

**BUREAU OF CONSUMER FINANCIAL PROTECTION**

**12 CFR Part 1026**

**[Docket No. CFPB-2012-0045]**

**RIN 3170-AA32**

**Delayed Implementation of Certain New Mortgage Disclosures**

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Final rule; official interpretation.

**SUMMARY:** The Bureau of Consumer Financial Protection (Bureau) is amending Regulation Z (Truth in Lending) to, in effect, delay implementation of certain new mortgage disclosure requirements in title XIV of the Dodd-Frank Wall Street Reform and Consumer Protection Act that would otherwise take effect on January 21, 2013. Instead, to avoid potential consumer confusion and reduce compliance burden for industry, the Bureau plans to implement these disclosures as part of the integrated mortgage disclosure forms proposed earlier this year, which combine certain disclosures that consumers receive in connection with applying for and closing on a mortgage loan under the Truth in Lending Act and the Real Estate Settlement Procedures Act. *See* 77 FR 51116 (Aug. 23, 2012). Accordingly, this rulemaking exempts persons from complying with these mortgage disclosure requirements and provides that such exemptions are intended to last only until the integrated mortgage disclosure forms take effect.

**DATES:** The rule is effective on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]

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**SUPPLEMENTARY INFORMATION:**

**I. Overview**

*A. Dodd-Frank Act*

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Public Law 111-203, amended the Real Estate Settlement Procedures Act of 1974 (RESPA) and the Truth in Lending Act (TILA) to mandate that the Bureau of Consumer Financial Protection (Bureau) establish a single disclosure scheme for use by lenders or creditors in complying with certain mortgage disclosure requirements under both statutes.<sup>1</sup> Sections 1098 and 1100A of the Dodd-Frank Act amended RESPA section 4(a) and TILA section 105(b), respectively, to require that the Bureau publish a single, integrated disclosure for mortgage loan transactions (including real estate settlement cost statements) which includes the disclosure requirements of TILA and sections 4 and 5 of RESPA that, taken together, may apply to a transaction that is subject to both or either provisions of law. 12 U.S.C. 2603(a); 15 U.S.C. 1604(b). Section 1032(f) of the Dodd-Frank Act mandated that the Bureau propose for public comment rules and model disclosures that integrate the TILA and RESPA disclosures by July 21, 2012. 12 U.S.C. 5532(f). As noted

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<sup>1</sup> RESPA and TILA historically have been implemented by regulations of the Department of Housing and Urban Development (HUD) under Regulation X and the Board of Governors of the Federal Reserve System (the Board) under Regulation Z, respectively. The Dodd-Frank Act generally consolidated and transferred these rulemaking authorities to the Bureau.

below, the Bureau satisfied this statutory mandate and issued proposed rules and forms on July 9, 2012.<sup>2</sup>

In addition to the integrated disclosure requirements in title X of the Dodd-Frank Act, various provisions of title XIV of the Dodd-Frank Act amend TILA, RESPA, and other consumer financial laws to impose new disclosure requirements for mortgage transactions (the Title XIV Disclosures). These provisions generally require disclosure of certain information when a consumer applies for a mortgage loan or shortly before consummation of the loan, around the same time that consumers will receive the TILA-RESPA integrated disclosures required by sections 1032(f), 1098, and 1100A of the Dodd-Frank Act (the TILA-RESPA integrated disclosures), and after consummation of the loan if certain events occur. Dodd-Frank Act title XIV provisions generally take effect within 18 months after the designated transfer date (*i.e.*, by January 21, 2013) unless final rules implementing those requirements are issued on or before that date and provide for a different effective date pursuant to Dodd-Frank Act section 1400(c)(3).<sup>3</sup>

The Title XIV Disclosures generally include the following:

- Warning regarding negative amortization features. Dodd-Frank Act section 1414(a); TILA section 129C(f)(1).<sup>4</sup>

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<sup>2</sup> See the Bureau's press release *Consumer Financial Protection Bureau proposes "Know Before You Owe" mortgage forms* (July 9, 2012), available at <http://www.consumerfinance.gov/pressreleases/consumer-financial-protection-bureau-proposes-know-before-you-owe-mortgage-forms/>; the Bureau's blog post *Know Before You Owe: Introducing our proposed mortgage disclosure forms* (July 9, 2012), available at <http://www.consumerfinance.gov/blog/know-before-you-owe-introducing-our-proposed-mortgage-disclosure-forms/>.

<sup>3</sup> Dodd-Frank Act section 1400(c)(3) is codified at 15 U.S.C. 1601 note.

<sup>4</sup> Dodd-Frank Act section 1414(a) also added to TILA new section 129C(f)(2), which requires first-time borrowers for certain residential mortgage loans that could result in negative amortization to provide the creditor with documentation to demonstrate that the consumer received homeownership counseling from organizations or counselors certified as competent to provide such counseling by HUD. That provision is implemented in the Bureau's proposal to implement Dodd-Frank Act requirements expanding protections for "high-cost" mortgage loans under the Home Ownership and Equity Protection Act of 1994 (HOEPA), pursuant to TILA sections 103(bb)

- Disclosure of State law anti-deficiency protections. Dodd-Frank Act section 1414(c); TILA section 129C(g)(2) and (3).
- Disclosure regarding creditor's partial payment policy prior to consummation and, for new creditors, after consummation. Dodd-Frank Act section 1414(d); TILA section 129C(h).
- Disclosure regarding mandatory escrow or impound accounts. Dodd-Frank Act section 1461(a); TILA section 129D(h).
- Disclosure prior to consummation regarding waiver of escrow in connection with the transaction. Dodd-Frank Act section 1462; TILA section 129D(j)(1)(A).
- Disclosure regarding cancellation of escrow after consummation. Dodd-Frank Act section 1462; TILA section 129D(j)(1)(B).
- Disclosure of monthly payment, including escrow, at initial and fully-indexed rate for variable-rate residential mortgage loan transactions. Dodd-Frank Act section 1419; TILA section 128(a)(16).
- Repayment analysis disclosure to include amount of escrow payments for taxes and insurance. Dodd-Frank Act section 1465; TILA 128(b)(4).
- Disclosure of aggregate amount of settlement charges, amount of charges included in the loan and the amount of such charges the borrower must pay at closing, the approximate amount of the wholesale rate of funds, and the aggregate amount of

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and 129, as amended by Dodd-Frank Act sections 1431 through 1433 (the 2012 HOEPA Proposal). 77 FR 49090 (Aug. 15, 2012). The 2012 HOEPA Proposal also implements the requirement of RESPA section 5(c), added by section 1450 of the Dodd-Frank Act, that lenders provide borrowers with a list of certified homeownership counselors. The Bureau expects to issue a final rule related to the 2012 HOEPA Proposal on or before January 21, 2013.

other fees or required payments in connection with a residential mortgage loan.

Dodd-Frank Act section 1419; TILA section 128(a)(17).

- Disclosure of aggregate amount of mortgage originator fees and the amount of fees paid by the consumer and the creditor. Dodd-Frank Act section 1419; TILA section 128(a)(18).
- Disclosure of total interest as a percentage of principal. Dodd-Frank Act section 1419; TILA section 128(a)(19).
- Optional disclosure of appraisal management company fees. Dodd-Frank Act section 1475; RESPA section 4(c).
- Disclosure regarding notice of reset of hybrid adjustable rate mortgage. Dodd-Frank Act section 1418(a); TILA section 128A(b).
- Loan originator identifier requirement. Dodd-Frank section 1402(a)(2); TILA section 129B(b)(1)(B).
- Consumer notification regarding appraisals for higher-risk mortgages. Dodd-Frank Act section 1471; TILA section 129H(d).
- Consumer notification regarding the right to receive an appraisal copy. Dodd-Frank Act section 1474; Equal Credit Opportunity Act (ECOA) section 701(e)(5).

As noted in the list above, the Title XIV Disclosures include certain disclosures that may need to be given both before and after consummation. For example, the Title XIV Disclosures include disclosures regarding a creditor's policy for acceptance of partial loan payments both before consummation and, for persons who subsequently become creditors for the transaction, after consummation as required by new TILA section 129C(h), added by Dodd-Frank Act

section 1414(d).<sup>5</sup> In addition, the Title XIV Disclosures include disclosures for consumers who waive or cancel escrow services both before and after consummation, added by Dodd-Frank Act section 1462. Specifically, new TILA section 129D(j)(1)(A) requires a creditor or servicer to provide a disclosure with the information set forth under TILA section 129D(j)(2) when an impound, trust, or other type of account for the payment of property taxes, insurance premiums, or other purposes relating to real property securing a consumer credit transaction is not established in connection with the transaction (the Pre-Consummation Escrow Waiver Disclosure). New TILA section 129D(j)(1)(B) requires a creditor or servicer to provide disclosures post-consummation with the information set forth under TILA section 129D(j)(2) when a consumer chooses, and provides written notice of the choice, to close his or her escrow account established in connection with a consumer credit transaction secured by real property in accordance with any statute, regulation, or contractual agreement (the Post-Consummation Escrow Cancellation Disclosure). 15 U.S.C. 1639d(j)(1)(A), 1639d(j)(1)(B). The statute sets forth an identical set of information for both of these disclosures.<sup>6</sup>

#### *B. TILA-RESPA Integration Proposal*

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<sup>5</sup> As it stated in the TILA-RESPA Integration Proposal, the Bureau believes that to give effect to the legislative purpose of section 1414(d) of the Dodd-Frank Act, the disclosure requirements of TILA section 129C(h) should apply without regard to whether the person would be a “creditor” under TILA and Regulation Z. See 77 FR 51116, 51265. For these reasons, in the TILA-RESPA Integration Proposal, the Bureau proposed to retain the term “covered person” under § 1026.39(a)(1) and its definition, which would subject such covered persons to the proposed disclosure requirements. *Id.* As in the TILA-RESPA Integration Proposal, in this final rule the Bureau is temporarily exempting “persons” (as defined in Regulation Z) rather than “creditors” from compliance with the provisions of TILA section 129C(h), which includes covered persons.

<sup>6</sup> The information set forth under TILA section 129D(j)(2) includes information concerning any applicable fees or costs associated with either the non-establishment of the escrow account at the time of the transaction, or any subsequent closure of the account; a clear and prominent statement that the consumer is responsible for personally and directly paying the non-escrowed items, in addition to paying the mortgage loan payment, in the absence of any such account, and the fact that the costs for taxes, insurance, and related fees can be substantial; a clear explanation of the consequences of any failure to pay non-escrowed items, including the possible requirement for the forced placement of insurance by the creditor or servicers and the potentially higher cost (including any potential commission payments to the servicer) or reduced coverage for the consumer in the event of any such creditor-placed insurance; and other information the Bureau determines is necessary for consumer protection. 15 U.S.C. 1639d(j)(2).

On July 9, 2012, the Bureau issued a proposal requesting comment on proposed rules and forms to integrate certain disclosure requirements of TILA and RESPA for most closed-end consumer credit transactions secured by real property (the TILA-RESPA Integration Proposal), as required by sections 1032(f), 1098, and 1100A of the Dodd-Frank Act.<sup>7</sup> The proposed rule would amend the Bureau's Regulation X, 12 CFR part 1024, and Regulation Z, 12 CFR part 1026. The proposal was published in the *Federal Register* on August 23, 2012. 77 FR 51116 (Aug. 23, 2012).

Among other things, the TILA-RESPA Integration Proposal requested comment on an amendment to § 1026.1(c) of Regulation Z that would temporarily exempt persons from compliance with the following Title XIV Disclosures (collectively, the Affected Title XIV Disclosures) so that the disclosures could instead be incorporated into the TILA-RESPA integrated disclosures that would be finalized in the future:

- Warning regarding negative amortization features. Dodd-Frank Act section 1414(a); TILA section 129C(f)(1).
- Disclosure of State law anti-deficiency protections. Dodd-Frank Act section 1414(c); TILA section 129C(g)(2) and (3).
- Disclosure regarding creditor's partial payment policy prior to consummation and, for new creditors, after consummation. Dodd-Frank Act section 1414(d); TILA section 129C(h).

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<sup>7</sup> See the Bureau's press release *Consumer Financial Protection Bureau proposes "Know Before You Owe" mortgage forms* (July 9, 2012), available at <http://www.consumerfinance.gov/pressreleases/consumer-financial-protection-bureau-proposes-know-before-you-owe-mortgage-forms/>; the Bureau's blog post *Know Before You Owe: Introducing our proposed mortgage disclosure forms* (July 9, 2012), available at <http://www.consumerfinance.gov/blog/know-before-you-owe-introducing-our-proposed-mortgage-disclosure-forms/>.

- Disclosure regarding mandatory escrow or impound accounts. Dodd-Frank Act section 1461(a); TILA section 129D(h).
- Disclosure prior to consummation regarding waiver of escrow in connection with the transaction. Dodd-Frank Act section 1462; TILA section 129D(j)(1)(A).
- Disclosure of monthly payment, including escrow, at initial and fully-indexed rate for variable-rate residential mortgage loan transactions. Dodd-Frank Act section 1419; TILA section 128(a)(16).
- Repayment analysis disclosure to include amount of escrow payments for taxes and insurance. Dodd-Frank Act section 1465; TILA 128(b)(4).
- Disclosure of aggregate amount of settlement charges, amount of charges included in the loan and the amount of such charges the borrower must pay at closing, the approximate amount of the wholesale rate of funds, and the aggregate amount of other fees or required payments in connection with a residential mortgage loan. Dodd-Frank Act section 1419; TILA section 128(a)(17).
- Disclosure of aggregate amount of mortgage originator fees and the amount of fees paid by the consumer and the creditor. Dodd-Frank Act section 1419; TILA section 128(a)(18).
- Disclosure of total interest as a percentage of principal. Dodd-Frank Act section 1419; TILA section 128(a)(19).
- Optional disclosure of appraisal management company fees. Dodd-Frank Act section 1475; RESPA section 4(c).

The TILA-RESPA Integration Proposal provided for a bifurcated comment process.

Comments regarding the proposed amendments to § 1026.1(c) were required to have been

received on or before September 7, 2012. For all other proposed amendments and comments pursuant to the Paperwork Reduction Act, comments were required to have been received on or before November 6, 2012.<sup>8</sup>

*C. 2011 Escrows Proposal*

Sections 1461 and 1462 of the Dodd-Frank Act create new TILA section 129D, which substantially codifies requirements that the Board had previously adopted in Regulation Z regarding escrow requirements for higher-priced mortgage loans, but also adds disclosure requirements and lengthens the period for which escrow accounts are required. 15 U.S.C. 1639d. On March 2, 2011, the Board proposed amendments to Regulation Z implementing certain requirements of sections 1461 and 1462 of the Dodd-Frank Act. 76 FR 11598 (Mar. 2, 2011) (2011 Escrows Proposal). The Board proposed, among other things, to implement the disclosure requirements under TILA section 129D(j)(1) in Regulation Z under a new § 226.19(f)(2)(ii) and § 226.20(d) of the Board's Regulation Z, including both the Pre-Consummation Escrow Waiver Disclosure and the Post-Consummation Escrow Cancellation Disclosure.

The comment period for the 2011 Escrows Proposal closed on May 2, 2011. The Board did not finalize the 2011 Escrows Proposal. Subsequent to the issuance of the 2011 Escrows

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<sup>8</sup> In its initial *Federal Register* notice, the Bureau also applied the September 7, 2012 deadline to comments on the proposed amendments to the definition of finance charge in § 1026.4. On August 31, 2012, however, the Bureau issued a notice extending the deadline for such comments to November 6, 2012. See the Bureau's blog post, *More time for comments on proposed changes to the definition of the finance charge* (August 31, 2012), available at <http://www.consumerfinance.gov/blog/more-time-for-comments-on-proposed-changes-to-the-definition-of-the-finance-charge/>. The extension was published in the *Federal Register* on September 6, 2012. See 77 FR 54843 (Sept. 6, 2012). It did not change the comment period for any other aspects of the TILA-RESPA Integration Proposal, which, as noted above, ended November 6, 2012.

Proposal, the authority for finalizing the proposal was transferred to the Bureau pursuant to the Dodd-Frank Act.<sup>9</sup>

## **II. Summary of Proposed Rule and Comments**

### *A. Affected Title XIV Disclosures*

As described above, the Affected Title XIV Disclosures impose certain new disclosure requirements for mortgage transactions. Section 1400(c)(3) of the Dodd-Frank Act<sup>10</sup> provides that, if regulations implementing the Affected Title XIV Disclosures are not issued on the date that is 18 months after the designated transfer date (*i.e.*, by January 21, 2013), the statutory requirements will take effect on that date.

The Bureau provided in the TILA-RESPA Integration Proposal that it believed that implementing integrated disclosures that satisfy the applicable sections of TILA and RESPA and the Affected Title XIV Disclosures would benefit consumers and facilitate compliance for industry with TILA and RESPA. The Bureau provided further that consumers would benefit from a consolidated disclosure that conveys loan terms and costs to consumers in a coordinated way, and industry would benefit by integrating two sets of overlapping disclosures into a single form and by avoiding regulatory burden associated with revising systems and practices multiple times. 77 FR 51116, 51133.

However, given the broad scope and complexity of TILA-RESPA Integration Proposal and the 120-day comment period provided, the Bureau stated that it believed a final rule would not be issued by January 21, 2013. The Bureau was concerned that absent a final rule implementing the Affected Title XIV Disclosures, institutions would have to comply with those

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<sup>9</sup> Effective July 21, 2011, the Dodd-Frank Act generally transferred rulemaking authority for TILA to the Bureau (except for certain rulemaking authority over motor vehicle dealers that remains with the Board). See sections 1061 and 1100A of the Dodd-Frank Act.

<sup>10</sup> Codified at 15 U.S.C. 1601 note.

disclosures beginning January 21, 2013 due to the statutory requirement that any section of Dodd-Frank Act title XIV for which regulations have not been issued by January 21, 2013 are self-effectuating as of that date. The Bureau stated that this likely would result in widely varying approaches to compliance in the absence of regulatory guidance, creating confusion for consumers, and would impose a significant burden on industry. For example, this could result in a consumer who shops for a mortgage loan receiving different disclosures from different creditors. The Bureau noted that it believed such disclosures would not only be unhelpful to consumers, but likely would be confusing since the same disclosures would be provided in widely different ways, and, moreover, implementing the Affected Title XIV Disclosures separately from the TILA-RESPA integrated disclosures would increase compliance costs and burdens on industry. The Bureau also noted in the TILA-RESPA Integration Proposal that nothing in the Dodd-Frank Act itself or its legislative history suggests that Congress contemplated how the separate requirements in titles X and XIV would work together.<sup>11</sup>

Accordingly, in the TILA-RESPA Integration Proposal, the Bureau proposed to implement the Affected Title XIV Disclosures for purposes of Dodd-Frank Act section 1400(c) by providing a temporary exemption from the requirement to comply with such requirements such that they would not become self-effective on January 21, 2013, and instead would be required at the time the TILA-RESPA integrated disclosure requirements become effective.<sup>12</sup>

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<sup>11</sup> As the Bureau stated in the TILA-RESPA Integration Proposal, certain of the Affected Title XIV Disclosures indicate that Congress did not intend for those disclosure requirements and the TILA-RESPA integrated disclosures to operate independently. For example, Dodd-Frank Act section 1419 amended paragraphs (a)(16) through (19) of TILA section 128 to require additional content on the disclosure provided to consumers within three days of application and in final form at or before consummation. 15 U.S.C. 1638(a)(16) through (19). Pursuant to TILA section 128(b)(1), for residential mortgage transactions, all disclosures required by TILA section 128(a) must be “conspicuously segregated” from all other information provided in connection with the transaction. 15 U.S.C. 1638(b)(1). Therefore, the Bureau stated that these sections are directly implicated by the integrated TILA-RESPA requirement. 77 FR 51116, 51133.

<sup>12</sup> *Id.*

The Bureau proposed such temporary exemption pursuant to its authority under TILA sections 105(a) and 105(f), RESPA section 19(a), Dodd-Frank Act section 1032(a) and, for residential mortgage loans, Dodd-Frank Act section 1405(b). The Bureau explained that fully implementing the Affected Title XIV Disclosures as part of the broader integrated TILA-RESPA rulemaking, rather than issuing rules implementing each requirement individually or allowing those statutory provisions to take effect by operation of law, will improve the overall effectiveness of the integrated disclosures for consumers and reduce burden on industry.

Specifically, as set forth in the section-by-section analysis to proposed § 1026.1(c) in the TILA-RESPA Integration Proposal, the Bureau proposed to delay those requirements by temporarily exempting persons from the requirement to comply on January 21, 2013.<sup>13</sup> The Bureau stated in the TILA-RESPA Integration Proposal that it would remove this regulatory exemption in the final rule implementing the TILA-RESPA integrated disclosures. The proposed exemption would be, in effect, a delay of the effective date of the Affected Title XIV Disclosures.

#### *B. Other Title XIV Disclosures*

The Bureau proposed to exclude the following Title XIV Disclosures from the list of Affected Title XIV Disclosures in the TILA-RESPA Integration Proposal, stating they would be implemented in separate rulemakings:

- Disclosure regarding notice of reset of hybrid adjustable rate mortgage. Dodd-Frank Act section 1418(a); TILA section 128A(b).
- Loan originator identifier requirement. Dodd-Frank section 1402(a)(2); TILA section 129B(b)(1)(B).

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<sup>13</sup> 77 FR 51116, 51134.

- Consumer notification regarding appraisals for higher-risk mortgages. Dodd-Frank Act section 1471; TILA section 129H(d).
- Consumer notification regarding the right to receive an appraisal copy. Dodd-Frank Act section 1474; ECOA section 701(e)(5).
- Post-Consummation Escrow Cancellation Disclosure. Dodd-Frank Act section 1462; TILA section 129D(j)(1)(B).

The Bureau stated generally that these disclosures were expected to be proposed separately in summer 2012 and finalized by January 21, 2013. However, the Post-Consummation Escrow Cancellation Disclosure was excluded from the list of Affected Title XIV Disclosures, in part, because the Bureau stated it “will be implemented by final rule pursuant to an outstanding proposal published by the Board,” referring to the Board’s 2011 Escrows Proposal.<sup>14</sup>

The Bureau proposed to delay the Affected Title XIV Disclosures to the fullest extent those requirements could apply under the statutory provisions, including to transactions not covered by the proposed integrated disclosure provisions, including open-end credit plans, transactions secured by dwellings that are not real property, and reverse mortgages. The Bureau specifically solicited comment on this scope of the exemption of the Affected Title XIV Disclosures. The Bureau also solicited comment on whether the regulatory exemption should sunset on a specific date, rather than provide an exemption until a final rule for the integrated disclosures becomes effective.

*C. Comments on the Proposed Amendments to Section 1026.1(c)*

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<sup>14</sup> 77 FR 51116, 51134.

As of September 7, 2012, the Bureau had received nearly 500 comments on the TILA-RESPA Integration Proposal from depository institutions, credit unions, settlement agents, mortgage brokers, mortgage brokerage companies, industry trade groups, consumers, consumer advocacy organizations, a State attorney general, Government-Sponsored Enterprises (GSEs), and other sources. More than 20 of these comments specifically addressed the Bureau's proposed delay of the Affected Title XIV Disclosures, and those commenters were unanimously supportive of a temporary exemption from the Affected Title XIV Disclosures until the TILA-RESPA integrated disclosure rulemaking is finalized. Several industry commenters and their trade groups stated that this approach would result in disclosures that are more useful for consumers and would facilitate compliance for financial institutions by delaying compliance until a comprehensive implementation of all such rules could be accomplished. A State attorney general commented in support of this delayed implementation of the Affected Title XIV Disclosures, stating that it would allow business entities the time to make extensive changes to their software and retrain staff in order to comply with the new integrated disclosure requirements.

A number of commenters urged the Bureau to delay implementation of other Title XIV Disclosures or otherwise addressed the Title XIV Disclosures more generally. One mortgage company expressly urged the Bureau to delay implementation of the other Title XIV Disclosures (which include the Post-Consummation Escrow Cancellation Disclosure) in addition to the Affected Title XIV Disclosures. A national trade association for credit unions encouraged the Bureau to use its exemption authority under the Dodd-Frank Act, TILA, and RESPA to the fullest extent permissible to relieve regulatory burdens for credit unions. Several state-level trade associations for credit unions urged the Bureau to finalize all Regulation Z rulemakings at

the same time. A GSE noted the benefits of implementing rules in a manner that would necessitate only a one-time change for software and other systems. One trade association supported the proposal to delay implementation of the Affected Title XIV Disclosures and urged the Bureau to clarify in the final rule its reasoning for exercising its exemption authority under section 1032(a) of the Dodd-Frank Act to specifically incorporate the considerations in section 1032(c) of the Dodd-Frank Act. Two trade associations commented that the Bureau should make clear that proposed § 1026.1(c) is a rule in “final form” pursuant to section 1400(c)(1) of the Dodd-Frank Act and that such a rule prevents the triggering of section 1400(c)(3) of the Dodd-Frank Act.

Several industry trade associations were opposed to a sunset of the regulatory exemption on a specific date and instead, were in favor of the exemption existing until the TILA-RESPA integrated disclosures final rule becomes effective. These industry trade group commenters were concerned that a specific sunset date may precede the effective date for the TILA-RESPA integration final rule. Removing the exemption at the same time as implementing the TILA-RESPA integrated disclosures would, in their view, reduce unnecessary disruption and provide regulatory certainty.

In addition, the Bureau did not receive any comments in favor of limiting the scope of the temporary exemptions, such that the disclosure requirements would become self-effective for the types of loans that are not subject to the TILA-RESPA integrated disclosure requirements in the TILA-RESPA Integration Proposal. One national trade association representing the reverse mortgage industry commented in support of exemptions from the Affected Title XIV Disclosures for reverse mortgage loans. A national trade association representing banks and bank holding companies that provide retail financial services commented that the exemption should also apply

to the fullest extent under the statute, and not be limited to the loans subject the TILA-RESPA integrated disclosure requirements as proposed. The trade association specifically stated that many banks use similar systems for home equity lines of credit, reverse mortgages, and loans secured by dwellings that are not real property and noted that including them in the exemption would allow banks to implement the disclosure requirements in a coordinated manner. A trade association representing financial institutions in a particular State also commented in favor of the full scope of the temporary exemption.

*D. Board's 2011 Escrows Proposal for the Post-Consummation Escrow Cancellation Disclosure*

The 2011 Escrows Proposal proposed to implement the Pre-Consummation Escrow Waiver Disclosure required under TILA section 129D(j)(1)(A) and the Post-Consummation Escrow Cancellation Disclosure required under TILA section 129D(j)(1)(B).<sup>15</sup> The content requirements set forth in TILA section 129D(j)(2) are the same for the Pre-Consummation Escrow Waiver Disclosure and the Post-Consummation Escrow Cancellation Disclosure. The 2011 Escrows Proposal proposed model forms for both disclosures. Under the 2011 Escrows Proposal, the disclosures would be required to be delivered at least three business days before consummation or cancellation of the existing escrow account after consummation, as applicable. The proposed disclosures would explain what an escrow account is; how it works; and the risk of not having an escrow account. It also would state the potential consequences of failing to pay home-related costs such as taxes and insurance in the absence of an escrow account. In addition, it would state why there will be no escrow account or why it is being cancelled, as applicable; the amount of any fee imposed for not having an escrow account; and how the consumer can

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<sup>15</sup> 76 FR 11598.

request that an escrow account be established or left in place, along with any deadline for such requests.<sup>16</sup>

The Board received approximately 70 comments to the 2011 Escrows Proposal, of which roughly a dozen addressed the timing of the implementation of the Post-Consummation Escrow Cancellation Disclosure. Specifically, national industry trade associations, State industry trade associations, large depository institutions, and community banks urged the Board to delay implementation of the Dodd-Frank Act escrow disclosure requirements until the Bureau had authority over the disclosures or until the Bureau could finalize the escrow disclosure requirements along with the TILA-RESPA integrated disclosures. These commenters stated that harmonizing the rulemakings would allow for a comprehensive approach and avoid duplicative forms and repetitive rulemakings. One industry trade association commented that it would be “premature” and “potentially counterproductive” to issue new escrow rules prior to the completion of the TILA-RESPA integrated disclosures, and therefore recommended that the Board delay finalizing the escrow rules to allow the Bureau to incorporate the Dodd-Frank Act’s escrow amendments into the TILA-RESPA integrated disclosures.

As noted above, the Bureau proposed, as part of the TILA-RESPA Integration Proposal, to provide a temporary exemption from compliance with the TILA section 129D(j)(1)(A), which requires the Pre-Consummation Escrow Waiver Disclosure. The Bureau did not propose to effectively delay the Post-Consummation Escrow Cancellation Disclosure in the TILA-RESPA Integration Proposal, and instead stated it would implement the statute, TILA section 129D(j)(1)(B), by final rule pursuant to the Board’s 2011 Escrows Proposal. Absent the Bureau’s issuance of a final rule implementing TILA section 129D(j)(1)(B) by January 21, 2013,

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<sup>16</sup> 76 FR 11598, 11599.

the provision would go into effect as of such date by operation of law under the Dodd-Frank Act section 1400(c)(3).<sup>17</sup>

### **III. Summary of the Final Rule**

The final rule implements the Affected Title XIV Disclosures and the Post-Consummation Escrow Cancellation Disclosure in § 1026.1(c) of Regulation Z and provides for a temporary exemption for persons from these statutory disclosure requirements. The Bureau is issuing this final rule implementing the Affected Title XIV Disclosures and the Post-Consummation Escrow Cancellation Disclosure prior to the statutory provisions becoming self-effectuating on January 21, 2013. Accordingly, persons will not be required to comply with these statutory disclosure requirements until such time as the Bureau removes the exemption, which it plans to do in the final rule for the TILA-RESPA integrated disclosures, and such removal takes effect.

### **IV. Legal Authority**

The Bureau is exercising its authority under and consistent with TILA section 105(a) and (f), RESPA section 19(a), Dodd-Frank section 1032(a), and, for residential mortgage loans, Dodd-Frank Act section 1405(b) to, in effect, delay the effective date of the Affected Title XIV Disclosures and the Post-Consummation Escrow Cancellation Disclosure by exempting regulated persons from these provisions until a final rule for the TILA-RESPA integrated disclosures mandated by Dodd-Frank Act sections 1032(f), 1098 and 1100A takes effect. 15 U.S.C. 1604(a), 1604(f); 12 U.S.C. 2617(a); 12 U.S.C. 5532(a); 15 U.S.C. 1601 note. TILA section 105(a) gives the Bureau authority to adjust or except from the disclosure requirements of

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<sup>17</sup> As described under part IV below, the Bureau considers an exemption from the disclosure requirement under TILA section 129D(j)(1)(B), such as that proposed in the TILA-RESPA Integration Proposal for the Affected Title XIV Disclosures, to be the issuance of a regulation implementing that provision for purposes of Dodd-Frank Act section 1400(c)(3).

TILA all or any class of transactions to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or facilitate compliance therewith. As set forth above and below, delaying the Affected Title XIV Disclosures and the Post-Consummation Escrow Cancellation Disclosure until such time as a final rule implementing the TILA-RESPA integrated disclosures takes effect achieves the purpose of TILA to promote the informed use of credit through a more effective, consolidated disclosure, and facilitates compliance by reducing regulatory burden associated with revising systems and practices multiple times and providing multiple disclosures to consumers.

The Bureau is also exercising exemption authority pursuant to TILA section 105(f). The Bureau has considered the factors in TILA section 105(f) and believes that an exemption is appropriate under that provision. Specifically, the Bureau believes that the exemption is appropriate for all affected borrowers, regardless of their other financial arrangements and financial sophistication and the importance of the loan to them. Similarly, the Bureau believes that the exemption is 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 will simplify the credit process without undermining the goal of consumer protection or denying important benefits to consumers.

As discussed above, the Bureau believes that the exemption overall provides a benefit to consumers by facilitating a more effective, consolidated disclosure scheme. Absent an exemption, the Affected Title XIV Disclosures and the Post-Consummation Escrow Cancellation Disclosure would complicate and hinder the mortgage lending process because consumers would receive inconsistent disclosures and, likely, numerous additional pages of Federal disclosures that do not work together in a meaningful, synchronized way. The Bureau also believes that the

credit process could be more expensive and complicated if the Affected Title XIV Disclosures and the Post-Consummation Escrow Cancellation Disclosure take effect independent of the larger TILA-RESPA integration rulemaking because industry would be required to revise systems and practices multiple times. The Bureau has also considered the status of mortgage borrowers in issuing the exemptions, and believes the exemption is appropriate to improve the informed use of credit. The Bureau does not believe that the goal of consumer protection would be undermined by the exemption, because of the risk that layering the Affected Title XIV Disclosures and the Post-Consummation Escrow Cancellation Disclosure on top of existing mandated disclosures would lead to consumer confusion. The exemption allows the Bureau to coordinate the changes in a way that improves overall consumer understanding of the disclosures.

RESPA section 19(a) provides the Bureau with authority to grant reasonable exemptions for classes of transactions from the requirements of RESPA as necessary to achieve the purposes of RESPA. 12 U.S.C. 2617(a). As discussed above, one purpose of RESPA is to achieve more effective advance disclosure to home buyers and sellers of settlement costs. RESPA section 2(b)(1); 12 U.S.C. 2601(b). Delaying the optional disclosure of the appraisal management company fee and the fee paid to the appraiser provided for by Dodd-Frank Act section 1475 (amending RESPA section 4(c)) until such time as a final rule implementing the TILA-RESPA integrated disclosures takes effect will result in a more effective disclosure and improve consumer understanding, as discussed above.

Section 1405(b) of the Dodd-Frank Act additionally gives the Bureau authority to exempt from or modify disclosure requirements, in whole or in part, for any class of residential mortgage loans if the Bureau determines that the exemption or modification is in the interest of consumers

and the public. 15 U.S.C. 1601 note. As discussed above, implementing the Affected Title XIV Disclosures and the Post-Consummation Escrow Cancellation Disclosure with the TILA-RESPA integrated disclosures is in the interest of consumers because it allows the Bureau to coordinate the changes mandated by the Dodd-Frank Act in a way that synchronizes and harmonizes the disclosures, which in turn will improve overall consumer understanding of the disclosures.

Further, implementing the Affected Title XIV Disclosures and the Post-Consummation Escrow Cancellation Disclosure as part of the integrated disclosure rulemaking is in the public interest because it produces a more efficient regulatory scheme by incorporating multiple, potentially confusing disclosures into clear and understandable forms through consumer testing.

Consistent with section 1032(a) of the Dodd-Frank Act,<sup>18</sup> implementing the Affected Title XIV Disclosures and the Post-Consummation Escrow Cancellation Disclosure together with the TILA-RESPA integrated disclosures would ensure that the features of consumer credit transactions secured by real property 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 Bureau believes that implementing a single, consolidated disclosure will benefit consumers and facilitate compliance with TILA and RESPA.

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<sup>18</sup> As the Bureau stated in the TILA-RESPA Integration Proposal, Dodd-Frank Act section 1032(c) provides that, in prescribing rules pursuant to section 1032, the Bureau “shall consider available evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services.” 12 U.S.C. 5532(c). Consistent with Dodd-Frank Act section 1032(a), in developing this final rule to delay implementation of the Affected Title XIV Disclosures and the Post-Consummation Escrow Cancellation Disclosure, the Bureau considered available studies, reports, and other evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services, including the evidence developed through its consumer testing of the TILA-RESPA integrated disclosures as well as prior testing done by the Board and HUD regarding TILA and RESPA disclosures. *See* parts II and III of the TILA-RESPA Integration Proposal. For the reasons discussed in this final rule, the Bureau has considered available evidence pursuant to Dodd-Frank Act section 1032(c).

For these reasons, the Bureau is issuing this final rule to delay the Affected Title XIV Disclosures and the Post-Consummation Escrow Cancellation Disclosure until the Bureau issues a final rule implementing the TILA-RESPA integrated disclosures required by sections 1032(f), 1098, and 1100A of the Dodd-Frank Act and such rule takes effect. The Bureau considers the adoption of these amendments to § 1026.1(c) as prescribing the rules in final form for the Affected Title XIV Disclosures and the Post-Consummation Escrow Cancellation Disclosure pursuant to Dodd-Frank Act section 1400(c)(1)(A), to the extent regulations are required to be prescribed, and the effective date of the final rule as satisfying Dodd-Frank Act section 1400(c)(1)(B). The Bureau views this final rule as issuing regulations for purposes of Dodd-Frank Act section 1400(c)(3); therefore, the Affected Title XIV Disclosures and Post-Consummation Escrow Cancellation Disclosure do not take effect by operation of law with respect to any transaction covered by TILA or RESPA on January 21, 2013.

This final rule will be effective on the date of publication in the *Federal Register*. Under section 553(d) of the Administrative Procedure Act (APA), the required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except for (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule. 5 U.S.C. 553(d). As discussed in part III above and part V below, this final rule provides for a temporary exemption from the Affected Title XIV Disclosures and the Post-Consummation Escrow Cancellation Disclosure such that they would not become self-effective on January 21, 2013, and instead would be required at the time the TILA-RESPA integrated disclosures become effective. Therefore, under section 553(d)(1) of the APA, the Bureau is publishing this final rule less than 30 days before its effective date because it

is a substantive rule which grants or recognizes an exemption or relieves a restriction. 5 U.S.C. 553(d)(1).

## **V. Section-by-Section Analysis of Final Rule**

In the TILA-RESPA Integration Proposal, the Bureau proposed to exempt persons temporarily from the disclosure requirements of the Affected Title XIV Disclosures (*i.e.*, sections 128(a)(16) through (19), 128(b)(4), 129C(f)(1), 129C(g)(2) and (3), 129C(h), 129D(h), and 129D(j)(1)(A) of TILA and section 4(c) of RESPA), until regulations implementing the integrated disclosures required by sections 1032(f), 1098, and 1100A of the Dodd-Frank Act take effect. 15 U.S.C. 1638(a)(16)-(19), 1638(b)(4), 1639c(f)(1), 1639c(g), 1639c(h), 1639d(h), and 1639d(j)(1)(A); 12 U.S.C. 2604(c); 12 U.S.C. 5532(f); 12 U.S.C. 2603; 15 U.S.C. 1604. The TILA-RESPA Integration Proposal provided for implementation of the exemption in proposed § 1026.1(c)(5) by stating that no person is required to provide the disclosures required by the statutory provisions listed above. Proposed comment 1(c)(5)-1 explained that § 1026.1(c)(5) implements the above-listed provisions of TILA and RESPA added by the Dodd-Frank Act by exempting persons from the disclosure requirements of those sections. The comment proposed to clarify that the exemptions provided in proposed § 1026.1(c)(5) are intended to be temporary and will apply only until compliance with the regulations implementing the integrated disclosures required by section 1032(f) of the Dodd-Frank Act become mandatory. Proposed comment 1(c)(5)-1 also clarified that the exemption in proposed § 1026.1(c)(5) does not exempt any person from any other requirement of Regulation Z, Regulation X, or of TILA or RESPA.

The Bureau has considered the comments addressing the proposed amendments to § 1026.1(c), which are summarized in part II.C, above. Based on those comments and its own

analysis, the Bureau has determined that it will adopt the proposed amendments to § 1026.1(c), with only one substantive change and the technical changes described below.

### *1. Post-Consummation Escrow Cancellation Disclosure*

Although the Post-Consummation Escrow Cancellation Disclosure was not included in the Affected Title XIV Disclosures in the TILA-RESPA Integration Proposal, the Bureau nevertheless received comment requesting that it delay implementation of this disclosure, as described above. Furthermore, as discussed above, the Board received similar requests from commenters on its 2011 Escrows Proposal, which is now the Bureau's responsibility.

The Bureau has considered the comments received by the Board and the Bureau and believes that, for the reasons given by the commenters and the reasons described in part II above, delaying implementation of the Post-Consummation Escrow Cancellation Disclosure and coordinating such implementation with that of the TILA-RESPA integrated disclosures is in the interest of industry and consumers alike. As discussed in part II above, the Dodd-Frank Act statutory requirements for the content of the Pre-Consummation Escrow Waiver Disclosure and the Post-Consummation Escrow Cancellation Disclosure are the same, and the model forms proposed in the Board's 2011 Escrows Proposal contained similar language for both disclosures. The Bureau tested language for the Pre-Consummation Escrow Waiver Disclosure at its consumer testing conducted in connection with the TILA-RESPA Integration Proposal and proposed to integrate this disclosure into the Closing Disclosure (which integrates the final TILA disclosure and the RESPA settlement statement).<sup>19</sup> Implementing the Post-Consummation Escrow Cancellation Disclosure along with the TILA-RESPA integrated disclosures will allow

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<sup>19</sup> For a report on the Bureau's consumer testing, see Kleimann Communication Group, Inc., *Know Before You Owe: Evolution of the Integrated TILA-RESPA Disclosures* (July 2012), available at [http://files.consumerfinance.gov/f/201207\\_cfpb\\_report\\_tila-respa-testing.pdf](http://files.consumerfinance.gov/f/201207_cfpb_report_tila-respa-testing.pdf).

the Bureau to use feedback it has received from consumer testing conducted prior to the TILA-RESPA Integration Proposal, the comments on that proposal, and any consumer testing conducted subsequent to the proposal to harmonize the content and format of the Post-Consummation Escrow Cancellation Disclosure, the Pre-Consummation Escrow Waiver Disclosure, and the TILA-RESPA integrated disclosures. Consumers, therefore, would benefit from a more fully integrated and synchronized overall mortgage disclosure scheme, and industry would benefit from a more coordinated implementation of the overall mortgage disclosure scheme mandated by the Dodd-Frank Act and implemented by the Bureau. The Bureau also notes that no commenters supported the finalization of the Post-Consummation Escrow Cancellation Disclosure with the planned finalization of the Board's 2011 Escrows Proposal on or before January 21, 2013, and no commenters supported allowing the Post-Consummation Escrow Cancellation Disclosure to take effect by operation of law on that date.

In light of the considerations discussed above, including the comments submitted to the Board and the Bureau in support of a temporary exemption from compliance, the Bureau is modifying the proposed amendments to § 1026.1(c) to exempt persons from compliance with the Post-Consummation Escrow Cancellation Disclosure in addition to the Affected Title XIV Disclosures. Accordingly, the Bureau is adding a reference in § 1026.1(c)(5) and associated commentary to TILA section 129D(j)(1)(B).

## *2. Technical Changes*

In addition, in the final rule the Bureau is making three technical changes to § 1026.1 and its commentary. First, in § 1026.1(a), reference has been added to reflect the implementation of certain provisions of RESPA. This technical change relates to the fact that the optional disclosure of appraisal management company fees and fees paid to appraisers under RESPA

section 4(c) (as added by Dodd-Frank Act section 1475) is being implemented in Regulation Z, rather than Regulation X, by exempting persons from the disclosure requirements of that section.

Second, in comment 1(c)(5)-1, references have been added to Dodd-Frank Act sections 1098 and 1100A, which amend RESPA section 4(a) and TILA section 105(b), respectively, in addition to the proposed comment's reference to Dodd-Frank Act section 1032(f). This technical change reflects the fact that sections 1098 and 1100A of the Dodd-Frank Act also mandate the TILA-RESPA integrated disclosures. Third, the Bureau has amended § 1026.1(a) to make clear that the Office of Management and Budget control number listed applies only to Bureau respondents.

## **VI. Section 1022(b)(2) Analysis**

Section VII of the TILA-RESPA Integration Proposal contained the Bureau's preliminary analysis under section 1022(b)(2)(A) of the Dodd-Frank Act of the potential benefits and costs of the proposed rule to consumers and covered persons (as defined in Dodd-Frank Act section 1002(6), 12 U.S.C. 5481(6)), 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 (the Preliminary Section 1022(b)(2) Analysis).<sup>20</sup> In the Preliminary Section 1022(b)(2) Analysis, the Bureau addressed the impact of the proposed delay of the Affected Title XIV Disclosures on covered persons and consumers. *See* section VII.D.8 of

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<sup>20</sup> See 77 FR 51116, 51267. The Bureau stated that in developing the proposed rule, the Bureau had considered potential benefits, costs, and impacts, and had consulted or offered to consult with the prudential regulators, the Department of Housing and Urban Development, and the Federal Trade Commission, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies. The Bureau also held discussions with or solicited feedback from the United States Department of Agriculture Rural Housing Service, the Farm Credit Administration, the Federal Housing Administration, the Federal Housing Finance Agency, and the Department of Veterans Affairs regarding the potential impacts of the proposed rule on those entities' loan programs. *Id.* In addition, prior to finalizing the rule, the Bureau consulted or offered to consult with the appropriate prudential regulators and Federal agencies regarding this final rule.

the TILA-RESPA Integration Proposal. There, the Bureau noted that the proposed rule would exempt creditors temporarily from compliance with certain new disclosure requirements added to TILA and RESPA by the Dodd-Frank Act until such final rule takes effect. Although the Dodd-Frank Act does not specifically require inclusion of the Affected Title XIV Disclosures in the TILA-RESPA integrated disclosures, the Bureau stated in the TILA-RESPA Integration Proposal that it believes these disclosures should be included in the integrated disclosures because doing so would improve the overall effectiveness of the integrated disclosures, which may benefit consumers and covered persons, and also reduce burden on covered persons. *See* 77 FR 51116, 51279. The Bureau further stated that making the requirements to provide the Affected Title XIV Disclosures become effective simultaneously with the TILA-RESPA integrated disclosures would avoid unnecessary regulatory burden by preventing creditors from having to implement multiple iterations of disclosure rules. Lastly, the Bureau stated that it did not anticipate additional costs to covered persons as a result of delayed implementation of the Affected Title XIV Disclosures, although covered persons may incur additional recurring costs associated with calculating and disclosing this additional information to consumers once the implementing rules take effect. *See* 77 FR 51116, 51279-80. As discussed above, this final rule effectively delays implementation of certain disclosure requirements and thus, consumers will not receive the information provided in such disclosures as early as they would have if the statutory requirements had become self-effective pursuant to Dodd-Frank Act section 1400(c). However, the Bureau believes that these disclosures are of lesser value to consumers without the comprehensive reform of the integrated TILA-RESPA disclosures. In addition, any benefits that consumers would derive from allowing the statutory requirements to take effect prior to the TILA-RESPA integrated disclosures would only accrue during the time between when the

requirements would take effect and when the TILA-RESPA integrated disclosure requirements would be finalized.

The baseline for analysis in this final Dodd-Frank Act section 1022(b)(2) analysis is a post-statutory baseline analysis. The Preliminary Section 1022(b)(2) Analysis used a pre-statutory baseline, *i.e.*, it analyzed the benefits, costs, and impacts of the proposed temporary exemption against a pre-statutory baseline. The Bureau believes a post-statutory baseline more fully informs the rulemaking and is more appropriate for the distinct nature of this final rule – to prevent effectively certain statutory disclosure requirements from becoming self-effective. The Bureau has discretion in future rulemakings to choose the most appropriate baseline for each particular rulemaking.

The Bureau did not receive any comments on the Bureau’s Preliminary Section 1022(b)(2) Analysis regarding the effect of the proposed delay of implementing the Affected Title XIV Disclosures on covered persons and consumers. The Bureau also believes that delaying implementation of the Post-Consummation Escrow Cancellation Disclosure and, instead, implementing the disclosure along with the TILA-RESPA integrated disclosures would avoid unnecessary regulatory burden by preventing covered persons from having to implement multiple iterations of disclosure rules. The Bureau does not anticipate additional costs to covered persons as a result of such delayed implementation of the Post-Consummation Escrow Cancellation Disclosure, although covered persons may incur additional recurring costs associated with calculating and disclosing this additional information to consumers once the implementing rules take effect.

In light of this, the Bureau concludes, using a post-statutory baseline, that the final rule will have the benefits, costs, and impacts on covered persons and consumers that were discussed

in the Preliminary Section 1022(b)(2) Analysis. This final rule does not have the potential to reduce access by consumers to consumer financial products or services, as it will not increase costs on covered persons. In addition, as noted above, because this rule effectively delays the implementation of disclosure requirements, it will cause no additional costs on depository institutions and credit unions with \$10 billion or less in total assets, as described in section 1026 of the Dodd-Frank Act. Further, it will have no significant or adverse impact on consumers in rural areas, as it does not increase costs for covered persons or consumers. The Bureau believes that delaying the implementation of the Affected Title XIV Disclosures and the Post-Consummation Escrow Cancellation Disclosure will eliminate the costs that covered persons would have incurred if they had to implement the disclosure provisions multiple times, *i.e.*, if these statutory provisions had taken effect by operation of law pursuant to Dodd-Frank Act section 1400(c)(3) and were also later implemented through the TILA-RESPA integration final rule (including potential increased compliance costs due to uncertainty of complying with statutory provisions without implementing regulations).

## **VII. Regulatory Flexibility Act**

The Bureau's TILA-RESPA Integration Proposal included an initial regulatory flexibility analysis (IRFA) discussing the potential impact of the Bureau's regulations on small entities, including small businesses, under the Regulatory Flexibility Act (RFA). *See* 77 FR 51116, 51282. Among other issues, the IRFA discussed how the proposed rule would exempt creditors temporarily from compliance with certain new disclosure requirements added to TILA and RESPA by the Dodd-Frank Act until the integrated TILA-RESPA rule takes effect. *See* 77 FR 51116, 51293. The Bureau stated in the IRFA that, although the Dodd-Frank Act does not specifically require inclusion of all of these new disclosures in the integrated disclosures, the

Bureau believes these disclosures should be included in the integrated disclosures because doing so would improve the overall effectiveness of the integrated disclosures, which may benefit consumers and covered persons that are small entities, and also reduce burden on covered persons that are small entities. The Bureau provided in the IRFA that finalizing the rules implementing these title XIV disclosures simultaneously with the final TILA-RESPA rule would avoid unnecessary regulatory burden by preventing creditors that are small entities from having to implement multiple iterations of disclosure rules. The Bureau stated in the IRFA that it does not anticipate additional costs to covered persons as a result of delayed implementation of the new disclosure requirements, although small entities may incur additional recurring costs associated with calculating and disclosing this additional information to consumers once the implementing rules take effect. *Id.* The Bureau also noted in the IRFA that incorporating the Affected Title XIV Disclosures into the TILA-RESPA integrated disclosures was being proposed to avoid duplication, overlaps, and conflicts. *See* 77 FR 51116, 51294.

The Bureau did not receive any comments on the conclusions that the Bureau made in the IRFA regarding the effect on small entities of the proposed delay of implementing the Affected Title XIV Disclosures. The Bureau also believes that delaying implementation of the Post-Consummation Escrow Cancellation Disclosure to implement it simultaneously with the TILA-RESPA integration final rulemaking will avoid unnecessary regulatory burden by preventing covered persons that are small entities from having to implement multiple iterations of disclosure rules. The Bureau does not anticipate additional costs as a result of delayed implementation of the Post-Consummation Escrow Cancellation Disclosure, although small entities may incur additional recurring costs associated with calculating and disclosing this additional information to consumers once the implementing rules take effect. *Id.* The Bureau also believes that

synchronizing the format and content of the Post-Consummation Escrow Cancellation Disclosure with the Pre-Consummation Escrow Waiver Disclosure and the integrated TILA-RESPA disclosures avoids duplication, overlaps, and conflicts with other Federal rules. *See* 77 FR 51116, 51294.

Accordingly, because this final rule, which the Bureau is issuing separately from the other parts of the TILA-RESPA Integration Proposal, will not create additional costs for covered persons that are small entities, the undersigned certifies that it will not have a significant economic impact on a substantial number of small entities. Therefore, an analysis under the RFA is not required for this final rule. However, the factors required in such an analysis are addressed below for informational purposes.

The Bureau has concluded that the final rule will impose, subject to a post-statutory baseline, the impacts on small entities that were discussed in the IRFA. The delay of the implementation of the Affected Title XIV Disclosures and the Post-Consummation Escrow Cancellation Disclosure, so that they may be implemented with the integrated TILA-RESPA disclosures, will improve the integrated disclosures, which may benefit consumers and small entities, and avoid unnecessary regulatory burden by preventing covered persons that are small entities from having to implement multiple iterations of disclosure rules.

As described in the TILA-RESPA Integration Proposal, the Bureau estimates the final rule to affect small entities that are engaged in closed-end mortgage transactions that are commercial banks and savings associations, credit unions, non-bank mortgage lenders, mortgage brokers, and settlement agents, totaling about 26,000 small entities.<sup>21</sup> This rule provides an exemption and, therefore, does not contain any reporting, recordkeeping, or other requirements.

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<sup>21</sup> See 77 FR 51116, 51285-6.

The Bureau has reviewed possible steps to minimize the impact on small entities in connection with the TILA-RESPA Integration Proposal. As the nature of this final rule is an exemption, it is itself a step taken to minimize impact on small entities (as opposed to the alternative of letting the statutory disclosure provisions become self-effective). The final rule covers all small entities subject to the statutory provisions, because the final rule applies to persons generally.

In sum, this final rule will eliminate the costs that covered small entities would have incurred if they had to implement the disclosure provisions multiple times, *i.e.*, if these statutory provisions had taken effect by operation of law pursuant to Dodd-Frank Act section 1400(c)(3) and were also later implemented through the TILA-RESPA integration final rule (including potential increased compliance costs due to uncertainty of complying with statutory provisions without implementing regulations).

### **VIII. Paperwork Reduction Act**

The Bureau has determined that this final rule does not impose any new recordkeeping, reporting, or disclosure requirements on covered persons or members of the public that would be collections of information requiring OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501, *et seq.* Rather, the final rule defers certain information collection requirements subject to the PRA until such time as the TILA-RESPA integrated disclosure final rule, and the corresponding information collection requirements, becomes effective. The Bureau did not receive any comments related to this exemption under the PRA.

### **List of Subjects in 12 CFR Part 1026**

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

## **Authority and Issuance**

For the reasons stated in the preamble, the Bureau amends Regulation Z, 12 CFR part 1026, as set forth below:

### **PART 1026—TRUTH IN LENDING (REGULATION Z)**

1. The authority citation for part 1026 is revised 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.*

2. Section 1026.1 is amended by revising paragraph (a) and adding paragraph (c)(5) to read as follows:

#### **§ 1026.1 Authority, purpose, coverage, organization, enforcement, and liability.**

(a) *Authority.* This part, known as Regulation Z, is issued by the Bureau of Consumer Financial Protection to implement the Federal Truth in Lending Act, which is contained in title I of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 *et seq.*). This part also implements title XII, section 1204 of the Competitive Equality Banking Act of 1987 (Pub. L. 100-86, 101 Stat. 552). Furthermore, this part implements certain provisions of the Real Estate Settlement Procedures Act of 1974, as amended (12 U.S.C. 2601 *et seq.*). The Bureau's information-collection requirements contained in this part have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 *et seq.* and have been assigned OMB No. 3170-0015 (Truth in Lending).

\* \* \* \* \*

(c) *Coverage.* \* \* \*

(5) No person is required to provide the disclosures required by sections 128(a)(16) through (19), 128(b)(4), 129C(f)(1), 129C(g)(2) and (3), 129C(h), 129D(h), 129D(j)(1)(A), or

129D(j)(1)(B) of the Truth in Lending Act or section 4(c) of the Real Estate Settlement Procedures Act.

\* \* \* \*

3. In Supplement I to Part 1026:

A. Under *Section 1026.1—Authority, Purpose, Coverage, Organization, Enforcement and Liability*, add subheading *I(c) Coverage*, the subheading *Paragraph 1(c)(5)* and paragraph 1. under that subheading.

The additions read as follows:

**Supplement I to Part 1026—Official Interpretations**

\* \* \* \*

**SUBPART A—GENERAL**

*Section 1026.1—Authority, Purpose, Coverage, Organization, Enforcement and Liability*

*I(c) Coverage.*

\* \* \* \*

*Paragraph 1(c)(5).*

1. *Temporary exemption.* Section 1026.1(c)(5) implements sections 128(a)(16) through (19), 128(b)(4), 129C(f)(1), 129C(g)(2) and (3), 129C(h), 129D(h), 129D(j)(1)(A), and 129D(j)(1)(B) of the Truth in Lending Act and section 4(c) of the Real Estate Settlement Procedures Act, by exempting persons from the disclosure requirements of those sections. These exemptions are intended to be temporary, lasting only until regulations implementing the integrated disclosures required by sections 1032(f), 1098, and 1100A of the Dodd-Frank Act (12 U.S.C. 5532(f), 12 U.S.C. 2603(a), 15 U.S.C. 1604(b)) become mandatory. Section

1026.1(c)(5) does not exempt any person from any other requirement of this part, Regulation X (12 CFR part 1024), the Truth in Lending Act, or the Real Estate Settlement Procedures Act.

\* \* \* \*

**[THIS SIGNATURE PAGE PERTAINS TO THE FINAL RULE TITLED “DELAYED  
IMPLEMENTATION OF CERTAIN NEW MORTGAGE DISCLOSURES”]**

Dated: November 13, 2012.

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**Richard Cordray,**

*Director, Bureau of Consumer Financial Protection.*