[64] The CFPB proposed to add to Section 1026.38(o)(1) ("total of payments") the tolerances that are currently set forth in Section 1026.38(o)(2) ("finance charge").[65] The CFPB finalizes this amendment as proposed. The final regulation provides that the disclosed total of payments "shall be treated as accurate if the amount disclosed as the total of payments: (i) is understated by no more than $100; or (ii) is greater than the amount required to be disclosed."[66] Moreover, the CFPB proposed to amend Section 1026.23 ("right of rescission") to explicitly include the tolerances that would apply to the total of payments disclosure for purposes of the right to rescission.[67] The CFPB also finalized this proposal. The CFPB explains in both the NPRM and the final regulations that when it enacted TRID, it never intended to remove the tolerances for the Total of Payments disclosure.[68] The CFPB is making right on that intention, which is a positive step in addressing the impact of minor misdisclosures, particularly for secondary market investors.

Housing Assistance Lending

As part of the 2010 revisions to the Good Faith Estimate ("GFE") and HUD-1 Settlement Statement ("HUD-1"), the US Department of Housing and Urban Development ("HUD") created an exception to those disclosure requirements for certain second-lien, homebuyer assistance loans. The CFPB adopted the same exception in the Rule as it relates to the Loan Estimate and Closing Disclosure.[69] However, since the Rule took effect, Housing Finance Agencies ("HFA"), which are often the originators of these loans, have reported that many homebuyer assistance loans were falling outside the exception because typical fees incurred as part of the loans exceeded the limit established in the exception.

Specifically, one criterion of the exception to the Loan Estimate and Closing Disclosure in Section 1026.3(h) is that the total costs payable by the consumer at consummation must be less than 1 percent of the amount of credit extended and include no costs other than fees for recordation, application and housing counseling.[70] In the NPRM, the CFPB recognized that because these loans are typically smaller balance loans, the

recording fees often cause the loans to exceed the 1 percent limit.[71] For example, recording fees of $36 (which one HFA reported as typical in one state) is more than the 1-percent limitation for a $2,500 loan. The Bureau cited similar problems regarding taxes associated with recording.[72]

When these loans fall outside of the exception, the creditor must provide the "old" Truth in Lending Disclosures under Regulation Z, as well as the GFE and HUD-1 (assuming the loans also fall outside of the RESPA exception). In the NPRM, the CFPB stated that HFAs have experienced difficulty finding lenders to partner with to make these loans because, following TRID, some vendor and loan origination systems no longer support the RESPA disclosures or the "old" Truth in Lending disclosures.[73] As a result, some HFAs and lenders reported that they were completing disclosures manually, which the CFPB noted "is cumbersome and may increase errors."[74] General concerns also were raised that these homebuyer assistance loans may not be as readily available to consumers.

To address these concerns, the CFPB proposed that, for purposes of the Section 1026.3(h) exemption, fees for recordation (which are expressly permitted) include transfer taxes.[75] Moreover, the CFPB proposed that recording fees and transfer taxes would not count towards the 1-percent threshold.[76] The goal with these proposed changes was to ensure the government-imposed fees that must be paid as part of the second-lien homebuyer assistance loans do not cause the loans to lose the Loan Estimate and Closing Disclosure exception. The CFPB finalizes these proposals in the final regulations.

The final regulations also make other modifications to Section 1026.3(h) to address what it means to comply with Regulation Z if the exception applies. Notably, if a loan meets the standards necessary to use the exception, the revised Section 1026.3(h)(6) allows the creditor to provide either (a) the "old" Truth in Lending disclosures under Section 1026.18 in connection with the housing assistance loan or (b) the Loan Estimate and Closing Disclosure forms.[77] If the creditor chooses to provide the "old" Regulation Z disclosures, it is exempt from the Loan Estimate, Closing Disclosure, and special information booklet requirements. However, if the creditor chooses to provide the Loan Estimate and Closing Disclosure in connection with an exempt housing assistance loan, the creditor must comply with all requirements related to the Loan Estimate and the Closing Disclosure. The loan will continue to be exempt from the special information booklet requirement. The revised Section 1026.3(h)(6) also omits language in the current regulation that makes compliance with all other applicable Regulation Z requirements a condition for satisfying the exemption.[78]

Privacy and Information Sharing

The Rule requires that the creditor provide the Closing Disclosure to the consumer and that the settlement agent provide a copy of the Closing Disclosure to the seller.[79] However, the creditor or settlement agent may provide the seller with a separate Closing Disclosure containing just the details of the seller's transaction.[80] The Rule does not provide further guidance on whether the Closing Disclosure may be provided to third parties and the extent to which information about one party may be provided to another party. As a result, many creditors and settlement agents ceased the common practice of providing copies of closing statements to buyer and seller real estate agents without the consumer's express consent.

Financial institutions must comply with federal and state laws relating to the sharing of consumer information, such as the Gramm-Leach-Bliley Act ("GLBA") and state corollaries to the GLBA. The CFPB indicated in the NPRM that it had been asked many times about whether and how entities are permitted to share the Closing Disclosure with third parties

involved in a mortgage transaction, such as real estate agents, loan officers, and settlement agents.[81] To address these concerns, the CFPB discussed in the NPRM two exceptions to the GLBA privacy restrictions that allow financial institutions to share customer information without following notice and opt-out requirements. One applies if a financial institution shares a borrower's non-public personal information to comply with federal, state, or local laws, rules and other applicable legal requirements. The other applies if a financial institution's "sharing of its customers' non-public personal information is required, or is a usual, appropriate, or acceptable method, to provide the customer or the customer'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."[82]

In the final regulations, the CFPB recites these GLBA exceptions again and notes that it "included discussion of GLBA and Regulation P in the preamble [of the NPRM] in response to inquiries from creditors, settlement agents, and real estate agents about the sharing of the Closing Disclosure with third parties."[83] The CFPB, however, declines to make any amendments in response to public comments urging the CFPB to explicitly permit or require the sharing of the Closing Disclosure with third parties.[84] The CFPB, nevertheless, acknowledges that the GLBA and Regulation P may still permit the sharing of the document, while also noting that creditors and settlement agents may disclose customer information with the consent or at the direction of the customer.[85] Thus, while the final regulations do not provide explicit permission for creditors and settlement agents to share copies of the Closing Disclosures with real estate agents and other persons that may have an interest in the transaction, industry participants must decide whether they will rely on existing GLBA exceptions to support the sharing of the document, or whether they will obtain consumer consent.

The CFPB also had proposed to add a comment clarifying that the creditor, at its discretion, may make modifications to the Closing Disclosure form to accommodate the provision of separate Closing Disclosure forms to the borrower and seller.[86] The proposed comment would have allowed the creditor to modify the Closing Disclosure in any one of the following ways:

> (i) Leave the applicable disclosure blank concerning the seller or consumer on the form provided to the other party; (ii) Omit the table or label, as applicable, for the disclosure concerning the seller or consumer on the form provided to the other party; or (iii) Provide 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.[87]

The CFPB finalizes this proposed comment without modification.[88]

Cash to Close

A positive component of the Loan Estimate and Closing Disclosure forms is a Calculating Cash to Close ("Cash to Close") table that allows a consumer to see the math in the transaction for the various items to be paid by the consumer at closing, as well as the items that reduce the total amount of funds the consumer must bring to the closing table. The regulations that govern this table are very prescriptive to ensure uniformity in how creditors disclose information to the consumer.[89] However, that also means there is little flexibility in how creditors may use the table to reflect the costs of a transaction. As a result, the industry continues to have questions regarding how certain amounts in the table are to be calculated or where certain costs are to be disclosed if they cannot be included in the table.

To address certain of these questions, the CFPB proposed several changes and clarifications regarding the calculation of various amounts disclosed on the Cash to Close table. The CFPB generally adopts these proposals with certain modifications to ensure clarity. We summarize a few of them below.

OMISSION OF SALES PRICE FOR SUBORDINATE FINANCING

For a simultaneous loan for subordinate financing, the CFPB proposed to exclude the sale price required to be disclosed under Section 1026.37(a) ("General information") from any of the calculations for the Cash to Close table on the Loan Estimate. The CFPB explained that by omitting the sale price, the cash to close calculation for simultaneous loans for subordinate financing will accurately reflect the proceeds of the subordinate financing.[90] The CFPB finalized this proposal with only technical revisions.

CLOSING COSTS TO BE FINANCED

Section 1026.37(h)(1)(ii) requires disclosure of the closing costs to be financed, which is determined by subtracting (a) the estimated total amount of payments to third parties not otherwise disclosed as a loan cost (Section 1026.37(f)) or other cost (Section 1026.37(g)) from (b) the disclosed loan amount.[91] Among other things, the CFPB proposed that the loan amount disclosed under this section is the total amount the consumer will borrow, as reflected by the face amount of the note.[92] This would have created a consistent definition in all cases, regardless of how creditors use the term "loan amount" or how other agencies may use similar terms under their own loan programs. Similar modifications were proposed related to the Cash to Close table on the Closing Disclosure.[93]

The CFPB finalizes this new Commentary language with revisions. Notably, because the CFPB believes the statement is clear that the loan amount is the total amount the consumer will borrow as reflected by the face amount of the note, the CFPB removes the example it had proposed.[94]

SELLER CREDITS

A creditor is required to disclose on the Cash to Close table the amounts the seller will pay for total loan costs and total other costs, labeled "Seller Credits."[95] Creditors also must itemize loan costs and other costs under respective sections on page two of the Loan Estimate.[96] The CFPB proposed to clarify that specific seller credits for the payment of loan costs and other costs may, at the creditor's option, either be disclosed as a lump sum in the "Seller Credits" line of the Cash to Close table or be reflected within the amounts disclosed for specific items itemized for loan costs or other costs.[97] In other words, if a seller has agreed to pay one-half of the settlement fee, a creditor would be able to reduce the amount of the settlement fee itemized on the Loan Estimate by one half or disclose the fee equivalent as a seller credit in the Cash to Close table.

The CFPB finalizes its proposed amendments to the Commentary language and indicates its belief that the final Commentary is consistent with existing Section 1026.37(h)(1)(vi), under which creditors already have the option to disclose seller credits in the Cash to Close table or within the amounts disclosed for specific loan costs or other costs.[98] The final regulations also add more language to comment 37(h)(1)(vi)-2 to provide an example intended to clarify circumstances where a seller credit covers the entire cost of a service. The Commentary now states, in part:

> For example, if the creditors knows at the time of the delivery of the Loan Estimate that the seller has agreed to pay half of a $100 required pest inspection fee, the creditor may either disclose the required pest inspection fee as $100 under § 1026.37(f) with a $50 seller credit disclosed under § 1026.37(h)(1)(vi) or disclose the

required pest inspection fee as $50 under § 1026.37(f), reflecting the specific seller credit in the amount disclosed for the pest inspection fee. If the creditor knows at the time of the delivery of the Loan Estimate that the seller has agreed to pay the entire $100 pest inspection fee, the creditor may either disclose the required pest inspection fee as $100 under § 1026.37(f) with a $100 seller credit disclosed under § 1026.37(h)(1)(vi) or disclose nothing under § 1026.37(f) with a $100 seller credit disclosed under § 1026.37(f), reflecting that the specific seller credit will cover the entire pest inspection fee.[99]

Although not in the formal Commentary language, the CFPB also provides guidance in the preamble of the final regulations as to how the seller credit disclosure impacts tolerance considerations. Using the example of a $500 appraisal fee where the seller has agreed to provide a $500 credit towards the appraisal, the CFPB states that if a creditor chooses to forego disclosing the appraisal fee on the Loan Estimate (because the seller credit covers the disclosed $500 cost) and the appraisal cost later increases to $750, the creditor will be unable to reset the 0 percent tolerance on this fee, unless the creditor can establish the increase resulted from a changed circumstance.[100] This example is consistent with current requirements governing a creditor's ability to provide revised Loan Estimate disclosures and reset tolerance limits.

ADJUSTMENTS AND OTHER CREDITS

The Rule covers situations where loan costs and other costs are to be paid by persons other than the originator, creditor, consumer or seller. The Rule requires these amounts to be combined with any other amounts that are required to be paid by the consumer at consummation pursuant to a sales contract and disclosed in the "Adjustments and Other Credits" section of the Cash to Close table on the Loan Estimate.[101] The Rule also dictates that such amount be disclosed as a negative number,[102] which assumes the amount required to be paid by a consumer at consummation will be greater than other credits. This, of course, is not always the case.

In the NPRM, the CFPB proposed to eliminate the requirement that the combined amount be disclosed as a negative number.[103] The CFPB finalizes that proposal and permits the figure that is disclosed in the "Adjustments and Other Credits" line item to be reflected as either a negative or positive number.[104] The CFPB also proposed to clarify that amounts expected to be paid by third parties not involved in the transaction are to be included in the amount disclosed only if expected to be paid at consummation, not in advance of consummation.[105] The CFPB finalizes this new Commentary language as proposed; any amounts paid by third parties on behalf of the borrower in the transaction before consummation will not be reflected in the "Adjustment and Other Credits" figure.[106]

Rounding

TRID imposes different rounding requirements for different information disclosed on the Loan Estimate and Closing Disclosure. For example, the Rule lists numerous categories of disclosures that must be rounded to the nearest whole dollar on the Loan Estimate, including dollar amounts required to be disclosed under the "Other Costs" column of the Loan Estimate.[107] The Rule, however, excludes the per diem amount of interest and the monthly amounts in the initial escrow section from this rounding requirement and states that these amounts should not be rounded.[108] The Rule also requires that percentage amounts for the interest rate, amount of origination points, Adjustable Interest Rate table, and Total Interest Percentage be disclosed "up to two or three decimal places," whereas the Annual Percentage Rate must "be disclosed up to three decimal places."[109]

In the NPRM, the CFPB noted that there has been "continued uncertainty about rounding requirements on the Loan Estimate."[110] To address these questions, the CFPB proposed clarifications to explain that the per diem amount and the monthly amounts required for initial escrow payments should be rounded to the nearest cent and disclosed to two decimal places.[111] It also clarified that the required percentage disclosures should be disclosed by rounding the exact amounts to three decimal places and then dropping any trailing zeros to the right of the decimal point.[112] For example, the proposed Commentary stated:

> [A] 2.4999 percent annual percentage rate, when rounded as an exact amount to three decimal places, becomes 2.500% but is disclosed as "2.5%" under § 1026.37(o)(4)(ii). Similarly, a 7.005 percent annual percentage rate is disclosed as "7.005%," and a 7.000 annual percentage rate is disclosed as "7%."[113]

The CFPB also proposed the same rounding clarification for percentages disclosed on the Closing Disclosure.[114]

In the final regulations, the CFPB revises certain of its proposals related to rounding. First, rather than require per-diem amounts and monthly amounts to be rounded to the nearest cent and disclosed to two decimal places, the final regulations state that dollar amounts for per-diem interest and monthly dollar amounts for initial escrow payments should not be rounded.[115] The revised Commentary to this Section 1026.37(o)(4)(i)(A) explains that, for per-diem interest and monthly amounts for the initial escrow payment, the disclosed amounts do not include partial cents, and dollar amounts are rounded or truncated to the nearest whole cent. As an example, the Commentary states that a per-diem interest amount of $68.1254 would be disclosed as $68.13 or $68.12.[116] Second, the CFPB finalizes its proposals on rounding for percentages without any change. Thus, under the final regulations, percentage disclosures must be disclosed by rounding the exact amount to three decimal places and then dropping any trailing zeros that occur to the right of the decimal place.[117] The proposed Commentary language quoted above to provide examples of rounding for percentages is finalized without any changes.[118]

Closing the "Black Hole"

The NPRM included one of the most anticipated changes to the TRID regulations—an amendment to address the "black hole," which refers to a current limitation on a lender's ability to reset fee tolerances after it has provided a Closing Disclosure to the consumer. Unfortunately, the wait continues. Rather than finalize the NPRM's proposal for using subsequent Closing Disclosures to reset fee tolerances, the CFPB has issued a separate proposed rule and gives the industry an additional 60 days to submit public comments on this new proposal.

By way of background, an estimated closing cost disclosed on the Loan Estimate is considered to have been made in "good faith" if the charge paid by or imposed on the consumer does not deviate from the charge disclosed on the Closing Disclosure beyond the specified permitted tolerances.[119] For purposes of determining "good faith" and measuring tolerances, a creditor is permitted to use a revised estimate if the revision is due to a valid changed circumstance, or if the borrower requests the revision.[120] When the creditor intends to use a revised Loan Estimate to establish new good-faith tolerance baselines, the creditor must provide the revised Loan Estimate to the consumer within three business days after receiving information sufficient to establish that the changed circumstance exists,[121] with the caveat that the creditor may not provide a revised Loan Estimate on or after the day on which the creditor provides the Closing Disclosure to the consumer.[122] The creditor must also ensure that

the consumer *receives* the revised Loan Estimate no later than four business days prior to consummation.[123] When the revised Loan Estimate is not provided to the consumer in person, the Rule considers the consumer to have received the disclosure three business days after the creditor delivers or places the document in the mail.[124]

Issues have arisen under the current Rule when a creditor does not receive information that a changed circumstance has occurred until after it has issued the Closing Disclosure. In this circumstance, the creditor is no longer able to issue a revised Loan Estimate. The Rule's Commentary states that "[i]f…there are less than four business days between the time the revised version of the disclosures is required to be provided pursuant to § 1026.19(e)(4)(i) and consummation, creditors comply with the requirements of § 1026.19(e)(4) if the revised disclosures are reflected in the [Closing Disclosure]."[125] In other words, if a changed circumstance or borrower-requested change occurs and there are less than four business days between the time the revised Loan Estimate is required to be provided (three business days after the changed circumstance or borrower's request) and consummation, a creditor may issue a Closing Disclosure and use those figures to determine good faith. Similarly, based on guidance provided by the CFPB interpreting this Commentary language, if the event triggering the revised disclosure occurs after the initial Closing Disclosure was provided, the creditor may issue a revised Closing Disclosure to reset the baseline for tolerances if there are less than four business days between the time the revised disclosure is required to be provided and consummation.

Unfortunately, this exception that permits the use of a revised estimate on a Closing Disclosure has resulted in the so-called "black hole" where the creditor cannot re-baseline its estimates for purposes of the tolerance calculations. Based on the Commentary language above, when there are four or more business days between the time the revised version of the disclosure is required to be provided (*i.e.*, three business days following knowledge of a changed circumstance) and consummation, the creditor has no ability to reset tolerances if the initial Closing Disclosure has already been provided to the consumer. Stated differently, the creditor has no ability to reset tolerances when it already has provided an initial Closing Disclosure and a changed circumstance occurs more than six business days prior to the anticipated consummation date. If a changed circumstance occurs in the "black hole" and that change increases charges subject to tolerances, creditors could confront a claim for a refund of the excess charges.

In its proposal, the CFPB sought to address the "black hole" by including the following Commentary to Section 1026.19(e)(4)(ii):

> If there are fewer than four business days between the time the revised version of the disclosures is required to be provided under § 1026.19(e)(4)(i) and consummation *or the Closing Disclosure required by § 1026.19(f)(1) has already been provided to the consumer*, creditors comply with the requirements of § 1026.19(e)(4) (to provide a revised estimate under § 1026.19(e)(3)(iv) for the purpose of determining good faith under § 1026.19(e)(3)(i) and (ii)) if the revised disclosures are reflected in the corrected disclosures provided under § 1026.19(f)(2)(i) or (2)(ii), subject to the other requirements of § 1026.19(e)(4)(i).[126] (emphasis added).

As explained by the CFPB in the final regulations, many in the industry interpreted this Commentary language to mean that if a changed circumstance occurs after a creditor has provided the Closing Disclosure to the consumer, the creditor could provide a revised Closing Disclosure to the consumer reflecting updated estimates and resetting tolerances without regard to whether the revised disclosure is received within four

business days of consummation, as long as the creditor provides the revised disclosure within three business days of the triggering event.[127] Many public comments were supportive of the CFPB closing the "black hole" in this way and eliminating circumstances where the creditor could be left absorbing fee increases resulting from last minute changes at closing over which the creditor has no control. The CFPB, however, explains that it never intended to remove the "four business day limit" that applied to a creditor's ability to reset tolerances with a revised Closing Disclosure. Rather, the CFPB's proposed Commentary language was intended to merely memorialize the informal guidance the CFPB had provided—namely, that if a changed circumstance occurs after a creditor has provided the initial Closing Disclosure, the creditor may issue a revised Closing Disclosure to reset tolerances if there are less than four business days between the time the revised disclosure is required to be provided and consummation.[128]

Given this disconnect, the CFPB is now asking in the new proposed rule whether the CFPB should remove the current four-business-day limit for resetting tolerance with both an initial and corrected Closing Disclosure.[129] In other words, the CFPB is proposing this time to eliminate the "black hole." Based on the newly proposed Commentary language, creditors could use either initial or revised Closing Disclosures to re-baseline fee tolerances, regardless of when the Closing Disclosure is provided relative to consummation, as long as the revised disclosures are provided within three business days of the changed circumstance.[130] Specifically, in addition to making a slight revision to the regulation, the proposed Commentary would simply state:

> Section 1026.19(e)(4)(i) provides that, …, if a creditor uses a revised estimate pursuant to § 1026.19(e)(3)(iv) for the purpose of determining good faith …, the creditor shall provide a revised version of the disclosures required under § 1026.19(e)(1)(i) [the Loan Estimate] or the disclosures required under § 1026.19(f)(1)(i) [the initial Closing Disclosure] (including any corrected disclosures provided under § 1026.19(f)(2)(i) or (ii) [governing changes to the Closing Disclosure prior to consummation]) 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)(e)(iv)(A) through (F) has occurred.[131]

The proposal then provides detailed examples of the timing of the three-business-day requirement.[132]

Ultimately, the CFPB's continued consideration of the "black hole" issue is a positive. While lenders must continue to work through the fee liability that currently exists under the Rule, the CFPB has not closed the door on relief from tolerance violations that result when the creditor cannot use a revised Closing Disclosure to reset tolerances. But, lenders are not home free. The CFPB includes a number of topics in the new proposal on which it requests the public to submit comments, including the extent to which creditors are currently providing Closing Disclosures to consumers substantially before the third business day prior to closing and whether the CFPB should restrict the factual circumstances where it would be appropriate for creditors to use a revised Closing Disclosure to reset tolerances (for example, where a change occurs because of a borrower request or an unforeseeable event, like a natural disaster).[133] It will be important for lenders to submit public comments and share their practices with the CFPB to ensure the CFPB can be comfortable that the proposed change balances the interests of lenders and consumers while also advancing compliance with the Rule. Mayer Brown would be happy to assist your company in preparing

any public comments you wish to submit to the CFPB in response to this important new proposal.

Conclusion

The final regulations and the new proposed regulation go a long way in addressing many ambiguities that existed in the Rule. The industry should welcome the certainty that comes with no longer relying on the CFPB's informal guidance regarding these issues. At the same time, inadvertent errors with the Loan Estimate and Closing Disclosure carry risk of liability that leaves creditors vulnerable to consumer actions and impacts secondary market sales. The title insurance industry also continues to grapple with the borrower confusion caused by inexact title insurance premium disclosures required by the Rule. As a result, industry participants are likely to continue pushing the CFPB to address these important policy issues in future rulemakings. Whether the CFPB has an appetite for more TRID rulemaking in the near future remains to be seen.

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Endnotes

1 Amendments to Federal Mortgage Disclosure Requirements under the Truth in Lending Act (Regulation Z), Final Rule, page 418, available at http://files.consumerfinance.gov/f/documents/201707_cfpb_Final-Rule_Amendments-to-Federal-Mortgage-Disclosure-Requirements_TILA.pdf (last viewed July 7, 2017) ("Final Rule"). Compliance with the escrow cancellation notice required by Section 1026.20(e) and the partial payment policy disclosure required by Section 1026.39(d)(5) become effective October 1, 2018 without regard to when the application for the covered loan was received.

2 12 C.F.R. § 1026.17(c)(6)(ii).

3 Id. § 1026.17(c)(6), Comment 2.

4 Id. § 1026.17(c)(6), Comment 5.

5 Id.

6 Amendments to Mortgage Disclosure Requirements, 81 Fed. Reg. at 54,327 ("Notice of Proposed Rulemaking").

7 Id.

8 Id.

9 Final Rule at 53.

10 Id. at 54.

11 12 C.F.R. § 1026.17(c)(6)(ii).

12 Id.

13 Final Rule at 56.

14 Id. at 57.

15 Id.

16 12 C.F.R. pt. 1026 , App. D.

17 Id.

18 Id.

19 Notice of Proposed Rulemaking at 54,357.

20 Id.

21 Final Rule at 388.

22 Notice of Proposed Rulemaking at 54,357.

23 Id. at 54,358.

24 Final Rule at 377.

25 Notice of Proposed Rulemaking at 54,339.

26 Id.

27 Id.

28 Final Rule at 155.

29 12 C.F.R. §§ 1026.19(e), (f).

30 Id. § 1026.2(b)(3).

31 Notice of Proposed Rulemaking at 54,328.

32 Id.

33 Final Rule at 60.

34 12 C.F.R. §§ 1026.19(e)(1)(vi)(B), 1026.37(f)(3).

35 Id. § 1026.19(e)(1)(vi)(A).

36 Id. § 1026.19(e)(1)(vi)(C).

37 Id. § 1026.19(e)(1)(vi), Comment 3.

38 Id. § 1026.19(e)(3)(ii).

39 Id. § 1026.19(e)(3)(iii).

40 Id. § 1026.19(e)(3)(ii), Comment 3.

[41] Id.; see also id. § 1026.19(e)(3)(iii)(D).

[42] Id. § 1026.19(e)(3)(iii), Comment 2.

[43] Notice of Proposed Rulemaking at 54,332.

[44] Id.

[45] Final Rule at 79-80.

[46] Notice of Proposed Rulemaking at 54,330.

[47] Final Rule at 68.

[48] Id. at 69.

[49] Id. at 69-70. The revised Commentary also states that any settlement service providers identified on theWLSP must be available to the consumer.

[50] 12 C.F.R. § 1026.19(e)(1)(vi), Comment 3.

[51] Notice of Proposed Rulemaking at 54,330.

[52] See 12 C.F.R. §§ 1026.37(o)(3), 1026.38(t)(3) (requiring the model forms for a transaction that is a federally related mortgage loan).

[53] Notice of Proposed Rulemaking at 54,330.

[54] Final Rule at 71.

[55] Id. at 72.

[56] 15 U.S.C. § 1605(f).

[57] See 15 U.S.C. § 1605(f)(2).

[58] 15 U.S.C. § 1605(f)(1).

[59] See 12 C.F.R. §§ 1026.23(g) (for purposes of a consumer's right of rescission), 1026.38(o)(2).

[60] 15 U.S.C. § 1638(a)(5).

[61] See Notice of Proposed Rulemaking at 54,353.

[62] 12 C.F.R. § 1026.38(o)(1).

[63] See 15 U.S.C. § 1640.

[64] Notice of Proposed Rulemaking at 54,354.

[65] Id.

[66] Final Rule at 346.

[67] Notice of Proposed Rulemaking at 54,336.

[68] Id. at 54,354; Final Rule at 347.

[69] 12 C.F.R. § 1026.3(h).

[70] Id. § 1026.3(h)(5).

[71] Notice of Proposed Rulemaking at 54,325.

[72] Id.

[73] Id.

[74] Id.

[75] Id.

[76] Id.

[77] Final Rule at 34.

[78] Id. at 36.

[79] 12 C.F.R. § 1026.38(f)(1)(i), (f)(4)(i).

[80] Id. §§ 1026.19(f)(4)(i), Comment 1, 1026.38(t)(5)(vi).

[81] Notice of Proposed Rulemaking at 54,356.

[82] Id.

[83] Final Rule at 364.

[84] Id. at 365.

[85] Id. at 364-365.

[86] Notice of Proposed Rulemaking at 54,356.

[87] Id. at 54,385.

[88] Final Rule at 547.

[89] See 12 C.F.R. § 1026.37(h).

[90] Id.

[91] 12 C.F.R. §1026.37(h)(1)(ii), Comment 1.

[92] Notice of Proposed Rulemaking at 54,341.

[93] See id. at 54,349–50.

[94] Final Rule at 197.

[95] 12 C.F.R. § 1026.37(h)(1)(vi).

[96] See id. § 1026.37(f), (g).

[97] Notice of Proposed Rulemaking at 54,343.

[98] Final Rule at 211.

[99] Id. at 509–510.

[100] Id. at 213.

[101] 12 C.F.R. § 1026.37(h)(1)(vii).

[102] Id.

[103] Notice of Proposed Rulemaking at 54,343.

[104] Final Rule at 218.

[105] Notice of Proposed Rulemaking at 54,343.

[106] Final Rule at 219.

[107] 12 C.F.R. § 1026.37(o)(4)(i)(A).

[108] Id.

[109] Id. § 1026.37(o)(4)(ii).

[110] Notice of Proposed Rulemaking at 54,344.

[111] Id. at 54,345.

[112] Id.

[113] Id. at 54,381.

[114] Id. at 54,355.

[115] Final Rule at 236.

[116] Id. at 515.

[117] Id. at 442.

[118] Id. at 515-516.

[119] 12 C.F.R. § 1026.19(e)(3)(i).

[120] Id. § 1026.19(e)(3)(iv). Valid changed circumstances include: an extraordinary event beyond the control of any interested party or other unexpected event specific to

the consumer or transaction; information specific to the consumer or transaction that the creditor relied upon when providing the Loan Estimate and that was inaccurate or changed after the disclosures were provided; or new information specific to the consumer or transaction that the creditor did not rely on when providing the original Loan Estimate. Id. § 1026.19(e)(3)(iv)(A).

[121] Id. § 1026.19(e)(4)(i).

[122] Id. § 1026.19(e)(4)(ii).

[123] Id.

[124] Id.

[125] Id. § 1026.19(e)(4)(ii), Comment 1.

[126] Id. at 54,376.

[127] Amendments to Federal Mortgage Disclosure Requirements under the Truth in Lending Act (Regulation Z), Proposed Rule with Request for Public Comment, page 17, available at http://files.consumerfinance.gov/f/documents/201707_cfpb_Proposed-Rule_Amendments-to-Federal-Mortgage-Disclosure-Requirements_TILA.pdf (last visited July 7, 2017) ("July 2017 Proposed Rule").

[128] Id. at 16-17.

[129] Id. at 6.

[130] Id.

[131] Id. at 37.

[132] Id. at 23.

[133] July 2017 Proposed Rule at 27.