BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Parts 1002, 1024, and 1026

[Docket No. CFPB–2013–0018]

RIN 3170–AA37

Amendments to the 2013 Mortgage Rules Under the Equal Credit Opportunity Act (Regulation B), Real Estate Settlement Procedures Act (Regulation X), and the Truth in Lending Act (Regulation Z)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Proposed rule with request for public comment.

SUMMARY: This rule proposes amendments to certain mortgage rules issued by the Bureau of Consumer Financial Protection (Bureau) in January 2013. These proposed amendments focus primarily on clarifying, revising, or amending provisions on loss mitigation procedures under Regulation X's servicing provisions, amounts counted as loan originator compensation to retailers of manufactured homes and their employees for purposes of applying points and fees thresholds under the Home Ownership and Equity Protection Act and the qualified mortgage rules in Regulation Z, exemptions available to creditors that operate predominantly in ''rural or underserved'' areas for various purposes under the mortgage regulations, application of the loan originator compensation rules to bank tellers and similar staff, and the prohibition on creditor-financed credit insurance. The Bureau also is proposing to adjust the effective dates for certain provisions of the loan originator compensation rules. In addition, the Bureau is proposing technical and wording changes for clarification purposes to Regulations B, X, and Z.

DATES: Comments must be received on or before July 22, 2013.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2013–0018 or RIN 3170–AA37, by any of the following methods:

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

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

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

FOR FURTHER INFORMATION CONTACT: Whitney Patross, Attorney; Richard Arculin, Michael Silver, and Daniel Brown, Counsels; Marta Tanenhaus, Mark Morelli, Senior Counsels and Paul Ceja, Senior Counsel and Special Advisor, Office of Regulations, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Summary of Proposed Rule

In January 2013, the Bureau issued several final rules concerning mortgage markets in the United States (2013 Title XIV Final Rules), pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Public Law 111–203, 124 Stat. 1376 (2010).[1]

This document proposes several amendments to the provisions adopted by the 2013 Title XIV Final Rules to clarify or revise regulatory provisions and official interpretations primarily relating to the 2013 Mortgage Servicing Final Rules and the 2013 Loan Originator Compensation Final Rule, as described further below. This document also proposes modifications to the effective dates for provisions adopted by the 2013 Loan Originator Compensation Final Rule, and certain technical corrections and minor refinements to Regulations B, X, and Z.

Specifically, the Bureau is proposing several modifications to the Regulation X loss mitigation provisions adopted by the 2013 Mortgage Servicing Final Rules, in § 1024.41. Two of the revisions concern the requirement in § 1024.41(b)(2)(i) that servicers review a borrower's loss mitigation application within five days and provide a notice to the borrower acknowledging receipt and informing the borrower whether the application is complete or incomplete. If the servicer does not deem the application complete, the servicer's notice must also list the missing items and direct the borrower to provide the information by the earliest remaining date of four possible timeframes. The proposed changes would provide servicers more flexibility with regard to setting and describing the date by which borrowers should supply missing information and would set forth requirements and procedures for a servicer to follow in the event that an application is later found by the servicer to be missing information or documentation necessary to the evaluation process. Another proposed modification would provide servicers more flexibility in providing short-term payment forbearance plans based on an evaluation of an incomplete loss mitigation application. Other clarifications and revisions would address the content of notices required under § 1024.41(c)(1)(ii) and (d), which inform borrowers of the outcomes of their evaluation for loss mitigation and any appeal filed by the borrower. In addition, the proposed amendments would address the appropriate timelines to apply where a foreclosure sale has not been scheduled at the time the borrower submits a loss mitigation application or when a foreclosure sale is rescheduled, what actions are permitted while the general ban on proceeding to foreclosure before a borrower is 120

[1] Specifically, on January 10, 2013, the Bureau issued Escrow Requirements Under the Truth in Lending Act (Regulation Z), 78 FR 4726 (Jan. 30, 2013) (2013 Escrows Final Rule), High-Cost Mortgage and Homeownership Counseling Amendments to the Truth in Lending Act (Regulation Z) and Homeownership Counseling Amendments to the Real Estate Settlement Procedures Act (Regulation X), 78 FR 6856 (Jan. 31, 2013) (2013 HOEPA Final Rule), and Ability to Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z), 78 FR 6407 (Jan. 30, 2013) (2013 ATR Final Rule). The Bureau concurrently issued a proposal to amend the 2013 ATR Final Rule, which was finalized on May 29, 2013. See 78 FR 6621 (Jan. 10, 2013) and 78 FR 35430 (June 12, 2013). On January 17, 2013, the Bureau issued the Real Estate Settlement Procedures Act (Regulation X) and Truth in Lending Act (Regulation Z) Mortgage Servicing Final Rules, 78 FR 10901 (Regulation Z) (Feb. 14, 2013) and 78 FR 10695 (Regulation X) (Feb. 14, 2013) (2013 Mortgage Servicing Final Rules). On January 18, 2013, the Bureau issued the Disclosure and Delivery Requirements for Copies of Appraisals and Other Written Valuations Under the Equal Credit Opportunity Act (Regulation B), 78 FR 7215 (Jan. 31, 2013) (2013 ECOA Final Rule) and, jointly with other agencies, issued Appraisals for Higher-Priced Mortgage Loans (Regulation Z), 78 FR 10367 (Feb. 13, 2013). On January 20, 2013, the Bureau issued the Loan Originator Compensation Requirements under the Truth in Lending Act (Regulation Z), 78 FR 11279 (Feb. 15, 2013) (2013 Loan Originator Compensation Final Rule).

days delinquent is in effect, and the application of the 120-day prohibition to foreclosures for certain reasons other than nonpayment.

Second, the Bureau is proposing clarifications and revisions to the definition of points and fees for purposes of the qualified mortgage points and fees cap and the high-cost mortgage points and fees threshold, as adopted in the 2013 ATR Final Rule and the 2013 HOEPA Final Rule, respectively. In particular, the Bureau is proposing to add commentary to § 1026.32(b)(1)(ii) to clarify for retailers of manufactured homes and their employees what compensation must be counted as loan originator compensation and thus included in the points and fees thresholds.

Third, the Bureau is proposing to revise two exceptions available under the 2013 Title XIV Final Rules to small creditors operating in predominantly ''rural'' or ''underserved'' areas while the Bureau re-examines the underlying definitions of ''rural'' or ''underserved'' over the next two years, as it recently announced it would do in Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z) (May 2013 ATR Final Rule).[2] First, the Bureau is proposing to extend an exception to the general prohibition on balloon features for high-cost mortgages under § 1026.32(d)(1)(ii)(C) to allow all small creditors, regardless of whether they operate predominantly in ''rural'' or ''underserved'' areas, to continue originating balloon high-cost mortgages if the loans meet the requirements for qualified mortgages under §§ 1026.43(e)(6) or 1026.43(f). In addition, the Bureau is proposing to amend an exemption from the requirement to establish escrow accounts for higher-priced mortgage loans under the § 1026.35(b)(2)(iii)(A) for small creditors that extend more than 50 percent of their total covered transactions secured by a first lien in ''rural'' or ''underserved'' counties during the preceding calendar year. To prevent creditors that qualified for the exemption in 2013 from losing eligibility in 2014 or 2015 because of changes in which counties are considered rural while the Bureau is re-evaluating the underlying definition of ''rural,'' the Bureau is proposing to amend this provision to allow creditors to qualify for the exemption if they extended more than 50 percent of their total covered transactions in rural or underserved counties in any of the previous three calendar years (assuming the other criteria for eligibility are also met).

Fourth, the Bureau is proposing revisions, as well as general technical and wording changes to various provisions of the 2013 Loan Originator Compensation Final Rule in § 1026.36. These include revising the definition of ''loan originator'' in the regulatory text and commentary, such as provisions addressing when employees (or contractors or agents) of a creditor or loan originator in certain administrative or clerical roles (*e.g.,* tellers or greeters) may become ''loan originators'' and thus subject to the rule, upon providing contact information or credit applications for loan originators or creditors to consumers. It also proposes a number of clarifications to the commentary on prohibited payments to loan originators.

Fifth, the Bureau is proposing to clarify and revise two aspects of the rules implementing the Dodd-Frank Act prohibition on creditors financing credit insurance premiums in connection with certain consumer credit transactions secured by a dwelling. The Bureau is proposing to add new § 1026.36(i)(2)(ii) to clarify what constitutes financing of such premiums by a creditor. The Bureau also is proposing to add new § 1026.36(i)(2)(iii) to clarify when credit insurance premiums are considered to be calculated and paid on a monthly basis, for purposes of the statutory exclusion from the prohibition for certain credit insurance premium calculation and payment arrangements.

Sixth, the Bureau is proposing to make certain provisions under the 2013 Loan Originator Compensation Final Rule take effect on January 1, 2014, rather than January 10, 2014, as originally provided. The affected provisions would be the amendments to or additions of (as applicable) § 1026.25(c)(2) (record retention), § 1026.36(a) (definitions), § 1026.36(b) (scope), § 1026.36(d) (compensation), § 1026.36(e) (anti-steering), § 1026.36(f) (qualifications), and § 1026.36(j) (compliance policies and procedures for depository institutions). The Bureau believes that this change would facilitate compliance because these provisions largely focus on compensation plan structures, registration and licensing, and hiring and training requirements that are often structured on an annual basis and typically do not vary from transaction to transaction. The Bureau is also seeking comment on whether to adjust the date for implementation of the ban on financing credit insurance under § 1026.36(i), which the Bureau temporarily delayed and extended to January 10, 2014, to provide additional guidance on the issues discussed above. *See* Loan Originator Compensation Requirements under the Truth in Lending Act (Regulation Z); Prohibition on Financing Credit Insurance Premiums; Delay of Effective Date (2013 Effective Date Final Rule).[3]

In addition to the proposed clarifications and amendments to Regulations X and Z discussed above, the Bureau is proposing technical corrections and minor clarifications to wording throughout Regulations B, X, and Z that are generally not substantive in nature.

II. Background

A. Title XIV Rulemakings Under the Dodd-Frank Act

In response to an unprecedented cycle of expansion and contraction in the mortgage market that sparked the most severe U.S. recession since the Great Depression, Congress passed the Dodd-Frank Act, which was signed into law on July 21, 2010. Pub. L. 111–203, 124 Stat. 1376 (2010). In the Dodd-Frank Act, Congress established the Bureau and, under sections 1061 and 1100A, generally consolidated the rulemaking authority for Federal consumer financial laws, including the Equal Credit Opportunity Act (ECOA), Truth in Lending Act (TILA), and Real Estate Settlement Procedures Act (RESPA), in the Bureau.[4] At the same time, Congress significantly amended the statutory requirements governing mortgage practices with the intent to restrict the practices that contributed to and exacerbated the crisis. Under the statute, most of these new requirements would have taken effect automatically on January 21, 2013, if the Bureau had not issued implementing regulations by that date.[5] To avoid uncertainty and potential disruption in the national mortgage market at a time of economic vulnerability, the Bureau issued several final rules in a span of less than two weeks in January 2013 to implement these new statutory provisions and provide for an orderly transition.

[2] 78 FR 35430 (May 29, 2013).

[3] 78 FR 32547 (May 31, 2013).

[4] Sections 1011 and 1021 of the Dodd-Frank Act, in title X, the ''Consumer Financial Protection Act,'' Public Law 111–203, sections 1001–1100H, codified at 12 U.S.C. 5491, 5511. The Consumer Financial Protection Act is substantially codified at 12 U.S.C. 5481–5603. Section 1029 of the Dodd-Frank Act excludes from this transfer of authority, subject to certain exceptions, any rulemaking authority over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both. 12 U.S.C. 5519.

[5] Dodd-Frank Act section 1400(c), 15 U.S.C. 1601 note.

On January 10, 2013, the Bureau issued the 2013 ATR Final Rule, the 2013 Escrows Final Rule, and the 2013 HOEPA Final Rule. On January 17, 2013, the Bureau issued the 2013 Mortgage Servicing Final Rules. On January 18, 2013, the Bureau issued Appraisals for Higher-Priced Mortgage Loans (Regulation Z) [6] (issued jointly with other agencies) and the 2013 ECOA Final Rule. On January 20, 2013, the Bureau issued the 2013 Loan Originator Compensation Final Rule. Most of these rules will become effective on January 10, 2014.

Concurrent with the 2013 ATR Final Rule, on January 10, 2013, the Bureau issued Proposed Amendments to the Ability to Repay Standards Under the Truth in Lending Act (Regulation Z) (2013 ATR Concurrent Proposal), which the Bureau finalized on May 29, 2013 (May 2013 ATR Final Rule).[7]

B. Implementation Initiative for New Mortgage Rules

On February 13, 2013, the Bureau announced an initiative to support implementation of its new mortgage rules (Implementation Plan),[8] under which the Bureau would work with the mortgage industry and other stakeholders to ensure that the new rules can be implemented accurately and expeditiously. The Implementation Plan includes: (1) Coordination with other agencies, including to develop consistent, updated examination procedures; (2) publication of plain-language guides to the new rules; (3) publication of additional corrections and clarifications of the new rules, as needed; (4) publication of readiness guides for the new rules; and (5) education of consumers on the new rules.

This proposal concerns additional clarifications and revisions to the new rules. The purpose of these updates is to address important questions raised by industry, consumer groups, or other agencies. Priority for this set of updates has been given to issues that are important to a large number of stakeholders and critically affect loan originators' and mortgage servicers' implementation decisions. Additional updates will be issued as appropriate.

III. Legal Authority

The Bureau is issuing this proposed rule pursuant to its authority under ECOA, TILA, RESPA, and the Dodd-Frank Act. Section 1061 of the Dodd-Frank Act transferred to the Bureau the ''consumer financial protection functions'' previously vested in certain other Federal agencies, including the Federal Reserve Board and the Department of Housing and Urban Development. The term ''consumer financial protection function'' is defined to include ''all authority to prescribe rules or issue orders or guidelines pursuant to any Federal consumer financial law, including performing appropriate functions to promulgate and review such rules, orders, and guidelines.'' [9] Section 1061 of the Dodd-Frank Act also transferred to the Bureau all of HUD's consumer protections functions relating to RESPA.[10] Title X of the Dodd-Frank Act, including section 1061 of the Dodd-Frank Act, along with ECOA, TILA, RESPA, and certain subtitles and provisions of title XIV of the Dodd-Frank Act, are Federal consumer financial laws.[11]

A. ECOA

Section 703(a) of ECOA authorizes the Bureau to prescribe regulations to carry out the purposes of ECOA. Section 703(a) further states that such regulations may contain—but are not limited to—such classifications, differentiation, or other provision, and may provide for such adjustments and exceptions for any class of transactions as, in the judgment of the Bureau, are necessary or proper to effectuate the purposes of ECOA, to prevent circumvention or evasion thereof, or to facilitate or substantiate compliance. 15 U.S.C. 1691b(a).

B. RESPA

Section 19(a) of RESPA, 12 U.S.C. 2617(a), authorizes the Bureau to prescribe such rules and regulations, to make such interpretations, and to grant such reasonable exemptions for classes of transactions, as may be necessary to achieve the purposes of RESPA, which includes its consumer protection purposes. In addition, section 6(j)(3) of RESPA, 12 U.S.C. 2605(j)(3), authorizes the Bureau to establish any requirements necessary to carry out section 6 of RESPA, and section 6(k)(1)(E) of RESPA, 12 U.S.C. 2605(k)(1)(E), authorizes the Bureau to prescribe regulations that are appropriate to carry out RESPA's consumer protection purposes. As identified in the 2013 RESPA Servicing Final Rule, the consumer protection purposes of RESPA include responding to borrower requests and complaints in a timely manner, maintaining and providing accurate information, helping borrowers avoid unwarranted or unnecessary costs and fees, and facilitating review for foreclosure avoidance options.

C. TILA

Section 105(a) of TILA, 15 U.S.C. 1604(a), authorizes the Bureau to prescribe regulations to carry out the purposes of TILA. Under section 105(a), such regulations may contain such additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions, as in the judgment of the Bureau are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. A purpose of TILA is ''to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit.'' TILA section 102(a), 15 U.S.C. 1601(a). In particular, it is a purpose of TILA section 129C, as amended by the Dodd-Frank Act, to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive, and abusive. Section 105(f) of TILA, 15 U.S.C. 1604(f), authorizes the Bureau to exempt from all or part of TILA any class of transactions if the Bureau determines that TILA coverage does not provide a meaningful benefit to consumers in the form of useful information or protection. Under TILA section 103(bb)(4), the Bureau may adjust the definition of points and fees for purposes of that threshold to include such charges that the Bureau determines to be appropriate.

TILA section 129C(b)(3)(B)(i) provides the Bureau with authority to prescribe regulations that revise, add to, or subtract from the criteria that define a qualified mortgage upon a finding that such regulations are necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of the ability-to-repay requirements; or are necessary and appropriate to effectuate the purposes of

[6] 78 FR 10367.

[7] 78 FR 6622; 78 FR 35430.

[8] Consumer Financial Protection Bureau Lays Out Implementation Plan for New Mortgage Rules. Press Release. Feb. 13, 2013.

[9] 12 U.S.C. 5581(a)(1).

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

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

the ability-to-repay requirements, to prevent circumvention or evasion thereof, or to facilitate compliance with TILA sections 129B and 129C. 15 U.S.C. 1639c(b)(3)(B)(i). In addition, TILA section 129C(b)(3)(A) requires the Bureau to prescribe regulations to carry out the purposes of the qualified mortgage provisions, such as to ensure that responsible and affordable mortgage credit remains available to consumers in a manner consistent with the purposes of TILA section 129C. 15 U.S.C. 1639c(b)(3)(A).

D. The Dodd-Frank Act

Section 1022(b)(1) of the Dodd-Frank Act authorizes the Bureau to prescribe rules ''as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.'' 12 U.S.C. 5512(b)(1). Title X of the Dodd-Frank Act is a Federal consumer financial law. Accordingly, the Bureau is exercising its authority under the Dodd-Frank Act section 1022(b) to prescribe rules that carry out the purposes and objectives of ECOA, RESPA, TILA, title X, and the enumerated subtitles and provisions of title XIV of the Dodd-Frank Act, and prevent evasion of those laws.

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

Dodd-Frank Act section 1032(c) provides that, in prescribing rules pursuant to Dodd-Frank Act section 1032, the Bureau ''shall consider available evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services.'' 12 U.S.C. 5532(c). Accordingly, in proposing provisions authorized under Dodd-Frank Act section 1032(a), the Bureau has considered available studies, reports, and other evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services.

The Bureau is proposing to amend rules finalized in January 2013 that implement certain Dodd-Frank Act provisions. In particular, the Bureau is proposing to amend regulatory provisions adopted by the 2013 ECOA Final Rule, the 2013 Mortgage Servicing Final Rules, the 2013 HOEPA Final Rule, the 2013 Escrows Final Rule, the 2013 Loan Originator Compensation Final Rule, and the 2013 ATR Final Rule.

IV. Proposed Effective Dates

A. For Provisions Other Than Those Related to the 2013 Loan Originator Compensation Final Rule or the 2013 Escrows Final Rule

In enacting the Dodd-Frank Act, Congress significantly amended the statutory requirements governing a number of mortgage practices. Under the Dodd-Frank Act, most of these new requirements would have taken effect automatically on January 21, 2013, if the Bureau had not issued implementing regulations by that date.[12] Where the Bureau was required to prescribe implementing regulations, the Dodd-Frank Act further provided that those regulations must take effect not later than 12 months after the date of the regulations' issuance in final form.[13] The Bureau issued the 2013 Title XIV Final Rules in January 2013 to implement these new statutory provisions and provide for an orderly transition. To allow the mortgage industry sufficient time to comply with the new rules, the Bureau established January 10, 2014—one year after issuance of the earliest of the 2013 Title XIV Final Rules—as the baseline effective date for nearly all of the new requirements. In the preamble to certain of the various 2013 Title XIV Final Rules, the Bureau further specified that the new regulations would apply to transactions for which applications were received on or after January 10, 2014.

Except for the amendments regarding the 2013 Loan Originator Compensation Final Rule and the 2013 Escrows Final Rule discussed below, the Bureau proposes an effective date of January 10, 2014 for the proposals in this document. The Bureau believes that having a consistent effective date across most of the 2013 Title XIV Final Rules will facilitate compliance. The Bureau requests public comment on this proposed effective date, including on any suggested alternatives.

B. For Provisions Related to the 2013 Escrows Final Rule

While the Bureau established January 10, 2014 as the baseline effective date for most of the 2013 Title XIV Final Rules, the Bureau identified certain provisions that it believed did not present significant implementation burdens for industry, including amendments to § 1026.35 adopted by the 2013 Escrows Final Rule. For these provisions, the Bureau set an earlier effective date of June 1, 2013.

As discussed in the section-by-section analysis below, the Bureau is now proposing to amend one such provision, § 1026.35(b)(2)(iii)(A), which provides an exemption from the higher-priced mortgage loan escrow requirement to creditors that extend more than 50 percent of their total covered transactions secured by a first lien in ''rural'' or ''underserved'' counties during the preceding calendar year and also meet other small creditor criteria, and do not otherwise escrow loans serviced by themselves or an affiliate. In light of recent changes to which counties meet the definition of ''rural,'' the Bureau is proposing to amend this provision to prevent creditors that qualified for the exemption in 2013 from losing eligibility in 2014 or 2015 because of these changes. The Bureau is proposing to amend this provision to allow creditors to qualify for the exemption if they qualified in any of the previous three calendar years (assuming the other criteria for eligibility are also met). In addition, the Bureau is proposing to amend § 1026.35(b)(2)(iii)(D)(*1*) to prevent creditors that were previously ineligible for the exemption, but may now qualify in light of the proposed changes, from losing eligibility because they had established escrow accounts for first-lien higher-priced mortgage loans (for which applications were received after June 1, 2013), as required when the final rule took effect and prior to the proposed amendments taking effect.

Because the § 1026.35(b)(2)(iii) exemption applies based on a calendar year, the Bureau believes it is appropriate to set a January 1, 2014 effective date for these provisions. The Bureau notes that a January 1, 2014 effective date is more beneficial to industry, because the amendment

[12] Dodd-Frank Act section 1400(c)(3), 15 U.S.C. 1601 note.

[13] Dodd-Frank Act section 1400(c)(1)(B), 15 U.S.C. 1601 note.

would only expand eligibility for the exemption—thus an effective date of January 1, 2014, as opposed to January 10, 2014, would mean that creditors are able to take advantage of this expanded exemption earlier. The Bureau thus proposes that the amendments to § 1026.35(b)(2)(iii) and its commentary take effect for applications received on or after January 1, 2014. The Bureau invites comment on this approach, and specifically whether an effective date for transactions where applications were received on or after January 1, 2014 is appropriate, in light of the proposed changes to the calendar year exemption under § 1026.35(b)(2)(iii).

C. For Provisions Related to the 2013 Loan Originator Compensation Final Rule

The proposed effective date for certain provisions in this proposal related to the 2013 Loan Originator Compensation Final Rule is January 1, 2014 for the reasons discussed below.

V. Proposal To Change the Effective Date of the 2013 Loan Originator Compensation Rule

As described above, the Bureau established January 10, 2014 as the baseline effective date for nearly all of the provisions in the 2013 Title XIV Final Rules, including most provisions of the 2013 Loan Originator Compensation Final Rule. The Bureau believed that having a consistent effective date across nearly all of the 2013 Title XIV Final Rules would facilitate compliance. However, the Bureau identified a few provisions that it believed did not present significant implementation burdens for industry, including § 1026.36(h) on mandatory arbitration clauses and waivers of certain consumer rights and § 1026.36(i) on financing credit insurance, as adopted by the 2013 Loan Originator Compensation Final Rule. For these provisions, the Bureau set an earlier effective date of June 1, 2013.[14]

Since issuing the 2013 Loan Originator Compensation Final Rule in January, the Bureau has received a number of questions about transition issues, particularly with regard to application of provisions under § 1026.36(d) that generally prohibit basing loan originator compensation on transaction terms but permit creditors to award non-deferred profits-based compensation determined with reference to profits from mortgage-related business so long as the compensation does not exceed 10 percent of the loan originators' total compensation or the loan originator does not engage in more than a specified number of transactions within a 12-month period. For instance, the Bureau has received inquiries about when the 2013 Loan Originator Compensation Final Rule permits creditors and loan originator organizations to begin taking into account transactions for purposes of paying compensation under a non-deferred profits-based compensation plan pursuant to § 1026.36(d)(1)(iv)(B)(*1*) (*i.e.,* the 10-percent total compensation limit, or the 10-percent limit). The Bureau also believes that, given the current effective date, some creditors and loan originator organizations intending to pay compensation under a non-deferred profits-based compensation plan pursuant to § 1026.36(d)(1)(iv)(B)(*1*) might believe that they must undertake a separate accounting for the period from January 1 through January 9, 2014, given that the effective date is January 10, 2014, and is tied to when applications are received.

While the profits-based compensation provisions present relatively complicated transition issues, the Bureau is also conscious of the fact that most other provisions in the 2013 Loan Originator Compensation Final Rule are simpler to implement because they largely recodify and clarify existing requirements that were previously adopted by the Federal Reserve Board in 2010 with regard to loan originator compensation, and by various agencies under the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, 12 U.S.C. 5106–5116 (SAFE Act), with regard to loan originator qualification requirements. The provisions are also focused on compensation plan structures, registration and licensing, and hiring and training requirements that are often structured on an annual basis and typically do not vary from transaction to transaction.

For all of these reasons, the Bureau proposes moving the general effective date for most provisions adopted by the 2013 Loan Originator Compensation Final Rule to January 1, 2014. Although that would shorten the implementation period by nine days, the Bureau believes that the change would actually facilitate compliance and reduce implementation burden by providing a cleaner transition period that more closely aligns with changes to employers' annual compensation structures and registration, licensing, and training requirements. In addition, because elements of the 2013 Loan Originator Compensation Final Rule concerning retention of records, definitions, scope, and implementing procedures affect multiple provisions, the Bureau is proposing to make the change with regard to the bulk of the 2013 Loan Originator Compensation Final Rule as described further below, rather than attempting to treat individual provisions in isolation. Finally, the Bureau is also proposing changes, discussed below, to the effective date for provisions on financing of credit insurance under § 1026.36(i), in connection with proposing further clarifications and guidance on the Dodd-Frank Act requirements related to that provision.

These proposed clarifications and amendments to the effective date require only minimal revisions to the rule text and commentary. They primarily would be reflected in the Dates caption and discussion of effective dates in the Supplementary Information of a rule finalizing this proposal. As amended by the Dodd-Frank Act, TILA section 105(a), 15 U.S.C. 1604(a), directs the Bureau to prescribe regulations to carry out the purposes of TILA, and provides that such regulations may contain additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions, that the Bureau judges are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance. Further, under Dodd-Frank Act section 1022(b)(1), 15 U.S.C. 5512(b)(1), the Bureau has general authority to prescribe rules as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof. The Bureau is proposing to change the effective date of the 2013 Loan Originator Compensation Final Rule with respect to those provisions described above pursuant to its TILA section 105(a) and Dodd-Frank Act section 1022(b)(1) authority.

The Bureau believes these changes would facilitate compliance and help ensure that the 2013 Loan Originator Compensation Final Rule does not have adverse unintended consequences. The Bureau requests public comment on these proposed effective dates, including on any suggested alternatives.

1. Effective Date for Amendments to § 1026.36(d)

The Bureau is proposing three specific changes to the effective date for

[14] After interpretive issues were raised concerning the credit insurance provision as discussed further below, the Bureau temporarily delayed and extended the effective date for § 1026.36(i) in the 2013 Effective Date Final Rule until January 10, 2014. 78 FR 32547 (May 31, 2013).

the amendments to § 1026.36(d). First, the Bureau is proposing that the provisions of the 2013 Loan Originator Compensation Final Rule revising § 1026.36(d) would be effective January 1, 2014, not January 10, 2014. The Bureau is concerned that an effective date of January 10, 2014, for the revisions to § 1026.36(d) may result in creditors and loan originator organizations believing that they have to account separately for the period from January 1 through January 9, 2014, when applying the new compensation restrictions under § 1026.36(d) (for example, if a creditor wishes to pay individual loan originators through non-deferred profits-based compensation plans pursuant to § 1026.36(d)(1)(iv), or if a loan originator organization wishes to pay to an individual loan originator compensation pursuant to § 1026.36(d)(2)(i)(C)). The Bureau recognizes that this proposal would make certain aspects of the 2013 Loan Originator Compensation Final Rule effective nine days earlier than originally stated, meaning that creditors and loan originator organizations would have a slightly shorter implementation period. On balance, however, the Bureau believes this proposed change will ease compliance burdens for creditors and loan originator organizations by eliminating any concern about a need for separate accountings as described above. As noted above, the Bureau is also proposing to change the effective date for the addition of § 1026.25(c)(2) (records retention) from January 10, 2014, to January 1, 2014. This proposed change dovetails with the proposal to change the effective date of § 1026.36(d) to January 1, 2014, to ensure that records on compensation paid between January 1 and January 10, 2014, are properly maintained.

Second, the Bureau is proposing that the revisions to § 1026.36(d) (other than the addition of § 1026.36(d)(1)(iii), as discussed below) would apply to transactions that are consummated and for which the creditor or loan originator organization paid compensation on or after January 1, 2014. The Bureau believes applying the effective date for the revisions to § 1026.36(d) based on application receipt, rather than based on transaction consummation and compensation payment, could present compliance challenges. This proposed change would permit transactions to be taken into account for purposes of compensating individual loan originators under the exceptions set forth in § 1026.36(d)(1)(iv) if the transactions were consummated and compensation was paid to the individual loan originator on or after January 1, 2014, even if the applications for those transactions were received prior to January 1, 2014. The Bureau believes this clarification, in conjunction with the proposed change to the effective date for the revisions to § 1026.36(d) described above, will reduce compliance burdens on creditors and loan originator organizations by allowing them to take into account all transactions consummated in 2014 (and for which compensation is paid to individual loan originators in 2014) for purposes of paying compensation under § 1026.36(d)(1)(iv) that is earned in 2014. This proposed revision will also allow the consumer-paid compensation restrictions and exceptions thereto in the revisions to § 1026.36(d)(2) to be effective upon the consummation of any transaction where such compensation is paid in 2014 even if the application for that transaction was received in 2013. Making this proposed clarification would eliminate the concern that creditors and loan originator organizations would potentially have to undertake separate accountings depending on when the applications for the transactions were received.[15]

For example, assume a creditor utilizes a calendar-year accounting method and wishes, pursuant to the exception for non-deferred profits-based compensation in § 1026.36(d)(1)(iv)(B)(*1*), to pay a bonus to an individual loan originator with reference to the profits of the creditor's mortgage-related business during the first quarter of calendar year 2014. In applying the 10-percent limit under § 1026.36(d)(1)(iv)(B)(*1*) to determine the maximum permissible amount of the quarterly bonus, a creditor could have interpreted the 2013 Loan Originator Compensation Final Rule's effective date provision to mean that it would have to account separately for transactions that were consummated in 2014 but where the applications were received in 2013 (*i.e.,* by not counting them in the calculation of the 10-percent limit for the first quarter of 2014). The Bureau's proposal would alleviate this concern by allowing the creditor to calculate the bonus with reference to the creditor's mortgage-related business profits during the first quarter of 2014 without having to inquire into the particular details about the transactions on whose terms the compensation was based, such as when the applications for those transactions were received.

Third, the Bureau is proposing that the provisions of § 1026.36(d)(1)(iii), which pertain to contributions to or benefits under designated tax-advantaged plans for individual loan originators, would apply to transactions for which the creditor or loan originator organization paid compensation on or after January 1, 2014, regardless of when the transactions were consummated or their applications were received. These changes regarding the effective date for the revisions to § 1026.36(d)(1)(iii) more clearly reflect the Bureau's intent to permit payment of compensation related to designated tax-advantaged plans during both 2013 (as explained in CFPB Bulletin 2012–2 clarifying current § 1026.36(d)(1))[16] and thereafter (under the 2013 Loan Originator Compensation Final Rule). Without this proposed change, the Bureau believes there could be uncertainty about whether the clarification in the Bulletin, new § 1026.36(d)(1)(iii), or neither would apply if a creditor or loan originator organization wished to pay compensation in 2014 in the form of contributions to or benefits under designated tax-advantaged plans where the compensation was determined based on the terms of transactions consummated during 2013.

In addition to the three specific changes to the effective date described above, the Bureau solicits comment generally on whether the proposed changes to the effective date for the amendments to § 1026.36(d) are appropriate or whether other approaches should be considered. In particular, the Bureau solicits comment on whether the amendments to

[15] The Bureau recognizes that, under this proposed revision, creditors and loan originator organizations would still have to account separately for compensation under a non-deferred profits-based compensation plan that is paid in 2014 but is earned in 2013 (*e.g.,* a year-end bonus paid in January 2014 based on profits of a creditor's mortgage-related business during calendar year 2013). This approach is consistent with how compensation under a non-deferred profits-based compensation plan is treated generally for purposes of the 10-percent limit calculation under § 1026.36(d)(1)(iv)(B)(*1*) (*i.e.,* non-deferred profits-based compensation that is earned during one time period but is actually paid during a second time period is excluded from the total compensation amount for the second time period, and may be included in total compensation for the first time period). *See* comment 36(d)(1)–3.v.C, as proposed to be revised.

[16] The Bureau explained in the Supplementary Information to the 2013 Loan Originator Compensation Final Rule that it issued CFPB Bulletin 2012–2 (the Bulletin) to address questions regarding the application of § 1026.36(d)(1) to ''Qualified Plans'' (as defined in the Bulletin). The Bureau noted in that Supplementary Information that until the final rule takes effect, the clarifications in CFPB Bulletin 2012–2 remain in effect and that the Bureau interprets ''Qualified Plan'' as used in the Bulletin to include the designated tax-advantaged plans described in the final rule.

§ 1026.36(d) should take effect on January 1, 2014, and apply to all payments of compensation made on or after that date, regardless of the date of consummation of the transactions on whose terms the compensation was based. The Bureau believes such an approach would create a bright line that the payment of compensation on or after January 1, 2014, would be subject to the new rule. However, this approach could raise complexity about how the new rule would apply to payments under non-deferred profits-based compensation plans pursuant to § 1026.36(d)(1)(iv)(B)(*1*) made on or after January 1, 2014, where the compensation payments are based on the terms of transactions consummated in 2013, prior to the effect of the new rule.[17] This approach also could incentivize creditors and loan originator organizations to structure their compensation programs for 2013 to pay non-deferred profits-based compensation earned during 2013 in early 2014, rather than in 2013 when the current rule would remain in effect (although the Bureau also notes that the 10-percent limit would set an upper limit on such behavior).

2. Effective Dates for Amendments to or Additions of § 1026.36(a), (b), (e), (f), (g), and (j)

Rather than implementing the proposed change in effective dates for § 1026.36(d) in isolation, the Bureau is also proposing to make the amendments to or additions of (as applicable) § 1026.36(a) (definitions), § 1026.36(b) (scope), § 1026.36(e) (anti-steering provisions), § 1026.36(f) (loan originator qualification requirements) and § 1026.36(j) (compliance policies and procedures for depository institutions) take effect on January 1, 2014. The Bureau is proposing not to tie the effective date to the receipt of a particular loan application, but rather to a date certain. Because these provisions rely on a common set of definitions and in some cases cross reference each other,[18] the Bureau is proposing to make them effective on January 1, 2014, and without reference to receipt of applications to avoid a potential incongruity among the effective dates of those substantive provisions and the effective dates of the regulatory definitions and scope provisions supporting those substantive provisions. Thus, the Bureau believes this proposed revision would facilitate compliance.

The Bureau is not, however, proposing to adjust the effective date for § 1026.36(g), which requires that loan originators' names and identifier numbers be provided on certain loan documentation, except to clarify and confirm that the provision takes effect with regard to any application received on or after January 10, 2014, by a creditor or a loan originator organization. Because this provision requires modifications to documentation for individual loans and the systems that generate such documentation, the Bureau believes it is appropriate to have it take effect with the other 2013 Title XIV Final Rules that affect individual loan processing.

3. Effective Date for § 1026.36(i)

As discussed in the 2013 Effective Date Final Rule and below, the Bureau initially adopted a June 1, 2013 effective date for § 1026.36(i), but later delayed the provision's effective date to January 10, 2014, while the Bureau considered addressing interpretive questions concerning the provision's applicability to transactions other than those in which a lump-sum premium is added to the loan amount at consummation. As discussed in the section-by-section analysis below, the Bureau is now proposing amendments to § 1026.36(i), which will not be finalized until the Bureau has appropriately considered public comments and issued a final rule. The Bureau believes that creditors will need time to adjust certain credit insurance premium billing practices once the clarifications are finalized. However, the Bureau believes that the January 10, 2014 effective date adopted in the 2013 Effective Date Final Rule will allow sufficient time for compliance. This is consistent with the generally applicable effective date for the 2013 Title XIV Final Rules, including for several provisions the Bureau is proposing to amend through this notice. The Bureau requests comment on whether the effective date for § 1026.36(i) may be set earlier than January 10, 2014, upon finalization of any clarifications and amendments, and still permit sufficient time for creditors to adjust credit insurance premium practices as necessary.

VI. Section-by-Section Analysis

A. Regulation B

Section 1002.14 Rules on Providing Appraisals and Other Valuations

14(b) Definitions

14(b)(3) Valuation

The Bureau is proposing to amend commentary to § 1002.14 to clarify the definition of ''valuation'' as adopted by the 2013 ECOA Final Rule. Dodd-Frank Act section 1744 amended ECOA by, among other things, defining ''valuation'' to include any *estimate* of the value of the dwelling developed in connection with a creditor's decisions to provide credit. *See* ECOA section 701(e)(6). Similarly, the 2013 ECOA Final Rule adopted § 1002.14(b)(3), which defines ''valuation'' as any *estimate* of the value of a dwelling developed in connection with an application for credit. Consistent with these provisions, the Bureau intended the term ''valuation'' to refer only to an *estimate* for purposes of the 2013 ECOA Final Rule's newly adopted provisions. However, the 2013 ECOA Final Rule added two comments that refer to a valuation as an appraiser's *estimate or opinion* of the value of the property: Comment 14(b)(3)–1.i, which gives examples of ''valuations,'' as defined by § 1002.14(b)(3); and comment 14(b)(3)–3.v, which provides examples of documents that discuss or restate a valuation of an applicant's property but nevertheless do not constitute ''valuations'' under § 1002.14(b)(3).

The Bureau did not intend by these two comments to alter the meaning of ''valuation'' to become inconsistent with ECOA section 701(e)(6) and § 1002.14(b)(3). Accordingly, the Bureau proposes to clarify comments 14(b)(3)–1.i and 14(b)(3)–3.v by removing the words ''or opinion'' from their texts.

B. Regulation X

General—Technical Corrections

In addition to the proposed clarifications and amendments to Regulation X discussed below, the Bureau is proposing technical corrections and minor wording adjustments for the purpose of clarity throughout Regulation X that are not substantive in nature. The Bureau is proposing such technical and wording clarifications to regulatory text in §§ 1024.30, 1024.39, and 1024.41; and to commentary to §§ 1024.17, 1024.33 and 1024.41.

[17] For example, the 2013 Loan Originator Compensation Final Rule revised § 1026.36(d)(1)(i) and comment 36(d)(1)–2 to clarify how to determine whether a factor is a proxy for a term of a transaction, and § 1026.36(d)(1)(ii) now contains a definition of ''term of a transaction.'' Thus, there is a question as to whether, with respect to payments under a non-deferred profits-based compensation plan pursuant to § 1026.36(d)(1)(iv)(B)(*1*), a creditor or loan originator organization would have to apply the new proxy provisions and definition of a term of a transaction retroactively in assessing whether compensation based on transactions consummated in 2013 can be paid in 2014.

[18] For example, § 1026.36(j) requires that depository institutions establish written policies and procedures reasonably designed to ensure and monitor compliance with § 1026.36(d), (e), (f), and (g).

Sections 1024.35 and .36, Error Resolution Procedures and Requests for Information

The Bureau is proposing minor amendments to the error resolution and request for information provisions of Regulation X, adopted by the 2013 Mortgage Servicing Final Rules. The error resolution procedures largely parallel the information request procedures (particularly in the areas in which amendments are proposed); thus the two sections are discussed together below. Section 1024.35 implements section 6(k)(1)(C) of RESPA, and § 1024.36 implements section 6(k)(1)(D) of RESPA. To the extent the requirements under §§ 1024.35 and 1024.36 are applicable to qualified written requests, these provisions also implement sections 6(e) and 6(k)(1)(B) of RESPA. As discussed in part V (Legal Authority), the Bureau proposes these amendments pursuant to its authority under RESPA sections 6(j), 6(k)(1)(E) and 19(a). As explained in more detail below, these amendments are necessary and appropriate to achieve the consumer protection purposes of RESPA, including ensuring responsiveness to consumer requests and complaints and the provision and maintenance of accurate and relevant information.

35(c) and 36(b), Contact Information for Borrowers To Assert Errors and Information Requests

The Bureau is proposing to amend the commentary to § 1024.35(c) and § 1024.36(b) with respect to disclosure of the exclusive address (if a servicer chooses to establish one) when a servicer discloses contact information to the borrower for the purpose of assistance from the servicer. Section 1024.35(c) states that a servicer may, by written notice provided to a borrower, establish an address that a borrower must use to submit a notice of error to a servicer in accordance with the procedures set forth in § 1024.35. Comment 35(c)–2 clarifies that, if a servicer establishes any such exclusive address, the servicer must provide that address to the borrower in any communication in which the servicer provides the borrower with contact information for assistance from the servicer. Similarly, § 1024.36(b) states that a servicer may, by written notice provided to a borrower, establish an address that a borrower must use to submit information requests to a servicer in accordance with the procedures set forth in § 1024.36. Comment 36(b)–2 clarifies that, if a servicer establishes any such exclusive address, a servicer must provide that address to the borrower in any communication in which the servicer provides the borrower with contact information for assistance from the servicer.

The Bureau is concerned that comments 35(c)–2 and 36(b)–2 could be interpreted more broadly than the Bureau had intended. Section 1024.35(c) and comment 35(c)–2, as well as § 1024.36(b) and comment 36(b)–2, are intended to inform borrowers of the correct address for the borrower to use for purposes of submitting notices of error or information requests, so that borrowers do not inadvertently send these communications to other non-designated servicer addresses (which would not provide the protections afforded by §§ 1024.35 and 1024.36, respectively). If interpreted literally, the existing comments would require the servicer to include the designated address for notices of error and requests for information when *any* contact information for the servicer is given to the borrower. However, if the servicer is merely including a phone number or web address (without a mailing address), there is no risk of the borrower mailing a notice of error or information request to a wrong address. Thus it would be unnecessary to mandate that the servicer provide the designated address every time a phone number or web address is given. The Bureau does not intend that the servicer be required to inform the borrower of the designated address in all communications with borrowers where any contact information whatsoever for assistance from the servicer is provided.

Accordingly, the Bureau is proposing to amend comment 35(c)–2 to provide that, if a servicer establishes a designated error resolution address, the servicer must provide that address to a borrower in any communication in which the servicer provides the borrower with an *address* for assistance from the servicer. Similarly, the Bureau is proposing to amend comment 36(b)–2 to provide that if a servicer establishes a designated information request address, the servicer must provide that address to a borrower in any communication in which the servicer provides the borrower with an *address* for assistance from the servicer. The Bureau requests comment regarding this proposed revision to comments 35(c)–2 and 36(b)–2, and in particular about whether these updated comments appropriately clarify when the address must be disclosed.

35(g) and 36(f) Requirements Not Applicable

35(g)(1)(iii)(B) and 36(f)(1)(v)(B)

The Bureau is proposing amendments to § 1024.35(g)(1)(iii)(B) (untimely notices of error) and § 1024.36(f)(1)(v)(B) (untimely requests for information). Section 1024.35(g)(1)(iii)(B) provides that a notice of error is untimely if it is delivered to the servicer more than one year after a mortgage loan balance was paid in full. Similarly, § 1024.36(f)(1)(v)(B) provides that an information request is untimely if it is delivered to the servicer more than one year after a mortgage loan balance was paid in full.

The Bureau is proposing to replace the references to the date a mortgage loan balance is paid in full to the date the mortgage loan is discharged. This change would specifically address circumstances in which a loan is terminated without being paid in full, for example, because it was discharged through foreclosure or deed in lieu of foreclosure. This change would also align more closely with the § 1024.38(c)(1) record retention requirements, which require a servicer to retain records that document actions taken with respect to a borrower's mortgage loan account only until one year after the date a mortgage loan is discharged. The Bureau requests comment regarding these proposed changes.

Section 1024.41 Loss Mitigation Procedures

As discussed in part V (Legal Authority), the Bureau proposes amendments to § 1024.41 pursuant to its authority under sections 6(j)(3), 6(k)(1)(E), and 19(a) of RESPA. The Bureau believes that these proposed amendments are necessary to achieve the consumer protection purposes of RESPA, including to facilitate the evaluation of borrowers for foreclosure avoidance options. Further, the proposed amendments implement, in part, a servicer's obligation to take timely action to correct errors relating to avoiding foreclosure under section 6(k)(1)(C) of RESPA by establishing servicer duties and procedures that must be followed where appropriate to avoid errors with respect to foreclosure. In addition, the Bureau relies on its authority pursuant to section 1022(b) of the Dodd-Frank Act to prescribe regulations necessary or appropriate to carry out the purposes and objectives of Federal consumer financial law, including the purpose and objectives under sections 1021(a) and (b) of the Dodd-Frank Act. The Bureau additionally relies on its authority under section 1032(a) of the Dodd-Frank Act, which authorizes the Bureau to prescribe rules to ensure that the features of any consumer financial product or service both initially and over the terms of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

41(b) Receipt of a Loss Mitigation Application

41(b)(2) Review of Loss Mitigation Application Submission

41(b)(2)(i) Requirements

The Bureau is proposing to amend the commentary to § 1024.41(b)(2)(i) to clarify servicers' obligations with respect to providing notices to borrowers regarding the review of loss mitigation applications. Section 1024.41(b)(2)(i) requires a servicer that receives a loss mitigation application 45 days or more before a foreclosure sale to review and evaluate the application promptly and determine, based on that review, whether the application is complete or incomplete.[19] If the application is incomplete, the servicer must also determine what additional documentation and information are required to make it complete. The servicer then must notify the borrower within five days (excluding legal public holidays, Saturdays and Sundays) that the servicer acknowledges receipt of the application, and that the servicer has determined that the loss mitigation application is either complete or incomplete. If an application is incomplete, the notice must state the additional documents and information that the borrower must submit to make the loss mitigation application complete. In addition, servicers are obligated under § 1024.41(b)(1) to exercise reasonable diligence in obtaining documents and information necessary to complete an incomplete application, which may require, when appropriate, the servicer to contact the borrower and request such information as illustrated in comment 41(b)(1)–4.i.

The Bureau believes that additional commentary is warranted to address situations in which a servicer determines additional information from the borrower is needed to complete an evaluation of a loss mitigation application after either (1) the servicer has provided notice to the borrower informing the borrower that the loss mitigation application is complete, or (2) the servicer has provided notice to the borrower identifying specific information or documentation necessary to complete the application and the borrower has furnished that documentation or information. The notice required by § 1024.41(b)(2)(i)(B) is intended to provide the borrower with timely notification that a loss mitigation application was received and either is considered complete by the servicer or is considered incomplete and that the borrower is required to take further action for the servicer to evaluate the loss mitigation application. The Bureau has received repeated questions concerning circumstances in which a borrower submits information that appears facially complete based on an initial review by the servicer, but the servicer, upon further evaluation, determines that it does not in fact have enough information to evaluate the borrower for a loss mitigation option pursuant to requirements imposed by an investor or guarantor of a mortgage loan. The Bureau is very conscious of concerns that servicers have prolonged loss mitigation processes by incomplete and inadequate document reviews that lead to repeated requests for supplemental information, and designed the rule to ensure an adequate up-front review. At the same time, the Bureau does not believe it is in the best interest of borrowers or servicers to create a system that leads to borrower applications being denied solely because they contain inadequate information and the servicer believes it may not request the additional information needed.

The Bureau is therefore proposing three provisions to address these concerns. First, the Bureau is proposing new comment 41(b)(2)(i)(B)–1 to clarify that, notwithstanding that a servicer has informed a borrower that an application is complete (or notified the borrower of specific information necessary to complete an incomplete application), a servicer must request additional information from a borrower if the servicer determines, in the course of evaluating the loss mitigation application submitted by the borrower, that additional information is required.

Second, the Bureau is proposing new comment 41(b)(2)(i)(B)–2, to clarify that except as provided in § 1024.41(c)(2)(iv), the provisions and timelines triggered by a complete loss mitigation application in § 1024.41 are not triggered by an incomplete application. An application is considered complete only when a servicer has received all the information the servicer requires from a borrower in evaluating applications for the loss mitigation options available to the borrower, regardless of whether the servicer has sent a § 1024.41(b)(2)(i)(B) notification incorrectly informing the borrower that the loss mitigation application is complete or incorrectly informed the borrower of the information necessary to complete such application. The Bureau notes that the proposed clarifications do not allow servicers to inform borrowers that facially incomplete applications are complete or to incorrectly describe the information necessary to complete an application. Servicers are required under § 1024.41(b)(2)(i)(A) to review a loss mitigation application to determine whether it is complete or incomplete. In addition, servicers are subject to the § 1024.38(b)(2)(iv) requirement to have policies and procedures reasonably designed to achieve the objectives of identifying documents and information that a borrower is required to submit to complete an otherwise incomplete loss mitigation application, and servicers are obligated under § 1024.41(b)(1) to exercise reasonable diligence in obtaining documents and information necessary to complete an incomplete application.

Third, as described more fully below, the Bureau is proposing new § 1024.41(c)(2)(iv) to require that, if a servicer creates a reasonable expectation that a loss mitigation application is complete but later discovers information is missing, the servicer must treat the application as complete for certain purposes until the borrower has been given a reasonable opportunity to complete the loss mitigation application. The Bureau believes the proposed rule would mitigate potential risks to consumers that could arise through a loss mitigation process prolonged by incomplete and inadequate document reviews and repeated requests for supplemental information. The Bureau believes these new provisions will provide flexibility to servicers who make good faith mistakes in conducting up-front reviews of loss mitigation applications for completeness, while ensuring that borrowers do not lose the protections under the rule due to such mistakes and that servicers have incentives to conduct rigorous up-front review of loss mitigation applications. However, the Bureau requests comment regarding whether proposed comments 41(b)(2)(i)(B)–1 and –2, in connection

[19] A ''complete loss mitigation application'' is defined in § 1024.41(b)(1) as ''an application in connection with which a servicer has received all the information the servicer requires from a borrower in evaluating applications for the loss mitigation options available to the borrower.''

with proposed § 1024.41(c)(2)(iv), adequately balance the consumer interests in receipt of accurate notices. The Bureau also seeks comment regarding whether further provisions would be warranted to protect borrowers' interests in reducing dual tracking and prolonged loss mitigation processing, and avoiding application denials for lack of adequate information, while also providing servicers strong incentives to conduct rigorous up-front reviews and appropriate flexibility in the event of good-faith and clerical mistakes in conducting such reviews.

41(b)(2)(ii) Time Period Disclosure

The Bureau is proposing to amend the § 1024.41(b)(2)(ii) time period disclosure requirement, which requires a servicer to provide a date by which a borrower should submit any missing documents and information necessary to make a loss mitigation application complete. Section 1024.41(b)(2)(ii) requires a servicer to provide in the notice required pursuant to § 1024.41(b)(2)(i)(B) the earliest remaining of four specific dates set forth in § 1024.41(b)(2)(ii). The four dates set forth in § 1024.41(b)(2)(ii) are: (1) The date by which any document or information submitted by a borrower will be considered stale or invalid pursuant to any requirements applicable to any loss mitigation option available to the borrower; (2) the date that is the 120th day of the borrower's delinquency; (3) the date that is 90 days before a foreclosure sale; and (4) the date that is 38 days before a foreclosure sale.

In general, many of the protections afforded to a borrower by § 1024.41 are dependent on a borrower submitting a complete loss mitigation application a certain amount of time before a foreclosure sale, and such protections decrease as a foreclosure sale approaches. It is therefore in the interest of borrowers to complete loss mitigation applications as early in the delinquency and foreclosure process as possible. However, even if a borrower does not complete a loss mitigation application sufficiently early in the process to secure *all* the protections available under § 1024.41, that borrower may still benefit from some of the protections afforded. Borrowers should not be discouraged from completing loss mitigation applications merely because they cannot complete a loss mitigation application by the date that would be most advantageous in terms of securing the protections available under § 1024.41. Accordingly, the goal of § 1024.41(b)(2)(ii) is to inform borrowers of the time by which they should complete their loss mitigation applications to receive the greatest set of protections available, without discouraging later efforts if any such timeline is not met. The Bureau notes § 1024.41(b)(2)(ii) requires servicers to inform borrowers of the date by which the borrower *should* make the loss mitigation application complete, as opposed to the date by which the borrower *must* make the loss mitigation application complete.

The Bureau believes based on communications with consumer advocates, servicers, and trade associations that the requirement in § 1024.41(b)(2)(ii) may be over-prescriptive and may prevent a servicer from having the flexibility to suggest an appropriate date by which a borrower should complete a loss mitigation application. For example, if a borrower submits a loss mitigation application on the 114th day of delinquency, the servicer would have to inform him or her by the 119th day that the borrower should complete the loss mitigation application by the 120th day under the current provision. A borrower is unlikely to be able to assemble the missing information within one day, and would be better served by being advised to complete the loss mitigation application by a reasonable later date that would afford the borrower the benefits of the rule as well as enough time to gather the information.

In response to these concerns, and in accordance with the goals of the provision, the Bureau is proposing to amend the requirement in § 1024.41(b)(2)(ii). Specifically, the Bureau proposes to replace the requirement that a servicer disclose the earliest remaining date of the four specific dates set forth in § 1024.41(b)(2)(ii) with a more flexible requirement that a servicer determine and disclose a reasonable date by which the borrower should submit the documents and information necessary to make the loss mitigation application complete. The Bureau proposes to clarify this amendment in proposed comment 41(b)(2)(ii)–1, which would clarify that, in determining a reasonable date, a servicer should select the deadline that preserves the maximum borrower rights under § 1024.41, except when doing so would be impracticable. Proposed comment 41(b)(2)(ii)–1 would further clarify that a servicer should consider the four deadlines previously set forth in § 1024.41(b)(2)(ii) as factors in selecting a reasonable date. Proposed comment 41(b)(2)(ii)–1 also would clarify that if a foreclosure sale is not scheduled, for the purposes of determining a reasonable date, a servicer may make a reasonable estimate of when a foreclosure sale may be scheduled. This proposal is intended to provide appropriate flexibility while also requiring that servicers consider the impact of the various timing requirements set forth in § 1024.41. The Bureau requests comment regarding the proposed revision to § 1024.41(b)(2)(ii).

41(b)(3) Timelines

The Bureau is proposing to add a new provision in § 1024.41(b)(3) addressing the timelines when no foreclosure sale is scheduled as of the date a complete loss mitigation application is received or a foreclosure sale is rescheduled after receipt of a complete application. As discussed above, § 1024.41 is structured to provide different procedural rights to borrowers and impose different requirements on servicers depending on the number of days remaining until a foreclosure sale is scheduled to occur, as of the time that a complete loss mitigation application is received. In particular, § 1024.41(e)(1) requires that, if a complete loss mitigation application is received 90 days or more before a foreclosure sale, a servicer may require that a borrower accept or reject an offer of a loss mitigation option no earlier than 14 days after the servicer provides the offer. Similarly, § 1024.41(h) provides borrowers with a right to appeal a denial of a loan modification option when a complete loss mitigation application is received 90 days or more in advance of a foreclosure sale. Alternatively, § 1024.41(e)(1) provides that if a complete loss mitigation application is received less than 90 but more than 37 days before a foreclosure sale, a servicer may require that a borrower accept or reject an offer of a loss mitigation option no earlier than seven days after the servicer provides such offer, and under § 1024.41(h), the borrower does not have a right to appeal denial of a loan modification option in this circumstance. Likewise, the prohibition on foreclosure sales in § 1024.41(g) sets limitations on a servicer's ability to move for judgment or order of sale or to conduct a foreclosure sale when a complete application is received more than 37 days before a foreclosure sale.

However, the provisions of § 1024.41 do not expressly address situations in which a foreclosure sale is rescheduled, or has not yet been scheduled at the time a complete loss mitigation application is received. Since issuance of the final rule, the Bureau has received questions about the applicability of the timing provisions in such scenarios. Specifically, industry stakeholders have asked whether it is appropriate to use estimated dates of foreclosure where a foreclosure sale has not been scheduled at the time a complete loss mitigation application is received, and have requested guidance on how to apply the timelines if no foreclosure is scheduled as of the date a complete loss mitigation application is received, but a foreclosure sale is subsequently scheduled less than 90 days after receipt of such application, or if a foreclosure sale has been scheduled for less than 90 days after a complete application is received, but is then postponed to a date that is 90 days or more after the receipt date.

The Bureau believes guidance in such situations is appropriate, and is proposing in § 1024.41(b)(3) to provide that, for purposes of § 1024.41, timelines based on the proximity of a foreclosure sale to the receipt of a complete loss mitigation application will be determined as of the date a complete loss mitigation application is received. Proposed comment 41(b)(3)–1 would clarify that if a foreclosure sale has not yet been scheduled as of the date that a complete loss mitigation application is received, the application shall be treated as if it were received at least 90 days before a foreclosure sale. Proposed comment 41(b)(3)–2 would clarify that such timelines would remain in effect even if at a later date, a foreclosure sale was rescheduled.

The Bureau believes this approach would provide certainty to both servicers and borrowers as well as ensure that borrowers receive the broadest protections available under the rule in situations in which a foreclosure sale has not been scheduled at the time a borrower submits a complete loss mitigation application. The Bureau considered proposing a rule that would vary the applicable timelines depending on the number of days remaining until foreclosure sale at the time that a foreclosure sale is in fact scheduled even when the scheduling (or rescheduling) occurs after a complete loss mitigation application is received. Such an approach would have some advantages to both servicers (in reducing the risk of foreclosure sale delays compared to categorically applying the procedures applicable to applications received at least 90 days before a scheduled foreclosure sale when no foreclosure sale has yet been scheduled when a complete loss mitigation application is received) and to consumers (in providing appeal rights if a sale is initially scheduled to occur less than 90 days after receipt of a completed application but is later delayed). However, the Bureau was concerned that such a rule would have a number of disadvantages. First, it would add significant complexity and uncertainty to the existing timelines under the regulation. Second, it could create incentives for servicers to draw out their evaluation processes in the hope that a foreclosure sale would be scheduled in the intervening period, and disincentives for servicers to push off a previously scheduled foreclosure sale. Third, it could potentially create borrower confusion if changes to the timelines were permitted to occur after the servicer has provided the borrower with the notice required under § 1024.41(c)(1)(ii) explaining whether the loss mitigation application has been approved and laying out applicable timelines for follow-up. Similarly, the Bureau was concerned that allowing servicers to estimate foreclosure dates where a complete loss mitigation application is received before a foreclosure sale is scheduled would be imprecise—the Bureau believes it is necessary to clearly define what rights a borrower is entitled to and does not believe it is appropriate for a borrower's rights to turn on an estimated date.

Thus, on balance, the Bureau believes that a straightforward rule under which deadlines are calculated as of the date of receipt of a complete loss mitigation application, and a complete loss mitigation application is treated as having been received 90 days or more before a foreclosure sale if no sale is scheduled as of the date the application is received, may be preferable because it would provide industry and borrowers with clarity regarding its application, without the unnecessary complexity that may arise from an approach where the timelines would vary based on the number of days remaining before a later-scheduled foreclosure sale and whether a notice has already been provided to the borrower. The Bureau recognizes that the proposed rule might in some cases require a servicer to delay a foreclosure sale to adhere to the specified time for the borrower to respond to a loss mitigation offer and to appeal the servicer's denial of a loan modification option, where applicable. However, the Bureau believes that, in most circumstances, a foreclosure sale that is not scheduled at the time a complete application is received is unlikely to be subsequently scheduled to occur less than 90 days after the receipt date. The Bureau requests comment and supporting data regarding circumstances in which this may occur. Additionally, the Bureau believes borrowers should not lose certain protections of the rule because a servicer quickly schedules a foreclosure sale, particularly when a borrower has been informed by either the § 1024.41(c)(1)(ii) notice or the § 1024.41(h)(4) notice that he or she has such rights. The Bureau seeks comment on this provision addressing the calculation of timelines as of the date a complete loss mitigation application is received, or a scheduled foreclosure sale is subsequently rescheduled after receipt of a complete loss mitigation application. In particular the Bureau seeks comment as to whether the alternative approach that would vary the applicable timelines depending on the number of days remaining until foreclosure sale at the time that a foreclosure sale is in fact scheduled or subsequently rescheduled would be preferable and whether there are additional situations in which application of the timelines should be clarified or modified.

41(c) Evaluation of Loss Mitigation Applications

41(c)(1) Complete Loss Mitigation Application

41(c)(1)(ii)

The Bureau is proposing to amend § 1024.41(c)(1)(ii) to state explicitly that the notice required by § 1024.41(c)(1)(ii) must state the deadline for accepting or rejecting a servicer's offer of a loss mitigation option, in addition to the requirements currently in § 1024.41(d)(2) to specify, where applicable, that the borrower may appeal the servicer's denial of a loan modification option, the deadline for doing so, and any requirements for making an appeal. The Bureau intended that the § 1024.41(c)(1)(ii) notice would specify the time and procedures for the borrower to accept or to reject the servicer's offer, in accordance with the timing requirements specified in § 1024.41(e). Indeed, § 1024.41(e)(2) provides both that the servicer may deem the borrower to have rejected the offer if the borrower does not respond within the timelines specified under § 1024.41(e)(1) and that the servicer must give the borrower a reasonable opportunity to complete documentation necessary to accept the offer if the borrower does not follow the specified procedures but begins making payments in accordance with the offer by the deadline specified in § 1024.41(e)(1). The Bureau is therefore proposing to amend § 1024.41(c)(1)(ii) to state explicitly that the notice provided to the borrower under the provision must state the date and procedures by which the borrower is required to respond to an offer of a loss mitigation option, in addition to the information regarding appeals currently required to be included in such notices under § 1024.41(d)(2).

41(c)(2) Incomplete Loss Mitigation Application Evaluation

41(c)(2)(iii) Payment Forbearance

The Bureau is proposing to modify the requirement in § 1024.41(c)(2) to allow servicers to offer certain short-term forbearances to borrowers, notwithstanding the prohibition on servicers offering a loss mitigation option to a borrower based on the review of an incomplete loss mitigation application. The Bureau had intentionally drafted § 1024.41 with broad definitions of ''loss mitigation option'' and ''loss mitigation application,'' to provide a streamlined process in which a borrower will be evaluated for all available loss mitigation options at the same time, rather than having to apply multiple times to be evaluated for different options one at a time. Since publication of the final rule, however, both industry and consumer advocates have raised questions and concerns about how the rule applies in situations in which a borrower merely needs and requests short-term forbearance. For instance, a number of servicers have inquired about whether the rule would prevent them from granting a borrower's request for waiver of late fees or other short-term relief after a natural disaster until the borrower submits all information necessary for evaluation of the borrower for long-term loss mitigation options. Additionally, both consumer advocates and servicers have raised concerns about whether a borrower's request for short-term relief would later preclude a borrower from invoking the protections afforded by the rule if the borrower encounters a significant change in circumstances that warrants long-term loss mitigation alternatives.

The Bureau is very conscious of the difficulties involved in distinguishing short-term forbearance programs from other types of loss mitigation and of the fact that some servicers have significantly exacerbated borrowers' financial difficulties in the past by using short-term forbearance programs inappropriately instead of reviewing the borrowers for long-term options. Nevertheless, the Bureau believes that it may be possible to revise the rule to facilitate appropriate use of short-term payment forbearance programs without creating undue risk for borrowers who need to be evaluated for a full range of loss mitigation alternatives.

At the outset, the Bureau notes that it does not construe the existing rule to require that servicers obtain a complete loss mitigation application prior to exercising their discretion to waive late fees. Additionally the Bureau notes that a servicer may offer any borrower any loss mitigation option if the borrower has not submitted a loss mitigation application or if the option is not based on an evaluation of information submitted by the borrower in connection with a loss mitigation application, as clarified in existing comment 41(c)(2)(i)–1.

With regard to short-term forbearance programs that involve more than simply waiving late fees, such as where a servicer allows a borrower to forgo making two payments and then to catch up by spreading the cost over the next year, the Bureau believes that the issues raised by various stakeholders can most appropriately be addressed by providing more flexibility to servicers to provide such relief notwithstanding that a borrower has submitted an incomplete loss mitigation application. Thus, the Bureau is not proposing to change the current definition of loss mitigation option, which includes all forbearance programs, but rather to relax the prohibition in § 1024.41(c)(2)(i) against evading the requirement to evaluate a borrower's complete loss mitigation application for all loss mitigation options available to the borrower by offering a loss mitigation option based upon an evaluation of an incomplete loss mitigation application. Specifically, the Bureau is proposing to add § 1024.41(c)(2)(iii) to provide that a servicer may offer a short-term payment forbearance program to a borrower based upon an evaluation of an incomplete loss mitigation application.

The proposed exemption in § 1024.41(c)(2)(iii) would apply only to short-term payment forbearance programs. Proposed comment 41(c)(2)(iii)–1 states that a payment forbearance program is a loss mitigation option for which a servicer allows a borrower to forgo making certain payments for a period of time. Payment forbearance programs are usually offered when a borrower is having a short-term difficulty brought on, for example, a natural disaster. In such cases, the servicer offers a short-term payment forbearance arrangement to assist the borrower in managing the hardship. The Bureau believes it is appropriate for servicers to have the flexibility to offer short-term payment forbearance programs prior to receiving a complete loss mitigation application for all available loss mitigation options.

Proposed comment 41(c)(2)(iii)–1 also would explain how to determine whether a particular payment forbearance program is ''short-term.'' Specifically, it would provide that short-term programs allow the forbearance of payments due over periods of up to two months. Thus, if a borrower is allowed to forgo making payments due in January and February, but must make the monthly obligation due in March, such a program would be considered a two-month program. The proposed comment clarifies this would be considered a two-month payment forbearance, regardless of the amount of time the servicer provides the borrower to make up the forborne payments, and provides examples illustrating this principle. Different payment forbearance programs may have the borrower make up the payments at the end of the forbearance period, spread over a certain period of time (for example, over the next 12 payments) or may make the forgone payments due when the loan matures. The Bureau believes these all would be considered two-month payment forbearance programs despite the different repayment time periods because, under all of these scenarios, the borrower would resume making regular payments in March.

The Bureau notes that, under the proposed approach, servicers that receive a request for a short-term payment forbearance and grant such requests would remain subject to the requirements triggered by the receipt of a loss mitigation application in § 1024.41. Thus, as explained in proposed comment 41(c)(2)(iii)–2, if a servicer offers a payment forbearance program based on an incomplete loss mitigation application, the servicer is still required to review the application for completeness, to send the § 1024.41(b)(2)(i)(B) notice to inform the borrower whether the application is complete or incomplete, and if incomplete what documents or additional information are required, and to use due diligence to complete the loss mitigation application. If a borrower submits a complete application, the servicer must evaluate it for all available loss mitigation options. The Bureau believes that maintaining these requirements is important to ensure that borrowers are not inappropriately diverted into short-term forbearance programs without access to the full protections of the regulation. At the same time, if a borrower in fact does not want an evaluation for long-term options, the borrower will simply fail to provide the additional information necessary to submit a complete application and the servicer will therefore not be required to conduct a full assessment for all options.

To ensure that a borrower who is receiving an offer of short-term payment forbearance program understands the options available, proposed § 1024.41(c)(2)(iii) would require a servicer offering a short-term payment forbearance program to a borrower based on an incomplete loss mitigation application to include in the § 1024.41(b)(2)(i)(B) notice additional information, specifically that: (1) The servicer has received an incomplete loss mitigation application and on the basis of that application the servicer is offering a short-term payment forbearance program; (2) absent further action by the borrower, the servicer will not be reviewing the incomplete application for other loss mitigation options; and (3) if the borrower would like to be considered for other loss mitigation options, he or she must submit the missing documents and information required to complete the loss mitigation application. The Bureau believes that providing this more specific information, coupled with the proposed amendments under § 1024.41(c)(2)(iii), is critical to ensure that the rule provides both flexibility to servicers and borrowers to avoid unwarranted delays and paperwork where short-term forbearance is appropriate and a safeguard against the misuse of short-term forbearance to avoid addressing long-term problems. For example, suppose a borrower submits information in connection with a request for a payment forbearance program, but such information is not a complete loss mitigation application as defined in § 1024.41(b)(1). Under proposed § 1024.41(c)(2)(iii), the servicer would be able to offer the borrower a payment forbearance program. However, the servicer would have to send the notice required by § 1024.41(b)(2)(i)(B) notifying the borrower that his or her loss mitigation application is incomplete and stating the additional documents and information the borrower must submit to make the loss mitigation application complete. The borrower then would have the information needed to complete the loss mitigation application if he or she would like a full review for all loss mitigation options. However, if the borrower feels the payment forbearance program is sufficient, he or she would be able to decline to complete the loss mitigation application and the full § 1024.41 procedures would not be triggered.

Finally, the Bureau proposes comment 41(c)(2)(iii)–3 clarifying servicers' obligations on receipt of a complete loss mitigation application. The proposed comment states that, notwithstanding that a servicer offers a borrower a payment forbearance program after an evaluation of an incomplete loss mitigation application, a servicer must still comply with all requirements in § 1024.41 on receipt of a borrowers submission of a complete loss mitigation application. This comment is intended to clarify that, even though payment forbearance may be offered as short-term assistance to a borrower, a borrower is still entitled to submit a complete loss mitigation application and receive an evaluation of such application for all available loss mitigation options. Although payment forbearance may assist a borrower with a short-term hardship, a borrower should not be precluded from demonstrating a long-term inability to afford a mortgage, and being considered for long-term solutions, such as a loan modification, when that may be appropriate.

Accordingly, the Bureau proposes to amend the loss mitigation provisions in § 1024.41 by adding new § 1024.41(c)(2)(iii) and new comments 41(c)(2)(iii)–1, –2, and –3. The Bureau requests comment regarding all aspects of these proposed provisions, and in particular on whether the proposed amendments appropriately address concerns regarding servicers' ability to work with borrowers by offering payment forbearance programs as appropriate, pending receipt and evaluation of complete loss mitigation applications. Additionally, the Bureau requests comment as to whether short-term forbearance programs are appropriately defined and whether it might be appropriate to develop tailored definitions to address specific situations such as programs offered to victims of natural disasters or unemployment. Further, the Bureau seeks comment as to whether it would be helpful to require that additional language be added to the § 1024.41(b)(2)(i)(B) notice when a servicer is offering a short-term payment forbearance program based on an incomplete loss mitigation application to encourage a borrower to assess realistically whether he or she is encountering short-term or long-term problems and to complete a loss mitigation application as appropriate. Finally, the Bureau seeks comment on whether additional safeguards would be appropriate or necessary to provide flexibility for appropriate use of short-term forbearance programs without creating loopholes for abuse or disincentives to long-term loss mitigation activities.

41(c)(2)(iv) Servicer Creates Reasonable Expectation That a Loss Mitigation Application Is Complete

As discussed above, the Bureau is proposing new § 1024.41(c)(2)(iv) which states that if a servicer creates a reasonable expectation that a loss mitigation application is complete but later discovers that the application is incomplete, the servicer shall treat the application as complete as of the date the borrower had reason to believe the application was complete for purposes of applying paragraphs (f)(2) and (g) until the borrower has been given a reasonable opportunity to complete the loss mitigation application. This provision is designed to work in connection with proposed new comments 41(b)(2)(i)–1 and –2 as discussed above to address scenarios when a servicer determines that an application the servicer determined to be complete or to be missing particular information in fact is lacking additional information needed for evaluation.

The Bureau has received questions about the impact of an error in the notice required by § 1024.41(b)(2)(i)(B), particularly in light of the short time period the servicer has to review the information submitted by the borrower. As discussed above the Bureau recognizes that, in certain circumstances, a borrower may submit information that appears facially complete, or that appears to be missing only specific information, but that a servicer, upon further evaluation, may determine that additional information is needed in order for the servicer to evaluate the borrower for all available loss mitigation options. The proposed commentary to § 1024.41(b)(2)(i) is intended to clarify that servicers are required to obtain the missing information in such situations. Proposed § 1024.41(c)(2)(iv) is intended to protect borrowers while a servicer requests the missing information.

Proposed comment 41(c)(2)(iv)–1 would clarify that a servicer creates a reasonable expectation that a loss mitigation application is complete when the servicer notifies the borrower in the § 1024.41(b)(2)(i)(B) notice that the application is complete or when the servicer notifies the borrower in the § 1024.41(b)(2)(i)(B) notice that certain items are missing and the borrower provides all the missing documents and information. The Bureau believes that a borrower would have a reasonable expectation that his or her loss mitigation application was complete in either of these situations.

Where a servicer creates a reasonable expectation that a loss mitigation application is complete but later discovers that the application is incomplete, proposed § 1024.41(c)(2)(iv) would provide that the servicer shall treat the application as complete for certain purposes until the borrower has been given a reasonable opportunity to supply the missing information necessary to complete the loss mitigation application. Specifically, under this provision, the servicer would need to treat the application as complete for purposes of the foreclosure referral ban in § 1024.41(f)(2) and the foreclosure sale limitations in § 1024.41(g). Proposed § 1024.41(c)(2)(iv) would ensure that servicers that make good faith mistakes in making initial determinations of completeness need not be considered in violation of the rule, and that borrowers do not lose protections under the rule due to such mistake. The Bureau believes that, once a borrower is given reason to believe he or she has the benefit of certain protections (which are triggered by submission of a complete loss mitigation application), if the servicer discovers that an application is incomplete, the borrower should have a reasonable opportunity to complete the application before losing the benefit of such protections.

Proposed comment 41(c)(2)(iv)–2 gives guidance on what would be a reasonable opportunity for the borrower to complete a loss mitigation application. The comment states that a reasonable opportunity requires that the borrower be notified of what information is missing and be given sufficient time to gather the information and submit it to the servicer. The amount of time that is sufficient for this purpose will depend on the facts and circumstances.

The Bureau believes proposed § 1024.41(c)(2)(iv) would provide incentives to servicers to conduct rigorous up-front reviews, while providing servicers the ability to correct a good-faith mistake or clerical error. Further, servicers seeking relief under the provision need only give borrowers a reasonable opportunity to provide the missing information, thus allowing a servicer to continue the foreclosure process if a borrower does not provide such information. The Bureau seeks comment on all aspects of this proposed provision. In particular, the Bureau seeks comment as to if the additional information is supplied by the borrower, should the application be considered complete as of the date the borrower was given a reasonable belief it was complete, or as of the date it was actually completed. Additionally the Bureau seeks comment as to if other measures would be necessary or useful to clarify servicer obligations and risks regarding the § 1024.41(b)(2)(i)(B) notice.

Section 1024.41(d) Denial of Loan Modification Options

As discussed above, the Bureau is proposing to move the substance of § 1024.41(d)(2) to § 1024.41(c)(1)(ii). Therefore, the Bureau is proposing to re-codify § 1024.41(d)(1) as § 1024.41(d) and to re-designate the corresponding commentary accordingly.

The Bureau is also proposing to clarify the requirement in § 1024.41(d)(1), re-codified as § 1024.41(d), that a servicer must disclose the reasons for the denial of any trial or permanent loan modification option available to the borrower. The Bureau believes it is appropriate to clarify that the requirement to disclose the reasons for denial focuses on only those determinations actually made by the servicer and does not require a servicer to continue evaluating additional factors after a decision has been established. Thus, when a servicer's automated system uses a program that considers a borrower for a loan modification by proceeding through a series of questions and ends the process if the consumer is denied, the servicer need not modify the system to continue evaluating the borrower under additional criteria. For example, suppose a borrower must meet qualifications A, B, and C to receive a loan modification, but the borrower does not meet any of these qualifications. A servicer's system may start by asking if the borrower meets qualification A, and on the failure of that qualification end the analysis for that specific loan modification option. If a servicer were required to disclose all potential reasons why the borrower may have been denied for that loan modification option (i.e., A, B, and C), it would need to consider a lengthy series of hypothetical scenarios: For example, if the borrower had met qualification A, would the borrower also have met qualification B? The Bureau did not intend such a requirement, which it believes would be potentially burdensome.

The Bureau instead intended to require only the disclosure of the actual reason or reasons on which the borrower was evaluated and denied. Accordingly, the Bureau is proposing to amend § 1024.41(d) to require that a denial notice provided by the servicer must state the ''specific reason or reasons'' for the denial and also, where applicable, disclose that the borrower was not evaluated based on other criteria. The Bureau believes that this additional information will help borrowers understand the status of their application and the fact that they were not fully evaluated under all factors (where applicable). The Bureau is also proposing new comment 41(d)–4 stating that, if a servicer's system reaches the first issue that causes a denial but does not evaluate borrowers for additional factors, a servicer need only provide the reason or reasons actually considered. Amended § 1024.41(d) would also require that the notice must state the servicer did not evaluate the borrower on other criteria. The notice is not required to list such criteria. Thus, a servicer would not be required to consider hypothetical situations to compile a complete list of potential reasons for denial of the loan modification option, but a borrower would not be given the false impression that the denial reason stated is the only grounds on which he or she might have been denied. The Bureau believes this proposed amendment appropriately balances potential concerns about compliance challenges with concerns about informing borrowers about the status of their applications and about information that is relevant to potential appeals. The Bureau seeks comment on this proposed amendment to the denial notification requirement.

41(f) Prohibition on Foreclosure Referral

The Bureau is proposing new comment 41(f)–1 to clarify what servicer actions are prohibited during the pre-foreclosure review period. Section 1024.41(f) prohibits a servicer from making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless a borrower's mortgage loan is more than 120 days delinquent; a servicer is also prohibited from making such a notice or filing while a borrower's complete loss mitigation application is being evaluated. The Bureau has received numerous questions about what is prohibited. Specifically, the Bureau has been asked if the first notice or filing includes the breach letters required by Fannie Mae (typically required at 60 days delinquency). Additionally, the Bureau has been asked if the phrase ''first notice or filing'' has the same interpretation as the Federal Housing Administration (FHA) uses to define the ''first public action,'' which marks the initiation of the foreclosure process (which includes filing a complaint or petition, recording a notice of default or publication of a notice of sale, but not merely posting a notice on the property). In light of the requests for clarification of what is allowed under this provision, the Bureau believes additional guidance is appropriate.

The Bureau notes that the foreclosure process is a matter of State law, and is addressed differently in each State. Thus, the first notice or filing required by applicable law will be determined based on State law. In general, once a loan is delinquent, a servicer continues collection activity and will begin early intervention outreach. The Bureau believes that servicers frequently use demand or breach letters to notify borrowers of their delinquency at this stage. It is at this point that the Fannie Mae breach letter would typically be sent. At some point, many servicers will internally refer the loan to a foreclosure department or will send the loan to a foreclosure attorney. The formal foreclosure process will begin, generally, with a notice of default mailed to the borrower in a non-judicial State or with the onset of a legal action in a judicial State. It is at this point that the ''first public action,'' as FHA defines it, would typically occur.

The Bureau designed the pre-foreclosure review period to mitigate the harms of dual tracking, by giving borrowers the opportunity to submit a complete loss mitigation application and have it considered without the pressure imposed by an active foreclosure process. Once a formal foreclosure process has begun, there is both more potential confusion on the part of borrowers due to dual tracking between foreclosure procedures and loss mitigation applications, and there is more pressure on the servicer to comply with State requirements and owner/investor requirements and expectations to complete the foreclosure process in a timely fashion. The Bureau is concerned that defining ''first notice or filing'' to match the terms used by the FHA and Fannie Mae for purposes of managing their foreclosure processes would be inconsistent with the intent behind the pre-foreclosure review period under 1024.41(f). In particular, the Bureau is concerned that the FHA ''first public action'' requirement could occur significantly later in the foreclosure process than the Bureau had intended under the ''first notice or filing'' standard because the term ''first public action,'' as defined by FHA, does not encompass notices to the borrower. The Bureau believes that interpreting the term ''first notice or filing'' consistent with the term ''first public action'' would allow activity the rule intended to delay until after the pre-foreclosure review period.

The Bureau notes that the rule does not prohibit servicers from engaging in collection activity or communication with the borrower; in fact, other provisions of the rules affirmatively require that periodic statements with delinquency information be sent and that the servicer must engage in early intervention activities. The Bureau believes it would be appropriate for a servicer to send a breach letter at day 60, if the letter were sent for the general purpose of notifying the borrower of his or her delinquency and encouraging discussions about potential cures and loss mitigation options. However, to the extent that the servicer is sending a breach letter at day 60 with the purpose of serving as the formal notification of default to begin foreclosure proceedings in a non-judicial State, that is the type of activity that the rule was intended to delay until after the pre-foreclosure review period. The Bureau is therefore proposing a new comment to clarify what is prohibited under § 1024.41(f). Proposed comment 41(f)–1 would state that whether a document is considered the first notice or filing is determined according to applicable State law. A document that would be used as evidence of compliance with foreclosure practices required pursuant to State law is considered the first notice or filing, and a servicer thus is prohibited from filing such a document during the pre-foreclosure review period. Documents that would not be used in this fashion are not considered the first notice or filing. Thus, a servicer is not prohibited from attempting to collect the debt, sending periodic statements, sending breach letters or any other activity during the pre-foreclosure review period, so long as such documents would not be used as evidence of complying with requirements applicable pursuant to State law in connection with a foreclosure process, and are not banned by other applicable law (e.g., the Fair Debt Collection Practices Act or bankruptcy law). Instead, the Bureau expects that, when a State requires the first step to begin the formal foreclosure process is that a notice of default must be mailed to the borrower, such a notice would be sent after the expiration of the pre-foreclosure review period because earlier notices could not be used for such purposes consistent with the regulation.

Thus, under proposed comment 41(f)–1, to comply with the requirements of § 1024.41(f), any document that would be used as evidence of compliance with a State law requirement to initiate the foreclosure process by providing the borrower with a notice of default must be provided after the pre-foreclosure review period required by § 1024.41(f). If a State law process mandates a notice to a borrower of the availability of mediation and such notice is a necessary prerequisite under State law to commence the foreclosure process, that notice is included in the definition of first notice or filing for the purposes of § 1024.41.

The Bureau acknowledges that the provisions of § 1024.41 extend the timeline of a foreclosure by an additional 120 days. While the proposed clarifications may highlight that existing state procedures in connection with the Bureau's rule may create delays in the foreclosure process that are longer than 120 days, the Bureau notes this is not a new delay imposed by the proposed clarifications. The Bureau seeks to establish a rule that balances protecting consumers and encouraging communication between borrowers and servicers. The proposed rule would protect consumers by giving effect to the provisions in § 1024.41 intended to ensure a borrower is given sufficient time to submit a complete loss mitigation application and a servicer has time to work with the borrower without the pressure of a foreclosure practice. The rule would encourage communication by allowing the servicer to engage in any activity not being used as a prerequisite to State foreclosure practices. Further, the Bureau seeks to establish a workable rule that will clearly define what is and is not allowed, a goal that is complicated in light of both the varying foreclosure laws of different states, and the fact that a notice to the borrower may be sent for multiple reasons. The Bureau believes the proposed clarifications best balance these goals, but seeks comment on this topic.

41(f)(1) Pre-Foreclosure Review Period

The Bureau is proposing to amend the prohibition on referral to foreclosure until after the 120th day of delinquency by limiting the foreclosure ban in two scenarios: when the foreclosure is based on a borrower's violation of a due-on-sale clause, and when the servicer is joining the foreclosure action of a subordinate lienholder. Section 1024.41(f)(1) requires a 120-day pre-foreclosure review period; A servicer may not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless a borrower's mortgage loan obligation is more than 120 days delinquent. This review period is intended to ensure a borrower's loss mitigation application may be submitted and reviewed without the pressure of an active foreclosure process and to mitigate some of the consumer harms associated with dual tracking. However, the Bureau notes that there may be some circumstances where a servicer forecloses for reasons that do not involve a borrower's delinquency. In such scenarios, the Bureau acknowledges the protections for delinquent borrowers may not be appropriate or necessary. For example, if a borrower were current on his or her loan but transferred the property to another party (in breach of the loan contract), the rationale for the pre-foreclosure review of loss mitigation applications would not be applicable. Similarly, if a borrower were current on his or her first lien but was delinquent on a second lien mortgage, and the servicer for the second lien began a foreclosure action, it would be appropriate for the servicer of the first lien to join the foreclosure action, regardless of the fact that the borrower is current on the first lien mortgage.

The Bureau believes it may be appropriate to include an exemption to the 120-day pre-foreclosure review period in certain scenarios and is proposing to amend § 1024.41(f)(1) to include exclusions to the 120-day foreclosure ban when the foreclosure is based on a borrower's violation of a due-on-sale clause or when the servicer is joining the foreclosure action of a subordinate lienholder. The Bureau seeks comment on the proposed changes. Additionally, the Bureau seeks comment on whether other scenarios would appropriately be exempted from the 120-day foreclosure ban and on whether the exemption is appropriate in situations in which a borrower has submitted a complete loss mitigation application

41(h) Appeal Process

41(h)(4) Appeal Determination

The Bureau is proposing to amend § 1024.41(h)(4) to provide expressly that the notice informing a borrower of the determination of his or her appeal must also state the amount of time the borrower has to accept or reject an offer of a loss mitigation option after the notice is provided to the borrower. For the reasons discussed in the section-by-section analysis of § 1024.41(c)(1)(ii), which would require the § 1024.41(b)(2)(i)(B) notice to include how long the borrower has to accept or reject an offer of a loss mitigation option, the Bureau believes it is important that borrowers be informed of their rights. The Bureau believes that a borrower who is offered a loss mitigation option should be informed of how long he or she has to accept that option regardless of whether the option is being offered in response to an initial evaluation of a loss mitigation application or after the conclusion of an appeal. The Bureau seeks comment on this amendment.

41(j) Prohibition on Foreclosure Referral

As discussed above, the Bureau is proposing to amend the prohibition on referral to foreclosure until after the 120th day of delinquency by limiting the foreclosure ban in two situations: when the foreclosure is based on a borrower's violation of a due-on-sale clause and when the servicer is joining the foreclosure action of a subordinate lienholder. For the same reasons, the Bureau believes it would be appropriate to make corresponding amendments to the provision in § 1024.41(j) prohibiting a small servicer from making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless a borrower's mortgage loan obligation is more than 120 days delinquent. Thus, the Bureau is proposing to amend § 1024.41(j) to allow foreclosure before the 120th day of delinquency when the foreclosure is based on a borrower's violation of a due-on-sale clause and when the servicer is joining the foreclosure action of a subordinate lienholder, by incorporating a cross-reference to § 10124.41(f)(1). The Bureau seeks comment on this amendment.

C. Regulation Z

General—Technical Corrections

In addition to the proposed clarifications and amendments to Regulation Z discussed below, the Bureau is also proposing technical corrections and minor clarifications to wording throughout Regulation Z that are not substantive in nature. The Bureau is proposing such technical and wording clarifications to regulatory text in §§ 1026.23, 1026.31, 1026.32, 1026.35, and 1026.36 and to commentary to §§ 1026.25, 1026.32, 1026.34, 1026.36, and 1026.41.

Section 1026.23 Right of Rescission

23(a) Consumer's Right To Rescind

23(a)(3)(ii)

The Bureau is proposing to amend § 1026.23(a)(3)(ii) to update a cross-reference within that section from § 1026.35(e)(2), as adopted by the Bureau's Amendments to the 2013 Escrows Final Rule under the Truth in Lending Act (Regulation Z) (May 2013 Escrows Final Rule),[20] to § 1026.43(g). The cross-reference in the Amendments to the 2013 Escrows Final Rule under the Truth in Lending Act (Regulation Z) is the correct cross-reference during the time period that rule will be in effect for transactions where applications are received on or after June 1, 2013, but prior to January 10, 2014. For transactions where applications are received on or after January 10, 2014, the correct cross-reference will be to § 1026.43(g). For this reason, the Bureau is proposing to remove the cross-reference to § 1026.35(e)(2) and replace it with a cross-reference to § 1026.43(g).

Section 1026.32 Requirements for High-Cost Mortgages

32(b) Definitions

Two of the Bureau's 2013 Title XIV Final Rules—the 2013 ATR Final Rule and the 2013 HOEPA Final Rule—contain provisions that relate to a transaction's ''points and fees.''[21] Specifically, § 1026.43(e)(2)(iii), as adopted by the 2013 ATR Final Rule, sets forth a cap on points and fees for a closed-end credit transaction to acquire qualified mortgage status. In addition, § 1026.32(a)(1)(ii), as adopted by the 2013 HOEPA Final Rule, sets forth a points and fees coverage threshold for both closed- and open-end credit transactions.[22] These two final rules also adopted definitions of points and fees for closed- and open-end credit transactions.

Section 1026.32(b)(1) defines ''points and fees'' for closed-end credit transactions, for purposes of both the qualified mortgage points and fees cap and the high-cost mortgage coverage threshold. Section 1026.32(b)(1)(i) defines points and fees for closed-end credit transactions to include all items included in the finance charge as specified under § 1026.4(a) and (b), with the exception of certain items specifically excluded under § 1026.32(b)(1)(i)(A) through (F). These excluded items include interest or time-price differential; certain types and amounts of mortgage insurance premiums; certain bona fide third-party charges not retained by the creditor, loan originator or an affiliate of either; and certain bona fide discount points paid by the consumer. Section 1026.32(b)(1)(ii) through (vi) lists certain other items that are specifically included in points and fees, including compensation paid directly or indirectly by a consumer or creditor to a loan originator; certain real-estate related items listed in § 1026.4(c)(7); premiums

[20] 78 FR 30739 (May 23, 2013).

[21] *See* 78 FR 6407; 78 FR 6856. The Bureau also addressed points and fees in the May 2013 ATR Final Rule. *See* 78 FR 35430.

[22] Section 1026.43(b)(9) provides that, for the qualified mortgage points and fees cap, ''points and fees'' has the same meaning as in § 1026.32(b)(1).

for various forms of credit insurance, including credit life, credit disability, credit unemployment and credit property insurance; the maximum prepayment penalty, as defined in § 1026.32(b)(6)(i), that may be charged or collected under the terms of the mortgage loan; and the total prepayment penalty as defined in § 1026.32(b)(6)(i) incurred by the consumer if the consumer refinances an existing mortgage loan with the current holder of the existing loan (or a servicer acting on behalf of the current holder, or an affiliate of either).

Section 1026.32(b)(2), which defines points and fees for open-end credit plans for purposes of the high-cost mortgage thresholds, essentially follows the inclusions and exclusions set out in § 1026.32(b)(1) for closed-end transactions, with several modifications and additional inclusions related to fees charged for open-end credit plans.

32(b)(1)

The Bureau is proposing to add new commentary to § 1026.32(b)(1) to clarify when charges paid by parties other than the consumer, including third parties, are included in points and fees. Prior to the Dodd-Frank Act, TILA section 103(aa)(1)(B) provided that a mortgage is subject to the restrictions and requirements of HOEPA if the total points and fees ''payable *by the consumer* at or before closing'' (emphasis added) exceed the threshold amount. However, section 1431(a) of the Dodd-Frank Act amended the points and fees coverage test to provide in TILA section 103(bb)(1)(A)(ii) that a mortgage is a high-cost mortgage if the total points and fees ''payable *in connection with the transaction*'' (emphasis added) exceed newly established thresholds. Similarly, TILA section 129C(b)(2)(A)(vii) provides that points and fees ''payable *in connection with the loan''* (emphasis added) are included in the points and fees calculation for qualified mortgages.

The Bureau believes that additional clarification concerning the treatment of charges paid by parties other than the consumer, including third parties, for purposes of inclusion in or exclusion from points and fees would be beneficial to consumers and creditors and facilitate compliance with the rule. Specifically, the Bureau is proposing to add new comment 32(b)(1)–2 to clarify the treatment of charges imposed in connection with a closed-end credit transaction that are paid by a party to the transaction other than the consumer, for purposes of determining whether that charge is included in points and fees as defined in § 1026.32(b)(1). The proposed comment states that charges paid by third parties that fall within the definition of points and fees set forth in § 1026.32(b)(1)(i) through (vi) are included in points and fees, and provides examples of third-party payments that are included and excluded. In discussing included charges, the proposed comment notes that a third-party payment of an item excluded from the finance charge under a provision of § 1026.4, while not included in points and fees under § 1026.32(b)(1)(i), may be included under § 1026.32(b)(1)(ii) through (vi). In discussing excluded charges, the proposed comment states that a charge paid by a third party is not included in points and fees under § 1026.32(b)(1)(i) as a component of the finance charge if any of the exclusions from points and fees in § 1026.32(b)(1)(i)(A) through (F) applies.

The proposed comment also discusses the treatment of ''seller's points,'' as described in § 1026.4(c)(5) and commentary. The proposed comment states that seller's points are excluded from the finance charge and thus are not included in points and fees under § 1026.32(b)(1)(i), but also notes that charges paid by the seller may be included in points and fees if the charges are for items in § 1026.32(b)(1)(ii) through (vi). Finally the proposed comment restates for clarification purposes that, pursuant to § 1026.32(b)(1)(i)(A) and (ii), charges that are paid by the creditor, other than loan originator compensation paid by the creditor that is required to be included in points and fees under § 1026.32(b)(1)(ii), are excluded from points and fees. To the extent that the creditor recovers the cost of such charges from the consumer, the cost is recovered through the interest rate, which is excluded from points and fees under § 1026.32(b)(1)(i)(A). Section 1026.32(b)(1)(i) and (A) implements section 103(bb)(4)(A) of TILA to include in points and fees ''[a]ll items included in the finance charge under 1026.4(a) and (b)'' but specifically excludes ''interest and time-price differential.'' Under § 1026.32(b)(1)(ii), however, compensation paid by the creditor to loan originators, other than employees of the creditor, is included in points and fees.

The Bureau believes this clarification of the treatment of charges paid by parties other than the consumer for points and fees purposes is consistent with the amendment to TILA made by section 1431(a) of the Dodd-Frank Act, discussed above.

32(b)(1)(ii) and 32(b)(2)(ii)

Section 1431(c)(1)(B) of the Dodd-Frank Act requires that points and fees include ''all compensation paid directly or indirectly by a consumer or creditor to a mortgage originator from any source . . . . '' TILA section 103(bb)(4). The 2013 ATR Final Rule implemented this statutory provision in amended § 1026.32(b)(1)(ii), which provides that, for both the qualified mortgage points and fees limits and the high-cost mortgage points and fees threshold, points and fees include all compensation paid directly or indirectly by a consumer or creditor to a loan originator, as defined in § 1026.36(a)(1), that can be attributed to the transaction at the time the interest rate is set. The 2013 HOEPA Final Rule implemented § 1026.32(b)(2)(ii), which provides the same standard for including loan originator compensation in points and fees for open-end credit plans (*i.e.,* a home equity line of credit, or HELOC). Concurrent with the 2013 ATR Final Rule, the Bureau also issued the 2013 ATR Concurrent Proposal, which, among other things, proposed certain clarifications for calculating loan originator compensation for points and fees. The Bureau finalized the 2013 ATR Concurrent Proposal in the May 2013 ATR Final Rule, which further amended § 1026.32(b)(1)(ii) to exclude certain types of loan originator compensation from points and fees. In particular, the May 2013 ATR Final Rule excludes from points and fees loan originator compensation paid by a consumer to a mortgage broker when that payment has already been counted toward the points and fees thresholds as part of the finance charge under § 1026.32(b)(1)(i). *See* § 1026.32(b)(1)(ii)(A). It also excludes from points and fees compensation paid by a mortgage broker to an employee of the mortgage broker because that compensation is already included in points and fees as loan originator compensation paid by the consumer or the creditor to the mortgage broker. *See* § 1026.32(b)(1)(ii)(B). In addition, the May 2013 ATR Final Rule excludes from points and fees compensation paid by a creditor to its loan officers. *See* § 1026.32(b)(1)(ii)(C).

The 2013 ATR Concurrent Proposal had requested comment on whether additional adjustment of the rules or additional commentary is necessary to clarify any overlapping definitions between the points and fees provisions in the 2013 ATR Final Rule and the 2013 HOEPA Final Rule and the provisions adopted by the 2013 Loan Originator Compensation Final Rule. In particular, the Bureau sought comment on whether additional guidance would be useful regarding persons who are ''loan originators'' under § 1026.36(a)(1) but are not employed by a creditor or mortgage broker, such as employees of a retailer of manufactured homes.

In response to the 2013 ATR Concurrent Proposal, several industry and nonprofit commenters requested clarification of what compensation must be included in points and fees in connection with transactions involving manufactured homes. First, they requested additional guidance on what activities would cause a manufactured home retailer and its employees to qualify as loan originators. Second, they requested additional guidance on what compensation paid to manufactured home retailers and their employees would be counted as loan originator compensation and included in points and fees. The Bureau believes it is appropriate to provide additional opportunity for public comment on these issues. Accordingly, rather than provide additional guidance in the May 2013 ATR Final Rule, the Bureau noted that it would propose and seek comment on additional guidance.

The 2013 Loan Originator Compensation Final Rule had provided additional guidance on what activities would cause such a retailer and its employees to qualify as loan originators in light of language from the Dodd-Frank Act creating an exception from the definition of loan originator for employees of manufactured home retailers that engage in certain limited activities. *See* § 1026.36(a)(1)(i)(B) and comments 36(a)–1.i.A and 36(a)–4. Commenters responding to the 2013 ATR Concurrent Proposal nevertheless argued that it remains unclear what activities a retailer and its employees could engage in without qualifying as loan originators and causing their compensation to be included in points and fees. Industry commenters also noted that, because a creditor has limited knowledge of and control over the activities of a manufactured home retailer and its employees, it would be difficult for the creditor to know whether the retailer and its employees had engaged in activities that would require their compensation to be included in points and fees. Industry commenters therefore urged the Bureau to adopt a bright-line rule under which compensation would be included in points and fees only if paid to an employee of a creditor or a mortgage broker.

As noted in the May 2013 ATR Final Rule, the Bureau does not believe it is appropriate to use its exception authority to exclude from points and fees all compensation that may be paid to a manufactured home retailer. As a general matter, to the extent that the consumer or creditor is paying the retailer for loan origination activities, the retailer is functioning as a mortgage broker and compensation for the retailer's loan origination activities should be captured in points and fees. As discussed below, the Bureau is proposing to clarify what compensation must be included in points and fees. As discussed in the **SUPPLEMENTARY INFORMATION** describing proposed revisions and clarifications to the rule text and commentary defining ''loan originator,'' the Bureau is also proposing to clarify the circumstances in which employees of manufactured home retailers are loan originators, including a revision to § 1026.36(a)(i)(B). In addition, the Bureau is continuing to conduct outreach with the manufactured home industry and other interested parties to address concerns about what activities are permissible for a retailer and its employees without causing them to qualify as loan originators.

Industry commenters responding to the 2013 ATR Concurrent Proposal also requested that the Bureau clarify what compensation must be included in points and fees when a retailer and its employees qualify as loan originators. They argued that it is not clear whether the sales price received by the retailer or the sales commission received by the retailer's employee should be considered, at least in part, loan originator compensation. They urged the Bureau to clarify that compensation paid to a retailer and its employees in connection with the sale of a manufactured home should not be counted as loan originator compensation.

Under § 1026.32(b)(1)(ii), loan originator compensation is included in points and fees only if it can be attributed to a transaction at the time the interest rate is set. The Bureau believes that the sales price would not include compensation that is paid for loan origination activities and that can be attributed to a specific transaction. The sales price of a manufactured home allows manufactured home retailers to recover their costs (including the costs of compensating salespersons and other employees) and earn a profit. The Bureau does not believe that manufactured home retailers charge a different sales price depending on whether or not the retailer engages in loan origination activities for that particular transaction. If the retailer does not increase the price to obtain compensation for loan origination activities, then it does not appear that the sales price would include loan originator compensation that could be attributed to that particular transaction.

The Bureau acknowledges that it is theoretically possible that the sales price could include loan originator compensation that could be attributed to a particular transaction at the time the interest rate is set and that therefore should be included in points and fees. One approach for calculating loan originator compensation for manufactured home transactions would be to compare the sales price in a transaction in which the retailer engaged in loan origination activities and the sales prices in transactions in which the retailer did not do so (such as in cash transactions or in transactions in which the consumer arranged credit through another party). To the extent that there is a higher sales price in the transaction in which the retailer engaged in loan origination activities, then the difference in sales prices could be counted as loan originator compensation that can be attributed to that transaction and that therefore should be included in points and fees.

However, the Bureau does not believe that it is workable for the creditor to use this comparative sales price approach to determine whether the sales price includes loan originator compensation that must be included in points and fees. The creditor is responsible for calculating loan originator compensation to be included in points and fees for the qualified mortgage and high-cost mortgage points and fees thresholds. Accordingly, under the comparative sales price approach, the creditor would have to analyze a manufactured home retailer's prices to determine if there were differences in the prices that would have to be included in points and fees as loan originator compensation. This would appear to be an extremely difficult analysis for the creditor to perform. Not only would the creditor have to compare the sales prices from numerous transactions, it would have to determine whether any differences between the sales prices can be attributed to the loan origination activities of the retailer and not to other factors.

As noted above, the Bureau does not believe that the sales price of a manufactured home includes loan originator compensation that can be attributed to a particular transaction. Moreover, the Bureau does not believe it is practicable for the creditor to attempt to analyze the sales price to determine if it does in fact include loan originator compensation that can be attributed to a particular transaction and therefore must be included in points and fees. Accordingly, the Bureau is proposing guidance providing that the sales price of a manufactured home does not include loan originator compensation that can be attributed to the transaction at the time the interest rate is set and that the sales price therefore does not include loan originator compensation that must be included in points and fees under § 1026.32(b)(1)(ii). The Bureau requests comment on this proposed guidance. In addition, the Bureau requests comment on whether the sales price of a manufactured home does include loan originator compensation that can be attributed to the transaction at the time the interest rate is set, and, if so, whether there are practicable ways for a creditor to measure that compensation so that it could be included in points and fees.

With respect to employees of manufactured home retailers, the Bureau notes that the May 2013 ATR Final Rule added § 1026.32(b)(1)(ii)(B), which excludes from points and fees compensation paid by mortgage brokers to their loan originator employees. It appears to the Bureau that when an employee of a retailer would qualify as a loan originator, the retailer also would qualify as a loan originator and therefore would qualify as a mortgage broker. If the retailer qualifies as a mortgage broker, any compensation paid by the retailer to the employee would be excluded from points and fees under § 1026.32(b)(1)(ii)(B).

The Bureau notes, however, that if there were instances in which an employee of a manufactured home retailer would qualify as a loan originator but the retailer would not, the exclusion from points and fees in § 1026.32(b)(1)(ii)(B) for compensation paid to an employee of a mortgage broker would not apply because the retailer would not be a mortgage broker. Nevertheless, the Bureau believes it may still be appropriate to exclude such compensation paid to an employee of a manufactured home retailer. As noted by some commenters responding to the 2013 ATR Concurrent Proposal, it may be difficult for creditors to determine whether employees of a manufactured home retailer have engaged in loan origination activities and, if so, what compensation they received for doing so. The Bureau understands that a retailer typically pays a sales commission to its employees, so it may be difficult for a creditor to know whether a retailer has paid any compensation to its employees for loan origination activities, as distinct from compensation for sales activities.[23] Accordingly, to prevent any such uncertainty, the Bureau is proposing new § 1026.32(b)(1)(ii)(D), which excludes from points and fees all compensation paid by manufactured home retailers to their employees. The Bureau requests comment on this proposed exclusion. The Bureau also requests comment on whether there are instances in which an employee of a manufactured home retailer would qualify as a loan originator but the retailer would not qualify as a loan originator.

The Bureau notes that it is proposing to exclude from points and fees only compensation that is paid by a manufactured home retailer to its employees. To the extent that an employee of a manufactured home retailer receives from another source (such as the creditor) loan originator compensation that can be attributed to the transaction at the time the interest rate is set, then that compensation must be included in points and fees.

As noted above, the Bureau is proposing new § 1026.32(b)(1)(ii)(D), which excludes from points and fees all compensation paid by manufactured home retailers to their employees. The Bureau is also proposing new § 1026.32(b)(2)(ii)(D), which provides that, for open-end credit plans, compensation paid by manufactured home retailers to their employees is excluded from points and fees for purposes of the high-cost mortgage points and fees threshold.

The Bureau is also proposing new comment 32(b)(1)(ii)–5, which explains what compensation is included in loan originator compensation that must be included in points and fees for manufactured home transactions. Proposed comment 32(b)(1)(ii)–5.i states that, if a manufactured home retailer receives compensation for loan origination activities and such compensation can be attributed to the transaction at the time the interest rate is set, then such compensation is loan originator compensation that is included in points and fees. Proposed comment 32(b)(1)(ii)–5.ii specifies that the sales price of the manufactured home does not include loan originator compensation that can be attributed to the transaction at the time the interest rate is set and therefore is not included in points and fees. Proposed comment 32(b)(1)(ii)–5.iii specifies that, consistent with new § 1026.32(b)(1)(ii)(D), compensation paid by a manufactured home retailer to its employees is not included in points and fees.

The Bureau is proposing new § 1026.32(b)(1)(ii)(D) and (b)(2)(ii)(D) pursuant to its authority under TILA section 105(a) to make such adjustments and exceptions for any class of transactions as the Bureau finds necessary or proper to facilitate compliance with TILA and to effectuate the purposes of TILA, including the purposes of TILA section 129C of ensuring that consumers are offered and receive residential mortgage loans that reasonably reflect their ability to repay the loans. The Bureau's understanding of this purpose is informed by the findings related to the purposes of section 129C of ensuring that responsible, affordable mortgage credit remains available to consumers. The Bureau believes that using its TILA exception authorities will facilitate compliance with the points and fees regulatory regime by not requiring creditors to investigate the manufactured housing retailer's employee compensation practices, and by making sure that all creditors apply the provision consistently. It will also effectuate the purposes of TILA by helping to keep mortgage loans available and affordable by ensuring that they are subject to the appropriate regulatory framework with respect to qualified mortgages and the high-cost mortgage threshold. The Bureau is also invoking its authority under TILA section 129C(b)(3)(B) to revise, add to, or subtract from the criteria that define a qualified mortgage consistent with applicable standards. For the reasons explained above, the Bureau has determined that it is necessary and proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of TILA section 129C and necessary and appropriate to effectuate the purposes of this section and to facilitate compliance with section 129C. With respect to its use of TILA section 129C(b)(3)(B), the Bureau believes this authority includes adjustments and exceptions to the definitions of the criteria for qualified mortgages and that it is consistent with the purpose of facilitating compliance to extend use of this authority to the points and fees definitions for high-cost mortgage in order to preserve the consistency of the qualified mortgage and high-cost mortgage definitions. As

[23] Commenters asserted that creditors may presume that the sales commissions should be treated as loan originator compensation and include such payments in points and fees. They maintain that doing so would prevent most loans from staying under the qualified mortgage points and fees limits and would cause many loans to exceed the high-cost mortgage points and fees thresholds.

noted above, by helping to ensure that the points and fees calculation is not artificially inflated, the Bureau is helping to ensure that responsible, affordable mortgage credit remains available to consumers.

The Bureau also has considered the factors in TILA section 105(f) and has concluded that, for the reasons discussed above, the proposed exemption is appropriate under that provision. Pursuant to TILA section 105(f), the Bureau may exempt by regulation from all or part of this title all or any class of transactions for which in the determination of the Bureau coverage does not provide a meaningful benefit to consumers in the form of useful information or protection. In determining which classes of transactions to exempt, the Bureau must consider certain statutory factors. For the reasons discussed above, the Bureau is proposing to exclude from points and fees compensation paid by a retailer of manufactured homes to its employees because including such compensation in points and fees does not provide a meaningful benefit to consumers. The Bureau believes that the proposed exemption is appropriate for all affected consumers to which the proposed exemption applies, regardless of their other financial arrangements and financial sophistication and the importance of the loan to them. Similarly, the Bureau believes that the proposed exemption is appropriate for all affected loans covered under the proposed exemption, regardless of the amount of the loan and whether the loan is secured by the principal residence of the consumer. Furthermore, the Bureau believes that, on balance, the proposed exemption will simplify the credit process without undermining the goal of consumer protection, denying important benefits to consumers, or increasing the expense of the credit process.

The Bureau also concludes that, to the extent that it determines that it would be appropriate to adopt a regulatory provision that excludes from points and fees any loan originator compensation in the sales price of a manufactured home, such an exclusion also would be appropriate under TILA section 105(f). The Bureau believes that including such compensation in points and fees does not provide a meaningful benefit to consumers. The Bureau believes that such an exemption would be appropriate for all affected consumers to which the exemption would apply, regardless of their other financial arrangements and financial sophistication and the importance of the loan to them. Similarly, the Bureau believes that the exemption would be appropriate for all affected loans, regardless of the amount of the loan and whether the loan is secured by the principal residence of the consumer. Furthermore, the Bureau believes that, on balance, the exemption would simplify the credit process without undermining the goal of consumer protection, denying important benefits to consumers, or increasing the expense of the credit process.

32(b)(1)(vi) and 32(b)(2)(vi)

The Bureau is proposing changes to § 1026.32(b)(1)(vi) and (2)(vi) to harmonize more fully the definitions of ''total prepayment penalty'' adopted in these two sections with the statutory requirement implemented by them. Section 1026.32(b)(1)(vi) and (2)(vi) implements section 1431(c) of the Dodd-Frank Act, which added new TILA section 103(bb)(4)(F). That provision requires that points and fees include ''all prepayment fees or penalties that are incurred by the consumer if the loan refinances a previous loan made or currently held by the same creditor or an affiliate of the creditor.'' As adopted by the 2013 ATR Final Rule, § 1026.32(b)(1)(vi) implements this provision as it relates to closed-end credit transactions, and provides that points and fees must include ''[t]he total prepayment penalty, as defined in paragraph (b)(6)(i) of this section, incurred by the consumer if the consumer refinances the existing mortgage loan with the current holder of the existing loan, a servicer acting on behalf of the current holder, or an affiliate of either.'' As adopted by the 2013 HOEPA Final Rule, § 1026.32(b)(2)(vi) implements this provision as it relates to open-end credit plans (*i.e.,* a home equity line of credit, or HELOC), and provides that points and fees must include ''[t]he total prepayment penalty, as defined in paragraph (b)(6)(ii) of this section, incurred by the consumer if the consumer refinances an existing closed-end credit transaction with an open-end credit plan, or terminates an existing open-end credit plan in connection with obtaining a new closed- or open-end credit transaction, with the current holder of the existing plan, a servicer acting on behalf of the current holder, or an affiliate of either.''

The Bureau intended these provisions to work in the same manner for closed-end and open-end credit transactions: To include in points and fees any prepayment charges triggered by the refinancing of an existing loan or termination of a HELOC by obtaining a new credit transaction with the current holder of the existing closed-end mortgage loan or open-end credit plan. The Bureau believes that additional clarification as to when prepayment penalties are included in points and fees in connection with the refinancing of a closed-end mortgage loan or the termination and replacement of a HELOC with the holder of the existing loan or HELOC would be beneficial.

The Bureau is proposing changes to § 1026.32(b)(1)(vi) and (2)(vi) to clarify both provisions' application. Specifically, the Bureau is proposing to state expressly that § 1026.32(b)(1)(vi) applies to instances where the consumer takes out a closed-end mortgage loan to pay off and terminate an existing open-end credit plan held by the same creditor and the plan imposes a prepayment penalty (as defined in § 1026.32(b)(6)(ii)) on the consumer. The Bureau also is proposing to strike from § 1026.32(b)(2)(vi) the reference to obtaining a new closed-end credit transaction because § 1026.32(b)(2)(vi) relates to points and fees only for open-end credit plans and § 1026.32(b)(1)(vi) would apply instead. The Bureau is also proposing to insert in § 1026.32(b)(2)(vi) a reference to § 1026.32(b)(6)(i), the definition of prepayment penalties for closed-end credit transactions, to clarify that this definition applies in calculating the prepayment penalties included where a consumer refinances a closed-end mortgage loan with a HELOC with the creditor holding the closed-end mortgage loan (*i.e.,* the closed-end mortgage loan's prepayment penalties are included in calculating points and fees for the HELOC). The Bureau believes that these changes are consistent with the statutory provision implemented by this section and clarify the Bureau's intended application of § 1026.32(b)(1)(vi) and (2)(vi).

32(b)(2)

The Bureau is proposing the addition of a new comment 32(b)(2)–1 that directs readers for further guidance on the inclusion of charges paid by parties other than the consumer in points and fees for open-end credit plans to proposed comment 32(b)(1)–2 on closed-end credit transactions.

32(d) Limitations

32(d)(1)

32(d)(1)(ii) Exceptions

32(d)(1)(ii)(C)

The Bureau is proposing to revise the exception to the prohibition on balloon payments for high-cost mortgages in § 1026.32(d)(1)(ii)(c) for transactions that satisfy the criteria set forth in § 1026.43(f), which implements a Dodd-

Frank Act provision that allows certain balloon-payment mortgages made by small creditors operating predominantly in ''rural or underserved areas'' to be accorded status as qualified mortgages under the 2013 ATR Final Rule. The Bureau has received extensive comment on the definitions of ''rural'' and ''underserved'' that it adopted for purposes of § 1026.43(f) and certain other purposes in the 2013 Title XIV Final Rules, and recently announced that it would reexamine those definitions over the next two years to determine whether further adjustments are appropriate particularly in light of access to credit concerns.[24] The Bureau also amended the 2013 ATR Final Rule to add § 1026.43(e)(6) to allow small creditors during the period from January 10, 2014, to January 10, 2016, to make balloon-payment qualified mortgages even if they do not operate predominantly in rural or underserved areas.[25] In light of those actions, the Bureau is proposing to revise § 1026.32(d)(1)(ii)(c) to expand the exception to the prohibition on balloon payments for high-cost mortgages for transactions that satisfy the criteria in either § 1026.43(f) or (e)(6).

The balloon qualified mortgage provision in § 1026.43(f) implements a Dodd-Frank Act provision that appears to have been designed to promote access to credit. The Dodd-Frank Act generally prohibits balloon-payment loans from being accorded qualified mortgage status, but Congress appears to have been concerned that small creditors in rural areas might have sufficient difficulty converting from balloon-payment loans to adjustable rate mortgages that they would curtail mortgage lending if they could not obtain qualified mortgage status for their balloon-payment loans. As adopted in the 2013 ATR Final Rule, the exemption is available to creditors that extended more than 50 percent of their total covered transactions secured by a first lien in ''rural'' or ''underserved'' counties during the preceding calendar year.

Because commenters raised similar concerns about the prohibition in HOEPA on high-cost mortgages having balloon-payment features, the Bureau decided in the 2013 HOEPA Final Rule to adopt § 1026.32(d)(1)(ii)(C) to allow balloon-payment features on loans that met the qualified mortgage requirements. The Bureau stated that, in its view, (1) allowing creditors in certain rural or underserved areas to extend high-cost mortgages with balloon payments will benefit consumers by expanding access to credit in these areas, and also will facilitate compliance for creditors who make these loans; and (2) allowing creditors that make high-cost mortgages in rural or underserved areas to originate loans with balloon payments if they satisfy the same criteria promotes consistency between the 2013 HOEPA Final Rule and the 2013 ATR Final Rule, and thereby facilitates compliance for creditors that operate in these areas.

Because the Bureau has now decided to allow small creditors an additional two years to transition from balloon-payment loans to other products while it reevaluates the definitions of ''rural'' and ''underserved,'' the Bureau believes it is appropriate to carry over the flexibility provided by the revised May 2013 ATR Final Rule into the HOEPA balloon loan provisions. Accordingly, the Bureau is proposing to amend § 1026.32(d)(1)(ii)(C) to include the § 1026.43(e)(6) exception. The Bureau is proposing to expand this exception pursuant to its authority under TILA section 129(p)(1), which grants it authority to exempt specific mortgage products or categories from any or all of the prohibitions specified in TILA section 129(c) through (i) if the Bureau finds that the exemption is in the interest of the borrowing public and will apply only to products that maintain and strengthen homeownership and equity protections.

The Bureau believes expanding the balloon-payment exception for high-cost mortgages to allow certain small creditors operating in areas that do not qualify as ''rural'' or ''underserved'' to continue to originate high-cost mortgages with balloon payments is in the interest of the borrowing public and will strengthen homeownership and equity protection. The Bureau believes allowing greater access to credit in remote areas that nevertheless may not meet the definitions of ''rural'' or ''underserved'' while creditors transition to adjustable rate mortgages (or the Bureau reconsiders those definitions) will help those consumers who otherwise may be able to obtain credit only from a limited number of creditors. Further, it will do so in a manner that balances consumer protections with access to credit. In the Bureau's view, concerns about potentially abusive practices that may accompany balloon payments will be curtailed by the additional requirements set forth in § 1026.43(e)(6) and (f). Creditors that make these high-cost mortgages will be required to verify that the loans also satisfy the additional criteria discussed above, including some specific criteria required for qualified mortgages. Further, creditors that make balloon-payment high-cost mortgages under this exception will be required to hold the high-cost mortgages in portfolio for a specified time, which the Bureau believes also decreases the risk of abusive lending practices. Accordingly, for these reasons and for the purpose of consistency between the two rulemakings, the Bureau is proposing to amend the 2013 HOEPA Final Rule to include an exception to the § 1026.32(d)(1) balloon-payment restriction for high-cost mortgages where the creditor satisfies the conditions set forth in §§ 1026.43(f)(1)(i) through (vi) and 1026.43(f)(2) or the conditions set forth in § 1026.43(e)(6).

Section 1026.35 Requirements for Higher-Priced Mortgage Loans

35(b) Escrow Accounts

35(b)(2) Exemptions

35(b)(2)(iii)

35(b)(2)(iii)(A)

The Bureau is proposing to revise the exemption provided by § 1026.35(b)(2)(iii) to the general requirement that creditors establish an escrow account for first lien higher-priced mortgage loans where a small creditor operates predominantly in rural or underserved areas and meets various other criteria. The Bureau has received extensive comment on the definitions of ''rural'' and ''underserved'' that it adopted for purposes of § 1026.35(b)(2) and certain other purposes in the 2013 Title XIV Final Rules and recently announced that it would re-examine those definitions over the next two years

[24] *See e.g.,* U.S. Consumer Fin Prot. Bureau, *Clarification of the 2013 Escrows Final Rule* (May 16, 2013), *available at http://www.consumerfinance.gov/blog/clarification-of-the-2013-escrows-final-rule/.*

[25] Specifically, in the May 2013 ATR Final Rule, the Bureau adopted § 1026.43(e)(6), which provided for a temporary balloon-payment qualified mortgage that requires all of the same criteria be satisfied as the balloon-payment qualified mortgage definition in § 1026.43(f) except the requirement that the creditor extend more than 50 percent of its total first-lien covered transactions in counties that are ''rural'' or ''underserved.'' This temporary balloon-payment qualified mortgage would sunset, however, after January 10, 2016. As discussed in the section-by-section analysis of § 1026.43(e)(6) in the May 2013 ATR Final Rule, the Bureau adopted this two-year transition period for small creditors to roll over existing balloon-payment loans as qualified mortgages, even if they do not operate predominantly in rural or underserved areas, because the Bureau believes it is necessary to preserve access to responsible, affordable mortgage credit for some consumers. The Bureau also noted that, during the two-year period for which § 1026.43(e)(6) is in place, the Bureau intends to review whether the definitions of ''rural'' and ''underserved'' should be adjusted further and to explore how it can best facilitate the transition of small creditors that do not operate predominantly in rural or underserved areas from balloon-payment loans to adjustable-rate mortgages. 78 FR 35430.

to determine whether further adjustments are appropriate particularly in light of access to credit concerns. In light of that coming re-examination, the Bureau is proposing to revise § 1026.35(b) and its commentary to minimize volatility in the definitions while they are being re-evaluated.

The exemption in § 1026.35(b)(2)(iii) implements a Dodd-Frank Act provision that appears to have been designed to promote access to credit by exempting small creditors in rural areas that might have sufficient difficulty maintaining escrow accounts that they would curtail making higher-priced mortgage loans rather than trigger the escrow account requirement. As adopted in the 2013 Escrows Final Rule, and as amended by the Amendments to the 2013 Escrows Final Rule,[26] the exemption is available to creditors that extended more than 50 percent of their total covered transactions secured by a first lien on properties that are located in ''rural'' or ''underserved'' counties during the preceding calendar year. In general, a county's status as ''rural'' is defined in relation to Urban Influence Codes (UICs) established by the United States Department of Agriculture's Economic Research Service. Due to updated information from the 2010 Census, however, the list of ''rural'' counties will change between 2013 and 2014, with a small number of new counties meeting the definition of rural and approximately 82 counties no longer meeting that definition. The Bureau estimates that approximately 200–300 otherwise eligible creditors during 2013 could lose their eligibility for 2014 solely because of changes in the status of the counties in which they operate (assuming the geographical distribution of their mortgage originations does not change significantly over the relevant period).[27] In light of the Bureau's intent to review whether the definitions of ''rural'' and ''underserved'' should be adjusted further during the two-year transition period for balloon-payment mortgages discussed above, the Bureau also believes that subjecting small creditors that make higher-priced mortgage loans to such volatility in their eligibility for the exemption from the escrows requirement in the meanwhile could create significant burden for such creditors with little meaningful benefit to consumers in return.

Accordingly, the Bureau is proposing to revise § 1026.35(b)(2)(iii)(A) to provide that, to qualify for the exemption, a creditor must have extended more than 50 percent of its total covered transactions secured by a first lien on properties located in ''rural'' or ''underserved'' counties during any of the preceding three calendar years. As proposed, the provision thus would prevent a creditor from losing eligibility for the exemption under the ''rural or underserved'' element of the test unless it has failed to exceed the 50-percent threshold three years in a row.

As discussed above in the section-by-section analysis of § 1026.32(d)(1)(ii)(C), the Bureau also is proposing to modify the exception from the prohibition on balloon payments for high-cost mortgages in that section. Section 1026.32(d)(1)(ii)(C) provides an exception to the general prohibition on balloon payments for high-cost mortgages for balloon-payment qualified mortgages made by certain creditors operating predominantly in ''rural'' or ''underserved'' areas. Believing that the same rationale for allowing balloon-payment qualified mortgages made by creditors in rural or underserved areas applies to high-cost mortgages, the Bureau adopted the § 1026.32(d)(1)(ii)(C) exception in the 2013 HOEPA Final Rule. As explained above, the Bureau believes the same underlying rationale for the two-year transition period for balloon-payment qualified mortgages described above applies equally to the § 1026.32(d)(1)(ii)(C) exception from the high-cost mortgage balloon prohibition. Accordingly, the Bureau believes it is appropriate to extend this temporary framework to § 1026.32(d)(1)(ii)(C) and therefore is proposing to amend § 1026.32(d)(1)(ii)(C) to include loans meeting the criteria under § 1026.43(e)(6). Thus, for both balloon-payment qualified mortgages and for the high-cost mortgage balloon prohibition, the Bureau has adopted or is now proposing to adopt a two-year transition period during which the special treatment of balloon-payment loans does not depend on the creditor operating predominantly in rural or underserved areas.

The Bureau considered taking the same approach with regard to the escrow requirement but concluded ultimately that a smaller adjustment was appropriate. Because higher-priced mortgage loans are already subject to an escrow requirement, all creditors are currently required to maintain escrow accounts for such loans. Implementation of the Dodd-Frank Act exemption will thus reduce burden for some creditors, but does not impose different requirements than the status quo except as to the length of time that an escrow account must be maintained. This is fundamentally different than the ability-to-repay and high-cost mortgage requirements, which would prohibit new balloon-payment loans from being accorded qualified mortgage status or from being made going forward absent implementation of the special exemptions. In addition, the Bureau may change the definition of rural or underserved areas as the result of its re-examination process, but does not anticipate lifting the requirement that creditors operate predominantly in rural or underserved areas to qualify for the exemption because Congress specifically contemplated that limitation on the escrows exemption. Accordingly, the Bureau believes it is appropriate to leave the definition in place, but to prevent volatility in the definition from negatively impacting creditors who have fallen within the existing definition while the Bureau re-evaluates the underlying definitions. The Bureau believes that, as with the other two balloon-payment provisions for which the Bureau believes two-year transition periods are appropriate, this amendment will benefit consumers by expanding access to credit in certain areas that met the definitions of ''rural'' or ''underserved'' at some time in the preceding three calendar years and also will facilitate compliance for creditors that make these loans. The Bureau also believes that the proposed amendment will promote additional consistency between the 2013 HOEPA Final Rule, the 2013 ATR Final Rule, and the 2013 Escrows Final Rule, thereby facilitating compliance for affected creditors.

The Bureau notes that the mechanics of proposed § 1026.35(b)(2)(iii)(A) differ slightly from the express transition period ending on January 10, 2016, under § 1026.43(e)(6). Thus, this proposed amendment would not parallel the same transition period precisely, as does proposed § 1026.32(d)(1)(ii)(C), which simply would incorporate § 1026.43(e)(6)'s conditions by cross-reference. Instead, proposed § 1026.35(b)(2)(iii)(A) would approximate a two-year transition period by extending from one to three

[26] 78 FR 30739 (May 23, 2013).

[27] The extent of such volatility in the transition from 2012 rural/non-rural status (for purposes of eligibility for the exemption during 2013) to 2013 rural/non-rural status (for purposes of eligibility for the exemption during 2014) is likely far greater than during other year-to-year transitions. This is due to the fact that this first year-to-year transition under the Bureau's ''rural'' definition happens to coincide with the redesignation by the USDA's Economic Research Service of U.S. counties' urban influence codes, on which the ''rural'' definition is generally based. This redesignation occurs only decennially, based on the most recent census data. Nevertheless, for purposes of eligibility for the exemption during 2013 and 2014, the volatility is significant—just as creditors are first attempting to apply the exemption's criteria.

years the time for which a creditor, once eligible for the exemption, cannot lose that eligibility because of changes in the rural (or underserved) status of the counties in which the creditor operates. Because the 2013 Escrows Final Rule took effect on June 1, 2013, the escrows provisions already have begun operating over seven months earlier than the provisions adopted by the 2013 HOEPA and ATR Final Rules (which take effect on January 10, 2014). Thus, whereas the two balloon-payment provisions specifically last through January 10, 2016, the escrows-requirement exemption would guarantee eligibility (for a creditor that is eligible during 2013) through 2015. Thus, the proposed § 1026.35(b)(2)(iii) exemption would approximately, though not exactly, track the extension of the balloon exemption for qualified mortgages under § 1026.43(e)(6), and the proposed extension of the HOEPA balloon exemption under proposed § 1026.32(d)(1)(ii)(C).

In addition to the proposed changes discussed above, the Bureau also is proposing to amend § 1026.35(b)(2)(iii)(D)(*1*) and its commentary to conform to the proposed expansion of the exemption to creditors that may meet the section 35(b)(2)(iii)(A) criteria for calendar year 2014 based on loans made in ''rural'' or ''underserved'' counties in calendar year 2011, but not 2012 or 2013. Section § 1026.35(b)(2)(iii)(D)(*1*) currently prohibits any creditor from availing itself of the exemption if it maintains escrow accounts for any extensions of consumer credit secured by real property or a dwelling that it or its affiliate currently service, unless the escrow accounts were established for first-lien higher-priced mortgage loans on or after April 1, 2010, and before June 1, 2013, or were established after consummation as an accommodation for distressed consumers. With respect to loans where escrows were established on or after April 1, 2010, and before June 1, 2013, the Supplementary Information to the 2013 Escrows Final Rule explained that the Bureau believes creditors should not be penalized for compliance with the then current regulation, which would have required any such loans to be escrowed after April 1, 2010, and prior to June 1, 2013—the date the exemption took effect.

The Bureau understands that creditors who did not make more than 50 percent of their first-lien higher-priced mortgage loans in ''rural'' or ''underserved'' counties in calendar year 2012 would have been ineligible for the exemption for calendar year 2013, and thus would have been required under § 1026.35(a) to escrow any higher-priced mortgage loans those creditors made after June 1, 2013. However, it is possible in light of the proposed amendments that some of these same creditors may have met this criteria during calendar year 2011—and thus, should the Bureau finalize the proposal and allow creditors to qualify for the exemption (assuming they satisfy the other conditions set forth in § 1026.35(b)(2)(iii)(B), (C), and (D))—such creditors may qualify for the exemption in 2014. However, there would be one barrier: For applications received on or after June 1, 2013, but before the date the proposed amendment takes effect (as proposed, January 1, 2014), such a creditor who made a first-lien higher-priced mortgage loan would have been required to escrow that loan, and thus would be deemed ineligible under § 1026.35(b)(2)(iii)(D).

The Bureau does not believe that such creditors should lose the exemption because they were ineligible prior to the proposed amendment taking effect and thus made loans with escrows from June 1, 2013, through December 31, 2013. As the Bureau discussed in the Supplementary Information to the final rule, the Bureau believes creditors should not be penalized for compliance with the current regulation. The Bureau thus believes it is appropriate to amend § 1026.35(b)(2)(iii)(D)(*1*) and comment 35(b)(2)(iii)–1.iv to exclude escrow accounts established after April 1, 2010 and before January 1, 2014. The Bureau invites comment on this approach, and specifically whether an effective date for transactions where applications were received on or after January 1, 2014 is appropriate, in light of the proposed change to the calendar year exemption under § 1026.35(b)(2)(iii).

Section 1026.36 Loan Originator Compensation

36(a) Definitions

The Bureau is proposing several clarifications, revisions, and amendments to § 1026.36(a) and associated commentary to resolve inconsistencies in wording, to conform the comments to the intended operation of the regulation text, and to address issues raised during the regulatory implementation process. The Bureau proposes these changes pursuant to its TILA section 105(a) and Dodd-Frank Act section 1022(b)(1) authority.

References to Credit Terms

The Bureau is proposing to amend § 1026.36(a) and its commentary to clarify the meaning of ''credit terms'' in those provisions. For example, § 1026.36(a)(1)(i)(A) excludes from the definition of ''loan originator'' persons—*i.e.,* a loan originator's or creditor's employees (or agents or contractors thereof) engaged in certain administrative and clerical tasks that are not considered to be loan originator activity under the rules. To be eligible for the exclusion, the person must not, among other things, offer or negotiate ''credit terms available from a creditor.'' Likewise, comment 36(a)–4.i. provides that the definition of loan originator does not include persons who, among other things, do not discuss ''specific credit terms or products available from a creditor with the consumer.'' Similarly, comment 36(a)–4.ii.B provides that the definition of loan originator does not include an employee of a creditor or loan originator who provides loan originator or creditor contact information to a consumer, provided the employee does not, among other things, ''discuss particular credit terms available from a creditor.'' *See also* § 1026.36(a)(1)(i)(B) and comments 36(a)–1.i.A.*2* through –1.i.A.*4* (other similar references to credit terms). As discussed below, the Bureau is proposing to revise comment 36(a)–4.ii.B to clarify that it applies to loan originator or creditor agents and contractors as well as employees.

The Bureau intended the references to ''credit terms'' in these provisions to refer to particular credit terms that are or may be made available *to the consumer* in light of the consumer's financial characteristics. The Bureau believes that, when a loan originator's or creditor's employee (or agent or contractor thereof) is offering or discussing particular credit terms selected based on his or her assessment of the consumer's financial characteristics, the person is acting in the role of a loan originator. However, this does not extend to a person's discussion of general credit terms that a creditor makes available and advertises to the public at large, such as where such person merely states: ''We offer rates as low as 3% to qualified consumers.''

In light of inquiries from loan originators and creditors, the Bureau is concerned that the term ''credit terms'' could be construed too broadly and thus render any person that provides such general information a loan originator. This was not the Bureau's intent. Accordingly, the Bureau is proposing to revise § 1026.36(a)(1)(i)(A) and (B), and comments 36(a)–1 and –4 to address several inconsistencies regarding the meaning of ''credit terms'' to clarify that any such activity must relate to ''particular credit terms that are or may be available from a creditor to that consumer selected based on the consumer's financial characteristics,'' not credit terms generally. Thus, a person who discusses with a consumer that, based on the consumer's financial characteristics, a creditor should be able to offer the consumer an interest rate of 3%, would be considered a loan originator. However, a person who merely states general information such as ''we offer rates as low as 3% to qualified consumers'' would not be considered a loan originator under the proposed rule because the person is not offering particular credit terms that are or may be available to that consumer selected based on the consumer's financial characteristics. In addition, for clarification purposes the Bureau is proposing to move a parenthetical that explains ''credit terms'' includes rates, fees, and other costs to new § 1026.36(a)(1)(i)(6).

The Bureau believes these changes better align the scope of the loan originator definition with the intended scope of the 2013 Loan Originator Compensation Final Rule. The Bureau solicits comment on whether additional guidance concerning the meaning of particular credit terms that are or may be made available to the consumer in light of the consumer's financial characteristics is necessary, and if so, what clarifications would be helpful.

Application-Related Administrative and Clerical Tasks

Comment 36(a)–4.i provides that the definition of loan originator does not include persons who (1) At the request of the consumer, provide an application form to the consumer; (2) accept a completed application form from the consumer; or (3) without assisting the consumer in completing the application, processing or analyzing the information, or discussing specific credit terms or products available from a creditor with the consumer, deliver the application to a loan originator or creditor.

The Bureau is proposing to revise comment 36(a)–4.i to provide that the definition of loan originator does not include a person who, acting in his or her capacity as an employee (or agent or contractor), provides a credit application form from the entity for whom the person works to the consumer for the consumer to complete. In such a case, provided that the person does not assist the consumer in completing the application or otherwise influence his or her decision, the Bureau believes the person is performing an administrative task, not acting as a loan originator by engaging in a referral to a particular creditor or loan originator or assisting a consumer in obtaining or applying to obtain credit. As also discussed below with respect to persons who provide creditor or loan originator contact information, the Bureau believes ambiguity regarding the meaning of ''in response to a consumer's request'' could cause unnecessary compliance challenges. Moreover, the Bureau notes that classifying such individuals as loan originators would subject them to the requirements applicable to loan originators with, in the Bureau's view, little appreciable benefit for consumers in situations where the person is providing a credit application from the entity for whom the person works. The Bureau proposes to revise comment 36(a)–4.i accordingly, including removing the condition that the provision of the application must be ''at the request of the consumer.''

As a result of these proposed revisions, employees (or agents or contractors) of manufactured home retailers who provide a credit application form from one particular creditor or loan originator organization that is not the entity for which they work would not qualify for the exclusion in § 1026.36(a)(1)(i)(B), but those who simply provide a credit application form from the entity for which they work would potentially be eligible for the exclusion if other conditions are met. An employee of a manufactured home retailer who simply provides a credit application form from one particular creditor or loan originator organization that is its employer would potentially be eligible for the exclusion in § 1026.36(a)(1)(i)(B). An agent or contractor of a manufactured home retailer who simply provides a credit application form from one particular creditor or loan originator organization it works for as agent or contractor would potentially be eligible for the exclusion discussed in comment 36(a)–4.i. The revisions would also clarify that someone who merely delivers a completed credit application form from the consumer to a creditor or loan originator would potentially be eligible for the exclusion if other conditions are met but would remove language that could have been misinterpreted to suggest that someone who accepts an application in the sense of taking or helping the consumer complete an application could be eligible for the exclusion.

Responding to Consumer Inquiries and Providing General Information

Employees (or agents or contractors) of a creditor or loan originator who provide loan originator or creditor contact information. Comment 36(a)–4.ii.B provides that the definition of loan originator does not include persons who, acting as employees of a creditor or loan originator, provide loan originator or creditor contact information to a consumer in response to the consumer's request, provided that the employee does not discuss particular credit terms available from a creditor and does not direct the consumer, based on the employee's assessment of the consumer's financial characteristics, to a particular loan originator or creditor seeking to originate particular credit transactions to consumers with those financial characteristics. Similar to the clarifications regarding credit terms discussed above, the Bureau also is proposing to clarify that comment 36(a)–4.ii.B applies to loan originator or creditor agents and contractors as well as employees. The Bureau notes this is consistent with comments 36(a)–1.i.B and 36(a)–4.

In addition to making conforming technical revisions, the Bureau is proposing to remove the requirement that creditor or loan originator contact information must be provided ''in response to the consumer's request'' for the exclusion to apply. The Bureau has received many inquiries on this topic from stakeholders expressing concern that, absent a clarifying amendment, the rule could be interpreted to require tellers, greeters, or other such employees (or contractors or agents) to be classified as loan originators for merely providing contact information to a consumer who did not clearly or explicitly ask for it. Stakeholders have further asserted that such persons should not be considered loan originators when their conduct is limited to following a script prompting them to ask whether the consumer is interested in a mortgage loan and the tellers are not able to engage in any independent assessment of the consumer. Moreover, stakeholders have asserted it would be very costly to implement the training and certification requirements under Regulation Z as amended by the 2013 Loan Originator Compensation Final Rule for employers with large numbers of administrative staff who interact with consumers on a day-to-day basis in the manner described.

In light of these concerns, the Bureau is proposing a limited expansion of the existing exclusion that does not require the consumer to initiate a request for loan originator or creditor contact information as a prerequisite to its availability. The Bureau understands that basing the exclusion on the consumer requesting contact information could cause those who work for creditor or loan originator organizations in administrative or clerical roles (*e.g.,* tellers) to be treated as loan originators when simply attempting to explain generally what financing products the entity for which the person works offers. The Bureau also believes ambiguity regarding the meaning of ''in response to a consumer's request'' could cause unnecessary compliance challenges. In such instances, the Bureau does not believe tellers or other such staff should be considered loan originators for merely providing loan originator or creditor contact information to the consumer, provided that the person does not discuss particular credit terms available from a creditor to the consumer and does not direct the consumer, based on his or her assessment of the consumer's financial characteristics, to a particular loan originator or creditor seeking to originate credit transactions to consumers with those financial characteristics. The Bureau also notes that classifying such individuals as loan originators would subject them to the requirements applicable to loan originators with, in the Bureau's view, little appreciable benefit for consumers.

Accordingly, the Bureau is proposing to remove the qualifying phrase ''in response to the consumer's request'' from comment 36(a)–4.ii.B. However, the Bureau is not proposing to exclude from the definition of ''loan originator'' employees (or agents or contractors) of creditors and loan originator organizations who, in the course of providing loan originator or creditor contact information to the consumer, direct that consumer to a particular loan originator or particular creditor based on his or her assessment of the consumer's financial characteristics or discuss particular credit terms available from a creditor to the consumer. These actions can influence the credit terms that the consumer ultimately obtains, and the Bureau continues to believe these actions should result in application of the requirements imposed by the rule on loan originators. The Bureau believes this proposed amendment should enable creditors and loan originators to implement the rule with respect to persons acting under the controlled circumstances specified by the comment while still mitigating harmful steering outcomes the Bureau intended for the rule to address.

Describing other product-related services. Comment 36(a)–4.ii.C provides that the definition of loan originator does not include persons who describe other product-related services. The Bureau is proposing to amend this comment to provide examples of persons who describe other product-related services. The proposed new examples include persons who describe optional monthly payment methods via telephone or via automatic account withdrawals, the availability and features of online account access, the availability of 24-hour customer support, or free mobile applications to access account information. In addition, the proposed amendment to comment 36(a)–4.iii.C would clarify that persons who perform the administrative task of coordinating the closing process are excluded, whereas persons who arrange credit transactions are not excluded.

Amounts for Charges for Services That Are Not Loan Origination Activities. Comment 36(a)–5.iv.B provides that compensation includes any salaries, commissions, and any financial or similar incentive, regardless of whether it is labeled as payment for services that are not loan origination activities. The Bureau is proposing to revise this comment to provide that compensation includes any salaries, commissions, and any financial or similar incentive ''to an individual loan originator,'' regardless of whether it is labeled as payment for services that are not loan origination activities. The proposed wording change conforms this provision to the other provisions in comment 36(a)–5.iv that permit compensation paid to a loan originator organization under certain circumstances for services it performs that are not loan originator activities. The Bureau requests comment on these proposed clarifications generally and on whether other clarifications to comments 36(a)–4 and 36(a)–5 should be considered.

36(b) Scope

The Bureau is proposing to revise the scope of provisions in § 1026.36(b) to reflect the applicability of the servicing provisions in § 1026.36(c) regarding payment processing, pyramiding late fees, and payoff statements as modified by the 2013 TILA Servicing Final Rule.[28] Current § 1026.36(b) and comment 36(b)–1 (relocated from § 1026.36(f) and comment 36–1, respectively, by the 2013 Loan Originator Compensation Final Rule) provide that § 1026.36(c) applies to closed-end consumer credit transactions secured by a consumer's principal dwelling. The new payment processing provisions in § 1026.36(c)(1) and the restrictions on pyramiding late fees in § 1026.36(c)(2) both apply to consumer credit transactions secured by a consumer's principal dwelling. The new payoff statement provisions in § 1026.36(c)(3), however, apply more broadly to consumer credit transactions secured by a dwelling.

The proposal would revise § 1026.36(b) and comment 36(b)–1 to state that § 1026.36(c)(1) and (c)(2) apply to consumer credit transactions secured by a consumer's principal dwelling. The proposed revisions also would provide that § 1026.36(c)(3) applies to a consumer credit transaction secured by a dwelling (even if it is not the consumer's principal dwelling).

The Bureau is proposing these revisions to § 1026.36(b) and comment 36(b)–1 to conform them to modifications made to § 1026.36(c) by the 2013 Servicing Final Rules that changed the applicability of certain provisions in § 1026.36(c). The Bureau believes the proposed revisions are necessary to reflect the applicability of the provisions in § 1026.36(c) as modified by the 2013 Servicing Final Rules.

The Bureau seeks comment on these proposed revisions generally. The Bureau also invites comment on whether additional revisions to § 1026.36(b) and comment 36(b)–1 should be considered to clarify further the applicability of the provisions in § 1026.36(c) as modified by the 2013 Servicing Final Rules.

36(d) Prohibited Payments to Loan Originators

36(d)(1) Payments Based on a Term of the Transaction

36(d)(1)(i)

The Bureau is proposing to revise comments 36(d)(1)–1.ii and 36(d)(1)–1.iii.D, which interpret § 1026.36(d)(1)(i)–(ii), to improve the consistency of the wording across the regulatory text and commentary, and provide further interpretation of the intended meaning of the regulatory text.

36(d)(1)(iii)

The Bureau is proposing to revise the portions of comment 36(d)(1)–3 that interpret § 1026.36(d)(1)(iii) to improve the consistency of the wording across

[28] Among other things, the 2013 TILA Servicing Final Rule implemented TILA sections 129F and 129G added by section 1464 of the Dodd-Frank Act. The requirements in TILA section 129F concerning prompt crediting of payments apply to consumer credit transactions secured by a consumer's principal dwelling. The requirements in TILA section 129G concerning payoff statements apply to creditors or servicers of a home loan. The 2013 TILA Servicing Final Rule, however, did not substantively revise the existing late fee pyramiding requirement in § 1026.36(c) but instead redesignated the requirement as new paragraph 36(c)(2) to accommodate the regulatory provisions implementing TILA sections 129F and 129G.

the regulatory text and commentary, and provide further interpretation of the intended meaning of the regulatory text.

36(d)(1)(iv)

The Bureau is proposing revisions to the portions of comment 36(d)(1)–3 that interpret § 1026.36(d)(1)(iv). Section 1026.36(d)(1)(iv) permits, under certain circumstances, the payment of compensation under a non-deferred profits-based compensation plan to an individual loan originator even if the compensation is directly or indirectly based on the terms of multiple transactions by multiple individual loan originators. Section 1026.36(d)(1)(iv)(B)(*1*) permits this compensation if it does not exceed 10 percent of the individual loan originator's total compensation corresponding to the time period for which the compensation under a non-deferred profits-based compensation plan is paid. Comments 36(d)(1)–3.ii through –3.v further interpret § 1026.36(d)(1)(iv)(B)(*1*). Section 1026.36(d)(1)(iv)(B)(*2*) permits this type of compensation if the individual loan originator is a loan originator for ten or fewer consummated transactions during the 12-month period preceding the compensation determination. Comment 36(d)(1)–3.vi further interprets § 1026.36(d)(1)(iv)(B)(*2*).

The Bureau is proposing to amend comment 36(d)(1)–3 to improve the consistency of the wording across the regulatory text and commentary, provide further interpretation as to the intended meaning of the regulatory text in § 1026.36(d)(1)(iv), and ensure that the examples included in the commentary accurately reflect the interpretations of the regulatory text contained elsewhere in the commentary. These proposed amendments include clarifying in comment 36(d)(1)–3.vi that, for purposes of determining whether an individual loan originator was the loan originator for ten or fewer transactions, only consummated transactions are counted, consistent with § 1026.36(d)(1)(iv)(B)(*2*). Nearly all of the proposed revisions address the commentary sections that interpret the meaning of § 1026.36(d)(1)(iv)(B)(*1*) (*i.e.,* setting forth the 10-percent total compensation limit) and not § 1026.36(d)(1)(iv)(B)(*2*).

The Bureau is proposing more extensive clarifications to two comments interpreting § 1026.36(d)(1). First, the Bureau proposes to revise comment 36(d)(1)–3.v.A, which clarifies the meaning of ''total compensation'' as used in § 1026.36(d)(1)(iv)(B)(*1*). The proposed revisions clarify that the first component of total compensation—all wages and tips reportable for Medicare tax purposes in box 5 on IRS form W–2 (or IRS form 1099–MISC, as applicable)—includes all such wages and tips that are actually paid during the relevant time period regardless of when they are earned, except for any compensation under a non-deferred profits-based compensation plan that is earned during a different time period. The Bureau is proposing these changes to comment 36(d)(1)–3.v.A in conjunction with proposed revisions, described below, to comment 36(d)(1)–3.v.C. The proposed revisions to the two comments cumulatively are intended to provide a more precise interpretation of the following language in § 1026.36(d)(1)(iv)(B)(*1*): ''total compensation corresponding to the time period for which the compensation under the non-deferred profits-based compensation plan is paid.'' In particular, the Bureau believes that it is important to state more expressly in the commentary that compensation under a non-deferred profits-based compensation plan that is paid during a particular time period but is earned during a different time period (*e.g.,* a bonus made with reference to mortgage-related business profits for a calendar year that is paid in January of the following calendar year) is excluded from the total compensation amount for the particular time period in which the payment is made. This concept is discussed in an example in comment 36(d)(1)–3.v.C, but the Bureau is concerned that failing to highlight the concept more generally could lead to the language being misinterpreted to apply only to the facts in the example.

The Bureau is also proposing additional language in comment 36(d)(1)–3.v.A to make clearer that compensation under the non-deferred profits-based compensation plan that is earned during a particular time period can be included in the total compensation amount for that time period at the election of the party paying the compensation. This interpretation of the meaning of ''total compensation'' was implied in several examples in the commentary to § 1026.36(d)(1)(iv)(B)(*1*) (*e.g.,* comment 36(d)(1)–3.v.F.*1*); in this proposal, it is made more explicit.[29] The Bureau also is proposing to clarify that, if the person elects to include in total compensation the amount of any creditor or loan originator organization contributions to accounts of individual loan originators in designated tax-advantaged plans that are defined contribution plans, the contributions must be actually made during the relevant time period (rather than earned during that time period but made during a different time period). The Bureau believes that these changes would facilitate compliance.

Furthermore, the Bureau is proposing to revise comment 36(d)(1)–3.v.C to clarify the meaning of ''time period'' in § 1026.36(d)(1)(iv)(B)(*1*). The Bureau is concerned that comment 36(d)(1)–3.v.C inadvertently conflates the two relevant time periods to be used for the 10-percent limit calculation: The time period for compensation under the non-deferred profits-based compensation plan, and the time period for the total compensation. The proposed revisions would clarify that: (1) The relevant time period for compensation paid under the non-deferred profits-based compensation plan is the time period for which a person makes reference to profits in determining the compensation (*i.e.,* when the compensation was earned); and (2) the relevant time period for the total compensation is the same time period, but only certain types of compensation may be included in the total compensation amount for that time period, as explained in comment 36(d)(1)–3.v.A.

Collectively, the proposed revisions to comments 36(d)(1)–3.v.A and –3.v.C are intended to clarify that, while the time period used to determine both elements of the 10-percent limit ratio is the same: (1) The non-deferred profits-based compensation for the time period is whatever such compensation was earned during that time period, regardless of when it was actually paid; and (2) compensation that is actually paid during the time period, regardless of when it was earned, generally will be

[29] The Bureau included these commentary provisions in the 2013 Loan Originator Compensation Final Rule based on its belief that creditors and loan originator organizations paying non-deferred profits-based compensation under § 1026.36(d)(1)(iv)(B)(*1*) would potentially benefit from having the discretion to include the non-deferred profits-based compensation in the total compensation amount, which, if done, would increase the amount of non-deferred profits-based compensation that can be paid under the 10-percent limit (although this would make the calculation of total compensation somewhat more complex). The Bureau similarly provided discretion to creditors and loan originator organizations to include in total compensation the amount of any contributions by the creditor or loan originator organization to the individual loan originator's accounts in designated tax-advantaged plans that are defined contribution plans. The Bureau believes the potential marginal increase in the non-deferred profits-based compensation that can be paid under § 1026.36(d)(1)(iv)(B)(*1*) as a result of including these components of compensation in the total compensation amount does not raise a significant risk of steering incentives. See comment 36(d)(1)–3.v.F, as proposed to be revised, for an example of where including non-deferred profits-based compensation in total compensation affects the amount of non-deferred profits-based compensation that can be paid.

included in the amount of total compensation for that time period, but whether the compensation is included ultimately depends on the type of compensation. The proposal also revises the examples in comment 36(d)(1)–3.v.C to reflect the proposed changes to comment 36(d)(1)–3.v.A and, to allay potential confusion about when the provisions take effect, remove reference to calendar year 2013. See part IV of this Supplementary Information for discussion more generally of the Bureau's proposed changes to the effective date for the provisions of § 1026.36(d)(1). The Bureau believes these changes would facilitate compliance.

36(f) Loan Originator Qualification Requirements

36(f)(3)

The Bureau is proposing to change the dates referenced in § 1026.36(f)(3)(i) and (f)(3)(ii) and its associated commentary from January 10, 2014, to January 1, 2014. These proposed changes coincide with the proposed revision of the effective date for § 1026.36(f). See part IV of the Supplementary Information for a discussion of the effective date for § 1026.36(f).

36(i) Prohibition on Financing Credit Insurance

The Bureau is proposing to amend § 1026.36(i) to clarify the scope of the prohibition on a creditor financing, directly or indirectly, any premiums for credit insurance in connection with a consumer credit transaction secured by a dwelling. Dodd-Frank Act section 1414 added TILA section 129C(d), which generally prohibits a creditor from financing premiums or fees for credit insurance in connection with a closed-end consumer credit transaction secured by a dwelling, or an extension of open-end consumer credit secured by the consumer's principal dwelling. The prohibition applies to credit life, credit disability, credit unemployment, credit property insurance, and other similar products, including debt cancellation and debt suspension contracts (defined collectively as ''credit insurance'' for purposes of this discussion). The same provision, however, excludes from the prohibition credit insurance premiums or fees that are ''calculated and paid in full on a monthly basis.''

Section 1026.36(i) as Adopted in the 2013 Loan Originator Compensation Final Rule

In the 2013 Loan Originator Compensation Final Rule, the Bureau implemented this prohibition by adopting the statutory provision without substantive change, in § 1026.36(i). The final rule provided an effective date of June 1, 2013 for § 1026.36(i), and clarified that the provision applies to transactions for which a creditor received an application on or after that date.[30]

In the preamble to the final rule, the Bureau responded to public comments on the regulatory text that the Bureau had included in its proposal. The public comments included requests from consumer groups for clarification on the applicability of the regulatory prohibition to certain factual scenarios where credit insurance premiums are charged periodically, rather than as a lump-sum that is added to the loan amount at consummation. In particular, they requested clarification on the meaning of the exclusion from the prohibition for credit insurance premiums or fees that are ''calculated and paid in full on a monthly basis.'' The Bureau did not receive any public comments from the credit insurance industry. The Bureau received a limited number of comments from creditors concerning the general prohibition, but these comments did not address specifically the applicability of the exclusion from the prohibition for premiums that are calculated and paid in full on a monthly basis.

In their comments, the consumer groups described two practices that they believed should be prohibited by the regulatory provision. First, they described a practice in which some creditors charge credit insurance premiums on a monthly basis but add those premiums to the consumer's outstanding principal. They stated that this practice does not meet the requirement that, to be excluded from the prohibition, premiums must be ''paid in full on a monthly basis.'' They also stated that this practice constitutes ''financing'' of credit insurance premiums, which is prohibited by the provision. Second, the consumer groups described a practice in which credit insurance premiums are charged to the consumer on a ''levelized'' basis, meaning that the premiums remain the same each month, even as the consumer pays down the outstanding balance of the loan. They stated that this practice does not meet the condition of the exclusion that premiums must be ''calculated . . . on a monthly basis,'' and therefore violates the statutory prohibition. In the preamble of the final rule, the Bureau stated that it agreed that these practices do not meet the condition of the exclusion and violate the prohibition on creditors financing credit insurance premiums.

Outreach during implementation period following publication of the final rule. After publication of the final rule, representatives of credit unions and credit insurers expressed concern to the Bureau about these statements in the preamble of the final rule. Credit union representatives questioned whether adding monthly premiums to a consumer's loan balance should necessarily be considered prohibited ''financing'' of the credit insurance premiums and indicated that, if it is considered financing, they would not be able to adjust their data processing systems before the June 1, 2013 effective date.

Credit insurance company representatives stated that level and levelized credit insurance premiums are in fact ''calculated . . . on a monthly basis.'' (They use the term ''levelized'' premiums to refer to a flat monthly payment that is derived from a decreasing monthly premium payment arrangement and use the term ''level'' premium to refer to premiums for which there is no decreasing monthly premium payment arrangement available, such as for level mortgage life insurance.) The companies asserted that levelized premiums are, in fact, ''calculated . . . on a monthly basis,'' because an actuarially derived rate is multiplied by a fixed monthly principal and interest payment to derive the monthly insurance premium. They also asserted that level premiums are ''calculated . . . on a monthly basis'' because an actuarially derived rate is multiplied by the consumer's original loan amount to derive the monthly insurance premium. Accordingly, they urged that level and levelized credit insurance premiums should be excluded from the prohibition on creditors financing credit insurance premiums so long as they are also paid in full on a monthly basis. Industry representatives have further stated that even if the Bureau concludes that level or levelized credit insurance premiums are not ''calculated'' on a monthly basis within the meaning of the exclusion from the prohibition, they are not ''financed'' by a creditor and thus are not prohibited by the statutory provision.

Delay of § 1026.36(i) Effective Date

In light of these concerns, and the Bureau's belief that, if the effective date were not delayed, creditors could face uncertainty about whether and under what circumstances credit insurance premiums may be charged periodically in connection with covered consumer credit transactions secured by a

[30] 78 FR at 11390.

dwelling, the Bureau issued the 2013 Effective Date Final Rule delaying the June 1, 2013 effective date of § 1026.36(i) to January 10, 2014.[31] In that final rule, the Bureau stated its belief that this uncertainty could result in a substantial compliance burden to industry. However, the Bureau also stated that it would revisit the effective date of the provision in this proposal.

Proposed Amendments to § 1026.36(i)

The Bureau is now, as contemplated in the 2013 Effective Date Final Rule, proposing amendments to § 1026.36(i) to clarify the scope of the prohibition on a creditor financing, directly or indirectly, any premiums for credit insurance in connection with a consumer credit transaction secured by a dwelling. The Bureau believes from communications with consumer advocates, creditors, and trade associations that its statement in the final rule in response to consumer group public comments may have been overbroad and left ambiguity about when a creditor violates the prohibition on financing credit insurance premiums.

As an initial, interpretive matter, the Bureau believes it is important to highlight the structure of § 1026.36(i). First, although the heading of the statutory prohibition emphasizes the prohibition on financing ''single-premium'' credit insurance, which historically has been accomplished by adding a lump-sum premium to the consumer's loan balance at consummation, the provision more broadly prohibits a creditor from ''financing'' credit insurance premiums ''directly or indirectly'' in connection with a covered consumer credit transaction secured by a dwelling. That is, it generally prohibits a creditor from financing credit insurance premiums at any time, not just at consummation. The Bureau is proposing to clarify the scope of the prohibition by striking the term ''single-premium'' from the § 1026.36(i) heading, and by adding redesignated § 1026.36(i)(2)(ii), as discussed below. Second, ''credit insurance for which premiums or fees are calculated and paid in full on a monthly basis'' is excluded from the general prohibition. However, the mere fact that, under a particular premium calculation and payment arrangement, credit insurance premiums do not meet the conditions of the exclusion that they be ''calculated and paid in full on a monthly basis'' does not mean that a creditor is necessarily financing them in violation of the prohibition. For example, it is possible that credit insurance premiums could be calculated and paid in full by a consumer directly to a credit insurer on a quarterly basis with no indicia that the creditor is financing the premiums. The Bureau is proposing to clarify the scope of this exclusion by adding § 1026.36(i)(2)(iii), as discussed below.

''Financing'' credit insurance. The Bureau believes that practices that constitute ''financing'' of credit insurance premiums or fees by a creditor are generally equivalent to an extension of credit to a consumer with respect to payment of the credit insurance premiums or fees. Under § 1026.2(a)(14), credit means ''the right to defer payment of debt or to incur debt and defer its payment.'' Accordingly, as discussed above, financing of credit insurance premiums is not limited to addition of a single, lump-sum premium to the loan amount by the creditor at consummation. The Bureau believes that a creditor also finances credit insurance premiums within the meaning of the prohibition when it provides a consumer the right to defer payment of premiums or fees at other times, including when it adds a monthly credit insurance premium to the consumer's principal balance.

Accordingly, the Bureau proposes to add redesignated § 1026.36(i)(2)(ii), which clarifies that a creditor finances credit insurance premiums or fees when it provides a consumer the right to defer payment of a credit insurance premium or fee owed by the consumer. However, the Bureau invites public comment on whether this clarification is appropriate. For example, the Bureau does not believe that a brief delay in receipt of the consumer's premium or fee, such as might happen preceding a death or period of employment that the credit insurance is intended to cover, should cause immediate cancellation of the credit insurance. The Bureau also does not believe that refraining from cancelling or causing cancellation of credit insurance in such circumstances means that a creditor has provided the consumer a right to defer payment of the premium or fee, but the Bureau invites public comment on consequences of defining the term ''finances'' as proposed. In addition, some creditors have suggested that they may, as a purely mechanical matter, add a monthly credit insurance premium to the principal balance shown on a monthly statement but then subtract the premium from the principal balance immediately or as soon as the premium or fee is paid. Furthermore, under a provision of Regulation X (12 CFR 1024.17(f)(4), a creditor servicing a loan and escrowing credit insurance premiums may permit a consumer to make additional monthly deposits over one or more months to eliminate an escrow deficiency, and if the deficiency is greater than or equal to one month's escrow payment, cannot require elimination of the deficiency faster than through two or more equal monthly payments. Accordingly, the Bureau solicits comment on whether a creditor should instead be considered to have financed credit insurance premiums or fees only if it charges a ''finance charge,'' as defined in § 1026.4(a), on or in connection with the credit insurance premium or fee.

Calculated and paid in full on a monthly basis. The Bureau proposes to clarify in § 1026.36(i)(2)(iii) that credit insurance premiums or fees are calculated on a monthly basis if they are determined mathematically by multiplying a rate by the monthly outstanding balance (*e.g.,* the loan balance following the consumer's most recent monthly payment). As discussed above, § 1026.36(i) excludes from the prohibition on a creditor financing credit insurance premiums or fees any ''credit insurance for which premiums or fees are calculated and paid in full on a monthly basis.'' Although it has considered the concerns raised by industry following the issuance of the final rule, the Bureau continues to believe that the more straightforward interpretation of the statutory language regarding a premium or fee that is ''calculated . . . on a monthly basis'' is a premium or fee that declines as the consumer pays down the outstanding principal balance. Credit insurance with this feature is often referred to as a ''monthly outstanding balance,'' or M.O.B. credit insurance product. Level or levelized premiums or fees that are calculated by multiplying a rate by the initial loan amount or by a fixed monthly principal and interest payment are not calculated ''on a monthly basis'' in any meaningful way because the factors in the calculation do not change monthly (in contrast to the M.O.B. credit insurance product). Accordingly, under the proposed clarification, credit insurance cannot be categorically excluded from the scope of the prohibition on the ground that it is ''calculated and fully paid on a monthly basis'' if its premium or fee does not decline as the consumer pays down the outstanding principal balance. The Bureau notes that even if a particular premium calculation and payment arrangement provides for credit insurance premiums to be calculated on a monthly basis within the meaning of the proposed clarification, it must also

[31] 78 FR 32547 (May 31, 2013).

provide for the premiums to be paid in full on a monthly basis (rather than added to principal, for example) to be categorically excluded from § 1026.36(i).

Financed by the creditor. The Bureau notes that the scope of the prohibition only extends to credit insurance premiums financed by the creditor. Thus, while a monthly credit insurance premium or fee that does not decline as the consumer pays down the outstanding principal balance may not be categorically excluded from the prohibition's scope as ''calculated and fully paid on a monthly basis,'' a creditor only violates the prohibition if *the creditor* finances the credit insurance premium or fee.

Accordingly, the Bureau's statement implying in the final rule that levelized credit insurance premiums amount to a violation of the prohibition appears to have been overbroad. For example, credit insurance companies have described creditors as acting as passive conduits collecting and transmitting monthly premiums from the consumer to a credit insurer, rather than advancing funds to an insurer and collecting them subsequently from the consumer. Under such a scenario, the Bureau believes that a creditor would not likely be providing a consumer the right to defer payment of a credit insurance premium or fee owed by the consumer within the meaning of the proposal, as discussed above. Similarly, under an alternative interpretation that a creditor ''finances'' credit insurance only if it charges a ''finance charge'' on or in connection with the credit insurance premium or fee, as discussed above, a creditor that acts merely as a passive conduit for the payment of credit insurance premiums and fees to a credit insurer would not likely be charging such a finance charge. On the other hand, a creditor that does not act merely as a passive conduit, but instead achieves a levelized premium by deferring payments, or portions of payments, due to a credit insurer for a monthly outstanding balance credit insurance product (or by imposing a finance charge incident to such deferment, under the alternative interpretation discussed above) would likely be considered to be financing the credit insurance premiums or fees.

The Bureau invites public comment on the extent to which creditors act other than as passive conduits in a manner that would constitute financing of credit insurance premiums or fees. The Bureau specifically invites public comment on what actions by a creditor should or should not be considered financing of debt cancellation or suspension contract fees, when the creditor is a party to the debt cancellation or suspension contract and payments for principal, interest, and the debt cancellation or suspension contract are retained by the creditor.

VI. Section 1022(b)(2) of the Dodd-Frank Act

A. Overview

In developing the proposed rule, the Bureau has considered the potential benefits, costs, and impacts.[32] The Bureau requests comment on the preliminary analysis presented below as well as submissions of additional data that could inform the Bureau's analysis of the benefits, costs, and impacts. The Bureau has consulted, or offered to consult with, the prudential regulators, SEC, HUD, FHFA, the Federal Trade Commission, and the Department of the Treasury, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies.

As noted above, the proposed amendments focus primarily on clarifying or revising provisions on (1) Loss mitigation procedures under Regulation X's servicing provisions; (2) amounts counted as loan originator compensation to retailers of manufactured homes and their employees for purposes of applying points and fees thresholds under HOEPA and the qualified mortgage rules in Regulation Z; (3) determination of which creditors operate predominantly in ''rural'' or ''underserved'' areas for various purposes under the mortgage regulations; (4) application of the loan originator compensation rules to bank tellers and similar staff; and (5) the prohibition on creditor-financed credit insurance. The Bureau also is proposing to adjust the effective dates for certain provisions adopted by the 2013 Loan Originator Compensation Final Rule and proposing technical and wording changes for clarification purposes to Regulations B, X, and Z.

B. Potential Benefits and Costs to Consumers and Covered Persons

The Bureau believes that, compared to the baseline established by the final rules issued in January 2013,[33] the primary benefit of most of the provisions of the proposed rule to both consumers and covered persons is an increase in clarity and precision of the regulations and an accompanying reduction in compliance costs.

As described above, the proposed modifications to the Regulation X loss mitigation provisions would help servicers by providing clarity as to what is required by certain provisions of the rule, including a servicer's responsibility when it determines that a loss mitigation application that appeared facially complete in fact is lacking information necessary to complete review, how timelines are calculated when a foreclosure sale has not been scheduled or is rescheduled, and the actions prohibited during the pre-foreclosure review period.

In addition, the Bureau proposed modifications to the Regulation X loss mitigation provisions, which include allowing servicers more flexibility regarding the disclosure of a date by which a borrower should complete an incomplete loss mitigation application; allowing servicers to accommodate borrowers in need of immediate, short-term relief by offering short-term payment forbearance based on the evaluation of an incomplete loss mitigation application; the disclosure of certain information in the notices informing borrowers of the decisions of the evaluation of a loss mitigation application; and allowing servicers to foreclose before the 120th day of delinquency when the foreclosure is based on a borrower's violation of a due-on-sale clause or a subordinate lien is foreclosing.

The Bureau believes that servicers and consumers will benefit from these amendments because they will provide increased clarity, in part through reduced implementation costs. Further, the Bureau believes the proposed modifications to the loss mitigation rules would only minimally increase costs to servicers, and in many instances would reduce servicer burden. These modifications would improve the loss mitigation process for servicers by allowing them to provide more practical deadlines for borrowers to complete loss mitigation applications, and by allowing servicers to offer a short-term payment forbearance program based on an incomplete application. Further, the proposal would provide servicers a reasonable mechanism to seek additional information in situations in which a facially complete loss mitigation application is later

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

[33] The Bureau has discretion in any rulemaking to choose an appropriate scope of analysis with respect to potential benefits and costs and an appropriate baseline.

determined to lack information that is critical to completion of the servicer's review, while providing appropriate protections for consumers to minimize dual tracking and provide strong incentives for servicers to conduct rigorous up-front reviews.

The Bureau believes the proposed modifications to the servicing final rule should generally benefit borrowers by encouraging servicers to disclose to borrowers more useful information regarding the deadline to submit loss mitigation applications and to offer short-term forbearance without requiring borrowers to submit complete loss mitigation applications. The Bureau believes that such modifications could result in some cost to consumers if a servicer's mistake in the § 1024.41(b)(1)(i)(B) notice were to prolong or delay the loss mitigation process. However, the Bureau has sought to minimize this potential cost by providing incentives for servicers to conduct rigorous upfront review and preserving certain of the protections under the rule for borrowers in the event of servicer mistakes. The proposed amendments would impose some costs on consumers by making it easier for servicers to foreclose during the first 120 days of delinquency for certain reasons other than nonpayment of a debt.

The Bureau does not currently have data regarding the incidence of the situations specifically covered by these provisions, e.g. how often servicers make mistakes regarding whether an application is complete or the information necessary to complete an incomplete application, and therefore cannot quantify these benefits. However, the nature of the benefits and costs of specific timelines, procedures and disclosures was considered in detail in the discussion of benefits, costs, and impacts in part VII of the 2013 Mortgage Servicing Final Rules.

Two of the proposed sets of modifications to the Regulation Z provisions involve loan originator compensation. The Bureau is proposing to clarify for retailers of manufactured homes and their employees what compensation can be attributed to a transaction at the time the interest rate is set and must be included in the points and fees thresholds for qualified mortgages and high-cost mortgages under HOEPA. As discussed above, the proposal would exclude from points and fees of loan originator compensation paid by a retailer of manufactured homes to its employees and would clarify that the sales price of a manufactured home does not include loan originator compensation that must be included in points and fees. Both of these proposed changes would reduce the burden for creditors in manufactured home transactions by eliminating the need for them to attempt to determine what, if any, retailer employee compensation and what, if any, part of the sales price would count as loan originator compensation that must be included in points and fees. As a result, this amendment is likely to lower slightly the amount of money counted toward the points and fees thresholds on the covered loans. As a result, keeping all other provisions of a given loan fixed, this will result in a greater number of loans to be eligible to be qualified mortgages. For such loans, the costs of origination may be slightly lower as a result of the slightly decreased liability for the lender and any assignees and for possibly decreased compliance costs. Consumers may benefit from slightly increased access to credit and lower costs on the affected loans, however these consumers will also not have the added consumer protections that accompany loans made under the general ability-to-repay provisions. The lower amount of points and fees may also lead fewer loans to be above the points and fees triggers for high-cost mortgages under HOEPA: This should make these loans both more available and offered at a lower cost to consumers, though consumers will not have the added consumer protections that apply to high-cost mortgages. A more detailed discussion of these effects is contained in the discussion of benefits, costs, and impacts in part VII of the 2013 ATR Final Rule and the 2013 HOEPA Final Rule.

The Bureau also is proposing to revise when employees (or agents or contractors) of a creditor or loan originator in certain administrative or clerical roles (*e.g.,* tellers or greeters) may become ''loan originators'' under the 2013 Loan Originator Compensation Rule, and therefore subject to that Rule's requirements applicable to loan originators, such as qualification requirements and restrictions on certain compensation practices. As noted above, classifying such individuals as loan originators would subject them to the requirements applicable to loan originators with, in the Bureau's view, little appreciable benefit for consumers. Removing them from this classification should lower compliance costs including those related to SAFE Act training, certification requirements, and compensation restrictions.

The proposed provisions regarding credit insurance would clarify what constitutes financing of such premiums by a creditor, and is therefore generally prohibited under the Dodd-Frank Act. The proposal would also clarify when credit insurance premiums are considered to be calculated and paid on a monthly basis for purposes of a statutory exclusion from the prohibition for certain credit insurance premium calculation and payment arrangements.

As noted earlier, the Bureau believes that language in the preamble to the 2013 Loan Originator Compensation Final Rule led to some confusion among creditors and credit insurance providers regarding whether credit insurance products were prohibited under the rule based on how their premiums are calculated. The Bureau is now proposing to clarify that the prohibition only extends to creditors financing credit insurance premiums, and providing additional guidance on what constitutes creditor financing and what is excluded from the prohibition. The Bureau believes that increased clarity regarding the application of the rule to certain products—particularly to insurance with ''level'' or ''levelized'' premiums—should benefit both creditors and providers of credit insurance products.

The proposal would also make two adjustments to provisions that provide certain exceptions for creditors operating predominantly in ''rural'' or ''underserved'' areas during the next two years, while the Bureau reexamines the definition of ''rural'' or ''underserved'' as it recently announced in the May 2013 ATR Final Rule. Specifically, the proposal would extend an exception to the general prohibition on balloon features for high-cost mortgages under the 2013 HOEPA Final Rule that is available to certain loans made by small creditors who operate predominantly in rural or underserved areas temporarily to all small creditors, regardless of their geographic operations. The proposal would also amend an exemption from the requirement to maintain escrows for higher-priced mortgage loans under the 2013 Escrow Final Rule that is available to small creditors that extended more than 50 percent of their total covered transactions secured by a first lien in ''rural'' or ''underserved'' counties during the preceding calendar year to allow small creditors to qualify for the exemption if they made more than 50 percent of their covered transactions in ''rural'' or ''underserved'' counties during any of the previous three calendar years.

As noted above, the Bureau believes expanding the balloon-payment exception for high-cost mortgages to allow certain small creditors operating in areas that do not qualify as ''rural'' or ''underserved'' to continue to originate certain high-cost mortgages with balloon payments during the next two years will benefit creditors who might be unable to convert to offering adjustable rate mortgages by the time the final rules take effect in January 2014. The proposal would also promote consistency between HOEPA requirements and the May 2013 ATR Final Rule, thereby facilitating compliance for creditors. The Bureau believes that the proposal would also benefit consumers by increasing access to credit relative to the 2013 HOEPA Final Rule. Although balloon loans can in some cases increase risks for consumers, the Bureau believes that those risks are appropriately mitigated in these circumstances because the balloon loans must meet the requirements for qualified mortgages in order to qualify for the exception. This includes certain restrictions on the amount of up-front points and fees and various loan features, as well as a requirement that the loans be held on portfolio by the small creditor. These requirements reduce the risk of potentially abusive lending practices and provide strong incentives for the creditor to underwrite the loan appropriately.

The amendment to the qualifications for the exemption from the escrow requirements should minimize the disruptions from any changes in the categorization of certain counties while the Bureau is reevaluating the underlying definitions. This in turn should lower compliance costs for certain creditors during the interim period. Consumers may benefit from greater access to credit and lower costs, but in return would not receive the benefits of an escrow account. A more detailed discussion of these effects is contained in the discussion of benefits, costs, and impacts in part VII of the 2013 Escrows Final Rule.

C. Impact on Depository Institutions and Credit Unions With $10 Billion or Less in Total Assets, As Described in Section 1026; the Impact of the Provisions on Consumers in Rural Areas; Impact on Access to Consumer Financial Products and Services

The proposed rule is generally not expected to have a differential impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026. The exceptions are those provisions related to the definition of rural and underserved which directly impact entities with under $2 billion in total assets. The proposed rule may have some differential impacts on consumers in rural areas. To the extent that manufactured housing loans, higher-priced mortgage loans, high-cost loans or balloon loans are more prevalent in these areas, the relevant provisions may have slightly greater impacts. As discussed above, costs for creditors in these areas should be reduced; consumers should benefit from increased access to credit and lower costs, though they will not have access to the heightened protections afforded by various provisions. Given the nature and limited scope of the changes in the proposed rule, the Bureau does not believe that the proposed rule would reduce consumers' access to consumer products and services.

VII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements.[34] These analyses must ''describe the impact of the proposed rule on small entities.'' [35] An IRFA or FRFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities,[36] or if the agency considers a series of closely related rules as one rule for purposes of complying with the IRFA or FRFA requirements.[37] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[38]

This rulemaking is part of a series of rules that have revised and expanded the regulatory requirements for entities that originate or service mortgage loans. As noted above, in January, 2013, the Bureau issued the 2013 ATR Final Rule, 2013 Escrows Final Rule, 2013 HOEPA Final Rule, 2013 Mortgage Servicing Final Rules, and the 2013 Loan Originator Compensation Final Rule. Since January 2013, the Bureau also has issued the May 2013 ATR Final Rule, Amendments to the 2013 Escrows Final Rule, and the 2013 Effective Date Final Rule, along with Proposed Amendments to the 2013 Mortgage Rules under the Real Estate Settlement Procedures Act (Regulation X) and Truth in Lending Act (Regulation Z).[39] The Supplementary Information to each of these rules set forth the Bureau's analyses and determinations under the RFA with respect to those rules. Because these rules qualify as ''a series of closely related rules,'' for purposes of the RFA, the Bureau relies on those analyses and determines that it has met or exceeded the IRFA requirement.

In the alternative, the Bureau also concludes that the proposed rule, if adopted, would not have a significant impact on a substantial number of small entities. As noted, the proposal generally clarifies the existing rule and to the extent any changes are substantive, these changes would not have a material impact on small entities. The provisions related to servicing do not apply to many small entities under the small servicer exemption (and to the extent that they do, small entities will benefit from the same increased flexibility under the proposed provisions as other servicers), while the provisions related to loan officer compensation and the ''rural'' and ''underserved'' definitions lower the regulatory burden and possible compliance costs for affected entities. Therefore, the undersigned certifies that the proposed rule, if adopted, would not have a significant impact on a substantial number of small entities.

VIII. Paperwork Reduction Act

This proposed rule would amend 12 CFR Part 1002 (Regulation B) which implements the Equal Credit Opportunity Act, 12 CFR Part 1026 (Regulation Z), which implements the Truth in Lending Act (TILA), and 12 CFR Part 1024 (Regulation X), which implements the Real Estate Settlement Procedures Act (RESPA). Regulations B, Z and X currently contain collections of information approved by OMB. The Bureau's OMB control number for Regulation B is 3170–0013, for Regulation Z is 3170–0015 and for Regulation X is 3170–0016. However, the Bureau has determined that this proposed rule would not materially alter these collections of information or

[34] 5 U.S.C. 601 *et. seq.*

[35] 5 U.S.C. 603(a). For purposes of assessing the impacts of the proposed rule on small entities, ''small entities'' is defined in the RFA to include small businesses, small not-for-profit organizations, and small government jurisdictions. 5 U.S.C. 601(6). A ''small business'' is determined by application of Small Business Administration regulations and reference to the North American Industry Classification System (NAICS) classifications and size standards. 5 U.S.C. 601(3). A ''small organization'' is any ''not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' 5 U.S.C. 601(4). A ''small governmental jurisdiction'' is the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000. 5 U.S.C. 601(5).

[36] 5 U.S.C. 605(b).

[37] 5 U.S.C. 605(c).

[38] 5 U.S.C. 609.

[39] 78 FR 25638 (May 2, 2013).

impose any new recordkeeping, reporting, or disclosure requirements on the public that would constitute collections of information requiring approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Comments on this determination may be submitted to the Bureau as instructed in the **ADDRESSES** section of this notice and to the attention of the Paperwork Reduction Act Officer.

List of Subjects

12 CFR Part 1002

Aged, Banks, Banking, Civil rights, Consumer protection, Credit, Credit unions, Discrimination, Fair lending, Marital status discrimination, National banks, National origin discrimination, Penalties, Race discrimination, Religious discrimination, Reporting and recordkeeping requirements, Savings associations, Sex discrimination.

12 CFR Part 1024

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

12 CFR Part 1026

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

Authority and Issuance

For the reasons set forth in the preamble, the Bureau proposes to amend 12 CFR parts 1002, 1024, and 1026 as set forth below:

PART 1002—EQUAL CREDIT OPPORTUNITY ACT (REGULATION B)

■ 1. The authority citation for part 1002 continues to read as follows:

Authority: 12 U.S.C. 5512, 5581; 15 U.S.C. 1691b.

■ 2. Appendix A to Part 1002 is amended by revising paragraph 2.d to read as follows:

Appendix A to Part 1002—Federal Agencies To Be Listed in Adverse Action Notices

* * * * *

2. * * *

d. *Federal Credit Unions:* National Credit Union Administration, Office of Consumer Protection, 1775 Duke Street, Alexandria, VA 22314.

* * * * *

■ 3. In Supplement I to Part 1002, under *Section 1002.14,* under *Paragraph 14(b)(3) Valuation,* as amended January 31, 2013, at 78 FR 6407, effective January 18, 2014, paragraphs 1.i and 3.v are revised to read as follows:

Supplement I to Part 1002—Official Interpretations

* * * * *

Section 1002.14 Rules on Providing Appraisals and Valuations

* * * * *

14(b)(3) Valuation.

1. * * *

i. A report prepared by an appraiser (whether or not licensed or certified) including the appraiser's estimate of the property's value.

* * * * *

3. * * *

v. Reports reflecting property inspections that do not provide an estimate of the value of the property and are not used to develop an estimate of the value of the property.

* * * * *

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

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

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

Subpart A—General

■ 5. Section 1024.30, as amended February 14, 2013, at 78 FR 10695, effective January 10, 2014, is amended by revising paragraph (a) to read as follows:

§ 1024.30 Scope.

(a) *In general.* Except as provided in paragraphs (b) and (c) of this section, this subpart applies to any mortgage loan, as that term is defined in § 1024.31.

* * * * *

■ 6. Section 1024.35, as amended February 14, 2013, at 78 FR 10695, effective January 10, 2014, is amended by revising paragraph (g)(1)(iii)(B) to read as follows:

§ 1024.35 Error resolution procedures.

* * * * *

(g) * * *

(1) * * *

(iii) * * *

(B) The mortgage loan is discharged.

* * * * *

■ 7. Section 1024.36, as amended February 14, 2013, at 78 FR 10695, effective January 10, 2014, is amended by revising paragraph (f)(1)(v)(B) to read as follows:

§ 1024.36 Requests for information.

* * * * *

(f) * * *

(1) * * *

(v) * * *

(B) The mortgage loan is discharged.

* * * * *

■ 8. Section 1024.39, as amended February 14, 2013, at 78 FR 10695, effective January 10, 2014, is amended by revising paragraphs (b)(1) and (3) to read as follows:

§ 1024.39 Early intervention requirements for certain borrowers.

* * * * *

(b) *Written notice.* (1) *Notice required.* Except as otherwise provided in this section, a servicer shall provide to a delinquent borrower a written notice with the information set forth in paragraph (b)(2) of this section not later than the 45th day of the borrower's delinquency. A servicer is not required to provide the written notice more than once during any 180-day period.

* * * * *

(3) *Model clauses.* Model clauses MS–4(A), MS–4(B), and MS–4(C), in appendix MS–4 to this part may be used to comply with the requirements of this paragraph (b).

* * * * *

■ 9. Section 1024.41, as amended February 14, 2013, at 78 FR 10695, effective January 10, 2014, is amended by revising paragraphs (b)(2)(ii), (c)(1)(ii), (c)(2)(i), (d), (f)(1), (h)(4), (j) and adding paragraphs (b)(3), (c)(2)(iii), and (c)(2)(iv) to read as follows:

§ 1024.41 Loss mitigation procedures.

* * * * *

(b) * * *

(2) * * *

(ii) *Time period disclosure.* The notice required pursuant to paragraph (b)(2)(i)(B) of this section must include a reasonable date by which the borrower should submit the documents and information necessary to make the loss mitigation application complete.

(3) *Timelines.* For purposes of this section, timelines based on the proximity of a foreclosure sale to the receipt of a complete loss mitigation application will be determined as of the date a complete loss mitigation application is received.

(c) * * *

(1) * * *

(ii) Provide the borrower with a notice in writing stating the servicer's determination of which loss mitigation options, if any, it will offer to the borrower on behalf of the owner or assignee of the mortgage. The servicer shall include in this notice the amount of time the borrower has to accept or reject an offer of a loss mitigation program as provided for in paragraph (e) of this section, if applicable, and a notification, if applicable, that the borrower has the right to appeal the denial of any loan modification option as well as the amount of time the borrower has to file such an appeal and any requirements for making an appeal as provided for in paragraph (h) of this section.

(2) * * *

(i) *In general.* Except as set forth in paragraphs (c)(2)(ii) and (iii) of this section, a servicer shall not evade the requirement to evaluate a complete loss mitigation application for all loss mitigation options available to the borrower by offering a loss mitigation option based upon an evaluation of any information provided by a borrower in connection with an incomplete loss mitigation application.

* * * * *

(iii) *Payment forbearance.* Notwithstanding paragraph (c)(2)(i) of this section, a servicer may offer a short-term payment forbearance program to a borrower based upon an evaluation of an incomplete loss mitigation application. A servicer offering such a program to a borrower who has submitted an incomplete loss mitigation application must include in the notice of incomplete application required pursuant to paragraph (b)(2)(i)(B) of this section a statement that:

(A) The servicer has received an incomplete loss mitigation application, and on the basis of that application the servicer is offering a payment forbearance program;

(B) Absent further action by the borrower, the servicer will not review the incomplete application for other loss mitigation options; and

(C) If the borrower would like to be considered for other loss mitigation options, the borrower must notify the servicer and submit the missing documents and information required to complete the loss mitigation application.

(iv) *Servicer creates reasonable expectation that a loss mitigation application is complete.* If a servicer creates a reasonable expectation that a loss mitigation application is complete but the servicer later discovers that the application is incomplete, the servicer shall treat the application as complete as of the date the borrower had reason to believe the application was complete for purposes of paragraphs (f)(2) and (g) of this section until the borrower has been given a reasonable opportunity to complete the loss mitigation application.

(d) *Denial of loan modification options.* If a borrower's complete loss mitigation application is denied for any trial or permanent loan modification option available to the borrower pursuant to paragraph (c) of this section, a servicer shall state in the notice sent to the borrower pursuant to paragraph (c)(1)(ii) of this section the specific reason or reasons for the servicer's determination for each such trial or permanent loan modification option, and a notification that the borrower was not evaluated on other criteria (if applicable).

* * * * *

(f) * * *

(1) *Pre-foreclosure review period.* A servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless:

(i) A borrower's mortgage loan obligation is more than 120 days delinquent;

(ii) The foreclosure is based on a borrower's violation of a due-on-sale clause; or

(iii) The servicer is joining the foreclosure action of a subordinate lienholder.

* * * * *

(h) * * *

(4) *Appeal determination.* Within 30 days of a borrower making an appeal, the servicer shall provide a notice to the borrower stating the servicer's determination of whether the servicer will offer the borrower a loss mitigation option based upon the appeal, and, if applicable, how long the borrower has to accept or reject such an offer or a prior offer of a loss mitigation option, as provided for in this paragraph. A servicer may require that a borrower accept or reject an offer of a loss mitigation option after an appeal no earlier than 14 days after the servicer provides the notice to a borrower. A servicer's determination under this paragraph is not subject to any further appeal.

* * * * *

(j) *Small servicer requirements.* A small servicer shall be subject to the prohibition on foreclosure referral in paragraph (f)(1) of this section. A small servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process and shall not move for foreclosure judgment or order of sale, or conduct a foreclosure sale, if a borrower is performing pursuant to the terms of an agreement on a loss mitigation option.

■ 10. Appendix MS–3 to Part 1024, as amended February 14, 2013, at 78 FR 10695, effective January 10, 2014, is amended by:

■ a. Revising the entry for MS–3(D) in the table of contents at the beginning of the appendix, and

■ b. Revising the heading of MS–3(D).

The amendments read as follows:

Appendix MS–3 to Part 1024

* * * * *

MS–3(D)—Model Form for Renewal or Replacement of Force-Placed Insurance Notice Containing Information Required By § 1024.37(e)(2)

* * * * *

■ 11. In Supplement I to Part 1024, as amended February 14, 2013, at 78 FR 10695, effective January 10, 2014,:

■ a. Under *Section* 1024.17 the heading for 17(k)(5)(ii) is revised.

■ b. Under *Section 1024.33*—Mortgage Servicing Transfers:

■ i. Under *Paragraph 33(a) Servicing Disclosure Statement,* paragraph 1 is revised.

■ ii. Under *Paragraph 33(c)(1) Payments not considered late,* paragraph 2 is revised.

■ c. Under *Section 1024.35—Error Resolution Procedures, Paragraph 35(c),* paragraph 2 is revised.

■ d. Under *Section 1024.36—Request for Information, Paragraph 36(b),* paragraph 2 is revised.

■ e. The heading for *Section 1024.41* is revised.

■ f. Under *Section 1024.41, Loss Mitigation Procedures;*

■ i. *Paragraphs 41(b)(2), 41(b)(3), 41(c)(2)(iii),* and *41(c)(2)(iv)* are added.

■ ii. The heading for *paragraphs 41(c) is* revised.

■ iii. Under newly designated 41(c), *paragraph (c)(2)(iii)* is added.

■ iv. The heading *Paragraph 41(d)(1)* is removed.

■ v. Under *paragraph 41(d),* paragraph 3 is redesignated as *Paragraph(c)(1),* paragraph 4, and paragraph 4 is redesignated as paragraph 3.

■ vii. Under paragraph 41(d), paragraph 4 is added.

■ viii. Under paragraph 41(f), new paragraph 1 is added.

Supplement I to Part 1024—Official Bureau Interpretations

* * * * *

Subpart B—Mortgage Settlement and Escrow Accounts

* * * * *

Section 1024.17—Escrow Accounts

17(k)(5)(ii) Inability to disburse funds.

* * * * *

Subpart C—Mortgage Servicing

* * * * *

Section 1024.33—Mortgage Servicing Transfers

* * * * *

33(a) Servicing disclosure statement.

1. *Terminology.* Although the servicing disclosure statement must be clear and conspicuous pursuant to § 1024.32(a), § 1024.33(a) does not set forth any specific

rules for the format of the statement, and the specific language of the servicing disclosure statement in appendix MS–1 is not required to be used. The model format may be supplemented with additional information that clarifies or enhances the model language.

* * * * *

33(c) Borrower payments during transfer of servicing.

33(c)(1) Payments not considered late.

1. * * *

2. *Compliance with § 1024.39.* A transferee servicer's compliance with § 1024.39 during the 60-day period beginning on the effective date of a servicing transfer does not constitute treating a payment as late for purposes of § 1024.33(c)(1).

Section 1024.35 Error Resolution Procedures

* * * * *

35(c) Contact information for borrowers to assert errors

* * * * *

2. *Notice of an exclusive address.* A notice establishing an address that a borrower must use to assert an error may be included with a different disclosure, such as on a notice of transfer, periodic statement, or coupon book. The notice is subject to the clear and conspicuous requirement in § 1024.32(a)(1). If a servicer establishes an address that a borrower must use to assert an error, a servicer must provide that address to the borrower in any communication in which the servicer provides the borrower with an address for assistance from the servicer.

* * * * *

Section 1024.36 Requests for Information

* * * * *

36(b) Contact information for borrowers to request information

1. * * *

2. *Notice of an exclusive address.* A notice establishing an address that a borrower must use to request information may be included with a different disclosure, such as on a notice of transfer, periodic statement, or coupon book. The notice is subject to the clear and conspicuous requirement in § 1024.32(a)(1). If a servicer establishes an address that a borrower must use to request information, a servicer must provide that address to the borrower in any communication in which the servicer provides the borrower with an address for assistance from the servicer.

* * * * *

Section 1024.41—Loss Mitigation Procedures.

41(b) Receipt of loss mitigation application

* * * * *

41(b)(2) Review of loss mitigation application submission

41(b)(2)(i) Requirements

Paragraph 41 (b)(2)(i)(B)

1. *Notification of complete application.* Even if a servicer has informed a borrower that an application is complete (or notified the borrower of specific information necessary to complete an incomplete application), if the servicer determines, in the course of evaluating the loss mitigation application submitted by the borrower, that additional information is required, the servicer must request the additional information from a borrower pursuant to the § 1024.41(b)(1) obligation to exercise reasonable diligence in obtaining such documents and information.

2. *Effect on timelines.* Except as provided in § 1024.41(c)(2)(iv), the provisions and timelines triggered by a complete loss mitigation application in § 1024.41 will not be triggered by an incomplete application, regardless of whether a servicer has sent a § 1024.41(b)(2)(i)(B) notification incorrectly informing the borrower that the loss mitigation application is complete or otherwise given the borrower reason to believe the application is complete.

41(b)(2)(ii) Time period disclosure

1. *Reasonable date factors.* Section 1024.41(b)(2)(ii) requires that a notice informing a borrower that a loss mitigation application is incomplete must include a reasonable date by which the borrower should submit the documents and information necessary to make the loss mitigation application complete. In determining a reasonable date, a servicer should select the deadline that preserves the maximum borrower rights under § 1024.41, except when doing so would be impracticable. Thus, in setting a date, the factors listed below should be considered (if the date of a foreclosure sale is not known, a servicer may use a reasonable estimate of when a foreclosure sale may be scheduled):

i. The date by which any document or information submitted by a borrower will be considered stale or invalid pursuant to any requirements applicable to any loss mitigation option available to the borrower;

ii. The date that is the 120th day of the borrower's delinquency;

iii. The date that is 90 days before a foreclosure sale;

iv. The date that is 38 days before a foreclosure sale.

41(b)(3) Timelines

1. *Foreclosure sale not scheduled.* If no foreclosure sale has been scheduled as of the date that a complete loss mitigation application is received, the application shall be treated as if it were received at least 90 days before a scheduled foreclosure sale.

2. *Foreclosure sale re-scheduled.* These timelines established as of the receipt of a complete loss mitigation application shall remain in effect, even if a foreclosure sale is later re-scheduled to occur earlier or later.

41(c) Evaluation of loss mitigation applications

* * * * *

41(c)(2) Incomplete loss mitigation application evaluation

41(c)(2)(iii) Payment forbearance

1. *Short-term payment forbearance program.* The exemption in § 1024.41(c)(2)(iii) applies to a short-term payment forbearance program. A payment forbearance program is a loss mitigation option for which a servicer allows a borrower to forgo making certain payments or portions of payments for a period of time. A short-term payment forbearance program allows the forbearance of payments due over periods of no more than two months. Such a program would be short-term regardless of the amount of time a servicer allows the borrower to make up the missing payments. The examples below illustrate how the length of a payment forbearance program is calculated for purposes of § 1024.41(c)(2)(iii).

i. A servicer allows a borrower to forgo payment for January, February and March, and the borrower must make these payments in addition to the April payment at the time the April payment is due. This is a three-month forbearance program and thus would not be considered short-term.

ii. A servicer allows a borrower to forgo payment for January and February, and the borrower must make the January and February payments in addition to the March payment, at the time the March payment is due. This is a two-month forbearance program, and thus would be considered short-term.

iii. A servicer allows a borrower to forgo payment for January and February. These payments are spread over the next six months, and the borrower will make larger payments for March through August. This is a two-month forbearance program, and thus would be considered short-term.

iv. A servicer allows a borrower to forgo payment for January and February. These payments are added to the last monthly payment at the end of the loan obligation. This is a two-month forbearance program, and thus would be considered short-term.

2. *Payment forbearance and incomplete applications.* Section 1024.41(c)(2)(iii) allows a servicer to offer a borrower a short-term payment forbearance program based on an evaluation of an incomplete loss mitigation application. Such an incomplete loss mitigation application is still subject to the other obligations in § 1024.41, including the obligation in § 1024.41(b)(2) to review the application to determine if it is complete, the obligation in § 1024.41(b)(1) to exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application, and the obligation to provide the borrower with the § 1024.41(b)(2)(ii) notice that the servicer acknowledges the receipt of the application and has determined the application is incomplete (and any other information required to be in such a notice).

3. *Payment forbearance and complete applications.* Even if a servicer offers a borrower a payment forbearance program after an evaluation of an incomplete loss mitigation application, the servicer must still comply with all other requirements in § 1024.41 on receipt of a borrower's submission of a complete loss mitigation application.

41(c)(2)(iv) Servicer creates reasonable expectation that a loss mitigation application is complete.

1. *Reasonable expectation.* A servicer creates a reasonable expectation that a loss mitigation application is complete when:

i. The servicer notifies the borrower in the § 1024.41(b)(2)(i)(B) notice that the servicer has determined the application is complete. The borrower would have a reasonable expectation upon receipt of the notice that the application was complete as of the date the application was submitted.

ii. The servicer notifies the borrower in the § 1024.41(b)(2)(i)(B) notice that the servicer has determined the application is incomplete and identifies information and documentation necessary to complete the application, and the borrower provides all the documents and information that were listed as missing in that notice within a reasonable time. The borrower would have a reasonable expectation that the application was complete as of the date the borrower submitted all the documents and information that were listed as missing.

2. *Reasonable opportunity.* Section 1024.41(c)(2)(iv) requires a servicer to treat as complete an application that the servicer has created a reasonable expectation is complete until a borrower has been given a reasonable opportunity to complete the loss mitigation application. A reasonable opportunity requires the servicer to notify the borrower of what information and documentation is missing, and afford the borrower sufficient time to gather the information and/or documentation necessary to complete the application and submit it to the servicer. The amount of time that is sufficient for this purpose will depend on the facts and circumstances.

41(d) Denial of loan modification options

* * * * *

4. *Reasons listed.* A servicer is required to disclose the actual reason or reasons for the denial. If a servicer's systems establish a hierarchy of eligibility criteria and reach the first criterion that causes a denial but do not evaluate the borrower based on additional criteria, a servicer complies with the rule by providing only the reason or reasons with respect to which the borrower was actually evaluated as well as notification that the borrower was not evaluated on other criteria. A servicer is not required to determine or disclose whether a borrower would have been denied on the basis of additional criteria if such criteria were not actually considered.

41(f) Prohibition on foreclosure referral

1. *Prohibited activities.* Section 1024.41(f) prohibits a servicer from making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process under certain circumstances. Whether a document is considered the first notice or filing is determined under applicable State law. Specifically, a document is considered the first notice or filing if it would be used by the servicer as evidence of compliance with foreclosure practices required pursuant to State law, but is not considered the first notice or filing if it is used solely for other purposes. Thus, a servicer is not prohibited from attempting to collect payments, sending periodic statements, sending breach letters, or engaging in any other activity during the pre-foreclosure review period, so long as such documents or activity would not be used as evidence of complying with requirements applicable pursuant to State law in connection with a foreclosure process, and are not banned by other applicable law (e.g., the Fair Debt Collection Practices Act or bankruptcy law).

* * * * *

PART 1026—TRUTH IN LENDING (REGULATION Z)

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

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

* * * * *

Subpart C—Closed-End Credit

■ 13. Section 1026.23 is amended by revising paragraph (a)(3)(ii) to read as follows:

§ 1026.23 Right of rescission.

(a) * * *

(3) * * *

(ii) For purposes of this paragraph (a)(3), the term ''material disclosures'' means the required disclosures of the annual percentage rate, the finance charge, the amount financed, the total of payments, the payment schedule, and the disclosures and limitations referred to in §§ 1026.32(c) and (d) and 1026.43(g).

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

■ 14. Section 1026.31, as amended January 31, 2013, at 78 FR 6856, effective January 10, 2014, is amended by revising paragraphs (h)(1)(iii)(A) and (h)(2)(iii)(A) to read as follows:

§ 1026.31 General rules.

* * * * *

(h) * * *

(1) * * *

(iii) * * *

(A) Make the loan or credit plan satisfy the requirements of 15 U.S.C. 1631–1651; or

* * * * *

(2) * * *

(iii) * * *

(A) Make the loan or credit plan satisfy the requirements of 15 U.S.C. 1631–1651; or

* * * * *

■ 15. Section 1026.32 is amended by:

■ a. Revising paragraph (a)(2)(iii), as amended January 31, 2013, at 78 FR 6856, effective January 10, 2014;

■ b. Revising paragraph (b)(1)(ii), as amended June 2, 2013, at 78 FR 35430, effective January 10, 2014;

■ c. Revising paragraph (b)(1)(vi), as amended January 30, 2013, at 78 FR 6408, effective January 10, 2014;

■ d. Revising paragraph (b)(2)(ii), as amended June 12, 2013, at 78 FR 35430, effective January 10, 2014; and

■ e. Revising paragraphs (b)(2)(vi), (b)(6)(ii), and (d)(1)(ii)(C), as amended January 31, 2013, at 78 FR 6856, effective January 10, 2014.

The revisions read as follows:

§ 1026.32 Requirements for high-cost mortgages.

(a) * * *

(2) * * *

(iii) A transaction originated by a Housing Finance Agency, where the Housing Finance Agency is the creditor for the transaction; or

(b) * * *

(1) * * *

(ii) All compensation paid directly or indirectly by a consumer or creditor to a loan originator, as defined in § 1026.36(a)(1), that can be attributed to that transaction at the time the interest rate is set unless:

(A) That compensation is paid by a consumer to a mortgage broker, as defined in § 1026.36(a)(2), and already has been included in points and fees under paragraph (b)(1)(i) of this section;

(B) That compensation is paid by a mortgage broker, as defined in § 1026.36(a)(2), to a loan originator that is an employee of the mortgage broker;

(C) That compensation is paid by a creditor to a loan originator that is an employee of the creditor; or

(D) That compensation is paid by a retailer of manufactured homes to its employee.

* * * * *

(vi) The total prepayment penalty, as defined in paragraph (b)(6)(i) or (ii) of this section, as applicable, incurred by the consumer if the consumer refinances the existing mortgage loan, or terminates an existing open-end credit plan in connection with obtaining a new mortgage loan, with the current holder of the existing loan or plan, a servicer acting on behalf of the current holder, or an affiliate of either.

* * * * *

(b) * * *

(2) * * *

* * * * *

(ii) All compensation paid directly or indirectly by a consumer or creditor to a loan originator, as defined in § 1026.36(a)(1), that can be attributed to that transaction at the time the interest rate is set unless:

(A) That compensation is paid by a consumer to a mortgage broker, as defined in § 1026.36(a)(2), and already has been included in points and fees under paragraph (b)(2)(i) of this section;

(B) That compensation is paid by a mortgage broker, as defined in § 1026.36(a)(2), to a loan originator that is an employee of the mortgage broker;

(C) That compensation is paid by a creditor to a loan originator that is an employee of the creditor; or

(D) That compensation is paid by a retailer of manufactured homes to its employee.

* * * * *

(vi) The total prepayment penalty, as defined in paragraph (b)(6)(i) or (ii) of this section, as applicable, incurred by the consumer if the consumer refinances an existing closed-end credit transaction with an open-end credit plan, or terminates an existing open-end credit plan in connection with obtaining a new open-end credit plan, with the current holder of the existing transaction or plan, a servicer acting on behalf of the current holder, or an affiliate of either;

* * * * *

(6) * * *

(ii) *Open-end credit.* For an open-end credit plan, *prepayment penalty* means a charge imposed by the creditor if the consumer terminates the open-end credit plan prior to the end of its term, other than a waived, bona fide third-party charge that the creditor imposes if the consumer terminates the open-end credit plan sooner than 36 months after account opening.

* * * * *

(d) *Limitations.* A high-cost mortgage shall not include the following terms:

(1) * * *

(ii) * * *

(C) A loan that meets the criteria set forth in §§ 1026.43(f)(1)(i) through (vi) and 1026.43(f)(2), or the conditions set forth in § 1026.43(e)(6).

* * * * *

■ 16. Section 1026.35 is amended by revising paragraphs (b)(2)(i)(D), (b)(2)(iii)(A), and (b)(2)(iii)(D)(*1*) to read as follows:

§ 1026.35 Requirements for higher-priced mortgage loans.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(D) A reverse mortgage transaction subject to § 1026.33.

* * * * *

(iii) * * *

(A) During any of the three preceding calendar years, the creditor extended more than 50 percent of its total covered transactions, as defined by § 1026.43(b)(1), secured by a first lien, on properties that are located in counties that are either ''rural'' or ''underserved,'' as set forth in paragraph (b)(2)(iv) of this section;

* * * * *

(D) * * *

(*1*) Escrow accounts established for first-lien higher-priced mortgage loans on or after April 1, 2010, and before January 1, 2014; or

* * * * *

■ 17. Section 1026.36, as amended February 15, 2013, at 78 FR 11280, effective January 10, 2014, is amended by revising paragraphs (a)(1)(i)(A) and (B), adding paragraph (a)(6), and revising paragraphs (b), (f)(3)(i) introductory text, (f)(3)(ii), (i), and (j)(2) to read as follows:

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

(a) * * *

(1) * * *

(i) * * *

(A) A person who does not take a consumer credit application or offer or negotiate credit terms available from a creditor to that consumer selected based on the consumer's financial characteristics, but who performs purely administrative or clerical tasks on behalf of a person who does engage in such activities.

(B) An employee of a manufactured home retailer who does not take a consumer credit application, offer or negotiate credit terms available from a creditor to that consumer selected based on the consumer's financial characteristics, or advise a consumer on particular credit terms available from a creditor to that consumer selected based on the consumer's financial characteristics.

* * * * *

(6) *Credit terms.* For purposes of this section, the term ''credit terms'' includes rates, fees, and other costs.

* * * * *

(b) *Scope.* Paragraphs (c)(1) and (2) of this section apply to closed-end consumer credit transactions secured by a consumer's principal dwelling. Paragraph (c)(3) of this section applies to a consumer credit transaction secured by a dwelling. Paragraphs (d) through (i) of this section apply to closed-end consumer credit transactions secured by a dwelling. This section does not apply to a home equity line of credit subject to § 1026.40, except that paragraphs (h) and (i) of this section apply to such credit when secured by the consumer's principal dwelling and paragraph (c)(3) applies to such credit when secured by a dwelling. Paragraphs (d) through (i) of this section do not apply to a loan that is secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D).

* * * * *

(f) * * *

(3) * * *

(i) Obtain for any individual whom the loan originator organization hired on or after January 1, 2014 (or whom the loan originator organization hired before this date but for whom there were no applicable statutory or regulatory background standards in effect at the time of hire or before January 1, 2014, used to screen the individual) and for any individual regardless of when hired who, based on reliable information known to the loan originator organization, likely does not meet the standards under § 1026.36(f)(3)(ii), before the individual acts as a loan originator in a consumer credit transaction secured by a dwelling:

* * * * *

(ii) Determine on the basis of the information obtained pursuant to paragraph (f)(3)(i) of this section and any other information reasonably available to the loan originator organization, for any individual whom the loan originator organization hired on or after January 1, 2014 (or whom the loan originator organization hired before this date but for whom there were no applicable statutory or regulatory background standards in effect at the time of hire or before January 1, 2014, used to screen the individual) and for any individual regardless of when hired who, based on reliable information known to the loan originator organization, likely does not meet the standards under this paragraph (f)(3)(ii), before the individual acts as a loan originator in a consumer credit transaction secured by a dwelling, that the individual loan originator:

* * * * *

(i) *Prohibition on financing credit insurance.* (1) A creditor may not finance, directly or indirectly, any premiums or fees for credit insurance in connection with a consumer credit transaction secured by a dwelling (including a home equity line of credit secured by the consumer's principal dwelling). This prohibition does not apply to credit insurance for which premiums or fees are calculated and paid in full on a monthly basis.

(2) For purposes of this paragraph (i):

(i) ''Credit insurance'':

(A) Means credit life, credit disability, credit unemployment, or credit property insurance, or any other accident, loss-of income, life, or health insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, but

(B) Excludes credit unemployment insurance for which the unemployment insurance premiums are reasonable, the creditor receives no direct or indirect compensation in connection with the unemployment insurance premiums, and the unemployment insurance premiums are paid pursuant to a separate insurance contract and are not paid to an affiliate of the creditor;

(ii) A creditor finances premiums or fees for credit insurance if it provides a consumer the right to defer payment of a credit insurance premium or fee owed by the consumer; and

(iii) Credit insurance premiums or fees are calculated on a monthly basis if they are determined mathematically by multiplying a rate by the actual monthly outstanding balance.

* * * * *

(j) * * *

(2) For purposes of this paragraph (j), ''depository institution'' has the meaning in section 1503(3) of the SAFE Act, 12 U.S.C. 5102(3). For purposes of this paragraph (j), ''subsidiary'' has the meaning in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813.

* * * * *

■ 18. Appendix H to Part 1026, as amended February 14, 2013, at 78 FR 10901, effective January 10, 2014, is amended by:

■ a. Revising the entry for H–30(C) in the table of contents at the beginning of the appendix, and

■ b. Revising the heading of H–30(C).

The revision reads as follows:

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

* * * * *

H–30(C) Sample Form of Periodic Statement for a Payment-Option Loan

* * * * *

■ 19. In Supplement I to Part 1026:

■ a. Under *Section 1026.25—Record Retention,* under *Paragraph 25(c)(2) Records related to requirements for loan originator compensation,* as amended February 15, 2013, at 78 FR 11280, effective January 10, 2014, paragraph 1 is revised.

■ b. Under *Section 1026.32 Requirements for High Cost Mortgages:*

■ i. Under *Paragraph 32(b)(1),* as amended January 30, 2013, at 78 FR 6408, effective January 10, 2014, paragraph 2 is added.

■ ii. Under *Paragraph 32(b)(1)(ii),* as amended June 12, 2013, at 78 FR 35430, effective January 10, 2014, paragraph 5 is added.

■ iii. *Paragraph 32(b)(2),* as amended January 30, 2013, at 78 FR 6408, effective January 10, 2014, and paragraph 1 are added.

■ iv. Under *Paragraph 32(b)(2)(i),* as amended January 30, 2013, at 78 FR 6408, effective January 10, 2014, paragraph 1 is revised.

■ v. Under *Paragraph 32(b)(2)(i)(D),* as amended January 30, 2013, at 78 FR 6408, effective January 10, 2014, paragraph 1 is revised.

■ vi. Under *Paragraph 32(d)(8)(ii),* as amended January 30, 2013, at 78 FR 6408, effective January 10, 2014, paragraph 1 is revised.

■ c. Under *Section 1026.34—Prohibited Acts or Practices in Connection with High—Cost Mortgages,* under *Paragraph 34(a)(5)(v),* as amended January 30, 2013, at 78 FR 6408, effective January 10, 2014, paragraph 1 is revised.

■ d. Under *Section 1026.35—Requirements for Higher-Priced Mortgage Loans*

■ i. Under *Paragraph 35(b)(2)(iii),* paragraph 1 is revised.

■ ii. Under *Paragraph 35(b)(2)(iii)(D(1),* paragraph 1 is revised.

■ e. Under *Section 1026.36—Prohibited Acts or Practices in Connection With Credit Secured by a Dwelling*

■ i. Under *Paragraph 36(a),* as amended February 14, 2013, at 78 FR 11280, effective January 10, 2014, paragraphs 1, 4, and 5 are revised.

■ ii. Under *Paragraph 36(b),* as amended February 14, 2013, at 78 FR 11280, effective January 10, 2014, paragraph 1 is revised.

■ iii. Under *Paragraph 36(d)(1),* as amended February 14, 2013, at 78 FR 11280, effective January 10, 2014, paragraphs 1, 3, and 6 are revised.

■ iv. Under *Paragraph 36(f)(3)(i),* as amended February 14, 2013, at 78 FR 11280, effective January 10, 2014, paragraphs 1 and 2 are revised.

■ v. Under *Paragraph 36(f)(3)(ii),* as amended February 14, 2013, at 78 FR 11280, effective January 10, 2014, paragraphs 1and 2 are revised.

■ f. Under *Section 1026.41—Periodic Statements for Residential Mortgage Loans*

■ i. Under *Paragraph 41(b),* as amended February 14, 2013, at 78 FR 10901, effective January 10, 2014, paragraph 1 is revised.

■ ii. Under *Paragraph 41(d),* as amended February 14, 2013, at 78 FR 10901, effective January 10, 2014, paragraph 3 is revised.

■ iii. Under *Paragraph 41(d)(4),* as amended February 14, 2013, at 78 FR 10901, effective January 10, 2014, paragraph 1 is revised.

■ iv. Under *Paragraph 41(e)(3),* as amended February 14, 2013, at 78 FR 10901, effective January 10, 2014, paragraph 1 is revised.

■ v. Under *Paragraph 41(e)(4)(iii),* as amended February 14, 2013, at 78 FR 10901, effective January 10, 2014, paragraph 1 is revised.

The revisions read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Subpart D—Miscellaneous

Section 1026.25 Record Retention

* * * * *

25(c) Records related to certain requirements for mortgage loans.

25(c)(2) Records related to requirements for loan originator compensation.

1. * * *

i. Records sufficient to evidence payment and receipt of compensation. Records are sufficient to evidence payment and receipt of compensation if they demonstrate the following facts: The nature and amount of the compensation; that the compensation was paid, and by whom; that the compensation was received, and by whom; and when the payment and receipt of compensation occurred. The compensation agreements themselves are to be retained in all circumstances consistent with § 1026.25(c)(2)(i). The additional records that are sufficient necessarily will vary on a case-by-case basis depending on the facts and circumstances, particularly with regard to the nature of the compensation. For example, if the compensation is in the form of a salary, records to be retained might include copies of required filings under the Internal Revenue Code that demonstrate the amount of the salary. If the compensation is in the form of a contribution to or a benefit under a designated tax-advantaged plan, records to be maintained might include copies of required filings under the Internal Revenue Code or other applicable Federal law relating to the plan, copies of the plan and amendments thereto in which individual loan originators participate and the names of any loan originators covered by the plan, or determination letters from the Internal Revenue Service regarding the plan. If the compensation is in the nature of a commission or bonus, records to be retained might include a settlement agent ''flow of funds'' worksheet or other written record or a creditor closing instructions letter directing disbursement of fees at consummation. Where a loan originator is a mortgage broker, a disclosure of compensation or broker agreement required by applicable State law that recites the broker's total compensation for a transaction is a record of the amount actually paid to the loan originator in connection with the transaction, unless actual compensation deviates from the amount in the disclosure or agreement. Where compensation has been decreased to defray the cost, in whole or part, of an unforeseen increase in an actual settlement cost over an estimated settlement cost disclosed to the consumer pursuant to section 5(c) of RESPA (or omitted from that disclosure), records to be maintained are those documenting the decrease in compensation and reasons for it.

ii. Compensation agreement. For purposes of § 1026.25(c)(2), a compensation agreement includes any agreement, whether oral, written, or based on a course of conduct that establishes a compensation arrangement between the parties (e.g., a brokerage agreement between a creditor and a mortgage broker or provisions of employment contracts between a creditor and an individual loan originator employee addressing payment of compensation). Where a compensation agreement is oral or based on a course of conduct and cannot itself be maintained, the records to be maintained are those, if any, evidencing the existence or terms of the oral or course of conduct compensation agreement. Creditors and loan originators are free to specify what transactions are governed by a particular compensation agreement as they see fit. For example, they may provide, by the terms of the agreement, that the agreement governs compensation payable on transactions consummated on or after some future effective date (in which case, a prior agreement governs transactions consummated in the meantime). For purposes of applying the record retention requirement to transaction-specific commissions, the relevant compensation agreement for a given transaction is the agreement pursuant to which compensation for that transaction is determined.

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

* * * * *

Section 1026.32 Requirements for High-Cost Mortgages

* * * * *

32(b) Definitions.

* * * * *

Paragraph 32(b)(1)

* * * * *

2. *Charges paid by parties other than the consumer.* Under § 1026.32(b)(1), points and fees may include charges paid by third parties in addition to charges paid by the consumer. Specifically, charges paid by third parties that fall within the definition of points and fees set forth in § 1026.32(b)(1)(i) through (vi) are included in points and fees.

i. *Examples—included in points and fees.* A creditor's origination charge paid by a consumer's employer on the consumer's behalf that is included in the finance charge as defined in § 1026.4(a) or (b), must be included in points and fees under § 1026.32(b)(1)(i), unless other exclusions under § 1026.4 or § 1026.32(b)(1)(i)(A) through (F) apply. In addition, consistent with comment 32(b)(1)(i)–1, a third-party payment of an item excluded from the finance charge under a provision of § 1026.4, while not included in the total points and fees under § 1026.32(b)(1)(i), may be included under § 1026.32(b)(1)(ii) through (vi). For example, a payment by a third party of a creditor-imposed fee for an appraisal performed by an employee of the creditor is included in points and fees under § 1026.32(b)(1)(iii). *See* comment 32(b)(1)(i).

ii. *Examples—not included in points and fees.* A charge paid by a third party is not included in points and fees under § 1026.32(b)(1)(i) if the exclusions to points and fees in § 1026.32(b)(1)(i)(A) through (F) apply. For example, certain bona fide third-party charges not retained by the creditor, loan originator, or an affiliate of either are excluded from points and fees under § 1026.32(b)(1)(i)(D), regardless of whether those charges are paid by a third party or the consumer.

iii. *Seller's points.* Seller's points, as described in § 1026.4(c)(5) and commentary, are excluded from the finance charge and thus are not included in points and fees under § 1026.32(b)(1)(i). However, charges paid by the seller for items listed in § 1026.32(b)(1)(ii) through (vi) are included in points and fees.

iv. *Creditor-paid charges.* Charges that are paid by the creditor, other than loan originator compensation paid by the creditor that is required to be included in points and fees under § 1026.32(b)(1)(ii), are excluded from points and fees. *See* § 1026.32(b)(1)(i)(A).

* * * * *

Paragraph 32(b)(1)(ii)

* * * * *

5. *Loan originator compensation—calculating loan originator compensation in manufactured home transactions.* i. If a manufactured home retailer qualifies as a loan originator under § 1026.36(a)(1), then compensation that is paid by a consumer or creditor to the retailer for loan origination activities and that can be attributed to the transaction at the time the interest rate is set must be included in points and fees. For example, assume a manufactured home retailer takes a residential mortgage loan application and is entitled to receive at consummation a $1,000 commission from the creditor for taking the mortgage loan application. The $1,000 commission is loan originator compensation that must be included in points and fees.

ii. The sales price of the manufactured home does not include loan originator compensation that can be attributed to the transaction at the time the interest rate is set and therefore is not included in points and fees under § 1026.32(b)(1)(ii).

iii. As provided in § 1026.32(b)(1)(ii)(D), compensation paid by a manufactured home retailer to its employees is not included in points and fees under § 1026.32(b)(1)(ii).

* * * * *

Paragraph 32(b)(2)

1. See comment 32(b)(1)–2 for guidance concerning the inclusion in points and fees of charges paid by parties other than the consumer.

* * * * *

Paragraph 32(b)(2)(i).

1. *Finance charge.* The points and fees calculation under § 1026.32(b)(2) generally does not include items that are included in the finance charge but that are not known until after account opening, such as minimum monthly finance charges or charges based on account activity or inactivity. Transaction fees also generally are not included in the points and fees calculation, except as provided in § 1026.32(b)(2)(vi). See comments 32(b)(1)–1 and 32(b)(1)(i)–1 for additional guidance concerning the calculation of points and fees.

* * * * *

Paragraph 32(b)(2)(i)(D)

1. For purposes of § 1026.32(b)(2)(i)(D), the term *loan originator* means a loan originator as that term is defined in § 1026.36(a)(1), without regard to § 1026.36(a)(2). See comments 32(b)(1)(i)(D)–1 through –4 for further guidance concerning the exclusion of bona fide third-party charges from points and fees.

* * * * *

Paragraph 32(d)(8)(ii).

1. *Failure to meet repayment terms.* A creditor may terminate a loan or open-end credit agreement and accelerate the balance when the consumer fails to meet the repayment terms resulting in a default in payment under the agreement; a creditor may do so, however, only if the consumer actually fails to make payments resulting in a default in the agreement. For example, a creditor may not terminate and accelerate if the consumer, in error, sends a payment to the wrong location, such as a branch rather than the main office of the creditor. If a consumer files for or is placed in bankruptcy, the creditor may terminate and accelerate under § 1026.32(d)(8)(ii) if the consumer fails to meet the repayment terms resulting in a default of the agreement. Section 1026.32(d)(8)(ii) does not override any State or other law that requires a creditor to notify a consumer of a right to cure, or otherwise places a duty on the creditor before it can terminate a

* * * * *

Section 1026.34 Prohibited Acts or Practices in Connection With High-Cost Mortgages

* * * * *

34(a)(5) Pre-Loan Counseling

* * * * *

Paragraph 34(a)(5)(v) Counseling fees.

1. *Financing.* Section 1026.34(a)(5)(v) does not prohibit a creditor from financing the counseling fee as part of the transaction for a high-cost mortgage, if the fee is a bona fide third-party charge as provided by § 1026.32(b)(1)(i)(D) and (b)(2)(i)(D).

* * * * *

Section 1026.35 Requirements for Higher-Priced Mortgage Loans

* * * * *

35(b) Escrow accounts.

* * * * *

35(b)(2) Exemptions.

* * * * *

Paragraph 35(b)(2)(iii)

1. *Requirements for exemption.* Under § 1026.35(b)(2)(iii), except as provided in § 1026.35(b)(2)(v), a creditor need not establish an escrow account for taxes and insurance for a higher-priced mortgage loan, provided the following four conditions are satisfied when the higher-priced mortgage loan is consummated:

i. During any of the three preceding calendar years, more than 50 percent of the creditor's total first-lien covered transactions, as defined in § 1026.43(b)(1), are secured by properties located in counties that are either ''rural'' or ''underserved,'' as set forth in § 1026.35(b)(2)(iv). Pursuant to that section, a creditor may rely as a safe harbor on a list of counties published by the Bureau to determine whether counties in the United States are rural or underserved for a particular calendar year. Thus, for example, if a creditor originated 90 covered transactions, as defined by § 1026.43(b)(1), secured by a first lien, during 2011, 2012, or 2013, the creditor meets this condition for an exemption in 2014 if at least 46 of those transactions in one of those three calendar years are secured by first liens on properties that are located in such counties.

* * * * *

Paragraph 35(b)(2)(iii)(D)(1)

1. *Exception for certain accounts.* Escrow accounts established for first-lien higher-priced mortgage loans on or after April 1, 2010, and before January 1, 2014, are not counted for purposes of § 1026.35(b)(2)(iii)(D). On and after January 1, 2014, creditors, together with their affiliates, that establish new escrow accounts, other than those described in § 1026.35(b)(2)(iii)(D)(*2*), do not qualify for the exemption provided under § 1026.35(b)(2)(iii). Creditors, together with their affiliates, that continue to maintain escrow accounts established between April 1, 2010, and January 1, 2014, still qualify for the exemption provided under § 1026.35(b)(2)(iii) so long as they do not establish new escrow accounts for transactions consummated on or after January 1, 2014, other than those described in § 1026.35(b)(2)(iii)(D)(*2*), and they otherwise qualify under § 1026.35(b)(2)(iii).

* * * * *

Section 1026.36—Prohibited Acts or Practices in Connection With Credit Secured by a Dwelling

36(a) Definitions.

1. *Meaning of loan originator.* i. *General.* A. Section 1026.36(a) defines the set of activities or services any one of which, if done for or in the expectation of compensation or gain, makes the person doing such activities or performing such services a loan originator, unless otherwise excluded. The scope of activities covered by the term loan originator includes:

1. Referring a consumer to any person who participates in the origination process as a loan originator. Referring includes any oral or written action directed to a consumer that can affirmatively influence the consumer to select a particular loan originator or creditor to obtain an extension of credit when the consumer will pay for such credit. See comment 36(a)–4 with respect to certain activities that do not constitute referring.

2. Arranging a credit transaction, including initially contacting and orienting the consumer to a particular loan originator's or creditor's origination process or particular credit terms that are or may be available to that consumer selected based on the consumer's financial characteristics, assisting the consumer to apply for credit, taking an application, offering particular credit terms to the consumer selected based on the consumer's financial characteristics, negotiating credit terms, or otherwise obtaining or making an extension of credit.

3. Assisting a consumer in obtaining or applying for consumer credit by advising on particular credit terms that are or may be available to that consumer based on the consumer's financial characteristics, filling out an application form, preparing application packages (such as a credit application or pre-approval application or supporting documentation), or collecting application and supporting information on behalf of the consumer to submit to a loan originator or creditor. A person who, acting on behalf of a loan originator or creditor, collects information or verifies information provided by the consumer, such as by asking the consumer for documentation to support the information the consumer provided or for the consumer's authorization to obtain supporting documents from third parties, is not collecting information on behalf of the consumer. See also comment 36(a)–4.i through iv with respect to application-related administrative and clerical tasks and comment 36(a)–1.v with respect to third-party advisors.

4. Presenting particular credit terms for the consumer's consideration that are selected based on the consumer's financial characteristics, or communicating with a consumer for the purpose of reaching a mutual understanding about prospective credit terms.

* * * * *

4. * * *

i. *Application-related administrative and clerical tasks.* The definition of loan originator does not include a loan originator's or creditor's employee (or agent or contractor) who provides a credit application form from the entity for which the person works to the consumer for the consumer to complete or, without assisting the consumer in completing the credit application, processing or analyzing the information, or discussing particular credit terms or particular credit products available from a creditor to that consumer selected based on the consumer's financial characteristics, deliver the credit application from a consumer to a loan originator or creditor. A person does not assist the consumer in completing the application if the person explains to the consumer filling out the application the contents of the application or where particular consumer information is to be provided, or generally describes the credit application process to a consumer without discussion of particular credit terms or particular products available from a creditor to that consumer selected based on the consumer's financial characteristics.

ii. *Responding to consumer inquiries and providing general information.* The definition of loan originator does not include persons who:

A. * * *

B. As employees (or agents or contractors) of a creditor or loan originator, provide loan originator or creditor contact information to a consumer, provided that the person does not discuss particular credit terms that are or may be available from a creditor to that consumer selected based on the consumer's financial characteristics and does not direct the consumer, based on his or her assessment of the consumer's financial characteristics, to a particular loan originator or particular creditor seeking to originate credit transactions to consumers with those financial characteristics;

C. Describe other product-related services (for example, persons who describe optional monthly payment methods via telephone or via automatic account withdrawals, the availability and features of online account access, the availability of 24-hour customer support, or free mobile applications to access account information); or

D. * * *

iii. *Loan processing.* The definition of loan originator does not include persons who, acting on behalf of a loan originator or a creditor:

A. * * *

B. * * *

C. Coordinate consummation of the credit transaction or other aspects of the credit transaction process, including by communicating with a consumer about process deadlines and documents needed at consummation, provided that any communication that includes a discussion about credit terms available from a creditor to that consumer selected based on the consumer's financial characteristics only confirms credit terms already agreed to by the consumer;

iv. *Underwriting, credit approval, and credit pricing.* The definition of loan originator does not include persons who:

A. * * *

B. Approve particular credit terms or set particular credit terms available from a creditor to that consumer selected based on the consumer's financial characteristics in offer or counter-offer situations, provided that only a loan originator communicates to or with the consumer regarding these credit terms, an offer, or provides or engages in negotiation, a counter-offer, or approval conditions; or

* * * * *

5. *Compensation.*

* * * * *

iv. *Amounts for charges for services that are not loan origination activities.* A. * * *

B. Compensation includes any salaries, commissions, and any financial or similar incentive to an individual loan originator, regardless of whether it is labeled as payment for services that are not loan origination activities.

* * * * *

36(b) Scope.

1. *Scope of coverage.* Section 1026.36(c)(1) and (c)(2) applies to closed-end consumer credit transactions secured by a consumer's principal dwelling. Section 1026.36(c)(3) applies to a consumer credit transaction, including home equity lines of credit under § 1026.40, secured by a consumer's dwelling. Paragraphs (h) and (i) of § 1026.36 apply to home equity lines of credit under § 1026.40 secured by a consumer's principal dwelling. Paragraphs (d), (e), (f), (g), (h), and (i) of § 1026.36 apply to closed-end consumer credit transactions secured by a dwelling. Closed-end consumer credit transactions include transactions secured by first or subordinate liens, and reverse mortgages that are not home equity lines of credit under § 1026.40. See § 1026.36(b) for additional restrictions on the scope of § 1026.36, and §§ 1026.1(c) and 1026.3(a) and corresponding commentary for further discussion of extensions of credit subject to Regulation Z.

* * * * *

36(d) Prohibited payments to loan originators.

* * * * *

36(d)(1) Payments based on a term of a transaction.

1. * * *

ii. *Single or multiple transactions.* The prohibition on payment and receipt of compensation under § 1026.36(d)(1)(i) encompasses compensation that directly or indirectly is based on the terms of a single transaction of a single individual loan originator, the terms of multiple transactions by that single individual loan originator, or the terms of multiple transactions by multiple individual loan originators. Compensation to an individual loan originator that is based upon profits determined with reference to a mortgage-related business is considered compensation that is based on the terms of multiple transactions by multiple individual loan originators. For clarification about the exceptions permitting compensation based upon profits determined with reference to mortgage-related business pursuant to either a designated tax-advantaged plan or a non-deferred profits-based compensation plan, see comment 36(d)(1)–3. For clarification about ''mortgage-related business,'' see comments 36(d)(1)–3.v.B and –3.v.E.

A. Assume that a creditor pays a bonus to an individual loan originator out of a bonus pool established with reference to the creditor's profits and the profits are determined with reference to the creditor's revenue from origination of closed-end consumer credit transactions secured by a dwelling. In such instance, the bonus is considered compensation that is based on the terms of multiple transactions by multiple individual loan originators. Therefore, the bonus is prohibited under § 1026.36(d)(1)(i), unless it is otherwise permitted under § 1026.36(d)(1)(iv).

B. Assume that an individual loan originator's employment contract with a creditor guarantees a quarterly bonus in a specified amount conditioned upon the individual loan originator meeting certain performance benchmarks (*e.g.,* volume of originations monthly). A bonus paid following the satisfaction of those contractual conditions is not directly or indirectly based on the terms of a transaction by an individual loan originator, the terms of multiple transactions by that individual loan originator, or the terms of multiple transactions by multiple individual loan originators under § 1026.36(d)(1)(i) as clarified by this comment 36(d)(1)–1.ii, because the creditor is obligated to pay the bonus, in the specified amount, regardless of the terms of transactions of the individual loan originator or multiple individual loan originators and the effect of those terms of multiple transactions on the creditor's profits. Because this type of bonus is not directly or indirectly based on the terms of multiple transactions by multiple individual loan originators, as described in § 1026.36(d)(1)(i) (as clarified by this comment 36(d)(1)–1.ii), it is not subject to the 10-percent total compensation limit described in § 1026.36(d)(1)(iv)(B)(*1*).

iii. * * *

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D. The fees and charges described above in paragraphs B and C can only be a term of a transaction if the fees or charges are required to be disclosed in the Good Faith Estimate, the HUD–1, or the HUD–1A (and subsequently in any integrated disclosures promulgated by the Bureau under TILA section 105(b) (15 U.S.C. 1604(b)) and RESPA section 4 (12 U.S.C. 2603) as amended by sections 1098 and 1100A of the Dodd-Frank Act).

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3. *Interpretation of § 1026.36(d)(1)(iii) and (iv).* Subject to certain restrictions, § 1026.36(d)(1)(iii) and § 1026.36(d)(1)(iv) permit contributions to or benefits under designated tax-advantaged plans and compensation under a non-deferred profits-based compensation plan even if the contributions, benefits, or compensation, respectively, are based on the terms of multiple transactions by multiple individual loan originators.

i. *Designated tax-advantaged plans.* Section 1026.36(d)(1)(iii) permits an individual loan originator to receive, and a person to pay, compensation in the form of contributions to a defined contribution plan or benefits under a defined benefit plan provided the plan is a designated tax-advantaged plan (as defined in § 1026.36(d)(1)(iii)), even if contributions to or benefits under such plans are directly or indirectly based on the terms of multiple transactions by multiple individual loan originators. In the case of a designated tax-advantaged plan that is a defined contribution plan, § 1026.36(d)(1)(iii) does not permit the contribution to be directly or indirectly based on the terms of that individual loan originator's transactions. A defined contribution plan has the meaning set forth in Internal Revenue Code section 414(i), 26 U.S.C. 414(i). A defined benefit plan has the meaning set forth in Internal Revenue Code section 414(j), 26 U.S.C. 414(j).

ii. *Non-deferred profits-based compensation plans.* As used in § 1026.36(d)(1)(iv), a ''non-deferred profits-based compensation plan'' is any compensation arrangement where an individual loan originator may be paid variable, additional compensation based in whole or in part on the mortgage-related business profits of the person paying the compensation, any affiliate, or a business unit within the organizational structure of the person or the affiliate, as applicable (*i.e.,* depending on the level within the person's or affiliate's organization at which the non-deferred profits-based compensation plan is established). A non-deferred profits-based compensation plan does not include a designated tax-advantaged plan or other forms of deferred compensation that are not designated tax-advantaged plans, such as those created pursuant to Internal Revenue Code section 409A, 26 U.S.C. 409A. Thus, if contributions to or benefits under a designated tax-advantaged plan or compensation under another form of deferred compensation plan are determined with reference to the mortgage-related business profits of the person making the contribution, then the contribution, benefits, or other compensation, as applicable, are not permitted by § 1026.36(d)(1)(iv) (although, in the case of contributions to or benefits under a designated tax-advantaged plan, the benefits or contributions may be permitted by § 1026.36(d)(1)(iii)). Under a non-deferred profits-based compensation plan, the individual loan originator may, for example, be paid directly in cash, stock, or other non-deferred compensation, and the compensation under the non-deferred profits-based compensation plan may be determined by a fixed formula or may be at the discretion of the person (*e.g.,* the person may elect not to pay compensation under a non-deferred profits-based compensation plan in a given year), provided the compensation is not directly or indirectly based on the terms of the individual loan originator's transactions. As used in § 1026.36(d)(1)(iv) and this commentary, non-deferred profits-based compensation plans include, without limitation, bonus pools, profits pools, bonus plans, and profit-sharing plans. Compensation under a non-deferred profits-based compensation plan could include, without limitation, annual or periodic bonuses, or awards of merchandise, services, trips, or similar prizes or incentives where the bonuses, contributions, or awards are determined with reference to the profitability of the person, business unit, or affiliate, as applicable. As used in § 1026.36(d)(1)(iv) and this commentary, a business unit is a division, department, or segment within the overall organizational structure of the person or the person's affiliate that performs discrete business functions and that the person or the affiliate treats separately for accounting or other organizational purposes. For example, a creditor that pays its individual loan originators bonuses at the end of a calendar year based on the creditor's average net return on assets for the calendar year is operating a non-deferred profits-based compensation plan under § 1026.36(d)(1)(iv). A bonus that is paid to an individual loan originator from a source other than a non-deferred profits-based compensation plan (or a deferred compensation plan where the bonus is determined with reference to mortgage-related business profits), such as a retention bonus budgeted for in advance or a performance bonus paid out of a bonus pool set aside at the beginning of the company's annual accounting period as part of the company's operating budget, does not violate the prohibition on payment of compensation based on the terms of multiple transactions by multiple individual loan originators under § 1026.36(d)(1)(i), as clarified by comment 36(d)(1)–1.ii; therefore, § 1026.36(d)(1)(iv) does not apply to such bonuses.

iii. *Compensation that is not directly or indirectly based on the terms of multiple transactions by multiple individual loan originators.* The compensation arrangements addressed in § 1026.36(d)(1)(iii) and (iv) are permitted even if they are directly or indirectly based on the terms of multiple transactions by multiple individual loan originators. See comment 36(d)(1)–1 for additional interpretation. If a loan originator organization's revenues are exclusively derived from transactions subject to § 1026.36(d) (whether paid by creditors, consumers, or both) and that loan originator organization pays its individual loan originators a bonus under a non-deferred profits-based compensation plan, the bonus is not directly or indirectly based on the terms of multiple transactions by multiple individual loan originators if § 1026.36(d)(1)(i) is otherwise complied with.

iv. *Compensation based on terms of an individual loan originator's transactions.* Under both § 1026.36(d)(1)(iii), with regard to contributions made to a defined contribution plan that is a designated tax-advantaged plan, and § 1026.36(d)(1)(iv)(A), with regard to compensation under a non-deferred profits-based compensation plan, the payment of compensation to an individual loan originator may not be directly or indirectly based on the terms of that individual loan originator's transaction or transactions. Consequently, for example, where an individual loan originator makes loans that vary in their interest rate spread, the compensation payment may not take into account the average interest rate spread on the individual loan originator's transactions during the relevant calendar year.

v. *Compensation under non-deferred profits-based compensation plans.* Assuming that the conditions in § 1026.36(d)(1)(iv)(A) are met, § 1026.36(d)(1)(iv)(B)(*1*) permits certain compensation to an individual loan originator under a non-deferred profits-based compensation plan. Specifically, if the compensation is determined with reference to the profits of the person from mortgage-related business, compensation under a non-deferred profits-based compensation plan is permitted provided the compensation does not, in the aggregate, exceed more than 10 percent of the individual loan originator's total compensation corresponding to the time period for which compensation under the non-deferred profits-based compensation plan is paid. The compensation restrictions under § 1026.36(d)(1)(iv)(B)(*1*) are sometimes referred to in this commentary as the ''10-percent total compensation limit or the ''10-percent limit.''

A. *Total compensation.* For purposes of § 1026.36(d)(1)(iv)(B)(*1*), the individual loan originator's total compensation consists of the sum total of: (1) All wages and tips reportable for Medicare tax purposes in box 5 on IRS form W–2 (or, if the individual loan originator is an independent contractor, reportable compensation on IRS form 1099–MISC) that are actually paid during the relevant time period (regardless of when the wages and tips are earned), except for any compensation under a non-deferred profits-based compensation plan that is earned during a different time period (see comment 36(d)(1)–3.v.C); (2) at the election of the person paying the compensation, all contributions that are actually made during the relevant time period by the creditor or loan originator organization to the individual loan originator's accounts in designated tax-advantaged plans that are defined contribution plans (regardless of when the contributions are earned); and (3) at the election of the person paying the compensation, all compensation under a non-deferred profits-based compensation plan that is earned during the relevant time period, regardless of whether the compensation is actually paid during that time period (see comment 36(d)(1)–3.v.C). If an individual loan originator has some compensation that is reportable on the W–2 and some that is reportable on the 1099–MISC, the total compensation is the sum total of what is reportable on each of the two forms.

B. *Profits of the Person.* Under § 1026.36(d)(1)(iv), a plan is a non-deferred profits-based compensation plan if compensation is paid, based in whole or in part, on the profits of the person paying the compensation. As used in § 1026.36(d)(1)(iv), ''profits of the person'' include, as applicable depending on where the non-deferred profits-based compensation plan is set, the profits of the person, the business unit to which the individual loan originators are assigned for accounting or other organizational purposes, or any affiliate of the person. Profits from mortgage-related business are profits determined with reference to revenue generated from transactions subject to § 1026.36(d). Pursuant to § 1026.36(b) and comment 36(b)–1, § 1026.36(d) applies to closed-end consumer credit transactions secured by dwellings. This revenue includes, without limitation, and as applicable based on the particular sources of revenue of the person, business unit, or affiliate, origination fees and interest associated with dwelling-secured transactions for which individual loan originators working for the person were loan originators, income from servicing of such transactions, and proceeds of secondary market sales of such transactions. If the amount of the individual loan originator's compensation under non-deferred profits-based compensation plans paid for a time period does not, in the aggregate, exceed 10 percent of the individual loan originator's total compensation corresponding to the same time period, compensation under non-deferred profits-based compensation plans may be paid under § 1026.36(d)(1)(iv)(B)(*1*) regardless of whether or not it was determined with reference to the profits of the person from mortgage-related business.

C. *Time period for which the compensation under the non-deferred profits-based compensation plan is paid and to which the total compensation corresponds.* Under § 1026.36(d)(1)(iv)(B)(*1*), determination of whether payment of compensation under a non-deferred profits-based compensation plan complies with the 10-percent limit requires a calculation of the ratio of the compensation under the non-deferred profits-based compensation plan (*i.e.,* the compensation subject to the 10-percent limit) and the total compensation corresponding to the relevant time period. For compensation subject to the 10-percent limit, the relevant time period is the time period for which a person makes reference to profits in determining the compensation (*i.e.,* when the compensation was earned). It does not matter whether the compensation is actually paid during that particular time period. For total compensation, the relevant time period is the same time period, but only certain types of compensation may be included in the total compensation amount for that time period (see comment 36(d)(1)–3.v.A). For example, assume that during calendar year 2014 a creditor pays an individual loan originator compensation in the following amounts: $80,000 in commissions based on the individual loan originator's performance and volume of loans generated during the calendar year; and $10,000 in an employer contribution to a designated tax-advantaged defined contribution plan on behalf of the individual loan originator. The creditor desires to pay the individual loan originator a year-end bonus of $10,000 under a non-deferred profits-based compensation plan. The commissions are paid and employer contributions to the designated tax-advantaged defined contribution plan are made during calendar year 2014, but the year-end bonus will be paid in January 2015. For purposes of the 10-percent total compensation limit, the year-end bonus is counted toward the 10-percent limit for calendar year 2014, even though it is not actually paid until 2015. Therefore, for calendar year 2014 the individual loan originator's compensation that is subject to the 10-percent limit would be $10,000 (*i.e.,* the year-end bonus) and the total compensation would be $100,000 (*i.e.,* the sum of the commissions, the designated tax-advantaged plan contribution (assuming the creditor elects to include it in total compensation for calendar year 2014), and the bonus (assuming the creditor elects to include it in total compensation for calendar year 2014)); the bonus would be permissible under § 1026.36(d)(1)(iv) because it does not exceed 10 percent of total compensation. The determination of total compensation corresponding to 2014 also would not take into account any compensation subject to the 10-percent limit that is actually paid in 2014 but is earned during a different calendar year (*e.g.,* an annual bonus determined with reference to mortgage-related business profits for calendar year 2013 that is paid in January 2014). If the employer contribution to the designated tax-advantaged plan is earned in 2014 but actually made in 2015, however, it may not be included in total compensation for 2014. A company, business unit, or affiliate, as applicable, may pay compensation subject to the 10-percent limit during different time periods falling within its annual accounting period for keeping records and reporting income and expenses, which may be a calendar year or a fiscal year depending on the annual accounting period. In such instances, however, the 10-percent limit applies both as to each time period and cumulatively as to the annual accounting period. For example, assume that a creditor uses a calendar-year accounting period. If the creditor pays an individual loan originator a bonus at the end of each quarter under a non-deferred profits-based compensation plan, the payment of each quarterly bonus is subject to the 10-percent limit measured with respect to each quarter. The creditor can also pay an annual bonus under the non-deferred profits-based compensation plan that does not exceed the difference of 10 percent of the individual loan originator's total compensation corresponding to the calendar year and the aggregate amount of the quarterly bonuses.

D. *Awards of merchandise, services, trips, or similar prizes or incentives.* If any compensation paid to an individual loan originator under § 1026.36(d)(1)(iv) consists of an award of merchandise, services, trips, or similar prize or incentive, the cash value of the award is factored into the calculation of the 10-percent total compensation limit. For example, during a given calendar year, individual loan originator A and individual loan originator B are each employed by a creditor and paid $40,000 in salary, and $45,000 in commissions. The creditor also contributes $5,000 to a designated tax-advantaged defined contribution plan for each individual loan originator during that calendar year, which the creditor elects to include in the total compensation amount. Neither individual loan originator is paid any other form of compensation by the creditor. In December of the calendar year, the creditor rewards both individual loan originators for their performance during the calendar year out of a bonus pool established with reference to the profits of the mortgage origination business unit. Individual loan originator A is paid a $10,000 cash bonus, meaning that individual loan originator A's total compensation is $100,000 (assuming the creditor elects to include the bonus in the total compensation amount). Individual loan originator B is paid a $7,500 cash bonus and awarded a vacation package with a cash value of $3,000, meaning that individual loan originator B's total compensation is $100,500 (assuming the creditor elects to include the reward in the total compensation amount). Under § 1026.36(d)(1)(iv)(B)(*1*), individual loan originator A's $10,000 bonus is permissible because the bonus would not constitute more than 10 percent of the individual loan originator A's total compensation for the calendar year. The creditor may not pay individual loan originator B the $7,500 bonus and award the vacation package, however, because the total value of the bonus and the vacation package would be $10,500, which is greater than 10 percent (10.45 percent) of individual loan originator B's total compensation for the calendar year. One way to comply with § 1026.36(d)(1)(iv)(B)(*1*) would be if the amount of the bonus were reduced to $7,000 or less or the vacation package were structured such that its cash value would be $2,500 or less.

E. *Compensation determined only with reference to non-mortgage-related business profits.* Compensation under a non-deferred profits-based compensation plan is not subject to the 10-percent total compensation limit under § 1026.36(d)(1)(iv)(B)(*1*) if the non-deferred profits-based compensation plan is determined with reference only to profits from business other than mortgage-related business, as determined in accordance with reasonable accounting principles. Reasonable accounting principles reflect an accurate allocation of revenues, expenses, profits, and losses among the person, any affiliate of the person, and any business units within the person or affiliates, and are consistent with the accounting principles applied by the person, the affiliate, or the business unit with respect to, as applicable, its internal budgeting and auditing functions and external reporting requirements. Examples of external reporting and filing requirements that may be applicable to creditors and loan originator organizations are Federal income tax filings, Federal securities law filings, or quarterly reporting of income, expenses, loan origination activity, and other information required by government-sponsored enterprises. As used in § 1026.36(d)(1)(iv)(B)(*1*), profits means positive profits or losses avoided or mitigated.

F. *Additional examples. 1.* Assume that, during a given calendar year, a loan originator organization pays an individual loan originator employee $40,000 in salary and $125,000 in commissions, and makes a contribution of $15,000 to the individual loan originator's 401(k) plan. At the end of the year, the loan originator organization wishes to pay the individual loan originator a bonus based on a formula involving a number of performance metrics, to be paid out of a profit pool established at the level of the company but that is determined in part with reference to the profits of the company's mortgage origination unit. Assume that the loan originator organization derives revenues from sources other than transactions covered by § 1026.36(d). In this example, the performance bonus would be directly or indirectly based on the terms of multiple individual loan originators' transactions as described in § 1026.36(d)(1)(i), because it is being determined with reference to profits from mortgage-related business. Assume, furthermore, that the loan originator organization elects to include the bonus in the total compensation amount for the calendar year. Thus, the bonus is permissible under § 1026.36(d)(1)(iv)(B)(*1*) if it does not exceed 10 percent of the loan originator's total compensation, which in this example consists of the individual loan originator's salary, commissions, contribution to the 401(k) plan (if the loan originator organization elects to include the contribution in the total compensation amount), and the performance bonus. Therefore, if the loan originator organization elects to include the 401(k) contribution in total compensation for these purposes, the loan originator organization may pay the individual loan originator a performance bonus of up to $20,000 (*i.e.,* 10 percent of $200,000 in total compensation). If the loan originator organization does not include the 401(k) contribution in calculating total compensation, or the 401(k) contribution is actually made in January of the following calendar year (in which case it cannot be included in total compensation for the initial calendar year), the bonus may be up to $18,333.33. If the loan originator organization includes neither the 401(k) contribution nor the performance bonus in the total compensation amount, the bonus may not exceed $16,500.

2. Assume that the compensation during a given calendar year of an individual loan originator employed by a creditor consists of only salary and commissions, and the individual loan originator does not participate in a designated tax-advantaged defined contribution plan. Assume further that the creditor uses a calendar-year accounting period. At the end of the calendar year, the creditor pays the individual loan originator two bonuses: A ''performance'' bonus based on the individual loan originator's aggregate loan volume for a calendar year that is paid out of a bonus pool determined with reference to the profitability of the mortgage origination business unit, and a year-end ''holiday'' bonus in the same amount to all company employees that is paid out of a company-wide bonus pool. Because the performance bonus is paid out of a bonus pool that is determined with reference to the profitability of the mortgage origination business unit, it is compensation that is determined with reference to mortgage-related business profits, and the bonus is therefore subject to the 10-percent total compensation limit. If the company-wide bonus pool from which the ''holiday'' bonus is paid is derived in part from profits of the creditor's mortgage origination business unit, then the combination of the ''holiday'' bonus and the performance bonus is subject to the 10-percent total compensation limit. The ''holiday'' bonus is not subject to the 10-percent total compensation limit if the bonus pool is determined with reference only to the profits of business units other than the mortgage origination business unit, as determined in accordance with reasonable accounting principles. If the ''performance'' bonus and the ''holiday'' bonus in the aggregate do not exceed 10 percent of the individual loan originator's total compensation, the bonuses may be paid under § 1026.36(d)(1)(iv)(B)(*1*) without the necessity of determining from which bonus pool they were paid or whether they were determined with reference to the profits of the creditor's mortgage origination business unit.

G. *Reasonable reliance by individual loan originator on accounting or statement by person paying compensation.* An individual loan originator is deemed to comply with its obligations regarding receipt of compensation under § 1026.36(d)(1)(iv)(B)(*1*) if the individual loan originator relies in good faith on an accounting or a statement provided by the person who determined the individual loan originator's compensation under a non-deferred profits-based compensation plan pursuant to § 1026.36(d)(1)(iv)(B)(*1*) and where the statement or accounting is provided within a reasonable time period following the person's determination.

vi. *Individual loan originators who originate ten or fewer transactions.* Assuming that the conditions in § 1026.36(d)(1)(iv)(A) are met, § 1026.36(d)(1)(iv)(B)(*2*) permits compensation to an individual loan originator under a non-deferred profits-based compensation plan even if the payment or contribution is directly or indirectly based on the terms of multiple individual loan originators' transactions if the individual is a loan originator (as defined in § 1026.36(a)(1)(i)) for ten or fewer consummated transactions during the 12-month period preceding the compensation determination. For example, assume a loan originator organization employs two individual loan originators who originate transactions subject to § 1026.36 during a given calendar year. Both employees are individual loan originators under § 1026.36(a)(1)(ii), but only one of them (individual loan originator B) acts as a loan originator in the normal course of business, while the other (individual loan originator A) is called upon to do so only occasionally and regularly performs other duties (such as serving as a manager). In January of the following calendar year, the loan originator organization formally determines the financial performance of its mortgage business for the prior calendar year. Based on that determination, the loan originator organization on February 1 decides to pay a bonus to the individual loan originators out of a company bonus pool. Assume that, between February 1 of the prior calendar year and January 31 of the current calendar year, individual loan originator A was the loan originator for eight consummated transactions, and individual loan originator B was the loan originator for 15 consummated transactions. The loan originator organization may award the bonus to individual loan originator A under § 1026.36(d)(1)(iv)(B)(*2*). The loan originator organization may not award the bonus to individual loan originator B relying on the exception under § 1026.36(d)(1)(iv)(B)(*2*) because it would not apply, although it could award a bonus pursuant to the 10-percent total compensation limit under § 1026.36(d)(1)(iv)(B)(*1*) if the requirements of that provision are complied with.

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6. *Periodic changes in loan originator compensation and terms of transactions.* Section 1026.36 does not limit a creditor or other person from periodically revising the compensation it agrees to pay a loan originator. However, the revised compensation arrangement must not result in payments to the loan originator that are based on the terms of a credit transaction. A creditor or other person might periodically review factors such as loan performance, transaction volume, as well as current market conditions for originator compensation, and prospectively revise the compensation it agrees to pay to a loan originator. For example, assume that during the first six months of the year, a creditor pays $3,000 to a particular loan originator for each loan delivered, regardless of the terms of the transaction. After considering the volume of business produced by that originator, the creditor could decide that as of July 1, it will pay $3,250 for each loan delivered by that particular originator, regardless of the terms of the transaction. No violation occurs even if the loans made by the creditor after July 1 generally carry a higher interest rate than loans made before that date, to reflect the higher compensation.

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36(f) Loan originator qualification requirements.

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Paragraph 36(f)(3).

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Paragraph 36(f)(3)(i).

1. *Criminal and credit histories.* Section 1026.36(f)(3)(i) requires the loan originator organization to obtain, for any of its individual loan originator employees who is not required to be licensed and is not licensed as a loan originator pursuant to the SAFE Act, a criminal background check, a credit report, and information related to any administrative, civil, or criminal determinations by any government jurisdiction. The requirement applies to individual loan originator employees who were hired on or after January 1, 2014 (or whom the loan originator organization hired before this date but for whom there were no applicable statutory or regulatory background standards in effect at the time of hire or before January 1, 2014, used to screen the individual). A credit report may be obtained directly from a consumer reporting agency or through a commercial service. A loan originator organization with access to the NMLSR can meet the requirement for the criminal background check by reviewing any criminal background check it receives upon compliance with the requirement in 12 CFR 1007.103(d)(1) and can meet the requirement to obtain information related to any administrative, civil, or criminal determinations by any government jurisdiction by obtaining the information through the NMLSR. Loan originator organizations that do not have access to these items through the NMLSR may obtain them by other means. For example, a criminal background check may be obtained from a law enforcement agency or commercial service. Information on any past administrative, civil, or criminal findings (such as from disciplinary or enforcement actions) may be obtained from the individual loan originator.

2. *Retroactive obtaining of information not required.* Section 1026.36(f)(3)(i) does not require the loan originator organization to obtain the covered information for an individual whom the loan originator organization hired as a loan originator before January 1, 2014, and screened under applicable statutory or regulatory background standards in effect at the time of hire. However, if the individual subsequently ceases to be employed as a loan originator by that loan originator organization, and later resumes employment as a loan originator by that loan originator organization (or any other loan originator organization), the loan originator organization is subject to the requirements of § 1026.36(f)(3)(i).

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Paragraph 36(f)(3)(ii).

1. *Scope of review.* Section 1026.36(f)(3)(ii) requires the loan originator organization to review the information that it obtains under § 1026.36(f)(3)(i) and other reasonably available information to determine whether the individual loan originator meets the standards in § 1026.36(f)(3)(ii). Other reasonably available information includes any information the loan originator organization has obtained or would obtain as part of a reasonably prudent hiring process, including information obtained from application forms, candidate interviews, other reliable information and evidence provided by a candidate, and reference checks. The requirement applies to individual loan originator employees who were hired on or after January 1, 2014 (or whom the loan originator organization hired before this date but for whom there were no applicable statutory or regulatory background standards in effect at the time of hire or before January 1, 2014, used to screen the individual).

2. *Retroactive determinations not required.* Section 1026.36(f)(3)(ii) does not require the loan originator organization to review the covered information and make the required determinations for an individual whom the loan originator organization hired as a loan originator on or before January 1, 2014 and screened under applicable statutory or regulatory background standards in effect at the time of hire. However, if the individual subsequently ceases to be employed as a loan originator by that loan originator organization, and later resumes employment as a loan originator by that loan originator organization (or any other loan originator organization), the loan originator organization employing the individual is subject to the requirements of § 1026.36(f)(3)(ii).

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Section 1026.41—Periodic Statements for Residential Mortgage Loans

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41(b) Timing of the periodic statement.

1. *Reasonably prompt time.* Section 1026.41(b) requires that the periodic statement be delivered or placed in the mail no later than a reasonably prompt time after the payment due date or the end of any courtesy period. Delivering, emailing or placing the periodic statement in the mail within four days of the close of the courtesy period of the previous billing cycle generally would be considered reasonably prompt.

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41(d) Content and layout of the periodic statement.

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3. *Terminology.* A servicer may use terminology other than that found on the sample periodic statements in appendix H–30, so long as the new terminology is commonly understood. For example, servicers may take into consideration regional differences in terminology and refer to the account for the collection of taxes and insurance, referred to in § 1026.41(d) as the ''escrow account,'' as an ''impound account.''

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41(d)(4) Transaction Activity.

1. *Meaning.* Transaction activity includes any transaction that credits or debits the amount currently due. This is the same amount that is required to be disclosed under § 1026.41(d)(1)(iii). Examples of such transactions include, without limitation:

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41(e)(3) Coupon book exemption.

1. *Fixed rate.* For guidance on the meaning of ''fixed rate'' for purpose of § 1026.41(e)(3), see § 1026.18(s)(7)(iii) and its commentary.

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41(e)(4) Small servicers.

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41(e)(4)(iii) Small servicer determination.

1. *Loans obtained by merger or acquisition.* Any mortgage loans obtained by a servicer or

an affiliate as part of a merger or acquisition, or as part of the acquisition of all of the assets or liabilities of a branch office of a creditor, should be considered mortgage loans for which the servicer or an affiliate is the creditor to which the mortgage loan is initially payable. A branch office means either an office of a depository institution that is approved as a branch by a Federal or State supervisory agency or an office of a for-profit mortgage lending institution (other than a depository institution) that takes applications from the public for mortgage loans.

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Dated: June 24, 2013.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

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