



November 6, 2012

Monica Jackson  
Office of the Executive Secretary  
Consumer Financial Protection Bureau  
1700 G Street NW  
Washington, DC 20552

re: Docket No. CFPB-2012-0028 or RIN 3170-AA19

Dear Ms. Jackson:

The American Land Title Association (ALTA)<sup>1</sup> appreciates the opportunity to comment on the Consumer Financial Protection Bureau’s proposed rules and forms under the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA) (the “Proposed Rule”). The new rules, as proposed, combine certain disclosures provided to consumers in connection with applying for and closing on mortgage loans. We support the Bureau’s efforts to streamline and revise the disclosure forms using clearer language and improved visual design to make it easier for consumers to locate key information, such as interest rate, monthly payments, and costs to close a loan. ALTA believes that a well designed set of forms and regulations can improve not only consumers understanding of their transactions, but also the operations of ALTA members who provide these disclosures at closing.

However, as currently drafted, the Proposed Rule misses this mark and will have the unintended consequence of dramatically altering the processes and relationships within the settlement process—to the detriment of consumers. The result will limit consumer choice, concentrate risk among fewer settlement providers and potentially eliminate the role of the independent third-party settlement agent. The impact of these outcomes on consumers could be devastating.

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<sup>1</sup> The American Land Title Association, founded in 1907, is a national trade association and voice of the real estate settlement services, abstract and title insurance industry. ALTA represents more than 4,100 member companies. With more than 8,000 offices throughout the country, ALTA members operate in every county in the United States to search, review and insure land titles to protect home buyers and mortgage lenders who invest in real estate. ALTA members include title insurance companies, title agents, independent abstracters, title searchers and attorneys, ranging from small, one-county operations to large national title insurers.

ALTA believes that the single best thing that the Bureau can do to protect consumers in the mortgage and closing arena is to preserve the traditional role of the independent third-party settlement agent. This letter will outline a number of changes that will help achieve this goal.

- First, we discuss the important protections that independent third-party settlement agents bring to consumers, lenders and the public.
- Second, we encourage the Bureau to select alternative 2 under Proposed 1026.19(f)(1)(v) and modify that alternative to ensure that lenders and settlement agents maintain the same responsibilities and level of collaboration as they have today in providing disclosures to consumers.
- Third, to prevent the application of the three-day waiting period required under proposed 1026.19(f)(1)(ii) from operating to consumers' detriment, we suggest broadening the exceptions for re-disclosure under 1026.19(f)(2).
- Fourth, we strongly urge the Bureau to clarify that—notwithstanding the fact that the combined disclosure forms merge portions of RESPA and TILA—other components of the two statutes and regulations remain distinct, specifically the liability and penalty provisions.
- Fifth, we encourage the Bureau to help consumers make better informed financial decisions by encouraging them to investigate whether a service is in their best interest rather than predisposing them to bias by labeling the service “optional.”
- Sixth and finally, to reduce the extremely high costs of compliance as well as the 24 months needed to implement the rule, we urge the Bureau to make simple formatting changes to the disclosures and to provide the industry with uniform design specifications.

## **1. Independent third-party settlement agents are vital to protecting consumers' interests in the settlement process.**

As the Bureau recognizes, “people who conduct settlements, such as settlement agents and closing attorneys, play *a valuable role* in the real estate settlement process”.<sup>2</sup> (emphasis added) By serving as the independent third-party facilitator at the settlement table, “settlement agents may be able to assist consumers with issues that arise during a real estate settlement as, or perhaps more, effectively than creditors.”<sup>3</sup>

*Overview of settlement.*

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<sup>2</sup> Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z), 77 Fed. Reg. 51116, 51178 (August 23, 2012) (amending 12 CFR 225 and 12 CFR 1026).

<sup>3</sup> Id.

Settlement—or closing, as it is known in some parts of the country—is a term used to designate the point in time at which a contemplated real estate transaction is concluded. While variances occur throughout the country, in almost all residential real estate transactions, both the closing agent and the closing date are negotiated and agreed upon between the buyer and the seller, along with other terms of a purchase contract.

As you know, ALTA members serve as independent, third-party coordinators and facilitators of real estate transactions, overseeing the closing of real estate and mortgage transactions on behalf of the borrower, lender, seller and any other party in a transaction. A closing agent is typically an attorney or an employee of a title or escrow company (most of which are small, locally oriented businesses within the community). The closing agent acts as a neutral clearinghouse for the transaction, collecting all the necessary documentation, including the deed, mortgage (if applicable), title and homeowners' insurance policies, payoffs (if there are liens on the property that must be released) and pest inspection reports. Assembling these documents is just one of the many tasks performed by a settlement agent. In many states the settlement agent must be licensed by the state to perform these functions. This person also handles the exchange of monies, including any earnest money, mortgage funds and personal funds of the parties. Moreover, the closing agent prepares the HUD-1 Uniform Settlement Statement (HUD-1) and reconciles each file to confirm that the funds received and the funds disbursed balance exactly.

*Settlement agents are independent third parties to the transaction.*

With the complexity of modern real estate and mortgage transactions, it is nearly impossible for each party involved to meet and perform its obligations simultaneously. The role of the independent settlement agent arose specifically to facilitate these transactions more effectively and efficiently.

Settlement agents are the independent third party at the closing table. Their only interest is to ensure the integrity of the transaction.<sup>4</sup> They do not represent any single party in the transaction, but rather they equally represent all the parties by serving as a neutral clearinghouse collecting all the necessary documentation. The closing agent's function is to conclude the transaction equitably, honestly and in accordance with the agreed-upon instructions, and to get the funds and legal documents into the appropriate hands.

Consequently, the settlement agent is not only the clearinghouse but is also the only real estate authority among the parties. The expertise of the settlement agent is required to ensure that the parties acquire the real estate interests for which they have bargained, whether it be the lender's lien interest or the new buyer's ownership interest. In addition to providing benefit to

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<sup>4</sup> *Citizens National Bank of Roswell v. Davisson*, 229 U.S. 213, 223 (1913); *Bell v. Safeco Title Ins. Co.*, 830 S.W.2d. 157 (Tex.App. 1992).

the lender and consumer of a particular transaction, this expertise also is of great benefit to the public at large.

To preserve the valuable role of the independent settlement agent, ALTA proposes that the Bureau make the following changes to the Proposed Rule:

**2. The Bureau should modify its alternative 2 to ensure that lenders and settlement agents maintain the same responsibilities and level of collaboration for providing disclosures to consumers.**

We appreciate the difficulties the Bureau faces in achieving Congress' mandate to integrate two separate disclosures, as currently required, without clear direction on the resolution of statutory conflicts between RESPA and TILA. If done carefully, this mandate can meet the Bureau's dual goals of helping improve consumers' understanding of their mortgage transaction and facilitating industry compliance with TILA and RESPA. One area where these two statutes don't match up is on the question of who provides the Closing Disclosure.

Today, lenders are responsible for providing the Truth in Lending disclosure required under TILA while settlement agents prepare and provide the HUD-1 settlement statement required under RESPA. While the Bureau has combined these disclosures in a single integrated form, it has not determined the process for providing the Closing Disclosure to the consumer, and instead has listed two alternatives: (1) that the lender solely prepare and provide the disclosure or (2) that the lender and settlement agent share responsibility for preparing and providing the disclosure.<sup>5</sup>

Since it allows settlement agents to continue to play their important role in protecting consumers at the closing table, ALTA prefers the Bureau's alternative 2, which allows for shared responsibility between the lender and settlement for preparing and providing the new Closing Disclosure. However, ALTA believes that some simple modifications to the Proposed Rule and Official Staff Interpretation are necessary to fit the intent of both RESPA and TILA more precisely. To help the Bureau visualize these changes, we have attached a mark-up of both the text of the proposed regulation and the Official Staff Interpretation.<sup>6</sup>

As currently drafted, the Proposed Rule's concept of shared responsibility provides little guidance to settlement agents and lenders on how to divide the responsibilities and liabilities associated with providing the completed Closing Disclosure to the consumer. This lack of guidance runs counter to the Bureau's stated goals. In addition, it actually reduces consumer understanding, because consumers will not know what to expect when each lender is conducting business differently. It will also hinder industry compliance by creating unnecessary market inefficiencies and differences in practices amongst lenders and settlement agents.

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<sup>5</sup> See 77 FR 51117. These alternatives are set forth completely in § 1026.19(f)(1) of the Proposed Rule.

<sup>6</sup> See Appendix B.

ALTA believes that if the Bureau were to clarify which parts of the Closing Disclosure the settlement agents and lenders are each required to prepare and still leave it to the parties to determine who will deliver the completed disclosure to the consumer, then both concerns listed above and disruptions to current business relationships would be avoided. Under our proposal, the creditor would be responsible for preparing information contained in its systems and files (generally, pages 1, 4, and 5 of the proposed disclosure) and the settlement agent will remain responsible for the information contained in its system (generally, pages 2 and 3 of the proposed disclosure). After preparing their respective parts, either the lender or settlement agent (following identical rules) would combine, collate and provide the completed Closing Disclosure to the consumer. This option would allow both the creditor and the settlement agent to each prepare and be responsible for information currently in their control or systems, as they do now under TILA and RESPA.

*Our suggested modifications will improve consumers' ability to understand their transactions.*

The modifications ALTA is proposing would improve consumers' ability to understand their transactions by enabling settlement agents to continue to provide their expertise and the important checks and balances at the closing table. Every day, at closings across the country, local settlement agents work directly with consumers, answering questions about the sources and accuracy of the variety of settlement costs. Since they are members of the local community, settlement agents are familiar with local customs and practices, which can help "assist consumers with issues that arise during a real estate settlement."<sup>7</sup> Further, since they are local, settlement agents are able to serve consumers more conveniently in all marketplaces, including rural areas. If Alternative 1 were adopted and lenders began closing transactions, consumers in some areas of the country would likely need to travel hundreds of miles or rely on mobile notaries to close.

*ALTA's proposed modifications will facilitate industry compliance.*

Altering the current relationships between lenders and settlement agents would be a compliance nightmare, requiring a massive shifting of information away from the parties that have the best ability to verify that information's accuracy and explain the costs to the consumer. Upending this paradigm would require lenders and settlement agents to develop new systems of cooperation to transfer this important body of knowledge without clear regulatory guidance. Further, since the Bureau has not provided sufficient guidance about its expectations on shared responsibility, each lender would likely develop its own sets of requirements preventing uniformity of business processes and compliance management systems. As a result, this would add cost, time and expense to the operation of the settlement agent's small business, as each

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<sup>7</sup>77 Fed. Reg. 51178

agent would need to be prepared to close transactions in multiple ways depending upon the requirements of a given lender.

Lastly, both of the Bureau's alternatives, absent ALTA's proposed modifications, have the potential to be anti-competitive. Under the proposal, even if a lender is willing to work collaboratively with a settlement agent to prepare and provide the Closing Disclosure, the lender will still be ultimately liable for the accuracy of information and delivery of documents. To manage the potential liability associated with this new disclosure regime, lenders would need a higher level of control over the settlement process than they have today. While the current rules permit consumers to shop for a local settlement agent, the proposed changes would likely mean lenders would turn to larger, national settlement firms. This would lessen consumer choice and competitiveness in the marketplace for settlement services. It may also create the prospect of having dual closings occurring for both the real estate and mortgage transaction. The net result would be a more complicated closing at a higher cost to the consumer.

**3. To prevent the three-day-waiting period from operating to consumers' detriment, the Bureau should broaden the exceptions for re-disclosure.**

Under the Proposed Rule the Closing Disclosure must be delivered to and received by the borrower three business days prior to the "consummation" of the transaction.<sup>8</sup> ("three-day waiting period") If, during this three-day period before the scheduled closing, a cost that the borrower will pay increases or decreases<sup>9</sup> (subject to some limited exceptions), the borrower must be given a new updated Closing Disclosure and wait three additional business days before closing.<sup>10</sup> While we can appreciate the Bureau's goal of giving consumers final numbers before they come to closing, ALTA believes that the rule as proposed will lead to—at best—unnecessary delays to closing and—at worst—the cancellation of the entire transaction. Both of these outcomes will significantly harm consumers.

*The Bureau's strict three-day-waiting period will be very costly to home buyers, sellers and state and local government.*

An analysis commissioned by ALTA and conducted by Dr. Nam Pham<sup>11</sup> suggests that both home sellers and home buyers will be negatively impacted if an additional three-day waiting period is triggered because a closing cost had changed within three days of consummation. Using

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<sup>8</sup> 77 FR 51117

<sup>9</sup> The proposed rule is not consistent in defining the "triggers" for redisclosure. In the event of '(i) a consumer and seller negotiation", the rule uses the phrase "make changes". In the event of '(ii) a change in the amount paid, the rule uses the word "exceed". In the event of '(iii) a change after consummation, the rule uses the phrase 'become inaccurate". (page 740) The Bureau is encouraged to standardize these terms.

<sup>10</sup> 77 FR 51117

<sup>11</sup> Nam D. Pham, Ph.D. "The Economic Contributions of the Land Title Industry to the U.S. Economy." (2012). A copy this report is attached as Appendix A.

a historical average that 50% of transactions have some closing costs that change within the three days prior to settlement, Dr. Pham concludes that the average transaction will take longer to close.<sup>12</sup> If there is a delay to closing caused by this rule:

- Home sellers will be responsible for extra per-day interest costs to the tune of \$64 million a day and \$193 million per reset. Typically these homes will be empty since the sellers will have moved out in anticipation of closing.<sup>13</sup>
- Home buyers would likely pay more to obtain longer mortgage rate locks or pay higher mortgage interest rates. Dr. Pham concludes that home buyers would have to pay more than \$1 billion per year in additional interest throughout the life of their loans.<sup>14</sup>
- In a refinance transaction, homeowners would forgo more than \$21 million in savings per day and nearly \$64 million for each three-day reset on mortgage interest payments for each 1 percentage point of mortgage rate reduction.<sup>15</sup>

While these numbers are concerning, the more troubling fact is that under the Proposed Rule buyers (through no fault of their own) could default on their purchase contracts by not meeting the contractual deadlines to close because of a government-mandated delay to closing. If this were to occur, buyers would not only be out all the costs they expended leading up to the closing, but could also lose their earnest money deposits and the opportunity to purchase their homes.

According to Dr. Pham, state and local governments will be harmed by the three-day waiting period to the tune of \$0.35 million per day and by more than \$1 million for each three-day waiting period in delayed collection of transfer taxes and fees.<sup>16</sup> Past experience suggests that this drastic loss of revenue will have a serious impact on local government operations (especially in county recorders' offices), which will result in addition harm to consumers.

*While a good first step, more exceptions are needed to prevent the proposed three-day waiting period from harming consumers.*

We appreciate that the Bureau has recognized that with respect to the Proposed Rule's redisclosure and additional three-day-waiting period requirement, "there are several circumstances where the strict application of the three-day-waiting period required by § 1026.19(f)(1)(ii) may operate to the consumer's detriment."<sup>17</sup> To that end, the Bureau has proposed a limited number of exceptions in which closing costs could change without triggering

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<sup>12</sup> Id at 2.

<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> Id.

<sup>17</sup> 77 FR 51179

a new three-day waiting period.<sup>18</sup> This flexibility is a good first step toward ensuring that consumers are not inadvertently harmed by the Bureau’s good intentions; however, ALTA believes that more exceptions and clarification to the waiver provisions are needed to protect consumers from the unnecessary harms caused by delaying their closings. To that end, we suggest the following additional exceptions:

- Closing costs paid by or on behalf of the seller that do not impact the buyer, including sellers’ debts, liens or judgments
- Closing costs paid by or on behalf of the buyer, but unrelated to the loan costs (such as changes to or decisions to purchase property insurance coverages, flood insurance, owner’s title insurance or the like)
- Payment to discharge any defects, liens, encumbrances or other matters requiring curative action which are discovered in a title search or examination
- All prorations as long as the underlying per-day rate does not change or they are paid to a state or local government instrumentality or authority
- Recording costs and other fees incurred due to additional documentation used for the consumer’s convenience (such as a power of attorney)
- Any increase in the borrowers’ costs due to a change to the sales contract, mutually agreeable to the buyer and seller and not objected to by the lender, or as a result of local custom or practice regardless of when the change is made or the amount of the change

In addition to the above additional exceptions, ALTA believes that the Proposed Rule’s de minimis exception<sup>19</sup> should be converted from the specific dollar amount of \$100 to a set percentage of the loan amount. ALTA suggests an appropriate percentage would be 1% of the loan amount. By defining the de minimis change as a percentage of the loan amount, the exception will better serve the interests of the consumer and ensure that the Bureau will not have to go through frequent rounds of rulemaking to account for inflation.

Beyond adding additional exceptions to retrIGGERING the three-day waiting period, there are questions that the Bureau must answer in order for the industry to be able to understand its compliance requirements under the rule.

#### *What constitutes delivery of the closing disclosure?*

Under the Proposed Rule, “If any disclosures required under paragraph (f)(1)(i) of this section are not provided to the consumer in person, the consumer is presumed to have received the disclosures three business days after they are mailed or delivered to the address specified by the consumer.”<sup>20</sup> The Official Staff Interpretation clarifies that this presumption

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<sup>18</sup> Id.

<sup>19</sup> 77 FR 51180

<sup>20</sup> 77 FR 51161

of receipt can be rebutted “by providing evidence that the consumer received the disclosures earlier than three business days.”<sup>21</sup> While this provision is helpful, since most consumers will not receive their disclosures in person, the Official Staff Interpretation does not provide sufficient guidance to the industry on what types of evidence are sufficient to defeat the three-day presumption. ALTA urges the Bureau to clarify the types of receipt that can rebut this presumption by incorporating the answers to the following questions in the Official Staff Interpretation:

- If the disclosure is delivered by the United States Postal Service, package delivery or courier service, which service will suffice to rebut the presumption of receipt? Delivery confirmation? Signature Confirmation Service? Return Receipt? Certified Mail?
- If the disclosure is delivered by the United States Postal Service, package delivery or courier service, how does industry establish the date on which the disclosure was sent? A Certificate of Mailing? USPS Track and Confirm?
- If the disclosure is delivered by the United States Postal Service, package delivery or courier service, is a signature required for confirmation of receipt? If so, must it be the signature of the person named as a party to the loan? If multiple consumers are to be obligated on the loan, must all of them sign the receipt?
- If the disclosure is delivered by fax or electronic mail, which services will suffice to rebut the presumption of receipt? A read receipt? A return receipt? E-mail from the person to be obligated on the loan? E-mail tracking metrics such as open and click-through rates?

#### *What constitutes “consummation?”*

Under the Proposed Rule, the consumer must receive the Closing Disclosure three days prior to consummation of the mortgage transaction. Under the existing Official Staff Interpretation, the time of consummation is governed by state law.<sup>22</sup> In many states (primarily eastern states) consummation of a loan takes place at the same time as the real estate settlement, because all the parties physically come together “at the table” to execute and transfer all documents. In those states, the Closing Disclosure would have to be received by the consumer three days prior to this set date.

However, in escrow states (primarily in the west) there is not a set closing date and consummation and closing may occur at different times. Thus, it becomes less clear when the consumer must receive the Closing Disclosure to ensure compliance with this Proposed Rule. In these states, for example, could the escrow agent deliver and the consumer receive the

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<sup>21</sup> Id.

<sup>22</sup> Supplement I to 12 CFR 1026, Comment to 2(a)(13) Consummation

Closing Disclosure at the time they sign the loan documents if the escrow agent holds those documents for three days before consummating the transaction by recording the documents? Due to these unique aspects of state law and practice, we urge the Bureau to use the Official Staff Interpretation to provide sufficient guidance for disclosure to help facilitate industry compliance.

Lastly, ALTA believes that the borrower should have a right to fully waive the three-day waiting period in the event of potential economic harm such as the expiration of the sales contract, the loss of a rate lock or a similar financially disastrous event.<sup>23</sup> ALTA understands the Bureau’s concerns about a misuse of such a choice and recommends that the Official Staff Interpretation set forth examples of fact patterns that constitute a “Bona Fide Financial Emergency” beyond those currently provided.

**4. As the Bureau merges the disclosure forms, it should clarify that the underlying statutes and regulations remain distinct as Congress intended.**

The Dodd-Frank Act required the Bureau to combine “the disclosures required under the Truth in Lending Act and sections 4 and 5 of the Real Estate Settlement Procedures Act of 1974, into a single, integrated disclosure for mortgage loan transactions covered by those laws.”<sup>24</sup> While Congress ordered the Bureau to combine the disclosures in a single form, it did not empower the Bureau to go beyond this mandate as it has in the Proposed Rule. The Bureau’s current proposal effectively attempts to amend the two underlying statutes and regulations to make them mutually consistent. To remain within the intent of Congress, the provisions of both statutes (including their liability provisions) must remain in place.

Despite Congress’s refusal to choose which statute’s provisions and liabilities should govern, the Bureau appears to have done so of its own accord. The Bureau’s proposed rulemaking solely revises TILA rulemaking under Regulation Z and then exempts from RESPA (and Regulation X) all transactions that are subject to the combined disclosure. This appears to shift all the disclosure requirements (and liability for disclosure errors) into TILA. This is a dramatic shift that effectively negates the provisions in RESPA.

This was not Congress’s intent when passing Dodd-Frank. Rather than unilaterally nullifying RESPA, ALTA suggests that the Bureau could achieve an integrated disclosure while remaining faithful to the two statutes and Congressional intent by drafting mutually consistent proposals for both RESPA and TILA’s implementing regulations. This could easily be done by shifting the sections of the Proposed Rule that deal with closing costs or other RESPA-related disclosures

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<sup>23</sup> 77 FR 51161; See also Proposed comments to Proposed 1026.19(e)(1)(v)

<sup>24</sup> 12 USC 5532(f);

(primarily pages 2 and 3 of the Closing Disclosure) back into RESPA’s implementing regulation with appropriate cross references.

Revising the Proposed Rule in this manner would provide clear, “bright line” requirements under the combined disclosure. The result would facilitate industry compliance by providing unambiguous responsibilities and liabilities based on historical precedent, without any negative impact on consumer understanding—since consumers would still receive the same disclosure.

This proposal would facilitate industry compliance by keeping in place historical responsibilities and liabilities under the two statutes. Under TILA, if a lender fails to comply with any requirements of the statute, including the disclosure requirements (accuracy and timing), it is liable to the consumer in an amount equal to the sum of: (1) actual damages, (2) twice the finance charge (or for closed-end mortgage transactions, not less than \$400 nor more than \$4,000), and (3) in a class action, the lesser of \$500,000 or 1% of the net worth of the lender.<sup>25</sup> In addition to providing consumers with this right of action against the lender, disclosure errors could also provide the consumer with an enhanced rescission period and open up the lender to enforcement actions by the Bureau and state attorneys general. These are very severe penalties that RESPA does not possess. Rather, under RESPA, a disclosure error only opens up lenders or settlement agents to administrative enforcement or actions by state attorneys general.

**5. The Bureau should alter the Proposed Rule’s disclosure of title fees to prevent consumer confusion.**

For disclosures to be effective, they should provide consumers with quality information to help them make decisions in their financial interest. While the forms do make some improvements in the way they provide information to the consumer, one place they fall short is in their disclosure of title-related fees. By requiring owner’s title insurance to be listed as “(Optional)”<sup>26</sup> and incorrectly disclosing the costs of title insurance, the Bureau is doing consumers a disservice that will make it more difficult for them to understand the costs of their transaction.

Under the Proposed Rule, in all cases where the borrower will be paying, in whole or in part, the premium for an owner’s title insurance policy, the listing of such charge on both the Loan Estimate and Closing Disclosure forms must be followed by the modifier “(Optional).”<sup>27</sup> While this is technically true in some jurisdictions, we believe that the use of this modifier label for

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<sup>25</sup> 15 USC 1640.

<sup>26</sup> 77 FR 51216

<sup>27</sup> Id.

owners' title insurance will confuse consumers and prejudice them against making financial decisions that actually are in their best interest.

As the real estate industry, several state legislatures, and the Department of Housing and Urban Development have recognized, the purchase of an owner's title insurance policy is a smart financial decision in residential transactions. Sophisticated commercial real estate purchasers obtain an owner's title insurance policy in virtually every transaction. In many states, the legislature has deemed the issuance of owner's title insurance to purchasers a matter of important public policy for their citizens, and they statutorily mandate that their consumers be made aware of the protection such coverage provides.<sup>28</sup> Further, in its *Settlement Cost Booklet*<sup>29</sup> required under RESPA, HUD consistently recognized the value of owner's title policy protection for consumers:

**Owner's Policy.** A lender's title insurance policy **does not protect you.** Similarly, the prior owner's policy does not protect you. If you want to protect yourself from claims by others against your new home, you will need an owner's policy. When a claim does occur, it can be financially devastating to an owner who is uninsured. If you buy an owner's policy, it is

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<sup>28</sup> California Civil Code, Section 1057.6 provides: "In an escrow transaction for the purchase or simultaneous exchange of real property, where a policy of title insurance will not be issued to the buyer or to the parties to the exchange, the following notice shall be provided in a separate document to the buyer or parties exchanging real property, which shall be signed and acknowledged by them:

'IMPORTANT: IN A PURCHASE OR EXCHANGE OF REAL PROPERTY, IT MAY BE ADVISABLE TO OBTAIN TITLE INSURANCE IN CONNECTION WITH THE CLOSE OF ESCROW SINCE THERE MAY BE PRIOR RECORDED LIENS AND ENCUMBRANCES WHICH AFFECT YOUR INTEREST IN THE PROPERTY BEING ACQUIRED. A NEW POLICY OF TITLE INSURANCE SHOULD BE OBTAINED IN ORDER TO ENSURE YOUR INTEREST IN THE PROPERTY THAT YOU ARE ACQUIRING.'"

For other states requiring disclosure of the availability of owner's title insurance coverage and/or a written waiver for an election not to purchase such coverage, see Code of Ala. § 27-25-7 (Alabama); Ark. Code Ann. § 23-103-413(b); Conn. Gen. Stat. § 38a-423 (Connecticut); 2009 D.C. ALS 223 Sec 2139(b) (District of Columbia); La. R.S. 22:531 (Louisiana); MD Insurance Code Sec 22-102 (Maryland); 381.015 R.S.Mo. (Missouri); Nev. Rev. Stat. Ann. § 692A.210 (Nevada); NMAC 13.14.7.8B (New Mexico); Title Insurance Rate Manual for New York approved by Superintendent of Insurance of NY, Section 26 (New York); O.R.C. Ann. Sec. 3953.30 (Ohio); Tenn. Code Ann. § 56-35-133 (Tennessee); and Va. Code Ann. § 38.2-4616 (Virginia). Many states also provide both written and web-based materials indicating the importance of owner's title insurance. For example, see

[http://www.insurance.wa.gov/consumers/home/title\\_insurance.shtml](http://www.insurance.wa.gov/consumers/home/title_insurance.shtml) and

[http://www.insurance.wa.gov/publications/other\\_types/Title\\_Escrow\\_Guide.pdf](http://www.insurance.wa.gov/publications/other_types/Title_Escrow_Guide.pdf) (Washington Office of the Insurance Commissioner); <http://www.insurance.ca.gov/0100-consumers/0010-buying-insurance/0080-compare-premiums/title-terms.cfm> (California Department of Insurance); and

<http://www.colorado.gov/cs/Satellite?c=Page&childpagename=DORA-DI%2FDORALayout&cid=1251623076707&pagename=CBONWrapper> (Colorado Department of Real Estate)

<sup>29</sup> 12 USC 2604. A copy of the booklet can be found at

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/housing/rmra/res/settlement-cost-booklet03252010](http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/rmra/res/settlement-cost-booklet03252010).

usually much less expensive if you buy it at the same time and with the same insurer as the lender's policy.

*Title fees should be disclosed based on the common type of policy purchased in the jurisdiction and not the basic coverage.*

Besides prejudicing consumers against purchasing an owner's title insurance policy by using the modifier "(Optional)", the Proposed Rule also requires industry to misquote the actual cost of title insurance coverage to the consumer. Providing the consumer with incorrect prices on title insurance will most certainly inhibit their understanding of their transaction and make it difficult to shop for an appropriate title insurance provider.

Under the Proposed Rule, the lender is required to quote on the Loan Estimate the standard coverage rate for title insurance premiums. No enhancements are permitted even if (1) the lender knows that it will require enhanced coverage or endorsements for the Loan Title Insurance Policy, (2) it is customary in the locality for consumers to purchase enhanced coverage such as the ALTA Homeowner's Policy, and (3) the real estate sales contract actually requires the purchase of an enhanced policy. Providing a borrower with an estimate of a standard coverage policy, particularly when the lender has information that an enhanced policy form will ultimately be issued, is a disservice to the consumer and negates the benefit of an accurate and early "Cash to Close" number. We believe that a lender's Loan Estimate should reflect pricing of the owner's policy based upon the most accurate information available to the lender, rather than a one-size-fits-all computation frequently having no relation to the actual transaction.

In addition to requiring lenders to disclose the wrong type of title insurance policy, the Proposed Rule also mandates that consumers be quoted the wrong price. The Proposed Rule requires lenders to quote the lender's title insurance policy at the full policy rate and the simultaneously issued owner's policy at the reduced "simultaneous issue" rate, in direct conflict with state law and state regulator approved rates. Rather than distort the actual costs for title insurance policies, ALTA recommends that the Bureau require lenders to disclose the actual price for title insurance policies based on the state regulated title insurance rate structure.

Over the years, title industry pricing of owner's and lender's policies issued in a single transaction involving the same property have recognized the efficiencies of a single search and policy provisions limiting total liability. Custom and practice caused pricing of owner's policy coverage to remain at full premium, while providing a substantial discount on the second policy in the transaction issued to the lender, resulting in an overall discount in title insurance costs for the transaction. This discounted pricing is commonly referred to as a "simultaneous issue" rate, reflecting the circumstances of the dual policy issuance. Such a practice is firmly established in

the vast majority of states, providing a substantial reduction on borrower costs for lenders' title insurance policies required by lenders.

The Proposed Rule's distortion of "simultaneous issue" pricing is in direct conflict with state insurance statutes and/or regulations. In the vast majority of states, the promulgated or filed rates<sup>30</sup> involving simultaneous issue of a lender's and an owner's policy require a full charge for the owner's policy and the discounted simultaneous issue rate for the lender's policy. Many states prohibit settlement agents and/or title insurers from disclosing fees in an amount other than the actual premium charge for such product filed with its regulatory agency and actually charged to the consumer. The Proposed Rule will require settlement agents and title insurers to violate these state laws and regulations.

**6. The Bureau should make simple changes and issue clarifications to reduce the cost and burden of implementing the Proposed Rule.**

The proposed Closing Disclosure and accompanying rules will require significant technology and implementation efforts. Due to the new formatting, record-keeping requirements and the disclosures' dynamic qualities, the Proposed Rule will likely cost industry roughly \$315 million to implement. With this high cost and the significant changes from the current forms and processes, ALTA believes that the industry will need roughly **24 months** to implement the disclosures and rule once it is final.

While improved in some aspects over the recent 2010 changes, the proposed Closing Disclosure presents a number of new formatting challenges that will prove very costly for the industry to implement.

*Line Numbers.*

As noted in the Small Business Review Panel Report<sup>31</sup>, the proposed Closing Disclosure uses a different line numbering system than that of the current HUD-1 that industry believes will be unnecessarily costly to implement. The Small Business Review Panel requested that the Bureau seek comment on whether retaining the current line numbering system of the HUD-1 would (1) lower software-related costs on industry by a specific amount, while (2) improving consumer understanding of the loan terms and costs.<sup>32</sup> The answer to both of these inquiries is yes.

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<sup>30</sup> In some states title insurance premiums are promulgated (such as in Texas, Florida and New Mexico). In other states, rates for premiums must be filed and approved by state authorities. In still other states, rates must be filed and once filed are to be followed.

<sup>31</sup> *Final Report of the Small Business Review Panel on CFPB's Proposals Under Consideration for Integration of TILA and RESPA Mortgage Disclosure Requirements* (Apr. 23, 2012), available at [http://files.consumerfinance.gov/f/201207\\_cfpb\\_report\\_tila-respa-sbrefa-feedback.pdf](http://files.consumerfinance.gov/f/201207_cfpb_report_tila-respa-sbrefa-feedback.pdf).

<sup>32</sup> See Small Business Review Panel Report at 20, 28-9.

The proposed Closing Disclosure form only sets specific line numbers for a small number of fees. Without specific line numbers, software vendors are faced with the challenge of trying to determine the appropriate placement of data. This will require developing a more dynamic software program which will increase the number of hours of programming, limit the ability to automate the production of the form based off of certain lines and result in a significant loss in user productivity and the ability to integrate the data with other reports.

Also, unlike with the current HUD-1, very few of the closing cost items are hard coded to appear in the same spot on all Closing Disclosures. Instead, closings costs must be listed in alphabetical order under the appropriate cost subsection. Like the line numbers, this protocol will require extra software programming to create the type of dynamism that is required to produce a compliant software system.

While these are costly programming challenges, the lack of standard formatting for where costs are listed on the disclosures will make it difficult for consumers to compare disclosures from different lenders and for different transactions. Each lender, type of transaction and specific loan product will require their own sets of loan and closing costs. Since most loan and closing costs will not appear in the same place on every disclosure, consumers attempting to compare competing Loan Estimates or Closing Disclosures from different transactions will have barriers to comparing those costs.

To reduce software costs and improve consumers' ability to understand their transactions, ALTA suggests retaining the current line numbering system and requiring more costs to be hard coded in a set location on the disclosure.

#### *Lack of Standard Naming Convention.*

The proposed Closing Disclosure lacks any standard naming convention to describe loan and closing costs. Under the rule, the Closing Disclosure must list the loan and closing cost with the same terminology as used on the Loan Estimate. ALTA requests that the Bureau develop an industry-standard naming convention to improve consumers' ability to compare disclosures from different lenders and reduce the industry's compliance burden.

Using a standard naming convention would help consumers compare disclosures during shopping. Under the Proposed Rule, the consumer who obtains Loan Estimates from different lenders in an effort to shop would potentially have difficulty comparing the forms because of differing terminology used to describe the same loan terms and closings. The result could be a drastic blow to the consumer's ability to compare terms and determine which loan product is the best for his or her personal situation.

In addition, the lack of a standard naming convention opens the disclosure process up to regulatory uncertainty that can harm industry compliance efforts. To ensure proper compliance, lenders will need to provide settlement agents with the Loan Estimate (something that does not occur today) to guarantee they are matching the correct terminology. Unlike today, the settlement agent's software system will not be able to reduce the burden by pre-populating these terms. The result will be that industry will waste significant processing time (and expense) manually entering data to ensure compliance.

*“Calculating Cash to Close” Explanations.*

Similar to the issues discussed above, the lack of standardized and accepted verbiage for changes in the “Calculating Cash to Close” section of the Closing Disclosure on page 3 will hinder the consumer’s ability to compare disclosures from different lenders and increase the industry’s compliance burden. Without a standard set of explanations, different lenders will develop their own explanations. These explanations could expand into multiple sentences and/or paragraphs, which may spill over beyond page 3 of the closing disclosure form. To ensure the development of compliant software, the Bureau must provide industry with a standard set of explanations for the “Calculating Cash to Close” section.

*Record Keeping/Machine Readable.*

The Proposed Rule requires that lenders retain the data contained in both the Loan Estimate and the Closing Disclosure in a “machine-readable” format. While this technology exists, it is not widely used in the industry at the present time and will require significant costs to upgrade systems. In addition, without a single industry-wide standard for this technology, its benefits are limited.

Since the Bureau has not provided enough specific information on the requirements for machine-readable technology, it is impossible to estimate what the exact costs will eventually be. To comply with the Bureau’s proposal, software vendors will need to provide integrations for settlement agents to send the final Closing Disclosure form data to lenders electronically. This will require extensive research and coordination with the lending community. The result is that a significant period of time will be needed to scope and code these integrations.

According to the Bureau, the stated rationale and main benefit of this proposal is to improve, “the ability of the Bureau and other regulators to monitor compliance with applicable requirements and to evaluate whether the rules adequately protect consumers against impermissible changes in settlement costs and loan terms.” Without a standard data protocol, the Bureau will be required to “normalize” data to run the desired analyses. If the Bureau provided

software vendors with specific design documentation that details the parameters of this new functionality, the burdens on the Bureau might be reduced. Without an industry standard set by the Bureau, software vendors run the risk of producing integrations that fail to interface properly with multiple lender loan origination systems. In addition, the Bureau runs of the risk of having incompatible data to compare.

### **Additional comments.**

*The Proposed Rule's average charge pricing rules are an improvement over the current regulation.*

We believe that the use of average charges can provide a significant consumer benefit by more definitively predicting charges that will occur at closing. Thus, we were pleased to see the provisions in the Proposed Rule providing detailed direction on the computation and use of an average charge. As you know, similar (but in our opinion, less instructive) provisions exist in RESPA regulations. Therefore, we believe that one set of rules concerning the use and computation is advisable, and recommend that the RESPA provisions on this subject be supplanted by the new TILA provisions of the Proposed Rule.<sup>33</sup>

*The Proposed Rule will be very costly to implement.*

Just a few years ago, HUD finalized its amendments to RESPA's implementing regulation and disclosure forms. According to Dr. Pham, those changes cost the industry \$157.4 million, including \$13.7 million to upgrade software, \$97.6 million for settlement agent training, and \$53.2 million of productivity losses.<sup>34</sup> While the Bureau estimates that the total one-time cost related to the Proposed Rule will be \$100.1 million, ALTA believes that a more accurate estimate (given the size and scope of this regulation) is that it will cost the industry \$314.7 million, or twice the impact of the 2010 changes.<sup>35</sup> As discussed in the previous section, some of this cost can be reduced by making simple changes to the disclosure forms and regulations.

### **Conclusion.**

ALTA firmly believes that the single best thing that the Bureau can do to protect consumers in a mortgage transaction is to maintain the robust role settlement agents currently play as an independent third party to the transaction. We believe that the changes proposed in the above letter can achieve this end, while also meeting the Bureau's twin goals of improving consumer understanding of their mortgage and real estate transactions and facilitating industry compliance with consumer financial protection laws.

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<sup>33</sup> A suggested method for such revisions to the applicable RESPA regulation is shown in the Appendix.

<sup>34</sup> Pham, at 19-20.

<sup>35</sup> Id.

ALTA appreciates the thoughtfulness that the Bureau has shown in developing these new forms and urges the Bureau to keep working with industry to refine this rule. We also encourage the Bureau to continue testing these new forms and rules on consumers. We strongly believe that getting this right is important to ensure that consumers have a safe and efficient closing process. Should you have any questions, please do not hesitate to contact Steven Gottheim, Legislative and Regulatory Counsel, at 202.261.2943.

Sincerely,

A handwritten signature in black ink, appearing to read "Michelle L. Korsmo".

Michelle L. Korsmo  
Chief Executive Officer

# **Appendix I**

ndp | consulting

# The Economic Contributions of the Land Title Industry to the U.S. Economy

November 2012

Nam D. Pham, Ph.D.

# The Economic Contributions of the Land Title Industry to the U.S. Economy

Nam D. Pham, Ph.D.<sup>1</sup>

## Executive Summary

The Dodd-Frank Act rulemaking has directed the Consumer Financial Protection Bureau (CFPB) to create new mortgage forms to help consumers to understand the terms and the costs of mortgage loans. The current CFPB proposal is the second revision in the two years since the Bureau's 2010 changes to the mortgage disclosure forms. Two rounds of back-to-back compliance costs impose a significant financial burden to the land title industry. The compliance costs are passed on to consumers in the midst of a fragile economic recovery and a housing market that is slowly regaining strength. The proposed rules also understate the valuable role the land title industry plays in the process of buying a home and transferring real property.

This study estimates the economic contributions of the land title industry to the U.S. economy and examines the vital role title and escrow services play in supporting the American property system. The report then assesses the negative effects of the CFPB's proposed rules on the settlement process.

Key findings of the report are summarized below.

### *1. The Economic Contributions of the Land Title Industry to the U.S. Economy*

The land title industry consists of title agents, title abstractors, settlement offices, and direct title insurance companies. The industry employs abstractors, examiners, attorneys, settlement agents, title insurance agents, and support personnel for each operation. Approximately two-thirds of title agent, title abstract and settlement offices are small businesses that do business in the same communities as the properties that are being sold, purchased, and refinanced. Thus, the positive and valuable economic contributions of the land title industry to the U.S. economy are widely spread across the country (Table 1).

- The land title industry helps consumers sell, purchase, and refinance nearly 10 million real estate transactions worth more than \$2 trillion annually across the country.
- The industry directly contributes to the U.S. economy by creating nearly \$26 billion of goods and services a year and paying nearly \$7.9 billion in wages to employ 156,730 American workers.

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<sup>1</sup> This research received support from American Land Title Association. The research team included Nam D. Pham, Justin M. Badlam, and Anil Sarda. The analysis and views expressed here are solely those of the author.

- The direct and indirect economic contributions of the industry to the U.S. economy include more than \$50 billion in economic activities and nearly \$12.7 billion in wages to support 318,601 American jobs across the country.

**Table 1. Direct and Indirect Economic Contributions of Title Abstract and Settlement Offices and Direct Title Insurance Carriers, 2007**

	Total	Title Abstract & Settlement Offices	Direct Title Insurance Carriers
<i>Direct Economic Impacts</i>			
Total Revenues	\$25.972 billion	\$8.758 billion	\$17.214 billion
Number of Establishments	19,318	12,412	6,906
Revenue per Establishment	\$1.344 million	\$706,570	\$2.5 million
Total Payrolls	\$7.871 billion	\$3.198 billion	\$4.673 billion
Number of Employees	156,730	77,279	79,451
Payroll per Employee	\$50,220	\$41,384	\$58,820
<i>Direct and Indirect Economic Impacts</i>			
Output	\$50.674 billion	\$17.088 billion	\$33.586 billion
Earnings	\$12.669 billion	\$5.148 billion	\$7.522 billion
Employment	318,601	157,093	161,508

## 2. *The Negative Economic Impacts of CFPB's Proposed Three-Day Waiting Period*

The three-day waiting period proposed by the CFPB for each significant change in mortgage forms for a real estate transaction would negatively affect state and local governments, home sellers, home buyers, and homeowners who refinance their homes. Based on incidents in the past years, industry professionals expect that between 50 percent and 60 percent of total closing transactions would experience at least one three-day delay of closing due to changes in the Closing Disclosure forms.

- By delaying the collection of transfer taxes and fees due to the re-triggering of the three-day waiting period after changes to the transaction information occurs, the lost time value for state and local governments is cumulatively more than \$1 million each three-day waiting period.
- The closing process would extend the time it takes for home sellers to close their home sales. Until the closing, the time value and mortgage interest payments for home sellers' empty homes are nearly \$193 million each three-day waiting period.
- The three-day waiting period also affects homeowners who refinance their homes. They would forgo nearly \$64 million in savings each three-day waiting period on mortgage interest payments for each 1 percentage point mortgage rate reduction.
- Although not all closings will be delayed, all homebuyers would expect a delay and therefore would need to obtain a longer interest rate lock-in to avoid loan cancellation. As a result, home buyers would have to pay more than \$1 billion per year in additional mortgage interest payments throughout the life of their mortgage loans.

### *3. The Negative Impacts of CFPB Proposal on Lenders to Prepare Closing Disclosure Forms*

The proposal from the CFPB that mortgage lenders prepare Closing Disclosure forms would create market inefficiencies and heighten systemic risks.

- The replacement of title abstract and settlement offices will create market inefficiencies. Mortgage lenders will provide settlement services to mortgage borrowers while independent third-party settlement agents will provide services to all-cash buyers. Consumers will have limited choices over service providers and the industry will have less price competition.
- The reduction of the role of independent third-party settlement agents would heighten mortgage fraud and misrepresentation. Settlement agents have been shown to provide a valuable service to the community and government through the collection of back income taxes, delinquent real estate taxes, and child support payments in arrears. In addition, settlement agents often find and correct errors in the public record.
- Collusion among insiders, employees, and consumers has been proven highly effective in mortgage fraud. The reduction of the role of independent third-party settlement agents, who do not have direct interests in these transactions, would increase systemic risks and damage the integrity of the settlement and recording processes.

### *4. The Costs of Compliance Burden to the Industry*

The mortgage forms were changed as recently as 2010 to provide greater simplicity, transparency, and certainty of mortgage costs to consumers. Within two years, the CFPB has proposed additional changes with an aggressive 2013 implementation schedule. The regulators underestimate the financial difficulty for small businesses within the industry to fund these changes, as well as the financial consequences to consumers.

- Based on the industry data, we estimate the 2010 changes cost the industry nearly \$157.4 million, including \$13.7 million in software, \$97.6 million in training costs, and \$53.2 million in productivity losses.
- While the CFPB estimates the price tag of compliance to be around \$100 million, the industry estimates the compliance costs for the current CFPB proposal to be between two and five times the 2010 compliance costs. To be conservative, we use the low-end estimate to project the compliance costs at nearly \$315 million.
- Altogether, the 2010 and 2013 compliance costs are expected to be \$472 million or \$8,345 per settlement agent. More than 65 percent of settlement offices are small businesses, employing an average of three people and generating \$214,801 per year. Thus, the initial upfront cost for a three-person office would be \$25,035, accounting for 11.7 percent of annual business revenues.

Formal rules and laws governing our property system have been essential in our success as a nation. The land title industry and its subsectors provide a crucial role in the stewardship of this uniquely American system. The proposed rules, while fundamentally well intentioned, seek to alienate a sector that employs nearly 160,000 Americans across all corners of the country, plays a vital role in the processing of millions of transactions annually, and helps fulfill the dreams of countless Americans in facilitating and protecting the purchase of family homes.

## **Introduction**

The institution of property ownership is one of the fundamental pillars of American prosperity. Formal property records and titles represent society's shared concept of what is economically meaningful about any asset.<sup>2</sup> As Nobel Prize-winning economist Douglass C. North writes, "[I]nstitutions provide the incentive structure of an economy; as that structure evolves, it shapes the direction of economic change towards growth, stagnation, or decline."<sup>3</sup> Formal rules and laws governing our property system have been essential in our success as a nation.

The modern system of American property law can be traced to conveyance laws during the Colonial era. Indeed, the Colony of Massachusetts passed a registry act in 1640 requiring all sales or mortgages to be recorded with the names of the parties, the legal description, the date, and the type of estate conveyed. The law stipulated that, "an unrecorded deed could not defeat a deed that was executed later if the later deed was recorded first."<sup>4</sup> The recording system was designed to protect the rights of landowners in the United States.

Title to a property involves a complex bundle of property rights, or claims, which may include joint ownership, tax liens of various government agencies, mortgage obligations, and various types of judgments and easement rights.<sup>5</sup> The system requires the recording and maintenance of all property transactions to serve as evidence of title. Title insurance has provided lenders and purchasers of real estate with efficiency, security, and safety in the transfer of property rights. The title and deed to property represent the non-physical qualities that have the potential for producing value for the owner. Formal property records function as the means to secure the interests of other parties and create accountability by providing all the information, references, rules, and enforcement mechanisms required to complete the transaction.<sup>6</sup>

Formal property records serve an important civic function as well. Property registers operate as a locus for collecting debts, setting rates, and paying taxes that help pay for municipal and state government services. Our property system allows us to fund our schools, provide clean water, build bridges and roads, establish public utilities, and supply other important public goods. Without formal rules and laws that govern property ownership, communities and societies would lack the institutional structure that allows local, state and national economies to flourish.

## **The Process of Purchasing a Home**

Purchasing a real property, especially a family home, is an important personal and familial milestone. In a common scenario, the home-buying process begins with the customer working with lenders to obtain a "pre-qualifying" letter to go shopping for a home. Given the buyers' financial situation—including income, assets, debts and liabilities—lenders estimate a potential

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<sup>2</sup> De Soto, Hernando. 2000. "The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else." Perseus Books Group, New York.

<sup>3</sup> North, Douglass C. 1991. "Institutions," *The Journal of Economic Perspectives*, Vol. 5, No. 1.

<sup>4</sup> De Witt III, Charles B. 2001. "Title Insurance: A Primer", *Tennessee Journal of Practice & Procedure*.

<sup>5</sup> Janczyk, Joseph T. 1977 "An Economic Analysis of the Land Title System for Transferring Real Property," *Journal of Legal Studies*, Vol. 6.

<sup>6</sup> De Soto, Hernando. 2000. "The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else." Perseus Books Group, New York.

mortgage amount that the buyers are likely able to borrow. When the buyers find a property, they offer a price to purchase the home in an agreement of sale with the sellers. Homebuyers then apply for a mortgage loan to purchase the home. Once the buyers and sellers agree on the final price and the lenders agree to provide the mortgage loan to the buyers, the final step is called “settlement” or “closing,” which is when the legal title to the property is transferred to the customer.

The laws and practices governing the purchase of a home vary across states, counties, and cities. The Real Estate Settlement Procedures Act (RESPA) requires mortgage lenders to provide borrowers with a “good faith estimate” (GFE) of all expected closing costs within three business days of the submission of the loan application to purchase or refinance the home. Since it is an estimate, actual expenses at closing may vary. However, the standardized GFE form lists the costs that are likely to change prior to settlement and the maximum amount by which they are allowed to change. RESPA also requires the lender to give borrowers a copy of the HUD-1 or HUD-1A Settlement Statement. This final statement of settlement costs show all the fees and charges that the borrowers are expected to pay when the loan is closed.

One business day before the settlement, buyers may request the HUD-1 Settlement Statement, which itemizes the services and fees charged. Settlement costs typically include sales/broker’s commissions, lenders’ fees and charges, items required by the lender to be paid in advance, escrow account deposits, title charges, government recording, adjustments between the buyer and seller for pre-paid items, property taxes and transfer fees, and sometimes additional charges. The completed HUD-1 Settlement Statement must be delivered or mailed to buyers at or before the settlement. In cases where there is no settlement meeting, the escrow agents will mail the HUD-1 after settlement.<sup>7</sup>

### **The Process of Settlement and the Roles of Settlement Agents**

After the settlement process is complete, the property title is transferred to the buyers and generally a mortgage or “deed of trust” is given by the buyers or borrowers to the lender. The settlement agent coordinates with all parties—including the buyers, sellers, lenders, brokers, and public offices—to prepare all necessary steps to close the transaction. Buyers and sellers have the option of selecting a title company, a settlement company, an escrow agent, or an attorney to settle the transaction.

Once the sellers agree to the purchasing offer from the buyers, the settlement agent will start the closing process, which requires many tedious and routine procedures. Although the laws and practices vary across the country, a typical settlement involves the following factors:

1. Escrow account: The sale agreements normally include earnest money deposits. In some parts of the country, the settlement agent keeps the deposits in an escrow account where the funds are held until the time of closing.

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<sup>7</sup> HUD. 1997. “Buying Your Home – Settlement Costs and Helpful Information.” U.S. Department of Housing and Urban Development, Office of Housing-Federal Housing Administration.

2. Preliminary title work: The title agent<sup>8</sup> searches and examines the public records for information related to the property's title. The results of this search determine if there are any errors in the chain of title, any clouds on title based on the prior owner, or any estates that might yield that other people have an interest in the property. In addition, the settlement agent will handle miscellaneous tasks such as property inspections, termite reports, and survey orders. During this process, the title agent might discover and resolve issues such as liens against the property, unpaid taxes, incorrect legal descriptions, previous owners' debts and judgments against the property.
3. Outstanding balances: The settlement agent orders outstanding balances from existing lenders, if any, and utility companies. The settlement agent is responsible for the distribution of funds to pay off all outstanding balances to complete the transaction. These balances must be updated right before closing.
4. HUD-1 Settlement Statement: Prior to the closing time, the settlement agent will prepare the HUD-1 Settlement Statement that outlines all of the costs for both buyers and sellers. This document is approved by all parties, including the buyer, seller, lenders and real estate agents, at or before closing.
5. Pre-closing: Prior to closing, the settlement agent receives, reads, and reviews the lenders' closing instructions and document package. The settlement agent receives outstanding funds for disbursement from the lender and/or buyers verifies that the funds are in compliance with good funds statutes and have been received from the proper parties in conformance with the instructions of the lender and all applicable laws.
6. Closing: The settlement agent obtains signatures and notary acknowledgement from buyers and sellers on transactional documents. The settlement agent is also available to answer any questions about the documents and charges.
7. Final recording: The settlement agent orders a final search of the title of the property. The agent records all documents required by law to complete the transaction.
8. Post-closing: The settlement agent forwards payments to prior lenders, the sellers' creditors, service providers, governmental entities and sellers. In addition, the settlement agent reconciles the escrow account, ensuring that all previous liens have been released to clear title. The agent may also revise the HUD-1 Settlement Statement to reflect cures to any tolerance violations.

The transfer of property and the completion of the transaction could not be completed without the invaluable contributions of land title professionals and settlement agents. Their work provides real estate sellers and buyers with certainty in the marketplace, validity of the transaction, and safety in the transfer of property rights.

## **From Title Search to Title Insurance**

The American property system is underscored by the work of land title professionals. Prior to the final recording, land title professionals undertake a lengthy process to verify the property is free from unexpected and unwanted encumbrances. There are two distinct products and services related to property title: title search and title insurance. Title agents perform title search in the public records to detect any defects or problems with the property. The findings ensure lenders

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<sup>8</sup> The title agent and settlement agent are often the same entity that performs two separate functions in a real estate transaction. The terms title agent and settlement agent are often used interchangeably.

and buyers that the property has no outstanding claims or liens against it. Title searches can be time consuming and labor intensive since public real estate records could be held by surveyors, county courts, tax assessors, and recorders of deeds. In addition, older documents are not always available in electronic files and therefore title agents often have to visit courthouses and other government buildings to examine public records and files.

Although title search detects many issues, title problems can sometimes occur due to incomplete public records or documents inadvertently missed the title search process. Possible hidden title problems include errors or omission in deeds, mistakes in examining records, forgeries and undisclosed heirs. Because of the risk involved, title insurance policies help to protect against such unexpected events. Unlike other types of insurances, title insurance involves the acceptance of past transactional facts rather than future events associated with all other property and catastrophe exposures. In addition, title insurance has no termination date and no time limits on filing claims.

Title insurance is typically required by lenders to protect them against errors in the title search process, which could lead to losses resulting from claims by others against the property. Lenders' title insurance or a Loan Policy is usually based on the dollar amount of the loan. A policy protects the lender's interests in the property should a problem with the title arise. It does not protect the buyer. The policy amount decreases each year and eventually becomes null as the loan is paid off. Lenders require a new title search and a new Loan Policy in the event that the owner refinances and replaces the loan.

Owners' title insurance or an Owner's Policy is usually issued in the amount of the real estate purchase price. It is purchased for a one-time fee at closing and lasts for as long as the buyers own the property. An Owner's Policy premium can be paid by different people in different areas. Owners' insurance, however, does not protect buyers from losses caused by problems that homeowners create after their purchase of the property.

### **Characteristics of Title Insurance Industry and Its Employees**

Land title insurance is indeed a concept that is uniquely American. The land title industry is composed of abstractors, attorneys, title insurance agents, and title insurance sales and support staff who provide real estate settlement services. At any real estate closing, the parties involved must be assured that the title of the subject real property is as represented and expected. Members of the land title insurance industry are instrumental in delivering and guaranteeing this assurance. The structure of traditional insurance companies is not applicable to the land title industry because of differences in local laws, customs, and records. Instead, the title searches and examinations are mostly conducted locally as the public records are available in local public offices and government agencies.<sup>9</sup> The land title firms are primarily small businesses that reside in the same communities where the properties are sold, purchased, and refinanced.

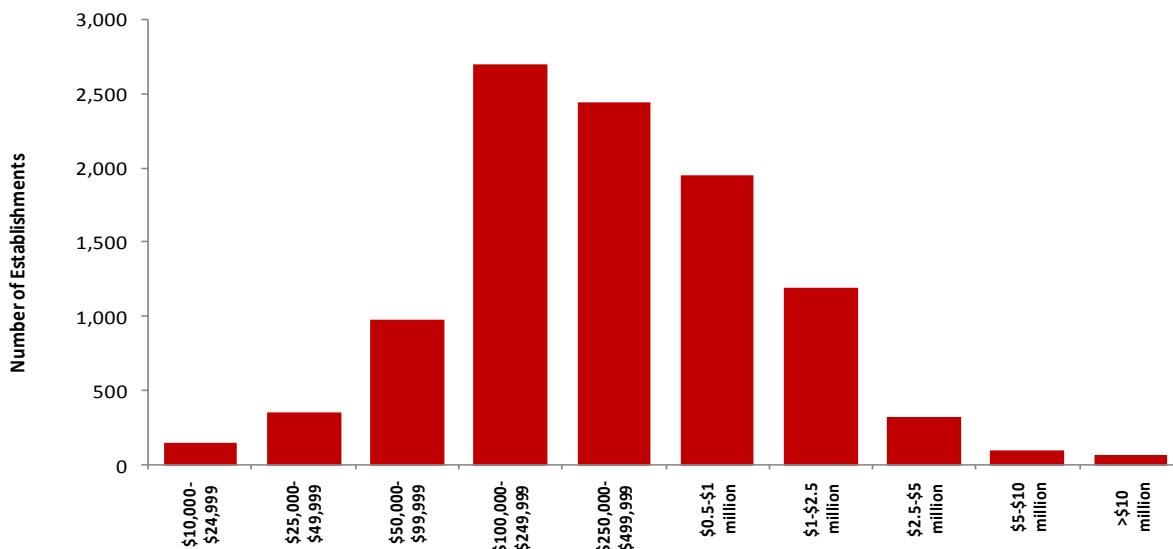
Based on the 2007 U.S. Economic Census data, more than 26 percent of title abstract and settlement offices had annual revenues between \$100,000 and \$250,000 and nearly 65 percent of business entities had annual revenues of less than \$500,000. The census data shows that

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<sup>9</sup> Best's Title & Mortgage Guaranty Center. 2012. "Industry Fundamentals."

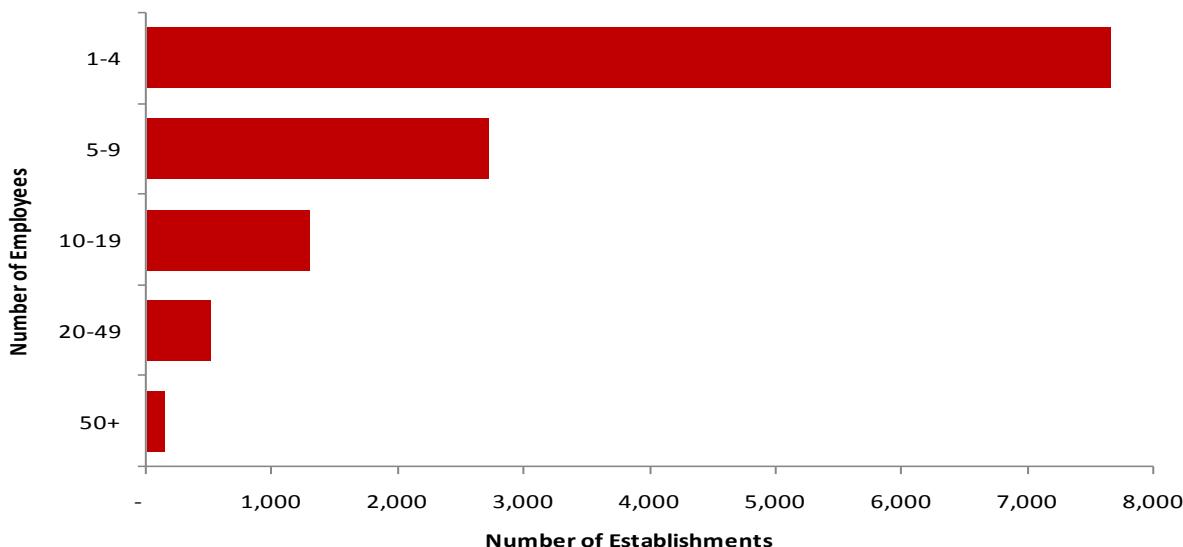
approximately 15 percent of title companies generated fewer than \$100,000 in annual revenues and another 16 percent of title companies had more than \$1 million per year in revenues (Figure 1).

**Figure 1. Number of Business Entities by Revenues, 2007<sup>10</sup>**



Like other local small businesses, land title companies are scattered across the country and employ people from their own communities. Census figures estimate that more than 62 percent of title abstract and settlement offices employed between 1 and 4 persons and more than 84 percent of total companies employed fewer than 10 workers. Only 5.5 percent of total business entities were larger businesses with more than 20 employees (Figure 2).

**Figure 2. Number of Establishments by Employment, 2007<sup>11</sup>**



<sup>10</sup> U.S. Census Bureau, American FactFinder.

<sup>11</sup> Ibid.

Employees in the land title industry represent middle-class Americans across the country. According to the Bureau of Labor Statistics' occupational employment figures, title examiners, abstractors, searchers (and settlement agents) in 2011 earned an average of \$44,850 in annual wages compared to an average of \$46,230 annual wage of all occupations in the United States. On an hourly basis, title examiners, abstractors, and searchers earned \$21.56 (mean) and \$19.60 (median) compared to \$21.74 (mean) and \$16.57 (median) of all occupations across the country (Table 2).

**Table 2. Title Examiners, Abstractors, and Searchers versus All Occupations, 2011<sup>12</sup>**

	Median Hourly Wage	Mean Hourly Wage	Annual Mean Wage
Title Examiners, Abstractors, Searchers	\$19.60	\$21.56	\$44,850
All Occupations in the U.S.	\$16.57	\$21.74	\$46,230

The average annual earnings of title examiners, abstractors, and searchers in 2011 ranged between \$24,900 per person in the lowest 10 percent of occupations and \$71,510 in the top 10 percent. The earning differential (top 10 percent earnings/lowest 10 percent earnings) in the title examiners, abstractors, searchers (and settlement agents) is 2.87, which is similar to other professions (Table 3).

**Table 3. Hourly and Yearly Wages of Title Examiners, Abstractors, and Searchers, 2011<sup>13</sup>**

	10%	25%	Median	75%	90%
Hourly	\$11.97	\$15.19	\$19.60	\$25.91	\$34.38
Yearly	\$24,900	\$31,590	\$40,760	\$53,900	\$71,510

Title examiners, abstractors, searchers (and settlement agents) have more training than the overall workforce. Approximately 38.5 percent of title examiners, abstractors, and searchers have college and graduate degrees compared to 32.4 percent of the U.S. workforce between 25 and 44 years old. Nearly 80 percent of the title examiners, abstractors, searchers (and settlement agents) have attended college compared to 62 percent of the U.S. workforce between 25 and 44 years old (Table 4).

<sup>12</sup> Bureau of Labor Statistics, Occupational Employment and Wages, Occupational Employment Statistics, 2011.

<sup>13</sup> Ibid.

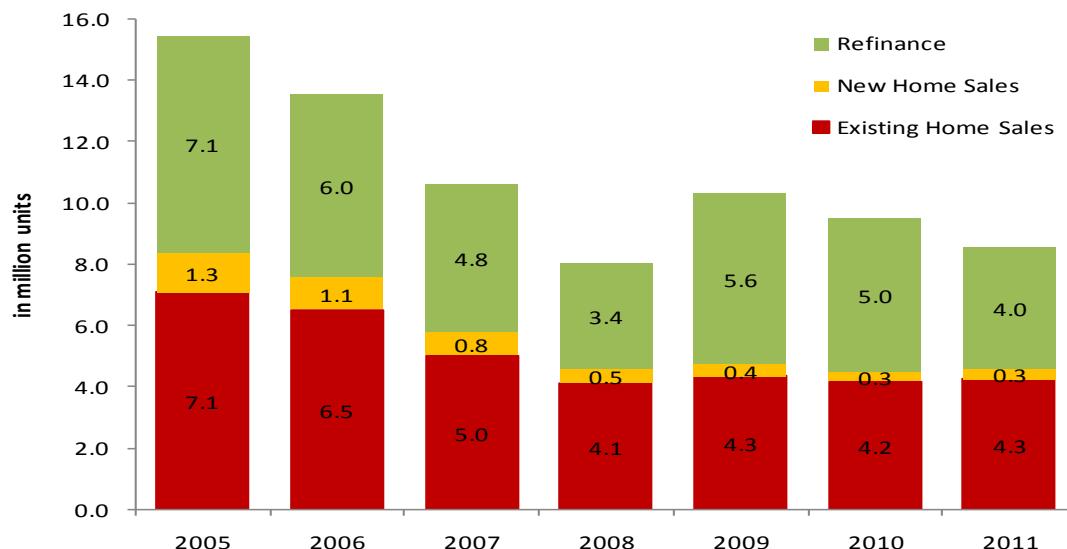
**Table 4. Distribution of Educational Attainment, Percent of Employees Aged 25 to 44, 2011<sup>14</sup>**

	Less than High School	High School	Some College	Associate Degree	Bachelor Degree	Master Degree	Doctoral or Professional Degree
Title Examiners	1.8%	18.9%	27.3%	13.4%	27.7%	6.8%	4.0%
All Occupations	10.4%	27.4%	20.9%	8.9%	19.5%	8.2%	4.7%

### The Economic Contributions of Land Title Industry to the U.S. Economy

The land title industry is involved in virtually every single real estate transaction across the United States, helping millions of homebuyers each year to purchase, sell and refinance their properties. Title agents helped to close 15.5 million real estate transactions in 2005, 8 million real estate transactions in 2008, and 8.6 million real estate transactions in 2011 (Figure 3).

**Figure 3. Annual Real Estate Transactions of New and Existing Home Sales and Refinancing, 2005-2011<sup>15</sup>**



Settlement agents utilize their skills as well as their knowledge of local, state and national property laws and land title systems to help Americans complete their purchases and sell their homes faster than any other country. Each time the ownership of a home changes or a mortgage is refinanced, title underwriting must occur on that transaction to clear the title of liens and encumbrances. These curative actions include identifying and releasing mortgages and liens

<sup>14</sup> Bureau of Labor Statistics, Office of Occupational Statistics and Employment Projections.

<sup>15</sup> National Association of Realtors; Wackes, John and Harriet Newburger. 2011. "FHA Lending Patterns Nationally and in the Third District States, Federal Reserve Bank of Philadelphia; Mortgage Bankers Association.

against the current owners as well as comparing the names of the buyers and sellers through PATRIOT Act databases and governmental tax and assessment indexes to confirm that any debts have been paid. In addition to this standard underwriting that occurs on each order, the American Land Title Association estimates that an additional 36 percent of orders require additional specific curative actions by settlement agents. These curative actions include more intensive research to identify and correct liens that remain on public records that were the responsibility previous owners, mistakes in public record indexes or improper foreclosure proceedings, among others.<sup>16</sup>

The land title industry consists of both the Title Abstract & Settlement Offices and Direct Title Insurance Carriers industry classifications (NAICS).<sup>17</sup> Title Abstract & Settlement Offices (NAICS 541191) include establishments that primarily engage in searching real estate titles and performing settlements, including title abstract companies, title and trust companies, title re-conveyance companies, and title search companies. Direct Title Insurance Carriers (NAICS 524127) include real estate insurance companies that are primarily engaged in underwriting insurance to protect the owner of real estate, or to guard mortgage lenders against losses sustained by reason of any defect of title.<sup>18</sup>

We use the 2007 Economic Census data to estimate the economic impact of the land title industry on the U.S. economy. To maintain confidentiality, the Census Bureau only reports the aggregate data and not the identity of any business or individual. According to the 2007 Census survey, 12,412 title abstract and settlement offices across the United States generated more than \$8.7 billion in revenues, employed 77,279 workers, and paid nearly \$3.2 billion in wages. The 2007 census also reported direct title insurance carriers comprised of 6,906 establishments that generated more than \$17.2 billion in revenues, employed 79,451 people, and paid nearly \$4.7 billion in wages. Altogether, the two integrated industries generated nearly \$26 billion in revenues, employed 156,730 people, and paid nearly \$7.9 million in wages.

We applied the Bureau of Economic Analysis' multipliers to estimate the indirect economic impact of title, abstract and settlement offices and direct title insurance carriers to the U.S. economy. We estimate that in 2007, the title abstract and settlement offices directly and indirectly generated nearly \$17.1 billion in economic activity and supported 157,093 workers and over \$5.1 billion in wages. Similarly, direct title insurance carriers directly and indirectly generated nearly \$33.6 billion in economic activities and supported 161,508 workers while paying more than \$7.5 billion in wages. Overall, the two integrated industries contributed more than \$50.6 billion in economic activities and supported 318,601 workers while paying nearly \$12.7 billion in wages in 2007 (Table 5).

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<sup>16</sup> American Land Title Association. 2011. "2010 Abstracter and Title Agent Operations Survey." August 2011.

<sup>17</sup> North American Industry Classification System.

<sup>18</sup> U.S. Department of Labor. Occupational Safety & Health Administration.

**Table 5. Direct and Indirect Economic Contributions of Title Abstract and Settlement Offices and Direct Title Insurance Carriers, 2007<sup>19</sup>**

	Total	Title Abstract & Settlement Offices	Direct Title Insurance Carriers
<i>Direct Economic Impacts</i>			
Total Revenues	\$25.972 billion	\$8.758 billion	\$17.214 billion
Number of Establishments	19,318	12,412	6,906
Revenue per Establishment	\$1.344 million	\$706,570	\$2.5 million
Total Payroll	\$7.871 billion	\$3.198 billion	\$4.673 billion
Number of Employees	156,730	77,279	79,451
Payroll per Employee	\$50,220	\$41,384	\$58,820
<i>Direct and Indirect Economic Impacts</i>			
Output	\$50.674 billion	\$17.088 billion	\$33.586 billion
Earnings	\$12.669 billion	\$5.148 billion	\$7.522 billion
Employment	318,601	157,093	161,508

### Consumer Financial Protection Bureau's Proposed Rules

The Consumer Financial Protection Bureau (CFPB) posted 1,099 pages of its proposed TILA-RESPA Rule on its website in July 2012 for public comment. The CFPB is proposing two new mortgage disclosure forms—the Loan Estimate and Closing Disclosure—for review and comment with the intention of finalizing them in 2013. The CFPB’s goal is to help consumers make informed decisions when shopping for a mortgage in order to avoid costly surprises at the closing table. The two different forms, part of the CFPB’s “Know before You Owe” project, will be given to borrowers after they apply for a loan, but before closing the transaction. The Loan Estimate and the Closing Disclosure present the costs and risks of the loan in a simplified format and using plain language.

The proposed forms are designed to allow consumers to compare different mortgages and examine their estimated final terms and costs. Specifically, the interest rate, monthly payments, loan amount and closing costs are stated on the first page. Additional information such as how payments might change over the life of the loan, taxes, insurance, and other costs are explained in the two forms. The forms also provide warnings about mortgage loan features such as prepayment penalties, negative amortization, and any other provisions. The Loan Estimate, which is three pages long, must be given to consumers within three business days of their submission of a loan application and the Closing Disclosures at least three days before the scheduled closing.

While the CFPB proposed rules intend to eliminate redundancies and eliminate unnecessary paperwork in the home buying process, the main elements of the proposed rules will create adverse effects both for consumers and for state and local governments. First, the CFPB’s

<sup>19</sup> U.S. Census Bureau, 2007 Economic Census.

proposed re-triggering of the three-day waiting period after the last change to the disclosure forms will have negative economic impacts on state and local governments, home sellers, home buyers, and mortgage lenders. Second, the CFPB proposal to have mortgage lenders provide the Closing Disclosure documents instead of independent third-party settlement agents will heighten risks for home buyers. Lastly, the compliance costs and for the timing of the new proposed rules so soon after the recent 2010 changes will be a significant financial burden for the industry in the midst of a fragile economic recovery.

#### The Negative Economic Impacts of the CFPB's Proposed Three-Day Waiting Period

During the period from 2009 to 2011, existing and new home sales averaged nearly 4.6 million units and nearly \$1 trillion in sale values per year. The weighted average transfer taxes and fees are 0.66 percent in the United States, which yields nearly \$5.4 billion in revenues to state and local governments. In some parts of the country, transfer and recording fees are low. In other regions, the costs of transfer fees, recording fees, and property taxes collected by local and state governments may be as much as 3 percent of the loan amount.

In preparing the estimates below, we made a few assumptions. When the rates depend on the home value or mortgage principal amount, we take the lowest transfer rate. In addition, we omit municipal and county transfer taxes when they are not available. Thus, we underestimated the transfer taxes and fees paid to state and local governments and consequently the negative economic impacts of the CFPB's proposed rules (See Appendix 1 for details).

The proposed three-day waiting period would delay the transfer taxes and fees paid to state and local governments. We use the current prime rate of 3.25 percent as a proxy for the time value of money to estimate the costs to these governmental entities that would result from the delay. Based on the incidence in the previous years, industry professionals expect between 50 and 60 percent of total transactions would be affected by the CFPB's proposed three-day waiting period. We therefore assume 50 percent of total transactions and nearly \$500 billion of home sales will be affected by the proposed three-day rule. Consequently, the collection of nearly \$2.7 billion in transfer taxes and fees would be delayed to the state and local governments if the rule is finalized in its current form. The time value of money of nearly \$2.7 billion in transfer taxes and fees are \$87.3 million per year and \$1.0 million for each three-day waiting period. We calculate the time value of the delayed collection of transfer taxes and fees for state and local governments in four regions across the country (Table 6).

**Table 6. Costs to State and Local Governments:  
Time Value of Transfer Taxes and Fees of Existing and New Home Sales,  
by Region (2009-2011 average)**

	<b>U.S.</b>	<b>Northeast</b>	<b>Midwest</b>	<b>South</b>	<b>West</b>
Number of home sales (000)	4,597.7	594.3	981.3	1,831.0	1,191.0
Sale Values (\$ mil.)	\$989,377	\$165,368	\$167,015	\$350,180	\$306,813
Transfer tax rates (w.a.)	0.66%	1.41%	0.30%	0.41%	0.36%
Transfer taxes (\$ mil.)	\$5,373	\$2,332	\$501	\$1,436	\$1,105
50% of transfer taxes (\$ mil.)	\$2,687	\$1,166	\$251	\$718	\$552
Prime rate (%)	3.25%	3.25%	3.25%	3.25%	3.25%
Annual time value (\$ mil.)	\$87.3	\$37.9	\$8.1	\$23.3	\$17.9
Three-day delay (\$ mil.)	\$1.0	\$0.5	\$0.1	\$0.3	\$0.2

Sellers of existing and new homes want to complete the transactions as quickly as possible. Their properties should be vacant by the time of closing and therefore any unexpected delay would create financial burdens for the sellers. As shown earlier, nearly 4.6 million new and existing homes worth nearly \$1 trillion were sold each year during 2009–2011. We also use the industry estimate of 50 percent of transactions to estimate that nearly \$500 billion in home sales would be affected by the proposed three-day waiting period. Again, we use the current prime rate of 3.25 percent as a proxy for the time value of money to estimate the costs to home sellers. We calculate that the time value of nearly \$500 billion in home sales is more than \$16 billion a year. Thus, the time value and mortgage interest payments for home sellers are nearly \$193 million for each three days of closing delay. We calculate the costs to home sellers in four regions across the country (Table 7).

**Table 7. Costs to Existing and New Home Sellers, by Region (2009-2011 average)**

	<b>U.S.</b>	<b>Northeast</b>	<b>Midwest</b>	<b>South</b>	<b>West</b>
Number of home sales (000)	4,597.7	594.3	981.3	1,831.0	1,191.0
Sale values (\$ mil.)	\$989,377	\$165,368	\$167,015	\$350,180	\$306,813
50% of sale values (\$ mil.)	\$494,688	\$82,684	\$83,507	\$175,090	\$153,407
Prime rate (%)	3.25%	3.25%	3.25%	3.25%	3.25%
Annual interests (\$ mil.)	\$16,077	\$2,687	\$2,714	\$5,690	\$4,986
Three-day interest (\$ mil.)	\$192.9	\$32.2	\$32.6	\$68.3	\$59.8

The CFPB’s proposed three-day waiting period will have negative financial impact on homeowners who refinance their homes. During the period between 2009 and 2011, 4.9 million homeowners refinanced their existing mortgage loans each year, totaling \$1.1 trillion in transactions.

Based on incidence over the past years, industry professionals expect that between 50 and 60 percent of total refinancing cases will be affected by the CFPB’s proposed three-day waiting rule. Since the closing is delayed, homeowners who refinance their homes would forgo some of the savings from lower mortgage interest rates. We estimate that the refinancing value of the 50 percent of transactions that would be affected by the CFPB rules to be more than \$530 billion per

year. For each three-day delay on interest payments, these homeowners could save \$5.3 billion per year and \$63.6 million for every percentage point reduction in mortgage interest rates (Table 8).

**Table 8. Costs to Homeowners to Refinance their Homes, for Each Percentage Point (2009-2011 Average)**

	U.S.
Number of refinancing	4,900,000
Refinancing values (\$ mil.)	\$1,060,132
50 percent of refinancing values (\$ mil.)	\$530,066
Annual interest payments of 50 percent refinancing values for each 1 percentage point of interest rate (\$ mil.)	\$5,301
Three-day interest payments of 50 percent refinancing values for each 1 percentage point of interest rate (\$ mil.)	\$63.6

Lastly, waiting periods are costly and disruptive to consumers. The proposed rule would mean rate locks that expire during the waiting period and deadlines to purchase or sell real estate that elapse during the waiting period, causing breaches of contract. A slower closing means all home buyers would need to have longer rate locks on their loan applications and would pay higher mortgage interest rates. As found in a study conducted by the Regulatory Research Corporation, a loan with a 45-day or 60-day rate lock has a mortgage interest rate that is an15 basis points higher than a loan with a 30-day rate lock.<sup>20</sup>

As shown earlier, nearly 4.6 million new and existing homes—totaling nearly \$1 trillion in value—were sold each year between 2009 and 2011. Since all home buyers would expect additional delays, they would give preference to longer rate locks on mortgage loans to allow more time for closing and to avoid rate cancellations from their lenders. With an additional 15 basis points on mortgage rates for longer rate locks, assuming 30-year loans and 4.725 percent mortgage rates, home buyers would have to pay \$1.1 billion in additional mortgage interest payments each year throughout the entire life of their mortgage loans. Similarly, we calculate the additional mortgage interest payments for home buyers across four regions in the United States (Table 9).

**Table 9. Costs to New and Existing Home Buyers Due to Delay in Closing (2009-2011 average)**

	U.S.	Northeast	Midwest	South	West
Number of home sales (000)	4,597.7	594.3	981.3	1,831.0	1,191.0
Sale values (\$ mil.)	\$989,377	\$165,368	\$167,015	\$350,180	\$306,813
Additional interest rate (%)	0.15%	0.15%	0.15%	0.15%	0.15%
Addl. interest/year (\$ mil.)	\$1,076	\$180	\$182	\$381	\$334

#### Who Provides the Closing Disclosure?

<sup>20</sup> Lipshutz, Nelson R. 2008. “Title Insurance – Consumer and Public Benefits.” Regulatory Research Corporation.

There are many parties involved in a real estate transaction, including buyers, sellers, lenders, holders of an existing deed of trust, and vendors. It is nearly impossible for each party to meet and perform its transaction obligations simultaneously. Therefore, it is necessary to have an independent settlement agent to assure that each party to a transaction receives what it has been promised.

The CFPB's proposal for the party to provide the required Closing Disclosure forms raises a series of operational problems, legal and regulatory responsibilities, and would fundamentally alter the obligations of lenders and settlement agents. Consequently, the CFPB proposal would create adverse effects on market efficiency, mortgage fraud, and systemic risks.

*Market Efficiency.* The CFPB's proposal to assign to lenders (instead of settlement agents) the responsibility for preparing Closing Disclosure forms would create a consolidation of title abstract and settlement offices that would limit consumer choices and reduce market efficiency. The entire industry of title abstract and settlement offices would be fragmented to allow mortgage lenders to provide services for mortgage borrowers while independent settlement agents continue providing services to all-cash buyers and others.

Under the CFPB's proposed change, a large amount of the workload of independent third-party settlement agents would be shifted to mortgage lenders. Consequently, a significant number of small title abstract and settlement businesses across the country would simply go out of business, leaving their employees without jobs. Meanwhile, mortgage lenders would take over a major portion of the workload from these independent settlement agents. Mortgage lenders would hire new workers—including some of those unemployed independent settlement agents—to perform the same work duties.

Consumers who are working with mortgage lenders would no longer have options when it comes to settlement services. Mortgage lenders would bundle the settlement services into their mortgage lending business. Mortgage borrowers would still be able to shop for mortgage loans but would not be able to shop for settlement services. Each mortgage lender would be able to dictate the settlement service fees, since there would be no direct competition.

Since not every real estate transaction has a mortgage lender, the industry of title abstract and settlement offices would not be eliminated but rather would be downsized to service fewer market segments such as all-cash home buyers and those customers who are not working with mortgage lenders. In fact, the market share of all-cash buyers has been rising over the years, resulting from falling home prices, low interest rates, tight underwriting, and difficulty in obtaining loans. According to the National Association of Realtors, all-cash buyers accounted for 27 percent of existing home sales in August 2012 after reaching a historical record of 35 percent in March 2011 compared to around 18 percent in 2008. The number of all-cash sales rose from 848,520 units and \$182.8 billion in 2009 to nearly 1.37 million units and \$289.7 billion in 2011. All-cash buyers in 2011 accounted for a large share of existing home sales in areas of high foreclosures such as Miami-Fort Lauderdale (63 percent of home sales), Las Vegas (49 percent), and Phoenix (44 percent) (Table 10).<sup>21</sup>

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<sup>21</sup> Schmit, Julie. 2011. "Cash buyers are kings in weak home-sales market." USA Today, June 23, 2011.

**Table 10. All-Cash Sales, 2009-2011<sup>22</sup>**

Year	% of Residential Cash Sales	Units of Residential Cash Sales	Values of Residential Cash Sales (\$ millions)
2009	18%	848,520	\$182,854.3
2010	25%	1,128,250	\$246,667.4
2011	30%	1,369,800	\$289,681.1

*Mortgage Fraud.* One of the indispensable functions of an independent third-party settlement agent is to help prevent mortgage fraud and misrepresentation. To reassign the task of providing the Closing Disclosure and settling real estate transactions would actually remove an important safeguard that consumers and lenders alike have long taken for granted. . Settlement agents have been shown to provide a valuable service for the community and government through the collection of back income taxes, delinquent real estate taxes, child support payments in arrears, and correcting errors in the public record. Before a transaction is completed, a title search of the records is made in an effort to locate potential problems so that they can be corrected and the transfer can proceed. About one-third of such problems are detected and fixed by settlement agents before the time of closing. An American Land Title Association study estimates the title industry annually collects \$1.75 billion in back income taxes, \$3 billion in delinquent real estate taxes, and \$325 million in delinquent child support payments. The industry spends \$225 million per year to correct errors in public property records and pays \$170 million per year to purchase copies of recorded documents.<sup>23</sup>

The Mortgage Asset Research Institute's MIDEX system classifies the type of alleged fraud involved in each incident reported by its cooperating subscribers. The incidence of mortgage fraud increased from 3,245 cases in 2000 to 93,508 cases in 2011 (Figure 5).

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<sup>22</sup> National Association of Realtors. 2012. "Realtors Confidence Index: Report and Market Outlook." August 2012 Edition.

<sup>23</sup> Testimony of Frank Pellegrini on behalf of the American Land Title Association before the House Financial Services Subcommittee on Oversight and Investigations, June 18, 2009.

**Figure 5. Mortgage Fraud Suspicious Activity Reports, 2000-2011<sup>24</sup>**

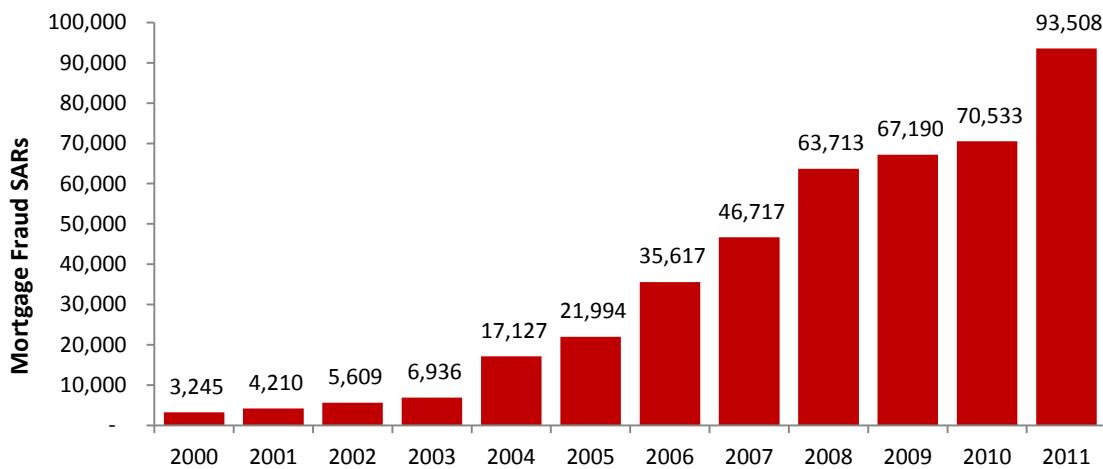


Table 11 below shows each type of fraud and misrepresentation as a percentage of all cases submitted to the MIDEX database. Application misrepresentation (such as incorrect names of borrowers, occupancy, income, employment, debt, and assets) ranks as the highest percentage among all fraud types, accounting for 59 percent of all cases submitted to the database. Appraisal and valuation fraud involve incorrect comparables, omitted information, and value inflation.

**Table 11. Mortgage Fraud and Misrepresentation Types,  
Mortgage Origination in 2009 (All States)<sup>25</sup>**

Fraud Classification	2009
Application	59%
Appraisal/Valuation	33%
Tax Return/Financial Statement	26%
Verification of Deposit	14%
Verification of Employment	9%
Escrow/Closing Documents	7%
Credit Report	3%

*Systemic Risks.* The consolidation of smaller independent third-party settlement offices and larger mortgage lenders would increase the systemic risks. Collusion among insiders, employees, and consumers is highly effective in perpetrating fraud and misrepresentation within the mortgage industry. To mitigate these systemic risks, settlement agents function as the independent third-party that is necessary to manage inherent counter-party risk as well as the potential for either side to not fulfill its contractual obligations.

The role and service of an independent third-party is not a concept that is unique to just the real estate industry. Clearinghouses and other third parties are prominent in other segments of the

<sup>24</sup> Mortgage Asset Research Institute's annual mortgage fraud reports.

<sup>25</sup> Ibid.

financial services and insurance industries, and also feature prominently in debt settlement, subrogation, and workers' compensation claims. In each case, the third party acts in support of facilitating the transaction in good faith. In fact, clearinghouses were initially established to improve and streamline the clearing and settling of checks in the mid-19th century. The immediate result was a reduction in the number of disputes and mistakes made in transactions between financial institutions.<sup>26</sup> Market functions have since evolved to accommodate the use of clearinghouses as vital players in the transactional process. Most recently, by enacting the Dodd-Frank Act, measures were put in place to increase third-party oversight of financial transactions between two parties vis-à-vis a clearinghouse.

### **The Financial Burden of 2010 and 2012 Compliance Costs to the Industry and Consumers**

In November 2008, HUD issued a Final Rule amending Regulation X relating to the Real Estate Settlement Procedures Act of 1974 (RESPA). The November 2008 RESPA rules were effective January 16, 2009. The settlement industry took another 12 months to comply with the majority of changes. The new Good Faith Estimate and modified HUD-1/HUD-1A went into effect on January 1, 2010.

We estimate the costs for industry to comply with the 2010 changes to be nearly \$157.4 million, including \$13.7 million to upgrade software, \$97.6 million for settlement agent training, and \$53.2 million of productivity losses. Our software upgrading estimates are based on the estimates of companies that provide software to the title and settlement industry.<sup>27</sup> Title insurance companies estimated that the impact of training personnel to use the new materials was at least 80 hours per employee.<sup>28</sup> We multiply \$21.56 per hour (the median hourly wage of title examiners, abstractors, and searchers) and 56,569 employees in the industry in 2011 to derive the training costs. The industry also estimates the 2010 rules added an extra 15 minutes of the settlement agent's time for each closing.<sup>29</sup> We again multiply \$21.56 per hour (the medium hourly wages) and 9,866,694 new and existing home sales and refinancing to estimate the loss of productivity (Table 12).

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<sup>26</sup> Bernanke, Ben. 2011. "Clearinghouses, Financial Stability, and Financial Reform." Speech at the 2011 Financial Markets Conference, Stone Mountain, GA. April 4, 2011. Web.

<sup>27</sup> Testimony of Christopher Abbinante to the House Financial Services Committee, Subcommittee on Insurance, Housing, and Community Opportunity on June 20. 2012; SoftPro Corporation's Comments for the Consumer Financial Protection Bureau, October 2012.

<sup>28</sup> Comments to CFPB Proposed Rule by First American Title Insurance Company on September 4, 2012.

<sup>29</sup> Testimony of Christopher Abbinante to the House Financial Services Committee, Subcommittee on Insurance, Housing, and Community Opportunity on June 20. 2012.

**Table 12. Estimated Costs to Comply with the 2010 CFPB Rules**

Types of Costs	2010 Compliance Cost Amounts (\$)
<u>TOTAL</u>	\$157,361,909
<u>Software</u>	\$13,651,903
Research & Project Management	\$1,490,285
Development	\$2,893,908
Testing	\$2,226,010
Training	\$431,483
Support	\$6,610,218
<u>Settlement Agent Training</u>	\$97,570,211
<u>Loss of Productivity</u>	\$53,181,481

The CFPB estimates that the total one-time cost of revising software and systems and training employees to implement the proposed 2013 changes to the disclosure forms is \$100,100,000. The CFPB states that this figure is an estimate of the direct costs to creditors, mortgage brokers, and settlement agents and will be amortized over five years to spread across all mortgage originations.<sup>30</sup>

The CFPB unrealistically expects the rules to be implemented as soon as possible and the cost of this round of changes to be one-third fewer than the previous changes in 2010. The industry estimates its compliance costs to be at least twice that amount and as high as five times the 2010 figure. To be conservative, we estimate the 2013 changes will cost the industry \$314.7 million, two times impact of the 2010 changes.<sup>31</sup> If the 2013 changes were implemented, total compliance costs of both 2010 and 2013 changes to the industry are expected to be \$472.1 million and \$8,345 per settlement agent. The 2010 costs are already being passed through to consumers, and the 2013 changes would increase these pass-through's even more.

The CFPB underestimates the financial difficulty for the industry to obtain \$472 million in additional up-front funding in order to amortize the impact of its recommendations over a five year period.<sup>32</sup> The compliance costs would be a significant financial burden for the land title industry. Indeed, more than 65 percent of settlement offices are small businesses, employing three people and generating \$214,801 in annual revenues. The initial up-front cost for a 3-person office would be \$25,035 (\$8,345 x 3 employees), accounting for 11.7 percent of annual revenues. In addition to the financial burden, assuming the industry's experience with the 2010 changes is a good measure, each business would be disrupted for more than 14 months to implement the new rules.

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<sup>30</sup> Committee on Small Business “Know Before You Regulate: The Impact of CFPB Regulations on Small Business.” August 1, 2012, Questions for the Record.

<sup>31</sup> Testimony of Christopher Abbinante to the House Financial Services Committee, Subcommittee on Insurance, Housing, and Community Opportunity on June 20. 2012.

<sup>32</sup> Committee on Small Business “Know Before You Regulate: The Impact of CFPB Regulations on Small Business.” August 1, 2012, Questions for the Record.

## **Conclusions**

The housing industry is recovering but it is still very fragile. The CFPB and its policymakers need to consider economic impacts carefully and conduct cost-and-benefit analyses to assess laws and regulations thoroughly to avoid unintentional adverse effects. Changes that can be completed with minor adjustments might have substantial benefits to consumers without further damaging the industry or the economy. Other changes might require the investment hundreds of millions of dollars and provide minimal benefits to consumers. The current proposal imposes a substantial economic cost to the U.S. economy and an industry composed of 65 percent small businesses without really knowing the benefits to consumers.

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## Appendix 1. Real Estate Transfer Tax<sup>33</sup>

State		
Alabama	Deeds \$0.50/\$500; Mortgages \$0.15/\$100	0.10%; 0.15%
Alaska	None	
Arizona	\$2 fee per deed or contract	Flat fee
Arkansas	\$3.30/\$1,000	0.33%
California	Loan option transfer tax \$.55/\$500 for counties; The city tax rate is half of the county rate and the city tax is allowed as a credit against the county tax.	0.11%
Colorado	Transfer tax \$.01/\$100	0.01%
Connecticut	State residential transfer tax has two tiers of either 0.75% or 1.25%, based on value; Nonresidential is 1.25%; Municipal transfer tax from 0.11% to 0.36%.	0.75% up to \$800K and 1.25% of value over \$800K; plus municipal tax.
Delaware	2% tax on value of property unless there is also a local transfer tax; then the maximum rate is 1.5%; then the maximum rate is 1.5%.	1.5%-2%; 1% for construction projects over \$10,000
District of Columbia	Transfer tax 1.1%; Mortgage recordation tax 1.5% or 1.1% for values up to \$250,000; there are varying rates for different types of property; \$5 surcharge per document.	1.1%; 1.1%-1.5%
Florida	Conveyance of realty \$0.70/\$100 (\$0.60 in Miami-Dade County plus a \$0.45 surtax on documents transferring anything other than a single-family residence); Mortgage tax \$0.35/100	0.70%; 0.35%
Georgia	\$.10/\$100	0.10%
Hawaii	Transfer tax \$0.10 to \$1/\$100, based on property value; \$0.15 to \$1.25/\$100 without homeowner exemption, based on value.	0.1%-1.0%; 0.15%-1.25%
Idaho	None	
Illinois	State \$0.50/\$500; County - \$0.25/\$500; Chicago - \$5.25/\$500	0.10%; 0.05%; 1.05%
Indiana	None	
Iowa	Transfer tax \$0.80/\$500	0.16%
Kansas	Mortgage fee \$0.26/\$100	0.26%
Kentucky	Transfer tax \$0.50/\$500	0.10%
Louisiana	None	
Maine	Transfer tax \$2.20/\$500	0.44%

<sup>33</sup> NCSL, Commerce Clearing House State Tax Guide, September 2012; Compiled by National Conference of State Legislatures Fiscal Affairs Program.

Maryland	Transfer tax 0.5% (or 0.25% for 1st- time buyers); County transfer tax varies by county; Recordation tax varies by county.	0.50%; varies; varies
Massachusetts	Transfer tax \$4.56/\$1,000 (\$2/\$500 plus 14% surtax); Barnstable County transfer tax \$3.42 / \$1,000 (\$1.50/\$500 plus 14% surtax); Also \$10-\$20 document fee.	0.46%; 0.34%
Michigan	State - \$3.75/\$500; County - \$0.55/\$500 - \$.75/\$500 depending on +/- 2 million population	0.75%; 0.11%-0.15%.
Minnesota	Deeds tax of \$1.65/\$500; Mortgage registry tax \$.23/100	0.33%; 0.23%
Mississippi	None	
Missouri	None	
Montana	None	
Nebraska	Transfer tax \$2.25/\$1,000	0.23%
Nevada	\$0.65/\$500 up to 700,000 county population; \$1.25/\$500 over 700,000 county population; Counties may impose an additional \$0.10/\$500; County tax regardless of size \$1.30/\$500.	0.13%; 0.25%; 0.26%
New Hampshire	Transfer tax \$0.75/\$100; Paid by buyer and by seller; \$20 minimum tax on transfers of \$4,000 or less.	1.50%
New Jersey	Transfer tax: Varies based on price and tax status (seniors, disability); Homes over \$1 million add \$5/\$500 surtax; Commercial sales over \$1 million have 1% fee; County: up to 0.1% additional tax.	0.4% - 1.21%, based on value; 1.0%; 1.0%; 0.10%
New Mexico	None	
New York	Realty transfer state - \$2/\$500 up to \$1 million; 1% additional over \$1 million and some counties may levy more; Mortgage recording tax-state \$1.00/\$100; Mortgage NY City \$1.00-\$1.75/\$100; Realty transfer NY City 1% to 2.625% based on +/- \$550K home value; There are many other local option taxes with rates varying by locality.	0.4% or 1.4% over \$1 million, possibly more depending on county; 1.0%; 1.0%-1.75%; 1.0%-2.625%.
North Carolina	Transfer tax \$1/\$500; Local option to increase by up to 0.4%.	0.2%; 0.4%
North Dakota	None	
Ohio	Transfer tax \$0.10/100; plus local option \$0.30/100	0.4% (0.1% plus 0.3% local)
Oklahoma	Deed stamp tax \$0.75/\$500; Mortgage registration tax \$0.02-\$0.10/\$100, based on term of mortgage.	0.15%; 0.02%-0.1%
Oregon	None	
Pennsylvania	Documentary stamp tax 1%; County rates widely vary	1%
Rhode Island	Realty conveyance tax \$2.00/\$500	0.40%
South Carolina	Deed recording fee \$1.85/\$500; (\$1.30 state, \$0.55 county)	0.37%
South Dakota	\$.50/\$500	0.10%

Tennessee	Transfer tax \$0.37/\$100; Mortgage tax \$0.115/\$100	0.37%; 0/12%
Texas	None	
Utah	None	
Vermont	Property transfer tax 1.25%; Unless property is owner-occupied, in which case, tax is 0.5% on the first \$100,000 of value and 1.25% over \$100,000. Qualified farms - 0.5%; Plus capital gains tax on land sales, based on length of ownership.	1.25%; (or marginal rates based on value)
Virginia	Transfer tax \$0.50/\$500; Mortgage tax \$0.25/\$100 up to \$10 million value; more thereafter; Local option for one-third more of state recordation tax; \$20 fee on every deed collected; Northern Virginia Transportation Authority and the Hampton Roads Transportation Authority are authorized to impose a local realty grantor's fee of \$0.40 per \$100.	0.10%; 0.25%
Washington	Real property sale excise tax 1.28% of sales price plus local option tax, currently ranging from 0.25%-0.75%.	1.28%; 1.53%-2.03% combined with local option.
West Virginia	Transfer tax \$1.65/\$500 (\$1.10 state, \$0.55 county) Local option for \$.55 more. Plus \$20 flat fee on all transfers.	0.33%; \$20.00
Wisconsin	Transfer tax \$.30/\$100	0.30%
Wyoming	None	

## About the Author

**Nam D. Pham** is Managing Partner of ndp|consulting, a strategic research firm that specializes in economic analysis of public policy and legal issues. Clients of ndp|consulting include trade associations, financial institutions, law firms, U.S. and foreign corporations, and multinational organizations. Prior to founding ndp|consulting in 2000, Dr. Pham was Vice President at Scudder Kemper Investments in Boston, where he was responsible for research, asset allocations, and currency hedging for global and international bond funds. Before that he was Chief Economist of the Asia Region for Standard & Poor's DRI; an economist at the World Bank; and a consultant to both the Department of Commerce and the Federal Trade Commission. Dr. Pham is an adjunct professor at the George Washington University. Dr. Pham holds a Ph.D. in economics from the George Washington University, an M.A. from Georgetown University; and a B.A. from the University of Maryland. He is a member of the board of advisors to the Dingman Center for Entrepreneurship at the University of Maryland Business School and a board member of the Food Recovery Network.

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# **Appendix II**

# **Proposed Changes to RESPA Regulations**

## **§ 1024.1 Designation.**

This part, known as Regulation X, is issued by the Bureau of Consumer Financial Protection to implement the Real Estate Settlement Procedures Act of 1974, as amended, 12 U.S.C. 2601 *et seq.*

## **§ 1024.2 Definitions.**

(a) *Statutory terms.* All terms defined in RESPA (12 U.S.C. 2602) are used in accordance with their statutory meaning unless otherwise defined in paragraph (b) of this section or elsewhere in this part.

(b) *Other terms.* As used in this part:

*Application* means the submission of a borrower's financial information in anticipation of a credit decision relating to a federally related mortgage loan, which shall include the borrower's name, the borrower's monthly income, the borrower's social security number to obtain a credit report, the property address, an estimate of the value of the property, the mortgage loan amount sought, and any other information deemed necessary by the loan originator. An application may either be in writing or electronically submitted, including a written record of an oral application.

*Balloon payment* has the same meaning as "balloon payment" under Regulation Z (12 CFR part 1026).

*Bureau* means the Bureau of Consumer Financial Protection.

*Business day* means a day on which the offices of the business entity are open to the public for carrying on substantially all of the entity's business functions. For the purposes of the disclosures required under § 1024.8(c), the term means all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a), such as New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

*Changed circumstances* means:

- (1)(i) Acts of God, war, disaster, or other emergency;
- (ii) Information particular to the borrower or transaction that was relied on in providing the GFE and that changes or is found to be inaccurate after the GFE has been provided. This may include

information about the credit quality of the borrower, the amount of the loan, the estimated value of the property, or any other information that was used in providing the GFE;

(iii) New information particular to the borrower or transaction that was not relied on in providing the GFE; or

(iv) Other circumstances that are particular to the borrower or transaction, including boundary disputes, the need for flood insurance, or environmental problems.

(2) Changed circumstances do not include:

(i) The borrower's name, the borrower's monthly income, the property address, an estimate of the value of the property, the mortgage loan amount sought, and any information contained in any credit report obtained by the loan originator prior to providing the GFE, unless the information changes or is found to be inaccurate after the GFE has been provided; or

(ii) Market price fluctuations by themselves.

*Closing Disclosure*, means the statement that is prescribed in Section 1024.XX of this part.

*Dealer* means, in the case of property improvement loans, a seller, contractor, or supplier of goods or services. In the case of manufactured home loans, “dealer” means one who engages in the business of manufactured home retail sales.

*Dealer loan or dealer consumer credit contract* means, generally, any arrangement in which a dealer assists the borrower in obtaining a federally related mortgage loan from the funding lender and then assigns the dealer's legal interests to the funding lender and receives the net proceeds of the loan. The funding lender is the lender for the purposes of the disclosure requirements of this part. If a dealer is a “creditor” as defined under the definition of “federally related mortgage loan” in this part, the dealer is the lender for purposes of this part.

*Effective date of transfer* is defined in section 6(i)(1) of RESPA (12 U.S.C. 2605(i)(1)). In the case of a home equity conversion mortgage or reverse mortgage as referenced in this section, the effective date of transfer is the transfer date agreed upon by the transferee servicer and the transferor servicer.

*Federally related mortgage loan or mortgage loan* means as follows:

(1) Any loan (other than temporary financing, such as a construction loan):

(i) That is secured by a first or subordinate lien on residential real property, including a refinancing of any secured loan on residential real property upon which there is either:

(A) Located or, following settlement, will be constructed using proceeds of the loan, a structure or structures designed principally for occupancy of from one to four families (including

individual units of condominiums and cooperatives and including any related interests, such as a share in the cooperative or right to occupancy of the unit); or

(B) Located or, following settlement, will be placed using proceeds of the loan, a manufactured home; and

(ii) For which one of the following paragraphs applies. The loan:

(A) Is made in whole or in part by any lender that is either regulated by or whose deposits or accounts are insured by any agency of the Federal Government;

(B) Is made in whole or in part, or is insured, guaranteed, supplemented, or assisted in any way:

(1) By the Secretary of the Department of Housing and Urban Development (HUD) or any other officer or agency of the Federal Government; or

(2) Under or in connection with a housing or urban development program administered by the Secretary of HUD or a housing or related program administered by any other officer or agency of the Federal Government;

(C) Is intended to be sold by the originating lender to the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation (or its successors), or a financial institution from which the loan is to be purchased by the Federal Home Loan Mortgage Corporation (or its successors);

(D) Is made in whole or in part by a “creditor”, as defined in section 103(g) of the Consumer Credit Protection Act (15 U.S.C. 1602(g)), that makes or invests in residential real estate loans aggregating more than \$1,000,000 per year. For purposes of this definition, the term “creditor” does not include any agency or instrumentality of any State, and the term “residential real estate loan” means any loan secured by residential real property, including single-family and multifamily residential property;

(E) Is originated either by a dealer or, if the obligation is to be assigned to any maker of mortgage loans specified in paragraphs (1)(ii)(A) through (D) of this definition, by a mortgage broker; or

(F) Is the subject of a home equity conversion mortgage, also frequently called a “reverse mortgage,” issued by any maker of mortgage loans specified in paragraphs (1)(ii) (A) through (D) of this definition.

(2) Any installment sales contract, land contract, or contract for deed on otherwise qualifying residential property is a federally related mortgage loan if the contract is funded in whole or in part by proceeds of a loan made by any maker of mortgage loans specified in paragraphs (1)(ii) (A) through (D) of this definition.

(3) If the residential real property securing a mortgage loan is not located in a State, the loan is not a federally related mortgage loan.

*Good faith estimate* or *GFE* means an estimate of settlement charges a borrower is likely to incur, as a dollar amount, and related loan information, based upon common practice and experience in the locality of the mortgaged property, as provided on the form prescribed in § 1024.7 and prepared in accordance with the Instructions in Appendix C to this part.

*HUD* means the Department of Housing and Urban Development.

*HUD-1 or HUD-1A settlement statement* (also *HUD-1 or HUD-1A*) means the statement that is prescribed in this part for setting forth settlement charges in connection with either the purchase or the refinancing (or other subordinate lien transaction) of 1- to 4-family residential property.

*Lender* means, generally, the secured creditor or creditors named in the debt obligation and document creating the lien. For loans originated by a mortgage broker that closes a federally related mortgage loan in its own name in a table funding transaction, the lender is the person to whom the obligation is initially assigned at or after settlement. A lender, in connection with dealer loans, is the lender to whom the loan is assigned, unless the dealer meets the definition of creditor as defined under “federally related mortgage loan” in this section. See also § 1024.5(b)(7), secondary market transactions.

*Loan originator* means a lender or mortgage broker.

*Manufactured home* is defined in HUD regulation 24 CFR 3280.2.

*Mortgage broker* means a person (not an employee of a lender) or entity that renders origination services and serves as an intermediary between a borrower and a lender in a transaction involving a federally related mortgage loan, including such a person or entity that closes the loan in its own name in a table funded transaction. A loan correspondent approved under HUD regulation 24 CFR 202.8 for Federal Housing Administration programs is a mortgage broker for purposes of this part.

*Mortgaged property* means the real property that is security for the federally related mortgage loan.

*Origination service* means any service involved in the creation of a mortgage loan, including but not limited to the taking of the loan application, loan processing, the underwriting and funding of the loan, and the processing and administrative services required to perform these functions.

*Person* is defined in section 3(5) of RESPA (12 U.S.C. 2602(5)).

*Prepayment penalty* has the same meaning as “prepayment penalty” under Regulation Z (12 CFR part 1026).

*Public Guidance Documents* means FEDERAL REGISTER documents adopted or published, that the Bureau may amend from time-to-time by publication in the FEDERAL REGISTER. These documents are also available from the Bureau at the address indicated in § 1024.3.

*Refinancing* means a transaction in which an existing obligation that was subject to a secured lien on residential real property is satisfied and replaced by a new obligation undertaken by the same borrower and with the same or a new lender. The following shall not be treated as a refinancing, even when the existing obligation is satisfied and replaced by a new obligation with the same lender (this definition of “refinancing” as to transactions with the same lender is similar to Regulation Z, 12 CFR 1026.20(a)):

- (1) A renewal of a single payment obligation with no change in the original terms;
- (2) A reduction in the annual percentage rate as computed under the Truth in Lending Act with a corresponding change in the payment schedule;
- (3) An agreement involving a court proceeding;
- (4) A workout agreement, in which a change in the payment schedule or change in collateral requirements is agreed to as a result of the consumer's default or delinquency, unless the rate is increased or the new amount financed exceeds the unpaid balance plus earned finance charges and premiums for continuation of allowable insurance; and
- (5) The renewal of optional insurance purchased by the consumer that is added to an existing transaction, if disclosures relating to the initial purchase were provided.

*Regulation Z* means the regulations issued by the Bureau (12 CFR part 1026) to implement the Federal Truth in Lending Act (15 U.S.C. 1601 *et seq.* ), and includes the Commentary on Regulation Z.

*Required use* means a situation in which a person must use a particular provider of a settlement service in order to have access to some distinct service or property, and the person will pay for the settlement service of the particular provider or will pay a charge attributable, in whole or in part, to the settlement service. However, the offering of a package (or combination of settlement services) or the offering of discounts or rebates to consumers for the purchase of multiple settlement services does not constitute a required use. Any package or discount must be optional to the purchaser. The discount must be a true discount below the prices that are otherwise generally available, and must not be made up by higher costs elsewhere in the settlement process.

*RESPA* means the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 *et seq.* ).

*Servicer* means the person responsible for the servicing of a mortgage loan (including the person who makes or holds a mortgage loan if such person also services the mortgage loan). The term does not include:

- (1) The Federal Deposit Insurance Corporation (FDIC), in connection with assets acquired, assigned, sold, or transferred pursuant to section 13(c) of the Federal Deposit Insurance Act or as receiver or conservator of an insured depository institution; and
- (2) The Federal National Mortgage Corporation (FNMA); the Federal Home Loan Mortgage Corporation (Freddie Mac); the FDIC; HUD, including the Government National Mortgage Association (GNMA) and the Federal Housing Administration (FHA) (including cases in which a mortgage insured under the National Housing Act (12 U.S.C. 1701 *et seq.* ) is assigned to HUD); the National Credit Union Administration (NCUA); the Farm Service Agency; and the Department of Veterans Affairs (VA), in any case in which the assignment, sale, or transfer of the servicing of the mortgage loan is preceded by termination of the contract for servicing the loan for cause, commencement of proceedings for bankruptcy of the servicer, or commencement of proceedings by the FDIC for conservatorship or receivership of the servicer (or an entity by which the servicer is owned or controlled).

*Servicing* means receiving any scheduled periodic payments from a borrower pursuant to the terms of any mortgage loan, including amounts for escrow accounts under section 10 of RESPA (12 U.S.C. 2609), and making the payments to the owner of the loan or other third parties of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the mortgage servicing loan documents or servicing contract. In the case of a home equity conversion mortgage or reverse mortgage as referenced in this section, servicing includes making payments to the borrower.

*Settlement* means the process of executing legally binding documents regarding a lien on property that is subject to a federally related mortgage loan. This process may also be called “closing” or “escrow” in different jurisdictions.

*Settlement service* means any service provided in connection with a prospective or actual settlement, including, but not limited to, any one or more of the following:

- (1) Origination of a federally related mortgage loan (including, but not limited to, the taking of loan applications, loan processing, and the underwriting and funding of such loans);
- (2) Rendering of services by a mortgage broker (including counseling, taking of applications, obtaining verifications and appraisals, and other loan processing and origination services, and communicating with the borrower and lender);
- (3) Provision of any services related to the origination, processing or funding of a federally related mortgage loan;
- (4) Provision of title services, including title searches, title examinations, abstract preparation, insurability determinations, and the issuance of title commitments and title insurance policies;
- (5) Rendering of services by an attorney;
- (6) Preparation of documents, including notarization, delivery, and recordation;

- (7) Rendering of credit reports and appraisals;
- (8) Rendering of inspections, including inspections required by applicable law or any inspections required by the sales contract or mortgage documents prior to transfer of title;
- (9) Conducting of settlement by a settlement agent and any related services;
- (10) Provision of services involving mortgage insurance;
- (11) Provision of services involving hazard, flood, or other casualty insurance or homeowner's warranties;
- (12) Provision of services involving mortgage life, disability, or similar insurance designed to pay a mortgage loan upon disability or death of a borrower, but only if such insurance is required by the lender as a condition of the loan;
- (13) Provision of services involving real property taxes or any other assessments or charges on the real property;
- (14) Rendering of services by a real estate agent or real estate broker; and
- (15) Provision of any other services for which a settlement service provider requires a borrower or seller to pay.

*Special information booklet* means the booklet adopted pursuant to section 5 of RESPA (12 U.S.C. 2604) to help persons understand the nature and costs of settlement services. The Bureau publishes the form of the special information booklet in the *FEDERAL REGISTER* or by other public notice. The Bureau may issue or approve additional booklets or alternative booklets by publication of a Notice in the *FEDERAL REGISTER*.

*State* means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

*Table funding* means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds. A table-funded transaction is not a secondary market transaction (see § 1024.5(b)(7)).

*Third party* means a settlement service provider other than a loan originator.

*Title company* means any institution, or its duly authorized agent, that is qualified to issue title insurance.

*Title service* means any service involved in the provision of title insurance (lender's or owner's policy), including but not limited to: Title examination and evaluation; preparation and issuance of title commitment; clearance of underwriting objections; preparation and issuance of a title

insurance policy or policies; and the processing and administrative services required to perform these functions. The term also includes the service of conducting a settlement.

*Tolerance* means the maximum amount by which the charge for a category or categories of settlement costs may exceed the amount of the estimate for such category or categories on a GFE.

(c) Definitions applicable to certain loans. For any loan that is subject to the special disclosure requirements for certain consumer credit transactions secured by real property set forth in regulation Z, 12 CFR 1026.19(e) and (f), the definitions and rules of constructions in Section 1026.2 of such Part shall control, to the extent of any inconsistency.

\* \* \*

## § 1024.5 Coverage of RESPA.

(a) *Applicability.* RESPA and this part apply to all federally related mortgage loans, except ►as◀ [for the exemptions] provided in paragraph ►s◀ (b) ►and (c)◀ of this section.

(b) *Exemptions.* (1) ►[Reserved]◀[A loan on property of 25 acres or more.]

(2) *Business purpose loans.* An extension of credit primarily for a business, commercial, or agricultural purpose, as defined by 12 CFR 1026.3(a)(1) of Regulation Z. Persons may rely on Regulation Z in determining whether the exemption applies.

(3) *Temporary financing.* Temporary financing, such as a construction loan. The exemption for temporary financing does not apply to a loan made to finance construction of 1- to 4-family residential property if the loan is used as, or may be converted to, permanent financing by the same lender or is used to finance transfer of title to the first user. If a lender issues a commitment for permanent financing, with or without conditions, the loan is covered by this part. Any construction loan for new or rehabilitated 1- to 4-family residential property, other than a loan to a *bona fide* builder (a person who regularly constructs 1- to 4-family residential structures for sale or lease), is subject to this part if its term is for two years or more. A “bridge loan” or “swing loan” in which a lender takes a security interest in otherwise covered 1- to 4-family residential property is not covered by RESPA and this part.

(4) *Vacant land.* Any loan secured by vacant or unimproved property, unless within two years from the date of the settlement of the loan, a structure or a manufactured home will be constructed or placed on the real property using the loan proceeds. If a loan for a structure or manufactured home to be placed on vacant or unimproved property will be secured by a lien on that property, the transaction is covered by this part.

(5) *Assumption without lender approval.* Any assumption in which the lender does not have the right expressly to approve a subsequent person as the borrower on an existing federally related

mortgage loan. Any assumption in which the lender's permission is both required and obtained is covered by RESPA and this part, whether or not the lender charges a fee for the assumption.

(6) *Loan conversions*. Any conversion of a federally related mortgage loan to different terms that are consistent with provisions of the original mortgage instrument, as long as a new note is not required, even if the lender charges an additional fee for the conversion.

(7) *Secondary market transactions*. A *bona fide* transfer of a loan obligation in the secondary market is not covered by RESPA and this part, except as set forth in section 6 of RESPA (12 U.S.C. 2605) and § 1024.21. In determining what constitutes a *bona fide* transfer, the Bureau will consider the real source of funding and the real interest of the funding lender. Mortgage broker transactions that are table-funded are not secondary market transactions. Neither the creation of a dealer loan or dealer consumer credit contract, nor the first assignment of such loan or contract to a lender, is a secondary market transaction (see § 1024.2).

| ►(c) *Partial exemptions for certain mortgage loans*. Sections 1024.6, 1024.7, ~~1024.8, 1024.10~~ and 1024.21 (b) and (c) do not apply to a federally regulated mortgage loan:

- (1) That is subject to the special disclosure requirements for certain consumer credit transactions secured by real property set forth in regulation Z, 12 CFR 1026.19(e) and (f); or
- (2) That satisfies the criteria in Regulation Z, 12 CFR 1026.3 (h).◀

| \* \* \*

## § 1024.8 Use of HUD-1 or HUD-1A settlement statements; Closing Disclosure Form.

(a) *Use by settlement agent*. Except for transactions covered by and described in paragraph (c), ~~The~~ settlement agent shall use the HUD-1 settlement statement in every settlement involving a federally related mortgage loan in which there is a borrower and a seller. For transactions in which there is a borrower and no seller, such as refinancing loans or subordinate lien loans, the HUD-1 may be utilized by using the borrower's side of the HUD-1 statement. Alternatively, the form HUD-1A may be used for these transactions. The HUD-1 or HUD-1A may be modified as permitted under this part. Either the HUD-1 or the HUD-1A, as appropriate, shall be used for every RESPA-covered transaction, unless its use is specifically exempted. The use of the HUD-1 or HUD-1A is exempted for open-end lines of credit (home-equity plans) covered by the Truth in Lending Act and Regulation Z.

(b) *Charges to be stated.* Except for transactions covered by and described in paragraph (c), the settlement agent shall complete the HUD-1 or HUD-1A, in accordance with the instructions set forth in Appendix A to this part. The loan originator must transmit to the settlement agent all information necessary to complete the HUD-1 or HUD-1A.

(1) *In general.* The settlement agent shall state the actual charges paid by the borrower and seller on the HUD-1, or by the borrower on the HUD-1A. The settlement agent must separately itemize each third party charge paid by the borrower and seller. All origination services performed by or on behalf of the loan originator must be included in the loan originator's own charge.

Administrative and processing services related to title services must be included in the title underwriter's or title agent's own charge. The amount stated on the HUD-1 or HUD-1A for any itemized service cannot exceed the amount actually received by the settlement service provider for that itemized service, unless the charge is an average charge in accordance with paragraph (b)(2) of this section.

(2) *Use of average charge.* (i) The use and computation of an average charge for a settlement service made by a settlement service provider shall be in accordance with Regulation Z, 12 CFR 1026.19 (f)(3).

~~shall be no more than the average amount paid for a settlement service by one settlement service provider to another settlement service provider on behalf of borrowers and sellers for a particular class of transactions involving federally related mortgage loans. The total amounts paid by borrowers and sellers for a settlement service based on the use of an average charge may not exceed the total amounts paid to the providers of that service for the particular class of transactions.~~

~~(ii) The settlement service provider shall define the particular class of transactions for purposes of calculating the average charge as all transactions involving federally related mortgage loans for:~~

~~(A) A period of time as determined by the settlement service provider, but not less than 30 calendar days and not more than 6 months;~~

~~(B) A geographic area as determined by the settlement service provider; and~~

~~(C) A type of loan as determined by the settlement service provider.~~

~~(iii) A settlement service provider may use an average charge in the same class of transactions for which the charge was calculated. If the settlement service provider uses the average charge for any transaction in the class, the settlement service provider must use the same average charge in every transaction within that class for which a GFE was provided.~~

~~(iv) The use of an average charge is not permitted for any settlement service if the charge for the service is based on the loan amount or property value. For example, an average charge may not be used for transfer taxes, interest charges, reserves or escrow, or any type of insurance, including mortgage insurance, title insurance, or hazard insurance.~~

~~(v) The settlement service provider must retain all documentation used to calculate the average charge for a particular class of transactions for at least 3 years after any settlement for which that average charge was used.~~

(c) Use of Closing Disclosure Format. For any loan that is subject to the special disclosure requirements for certain consumer credit transactions secured by real property set forth in regulation Z, 12 CFR 1026.19(e) and (f), a settlement agent shall use the form set out in Sections 1024.xx in lieu of a HUD-1 or HUD-1A.

(d) Reserved

(e) Reserved

(f) Mortgage loans secured by real property—Final disclosures. (1) Provision. (i) Scope. In a closed-end consumer credit transaction secured by real property, other than a reverse mortgage subject to § 1026.33, a person conducting the settlement shall provide the consumer with the disclosures in § 1026.38 reflecting the actual terms of the transaction.

(ii) Timing. (A) In general. Except as provided in paragraph (f)(1)(ii)(B) or (f)(2) of this section, the person conducting the settlement shall ensure that the consumer receives the disclosures required under paragraph (f)(1)(i) of this section simultaneously, and as a single document, with the disclosures prepared by the creditor and required under Section 1026.38 (f)(1)(i) no later than three business days before consummation.

(B) Timeshares. For transactions secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D), the person conducting the settlement shall ensure that the consumer receives the disclosures required under paragraph (f)(1)(i) of this section simultaneously, and as a single document, with the disclosures prepared by the creditor and required under Section 1026.38 (f)(1)(i) no later than the day of .

(iii) Delivery. If any disclosures required under paragraph (f)(1)(i) of this section are not provided to the consumer in person, the consumer is presumed to have received the disclosures three business days after they are mailed or delivered to the address specified by the consumer.

(iv) Consumer's waiver of waiting period before consummation. If the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency, the consumer may modify or waive the three-business-day waiting period for the disclosures required under paragraph (f)(1)(ii) of this section, after receiving the disclosures required under paragraph (f)(1)(i) of this section. To modify or waive a waiting period, the consumer shall give the creditor a dated written

statement that describes the emergency, specifically modifies or waives the waiting period, and bears the signature of all consumers who are primarily liable on the legal obligation. Printed forms for this purpose are prohibited.

(v) Settlement agent. A settlement agent providing a consumer with the disclosures required under paragraph (f)(1)(i) of this section shall comply with all requirements of this paragraph (f). The settlement agent shall ensure that disclosures are provided in accordance with the requirements of this paragraph (f).

(2) Subsequent changes. If the disclosure provided pursuant to paragraph (f)(1)(i) of this section is subsequently revised for any of the reasons described in this paragraph (f)(2), a settlement agent need not comply with the timing requirements in paragraph (f)(1)(ii) of this section when providing a revised disclosure:

(i) Changes due to consumer and seller negotiations. If, after the settlement agent provides the consumer with the disclosures required under paragraph (f)(1)(i) of this section, the consumer and the seller agree to make changes to the transaction that affect items disclosed pursuant to paragraph (f)(1)(i) of this section, the settlement agent shall deliver revised disclosures required under paragraph (f)(1)(i) of this section simultaneously, and as a single document, with the disclosures prepared by the creditor and required under Section [1026.38 (f)(1)(i)] reflecting such changes at or before consummation.

(ii) Changes to the amount actually paid by the consumer. If the amount actually paid by the consumer does not exceed the amount disclosed pursuant to [§ 1026.38(d)(1)] by more than one hundred dollars the settlement agent shall deliver revised disclosures required under paragraph (f)(1)(i) of this section simultaneously, and as a single document, with the disclosures prepared by the creditor and required under Section [1026.38 (f)(1)(i)] reflecting such changes at or before consummation.

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(iii) Changes due to events occurring after consummation. If an event occurs after consummation that causes disclosures required under paragraph (f)(1)(i) of this section to become inaccurate, and such inaccuracy results solely from payments to a government entity in connection with the transaction the settlement agent shall deliver revised disclosures required under paragraph (f)(1)(i) of this section simultaneously, and as a single document, with the disclosures prepared by the creditor and required under Section [1026.38 (f)(1)(i)] reflecting such changes no later than 30 days after consummation.

(iv) Changes due to clerical errors. A creditor does not violate section (f)(1)(i) if the disclosures provided under (f)(1)(i) contain non-numeric clerical errors, provided the settlement agent shall deliver revised disclosures required under paragraph (f)(1)(i) of this section simultaneously, and as a single document, with the disclosures prepared by the creditor and required under Section [1026.38 (f)(1)(i)] reflecting such changes as soon as reasonably practicable and no later than 30 days after consummation.

(v) Refunds related to the good faith analysis. If amounts paid by the consumer exceed the amounts specified under paragraph (e)(3)(i) or (ii) of [1026.xxx, and the creditor complies with paragraph Section 1026. XX(e)(1)(i) by refunding the excess to the consumer at or before consummation, the settlement agent shall deliver revised disclosures required under paragraph (f)(1)(i) of this section simultaneously, and as a single document, with the disclosures prepared by the creditor and required under Section 1026.38 (f)(1)(i) reflecting such changes at or before consummation or no later than 30 days after consummation.

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(4) Transactions involving a seller. (i) Provision to seller. In a closed-end consumer credit transaction secured by real property that involves a seller, other than a reverse mortgage subject to § 1026.33, the person conducting the real estate closing shall provide the seller with the disclosures in this section that relate to the seller's transaction.

#### **Record retention.**

(a) General rule. A person conducting a settlement in accordance with section 1024.8(f)(1) shall retain evidence of compliance with this part for two years after the date disclosures are required to be made or action is required to be taken. The administrative agencies responsible for enforcing the regulation may require the person conducting the settlement under their jurisdictions to retain records for a longer period if necessary to carry out their enforcement responsibilities.

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►(c) Records related to certain requirements for mortgage loans. (1) Records related to requirements for loans secured by real property. (i) General rule. Except as provided under paragraph (c)(1)(ii) of this section, a person conducting the settlement shall retain evidence of compliance with the requirements of § 1024.8 (f)(1) for three years after the later of the date of

consummation, the date disclosures are required to be made, or the date the action is required to be taken.

(ii) Closing Disclosures. (A) A person conducting a settlement under 1024.8 (f)(1) shall retain each completed disclosure and all documents related to such disclosures, for five years after consummation. (B) The Bureau shall have the right to require provision of copies of records related to the disclosures required under § 1024.8 (f)(1)(i) and (f)(4)(i).

(iii) Electronic records. A creditor shall retain evidence of compliance in electronic, machine readable format.

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#### **Content of disclosures for certain mortgage transactions (Closing Disclosure).**

For each transaction subject to § 1024.8(c) and [Transactions with Seller Provision], the person conducting the settlement shall disclose the information in this section, as applicable:

(a) General information. (1) Form title. The title of the form, “Closing Disclosure,” using that term.

(2) Form purpose. The following statement: “This form is a statement of final closing costs. .”

(3) Closing information. Under the heading “Closing Information”:

(i) Date issued. The date the disclosures required by this section are delivered to the consumer, labeled “Date Issued.”

(ii) Closing date. The date of consummation, labeled “Closing Date.”

(iii) Disbursement date. The date the amounts disclosed pursuant to paragraphs (j)(3)(iii) and (k)(3)(iii) of this section are expected to be paid to the consumer and seller, respectively, as applicable, labeled “Disbursement Date.”

(iv) Agent. The name of the settlement agent conducting the closing, labeled “Agent.” (v) File number. The number assigned to the transaction by the settlement agent for identification purposes, labeled “File #.”

(vi) Property. The street address or location of the property required to be disclosed under § 1026.37(a)(6), labeled “Property.”

(vii) Sale price. (A) In credit transactions where there is a seller, the contract sale price of the property identified in paragraph (a)(3)(vi) of this section, labeled “Sale Price.”

(B) In credit transactions where there is no seller, the appraised value of the property identified in paragraph (a)(3)(vi) of this section, labeled “Appraised Prop. Value.”

(4) Transaction information. Under the heading “Transaction Information”:

(i) Borrower. The consumer’s name and mailing address, labeled “Borrower.”

(ii) Seller. Where applicable, the seller’s name and mailing address, labeled “Seller.”

(iii) Lender. The name of the creditor making the disclosure, labeled “Lender.”

(5) Loan information. Under the heading “Loan Information”:

(i) Loan term. The information required to be disclosed under § 1026.37(a)(8), labeled “Loan Term.”

(ii) Purpose. The information required to be disclosed under § 1026.37(a)(9), labeled “Purpose.”

(iii) Product. The information required to be disclosed under § 1026.37(a)(10), labeled “Product.”

(iv) Loan type. The information required to be disclosed under § 1026.37(a)(11), labeled “Loan Type.”

(v) Loan identification number. The information required to be disclosed under § 1026.37(a)(12), labeled “Loan ID #.” (vi) Mortgage insurance case number. The case number for any mortgage insurance policy, if required by the creditor, labeled “MIC #.”

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For each transaction subject to § 1024.8(c), the person conducting the settlement shall disclose the information in this section, as applicable:

(f) Closing cost details; loan costs. Under the master heading “Closing Cost Details” with columns stating whether the charge was borrower-paid at or before closing, seller-paid at or before closing, or paid by others, all loan costs associated with the transaction, listed in a table under the heading “Loan Costs.” The table consists of the items and amounts listed under five labels, described in paragraphs (f)(1) through (5) of this section.

(1) Origination charges. Under the label “Origination Charges,” an itemization of the items described in § 1026.37(f)(1) and compensation paid by the creditor to a loan originator in the applicable column and the total of all such itemized amounts that are designated borrower-paid at or before closing.

(2) Services borrower did not shop for. Under the label “Services Borrower Did Not Shop For,” an itemization of the costs for services required by the creditor and provided by persons other than the creditor or mortgage broker in the applicable column, and the total of all such itemized amounts that are designated borrower-paid at or before closing. Items that were disclosed pursuant to § 1026.37(f)(3) must be disclosed under this paragraph (f)(2) when the consumer was provided a written list under § 1026.19(e)(1)(vi)(C) and the consumer selected a provider contained on that written list.

(3) Services borrower did shop for. Under the label “Services Borrower Did Shop For,” an itemization of the costs for services required by the creditor and provided by persons other than the creditor or mortgage broker where the consumer was provided a written list under § 1026.19(e)(1)(vi)(C) and the consumer did not select a provider contained on that written list, and the total of all such itemized costs that are designated borrower-paid at or before closing.

(4) Total loan costs. The total of the amounts disclosed under [§ 1026.38(f)(5)] with the label “Total Loan Costs (Borrower-Paid).”

(5) Subtotal of loan costs. The sum of loan costs, calculated by totaling the amounts described in paragraphs (f)(1), (2), and (3) of this section for costs designated borrower-paid at or before closing, with the label “Loan Costs Subtotal.”

(g) Closing cost details; other costs. Under the master heading “Closing Cost Details” disclosed pursuant to paragraph (f) of this section, all other costs associated with the transaction listed in a table with a heading disclosed as “Other Costs.” The table comprises items and amounts listed under five labels, described in paragraphs (g)(1) through (6) of this section.

(1) Taxes and other government fees. Under the label “Taxes and Other Government Fees,” each amount that is expected to be paid to State and local governments for taxes and government fees and the total of all such itemized amounts that are designated borrower-paid at or before closing, as follows:

- (i) Recording fees and the amounts paid in the applicable columns; and
- (ii) An itemization of transfer taxes and the amounts paid in the applicable columns.

(2) Prepaids. Under the subheading “Prepaids,” the charges disclosed pursuant to § 1026.37(g)(2) with the actual costs in the applicable columns, and the total of all such itemized amounts that are designated borrower-paid at or before closing.

(3) Initial escrow payment at closing. Under the label “Initial escrow payment at closing,” the items described in § 1026.37(g)(3) with their actual costs, the applicable aggregate adjustment pursuant to 12 CFR 1024.17(d)(2), and the total of all such itemized amounts that are designated borrower-paid at or before closing.

(4) Other. Under the label “Other,” identify and state any other actual costs for services that are required or obtained in the real estate closing by the consumer, the seller, or other party, and the total of all such itemized amounts that are designated borrower-paid at or before closing.

(i) For any actual cost that is a component of title insurance, the introductory description “Title –” shall appear at the beginning of the label for that actual cost.

(ii) The parenthetical description “(optional)” shall appear at the end of the label for actual costs designated borrower-paid at or before closing for any premiums paid for separate insurance, warranty, guarantee, or event-coverage products.

(5) Total other costs. With the label “Total Other Costs (Borrower-Paid),” the sum of the amounts disclosed pursuant to paragraphs (g)(6) of this section.

(6) Subtotal of costs. The sum of other costs, calculated by totaling the costs disclosed in paragraphs (g)(1) through (4) of this section designated borrower-paid at or before closing, labeled “Other Costs Subtotal.”

(h) Closing cost totals. (1) The total of the costs designated borrower-paid at or before closing that are disclosed pursuant to paragraph (h)(2) of this section, labeled “Total Closing Costs (Borrower-Paid).” (2) The total of the amounts disclosed in paragraphs (f)(5) and (g)(6) of this section and the total of the costs designated seller-paid at or before closing, or paid by others are disclosed pursuant to paragraphs (f) and (g) of this section, and the sum of the amount disclosed in (h)(3) of this section and the amounts designated borrower-paid at closing, labeled “Closing Costs Subtotal (Loan Costs + Other Costs).”

(3) The amount disclosed pursuant to § 1026.37(g)(6)(ii) as a negative number, with the label “Lender Credit” and designated borrower-paid at closing.

(4) The settlement agent must use descriptions for the charges disclosed pursuant to paragraphs (f) and (g) of this section on the Closing Disclosure in a manner that are consistent with the descriptions used for the charges disclosed on the Loan Estimate pursuant to § 1026.37. The settlement agent

must also list the charges on the Closing Disclosure in the same sequential order as on the Loan Estimate pursuant to § 1026.37.

- (i) Calculating cash to close. In a separate table, under the heading “Calculating Cash to Close,” together with the statement “Use this table to see what has changed from your Loan Estimate”:
- (1) Total closing costs. (i) Under the subheading “Estimate,” the “Total Closing Costs” disclosed on the Loan Estimate under § 1026.37(h)(1), labeled using that term together with a reference to the disclosure of “Total Closing Costs” under paragraph (h)(1) of this section.
- (ii) Under the subheading “Final,” the amount disclosed under paragraph (h)(1) of this section, reduced by the amount of any lender credits disclosed under [§ 1026.38(h)(3)].
- (iii) Disclosed more prominently than the other disclosures under this paragraph (i), under the subheading “Did this change?”:
- (A) If the amount disclosed under paragraph (i)(1)(ii) of this section is different than the amount disclosed under paragraph (i)(1)(i) of this section (unless the difference is due to rounding):
- (1) A statement of that fact;
- (2) If the difference in the “Total Closing Costs” is attributable to differences in itemized charges that are included in either or both subtotals, a statement that the consumer should see the total loan costs and total other costs subtotals disclosed under paragraphs (f)(4) and (g)(5) of this section (together with references to such disclosures), as applicable; and
- (3) If the increase exceeds the limitations on increases in closing costs under § 1026.19(e)(3), a statement that such increase exceeds the legal limits by the dollar amount of the excess. Such dollar amount shall equal the sum total of all excesses of the limitations on increases in closing costs under § 1026.19(e)(3), taking into account the different methods of calculating excesses of the limitations on increases in closing costs under § 1026.19(e)(3)(ii) and (iii).
- (B) If the amount disclosed under paragraph (i)(1)(ii) of this section is equal to the amount disclosed under paragraph (i)(1)(i) of this section, a statement of that fact.
- (2) Closing costs subtotal paid before closing. (i) Under the subheading “Estimate,” the dollar amount “\$0,” labeled “Closing Costs Subtotal Paid Before Closing.”
- (ii) Under the subheading “Final,” the amount of “Total Closing Costs” disclosed under paragraph (h)(2) of this section and designated as borrower-paid before closing, stated as a negative number.
- (iii) Disclosed more prominently than the other disclosures under this paragraph (i), under the subheading “Did this change?”:
- (A) If the amount disclosed under paragraph (i)(2)(ii) of this section is different than the amount disclosed under paragraph (i)(2)(i) of this section (unless the difference is due to rounding), a

statement of that fact, along with a statement that the consumer paid such amounts prior to consummation of the transaction; or

(B) If the amount disclosed under paragraph (i)(2)(ii) of this section is equal to the amount disclosed under paragraph (i)(2)(i) of this section, a statement of that fact.

(3) Closing costs financed. (i) Under the subheading “Estimate,” the amount disclosed under § 1026.37(h)(2), labeled “Closing Costs Financed.”

(ii) Under the subheading “Final,” the actual amount of the closing costs that are to be paid out of loan proceeds, stated as a negative number.

(iii) Disclosed more prominently than the other disclosures under this paragraph (i), under the subheading “Did this change?”:

(A) If the amount disclosed under paragraph (i)(3)(ii) of this section is different than the amount disclosed under paragraph (i)(3)(i) of this section (unless the difference is due to rounding), a statement that the amount is different, along with a statement that the consumer included the closing costs in the loan amount, which increased the loan amount; or

(B) If the amount disclosed under paragraph (i)(3)(ii) of this section is equal to the amount disclosed under paragraph (i)(3)(i) of this section, a statement of that fact.

(4) Downpayment/funds from borrower. (i) Under the subheading “Estimate,” the amount disclosed under § 1026.37(h)(3), labeled “Downpayment/Funds from Borrower.”

(ii) Under the subheading “Final”:

(A) In a transaction that is a purchase as defined in § 1026.37(a)(9)(i), the actual amount of the difference between the purchase price of the property and the principal amount of the credit extended, stated as a positive number, labeled using the term “Downpayment/Funds from Borrower”; or

(B) In a transaction other than the one described in paragraph (i)(4)(ii)(A) of this section, the “Funds from Borrower” as determined in accordance with paragraph (i)(6)(iv) of this section, labeled using the term “Downpayment/Funds from Borrower.”

(iii) Disclosed more prominently than the other disclosures under this paragraph (i), under the subheading “Did this change?”:

(A) If the amount disclosed under paragraph (i)(4)(ii) of this section is different than the amount disclosed under paragraph (i)(4)(i) of this section (unless the difference is due to rounding), a statement of that fact, along with a statement that the consumer increased or decreased this payment and that the consumer should see the details disclosed under paragraph (j)(1) or (j)(2) of this section, as applicable; or

(B) If the amount disclosed under paragraph (i)(4)(ii) of this section is equal to the amount disclosed under paragraph (i)(4)(i) of this section, a statement of that fact.

(5) Deposit. (i) Under the subheading “Estimate,” the amount disclosed under § 1026.37(h)(4), labeled “Deposit.”

(ii) Under the subheading “Final,” the amount disclosed under paragraph (j)(2)(ii) of this section, stated as a negative number.

(iii) Disclosed more prominently than the other disclosures under this paragraph (i), under the subheading “Did this change?”:

(A) If the amount disclosed under paragraph (i)(5)(ii) of this section is different than the amount disclosed under paragraph (i)(5)(i) of this section (unless the difference is due to rounding), a statement of that fact, along with a statement that the consumer increased or decreased this payment, as applicable, and that the consumer should see the details disclosed under paragraph (j)(2)(ii) of this section; or

(B) If the amount disclosed under paragraph (i)(5)(ii) of this section is equal to the amount disclosed under paragraph (i)(5)(i) of this section, a statement of that fact.

(6) Funds for borrower. (i) Under the subheading “Estimate,” the amount disclosed under § 1026.37(h)(5), labeled “Funds for Borrower.”

(ii) Under the subheading “Final,” the “Funds for Borrower,” labeled using that term, as determined in accordance with paragraph (i)(6)(iv) of this section.

(iii) Disclosed more prominently than the other disclosures under this paragraph (i), under the subheading “Did this change?”:

(A) If the amount disclosed under paragraph (i)(6)(ii) of this section is different than the amount disclosed under paragraph (i)(6)(i) of this section (unless the difference is due to rounding), a statement of that fact, along with a statement that the consumer’s available funds from the loan amount have increased or decreased, as applicable; or

(B) If the amount disclosed under paragraph (i)(6)(ii) of this section is equal to the amount disclosed under paragraph (i)(6)(i) of this section, a statement of that fact.

(iv) The “Funds from Borrower” to be disclosed under paragraph (i)(4)(ii)(B) of this section and “Funds for Borrower” to be disclosed under paragraph (i)(6)(ii) of this section are determined by subtracting the principal amount of the credit extended (excluding any amount disclosed pursuant to paragraph (i)(3)(ii) of this section) from the total amount of all existing debt being satisfied in the real estate closing and disclosed under § 1026.38(j)(1)(v) (except to the extent the satisfaction of such existing debt is disclosed under § 1026.38(g)).

(A) If the calculation under this paragraph (i)(6)(iv) yields an amount that is a positive number, such amount shall be disclosed under paragraph (i)(4)(ii)(B) of this section, and \$0.00 shall be disclosed under paragraph (i)(6)(ii) of this section.

(B) If the calculation under this paragraph (i)(6)(iv) yields an amount that is a negative number, such amount shall be disclosed under paragraph (i)(6)(ii) of this section, stated as a negative number, and \$0.00 shall be disclosed under paragraph (i)(4)(ii)(B) of this section.

(C) If the calculation under this paragraph (i)(6)(iv) yields \$0.00, \$0.00 shall be disclosed under paragraph (i)(4)(ii)(B) of this section and under paragraph (i)(6)(ii) of this section.

(7) Seller credits. (i) Under the subheading “Estimate,” the amount disclosed under § 1026.37(h)(6), labeled “Seller Credits.”

(ii) Under the subheading “Final,” the amount disclosed under paragraph (j)(2)(v) of this section, stated as a negative number.

(iii) Disclosed more prominently than the other disclosures under this paragraph (i), under the subheading “Did this change?”:

(A) If the amount disclosed under paragraph (i)(7)(ii) of this section is different than the amount disclosed under paragraph (i)(7)(i) of this section (unless the difference is due to rounding), a statement of that fact, along with a statement that the consumer should see the details disclosed under paragraph (j)(2)(v) of this section; or

(B) If the amount disclosed under paragraph (i)(7)(ii) of this section is equal to the amount disclosed under paragraph (i)(7)(i) of this section, a statement of that fact.

(8) Adjustments and other credits. (i) Under the subheading “Estimate,” the amount disclosed on the Loan Estimate under § 1026.37(h)(7) rounded to the nearest whole dollar, labeled “Adjustments and Other Credits.”

(ii) Under the subheading “Final,” the amount equal to the total of the amounts disclosed under paragraphs (j)(1)(v) through (x) of this section reduced by the total of the amounts disclosed under paragraphs (j)(2)(vi) through (xi) of this section.

(iii) Disclosed more prominently than the other disclosures under this paragraph (i), under the subheading “Did this change?”:

(A) If the amount disclosed under paragraph (i)(8)(ii) of this section is different than the amount disclosed under paragraph (i)(8)(i) of this section (unless the difference is due to rounding), a statement of that fact, along with a statement that the consumer should see the details disclosed under paragraphs (j)(1)(v) through (x) and (j)(2)(vi) through (xi) of this section; or

(B) If the amount disclosed under paragraph (i)(8)(ii) of this section is equal to the amount disclosed under paragraph (i)(8)(i) of this section, a statement of that fact.

(9) Cash to close. (i) Under the subheading “Estimate,” the amount disclosed on the Loan Estimate under § 1026.37(h)(8), labeled “Cash to Close” and disclosed more prominently than the other disclosures under this paragraph (i).

(ii) Under the subheading “Final,” the sum of the amounts disclosed under paragraphs (i)(1) through (i)(8) of this section, and disclosed more prominently than the other disclosures under this paragraph (i).

(j) Summary of borrower’s transaction. Under the heading “Summaries of Transactions,” with a statement to “Use this table to see a summary of your transaction,” two separate tables are disclosed. The first table shall include, under the subheading “Borrower’s Transaction,” the following information and shall satisfy the following requirements:

- (1) Itemization of amount due from borrower. (i) The total amount due from the consumer at closing, calculated as the sum of items required to be disclosed by paragraph (j)(1)(ii) through (x) of this section, excluding items paid from funds other than closing funds as described in paragraph (j)(4)(i) of this section, labeled “Due from Borrower at Closing”;
- (ii) The amount of the contract sales price of the property being sold in a purchase real estate transaction, excluding the price of any tangible personal property if the consumer and seller have agreed to a separate price for such items, labeled “Sale Price of Property”;
- (iii) The amount of the sales price of any tangible personal property excluded from the contract sales price pursuant to paragraph (j)(1)(ii) of this section, labeled “Sale Price of Any Personal Property Included in Sale”;
- (iv) The total amount of closing costs disclosed that are designated borrower-paid at closing, calculated pursuant to paragraph (h)(1) of this section, the labeled “Subtotal Closing Costs Paid at Closing by Borrower”;
- (v) A description and the amount of any additional items that the seller has paid prior to the real estate closing, but reimbursed by the consumer at the real estate closing, and a description and the amount of any other items owed by the consumer at the real estate closing not otherwise disclosed pursuant to paragraph (f), (g), or (j) of this section;
- (vi) The description “Adjustments for Items Paid by Seller in Advance”;
- (vii) The time period that the consumer is responsible for reimbursing the seller for any prepaid taxes, and the prorated amount of any prepaid taxes due from the consumer at the real estate closing, labeled “City/Town Taxes”;

- (viii) The time period that the consumer is responsible for reimbursing the seller for any prepaid taxes, and the prorated amount of any prepaid taxes due from the consumer at the real estate closing, labeled “County Taxes”;
- (ix) The time period that the consumer is responsible for reimbursing the seller for any prepaid assessments, and the prorated amount of any prepaid assessments due from the consumer at the real estate closing, labeled “Assessments”; and
- (x) A description and the amount of any additional items paid by the seller prior to the real estate closing that are due from the consumer at the real estate closing.
- (2) Itemization of amounts already paid by or on behalf of borrower. (i) The sum of the amounts disclosed in this paragraphs (j)(2)(ii) through (xi) of this section, excluding items paid from funds other than closing funds as described in paragraph (j)(4)(i) of this section, labeled “Paid Already by or on Behalf of Borrower at Closing”;
- (ii) Any amount that is paid to the seller or held in trust or escrow by an attorney or other party under the terms of the agreement for the sale of real estate, labeled “Deposit”;
- (iii) The amount of the consumer’s new loan or first user loan as disclosed pursuant to paragraph (b)(1) of this section, labeled “Borrower’s Loan Amount”;
- (iv) The amount of those existing loans assumed or taken subject to by the consumer, labeled “Existing Loan(s) Assumed or Taken Subject to”;
- (v) The total amount of money that the seller will provide at the real estate closing as a lump sum to pay for loan costs as determined by paragraph (f) of this section and other costs as determined by paragraph (g) of this section and any other obligations of the seller to be paid directly to the consumer, labeled “Seller Credit”;
- (vi) The amount of other items paid by or on behalf of the consumer and not otherwise disclosed pursuant to paragraphs (f), (g), (h), and (j)(2) of this section, labeled “Other Credits”;
- (vii) The description “Adjustments for Items Unpaid by Seller”;
- (viii) The time period that the seller is responsible for the payment of any unpaid taxes, and the prorated amount of any unpaid taxes due from the seller at the real estate closing, labeled ”City/Town Taxes”;
- (ix) The time period that the seller is responsible for the payment of any unpaid taxes, and the prorated amount of any unpaid taxes due from the seller at the real estate closing, labeled “County Taxes”;

(x) The time period that the seller is responsible for the payment of any unpaid assessments, and the prorated amount of any unpaid assessments due from the seller at the real estate closing, labeled “Assessments”; and

(xi) A description and the amount of any additional items which have not yet been paid and which the consumer is expected to pay after the real estate closing, but which are attributable in part to a period of time prior to the real estate closing.

(3) Calculation of borrower’s transaction. Under the label “Calculation”:

(i) The amount disclosed pursuant to paragraph (j)(1)(i) of this section, labeled “Total Due from Borrower at Closing”;

(ii) The amount disclosed pursuant to paragraph (j)(2)(i) of this section, disclosed as a negative number, labeled “Total Paid Already by or on Behalf of Borrower at Closing”; and

(iii) A statement that the disclosed amount is due from or to the consumer, and the amount due from or to the consumer at the real estate closing, calculated by the sum of the amounts disclosed under paragraphs (j)(3)(i) and (j)(3)(ii) of this section, labeled “Cash to Close.”

(4) Items paid outside of closing funds. (i) Costs that are not paid from closing funds but that would otherwise be disclosed in the table required pursuant to paragraph (j) of this section, should be marked with the phrase “Paid Outside of Closing” or the abbreviation “P.O.C.” and include the name of the party making the payment.

(ii) For purposes of this paragraph (j), “closing funds” means funds collected and disbursed at closing.

(k) Summary of seller’s transaction. Under the heading required by paragraph (j) of this section, a second table under the subheading “Seller’s Transaction,” that includes the following information and satisfies the following requirements:

(1) Itemization of amounts due to seller. (i) The total amount due to the seller at the real estate closing, calculated as the sum of items required to be disclosed pursuant to paragraph (k)(1)(ii) through (ix) of this section, excluding items paid from funds other than closing funds as described in paragraph (k)(4)(i) of this section, labeled “Due to Seller at Closing”;

(ii) The amount of the contract sales price of the property being sold, excluding the price of any tangible personal property if the consumer and seller have agreed to a separate price for such items, labeled “Sale Price of Property”;

(iii) The amount of the sales price of any tangible personal property excluded from the contract sales price pursuant to paragraph (k)(1)(ii) of this section, labeled “Sale Price of Any Personal Property Included in Sale”;

- (iv) A description and the amount of other items paid to the seller by the consumer pursuant to the contract of sale or other agreement, such as charges that were not disclosed pursuant to § 1026.37 on the Loan Estimate or items paid by the seller prior to the real estate closing but reimbursed by the consumer at the real estate closing;
- (v) The description “Adjustments for Items Paid by Seller in Advance”;
- (vi) The time period that the consumer is responsible for reimbursing the seller for any prepaid taxes, and the prorated amount of any prepaid taxes due from the consumer at the real estate closing, labeled “City/Town Taxes”;
- (vii) The time period that the consumer is responsible for reimbursing the seller for any prepaid taxes, and the prorated amount of any prepaid taxes due from the consumer at the real estate closing, labeled “County Taxes”;
- (viii) The time period that the consumer is responsible for reimbursing the seller for any prepaid assessments, and the prorated amount of any prepaid assessments due from the consumer at the real estate closing, labeled “Assessments”; and
- (ix) A description and the amount of additional items paid by the seller prior to the real estate closing that are reimbursed by the consumer at the real estate closing.
- (2) *Itemization of amounts due from seller.* (i) The total amount due from the seller at the real estate closing, calculated as the sum of items required to be disclosed pursuant to paragraph (k)(2)(ii) through (xiii) of this section, excluding items paid from funds other than closing funds as described in paragraph (k)(4)(i) of this section, labeled “Due from Seller at Closing”;
- (ii) The amount of any excess deposit retained by the seller at the time of the real estate closing, labeled “Excess Deposit”;
- (iii) The amount of closing costs designated seller-paid at closing disclosed pursuant to paragraph (h)(1) of this section, labeled “Subtotal Closing Costs Paid at Closing by Seller”;
- (iv) The amount of those existing loans assumed or taken subject to at the real estate closing by the consumer, labeled “Existing Loan(s) Assumed or Taken Subject to”;
- (v) The amount of any first loan secured by the property that will be paid off as part of the real estate closing, labeled “Payoff of First Mortgage Loan”;
- (vi) The amount of any second loan secured by the property that will be paid off as part of the real estate closing, labeled “Payoff of Second Mortgage Loan”;
- (vii) The total amount of money that the seller will provide at the real estate closing as a lump sum to pay for loan costs as determined by paragraph (f) of this section and other costs as determined by

paragraph (g) of this section and any other obligations of the seller to be paid directly to the consumer, labeled “Seller Credit”;

(viii) A description and amount of any and all other obligations required to be paid by the seller at the real estate closing, including any lien-related payoffs, fees, or obligations;

(ix) The description “Adjustments for Items Unpaid by Seller”;

(x) The time period that the seller is responsible for the payment of any unpaid taxes, and the prorated amount of any unpaid taxes due from the seller at the real estate closing, labeled “City/Town Taxes”;

(xi) The time period that the seller is responsible for the payment of any unpaid taxes, and the prorated amount of any unpaid taxes due from the seller at the real estate closing, labeled “County Taxes”;

(xii) The time period that the seller is responsible for the payment of any unpaid assessments, and the prorated amount of any unpaid assessments due from the seller at the real estate closing, labeled “Assessments”; and (xiii) A description and the amount of any additional items which have not yet been paid and which the consumer is expected to pay after the real estate closing, but which are attributable in part to a period of time prior to the real estate closing.

(3) Calculation of seller’s transaction. Under the label “Calculation”:

(i) The amount described in paragraph (k)(1)(i) of this section, labeled “Total Due to Seller at Closing”;

(ii) The amount described in paragraph (k)(2)(i) of this section, disclosed as a negative number, labeled “Total Due from Seller at Closing”; and

(iii) A statement that the disclosed amount is due from or to the seller, and the amount due from or to the seller at closing, calculated by the sum of the amounts disclosed pursuant to paragraphs (k)(3)(i) and (k)(3)(ii) of this section, labeled “Cash.”

(4) Items paid outside of closing funds. (i) Charges that are not paid from closing funds but that would otherwise be disclosed in the table described in paragraph (k) of this section, should be marked with the phrase “Paid Outside of Closing” or the acronym “P.O.C.” and include a statement of the party making the payment.

(ii) For purposes of this paragraph (k), “closing funds” are defined as funds collected and disbursed at closing.

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(t) Form of disclosures. (1) General requirements. (i) The person conducting the settlement shall make the disclosures required by this section clearly and conspicuously in writing, in a form that the

consumer may keep. The disclosures also shall be grouped together, ensuring that the consumer receives the disclosures required under paragraph (f)(1)(i) of this section simultaneously, and as a single document, with the disclosures prepared by the creditor and required under Section 1026.38 (f)(1)(i), segregated from everything else, and provided on separate pages that are not commingled with any other documents or disclosures, including any other disclosures required by State or other laws.

(ii) Except as provided in paragraph (t)(5), the disclosures shall contain only the information required by paragraphs (a) through (s) of this section and shall be made in the following order:

- (A) (i) in a disclosure required by [Seller Disclosure Provision] the information required by paragraphs (xxx) through (yyy) of this section; (ii) for all other Closing Disclosures, the information required by paragraphs (a) through (XX) of section 1026.38
- (B) the information required by paragraphs (xx) through (yy) of this section
- (C) the information required by paragraphs (xx) through (yy) of section 1026.38

, and positioned relative to the master headings, headings, subheadings, labels, and similar designations in the same manner, as shown in form H-25, set forth in appendix H to this part.

(2) *Estimated disclosures.* If a master heading, heading, subheading, label, or similar designation contains the word “estimated” in form H-25, set forth in appendix H to this part, that heading, label, or similar designation shall contain the word “estimated.”

(3) *Form.* Except as provided in paragraph (t)(5) of this section:

(i) For a transaction subject to this section that is a federally related mortgage loan, as defined in Regulation X, 12 CFR 1024.2, the disclosures must be made using form H-25, set forth in appendix H to this part.

(ii) For any other transaction subject to this section, the disclosures must be made with headings, content, and format substantially similar to form H-25, set forth in appendix H to this part.

(iii) The disclosures required by this section may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*).

(4) *Rounding.* (i) *Nearest dollar.* The following dollar amounts are required to be rounded to the nearest whole dollar:

- (A) The dollar amounts required to be disclosed by paragraph (b) of this section that are required to be rounded by § 1026.37(o)(4)(i)(A) when disclosed under § 1026.37(b)(6) and (7);
- (B) The dollar amounts required to be disclosed by paragraph (c) of this section that are required to be rounded by § 1026.37(o)(4)(i)(A) when disclosed under § 1026.37(c)(1)(iii);
- (C) The dollar amounts required to be disclosed by paragraph (i) of this section under the subheading “Estimate”;
- (D) The dollar amounts required to be disclosed by paragraph (m) of this section; and
- (E) The dollar amounts required to be disclosed by paragraph (c) of this section that are required to be rounded by § 1026.37(o)(4)(i)(B) when disclosed under § 1026.37(c)(2)(iv).

(ii) Percentages. The percentage amounts required to be disclosed under paragraphs (b), (f)(1)(i), (g)(2)(iii), (l), (n), and (o)(5) and (6) of this section shall be disclosed as an exact number up to two or three decimal places. The percentage amount required to be disclosed under paragraph (o)(4) of this section shall be disclosed up to three decimal places. Decimal places shall not be disclosed if the amount is a whole number.

(5) Exceptions. (i) Unit-period. Wherever the form or this section uses “monthly” to describe the frequency of any payments or uses “month” to describe the applicable unit-period, the creditor shall substitute the appropriate term to reflect the fact that the transaction’s terms provide for other than monthly periodic payments, such as bi-weekly or quarterly payments.

(ii) Lender credits. The amount required to be disclosed by paragraph (d)(4) of this section may be omitted from the form if the amount is zero.

(iii) Administrative information. The creditor may insert immediately above the information required to be disclosed by paragraph (a)(2) of this section and adjacent to the information required to be disclosed by paragraph (a)(3) of this section any administrative information, text, or codes that assist in identification of the form or the information disclosed on the form.

(iv) Line numbers (Closing Cost Details). Line numbers provided on form H-25 in Appendix H to this part for the disclosure of the information required by paragraphs (f)(1), (2), and (3) and (g)(1), (2), (3), and (4) of this section that are not used may be deleted and the deleted line numbers added to the space provided for any other of those paragraphs as necessary to accommodate the disclosure of additional items.

(v) Additional page (Closing Cost Details). The information required to be disclosed by paragraphs (f), (g), and (h) of this section may be disclosed on two pages if form H-25 in appendix H to this part, as altered pursuant to paragraph (t)(5)(iv) of this section, does not accommodate an itemization of all of the information required to be disclosed by paragraphs (f), (g), and (h) on one page, provided that

the information required by paragraph (f) is disclosed on a page separate from the information required by paragraph (g). The information required by paragraph (g), if disclosed on a page separate from paragraph (f), shall be disclosed on the same page as the information required by paragraph (h).

(vi) Separation of consumer and seller information. The creditor or settlement agent preparing the form may use form H-25 in appendix H to this part for the disclosure provided to both the consumer and the seller, with the following modifications to separate the information of the consumer and seller, as necessary:

(A) The information required to be disclosed by paragraphs (j) and (k) of this section may be disclosed on separate pages to the consumer and the seller, respectively, with the information required by the other paragraph left blank. The information disclosed to the consumer pursuant to paragraph (j) of this section must be disclosed on the same page as the information required by paragraph (i) of this section.

(B) The information required to be disclosed by paragraphs (f) and (g) of this section with respect to costs paid by the consumer may be left blank on the disclosure provided to the seller.

(C) The information required by paragraphs (a)(2), (a)(4)(iii), (a)(5), (b) through (d), (i), (l) through (p), (r) with respect to the creditor and mortgage broker, and (s)(2) of this section may be left blank on the disclosure provided to the seller.

(vii) Modified version of the form for a seller or third-party. The information required by paragraphs (a)(2), (a)(4)(iii), (a)(5), (b) through (d), (f) and (g) with respect to costs paid by the consumer, (i), (j), (l) through (p), (q)(1), (r) with respect to the creditor and mortgage broker, and (s) of this section may be deleted from the form provided to the seller or a third-party, as illustrated by form H-25(I) in appendix H to this part.

(viii) Transaction without a seller. The following modifications to form H-25 in appendix H to this part may be made for a transaction that does not involve a seller, as illustrated by form H-25(J) in appendix H to this part:

(A) The information required by paragraphs (a)(4)(ii), (f), (g), and (h) with respect to costs paid by the seller, and (k) of this section may be deleted.

(B) A table under the master heading “Closing Cost Details” required by paragraph (f) of this section may be added with the heading “Disbursements to Others” that itemizes the amounts of payments made at closing to other parties from the credit extended to the consumer or funds provided by the consumer in connection with the transaction, including designees of the

consumer; the payees of such disbursements under the subheading “To”; and the total amount of such payments labeled “Total Disbursements to Others.”

(C) The information required by paragraphs (i)(5), (7), and (8) of this section may be deleted from the table required by paragraph (i) of this section. These deletions must be factored into the calculation and disclosure required by paragraph (i)(9) of this section.

(D) The tables required to be disclosed by paragraphs (j) and (k) of this section may be deleted.

(ix) *Translation.* The form may be translated into languages other than English.

(x) *Customary recitals and information.* An additional page may be attached to the form for the purpose of including customary recitals and information used locally in real estate settlements. ◀

19. Section 1026.39 is amended by revising paragraphs (a)(2) and (d) and adding new paragraph (d)(5) to read as follows:

(de) *Violations of section 4 of RESPA (12 U.S.C. 2603).* A violation of any of the requirements of this section will be deemed to be a violation of section 4 of RESPA. An inadvertent or technical error in completing the HUD-1 or HUD-1A shall not be deemed a violation of section 4 of RESPA if a revised HUD-1 or HUD-1A is provided in accordance with the requirements of this section within 30 calendar days after settlement.

## **§ 1024.9 Reproduction of settlement statements and closing disclosures.**

(a) *Permissible changes—HUD-1.* The following changes and insertions are permitted when the HUD-1 settlement statement or the Closing Disclosure is reproduced:

(1) The person reproducing the HUD-1 or Closing Disclosure may insert its business name and logo in section A and may rearrange, but not delete, the other information that appears in section A.

(2) The name, address, and other information regarding the lender and settlement agent may be printed in sections F and H of the HUD-1, respectively.

(3) **(a)** Reproduction of the HUD-1 must conform to the terminology, sequence, and numbering of line items as presented in lines 100-1400. However, blank lines or items listed in lines 100-1400 that are not used locally or in connection with mortgages by the lender may be deleted, except for the following: Lines 100, 120, 200, 220, 300, 301, 302, 303, 400, 420, 500, 520, 600,

601, 602, 603, 700, 800, 900, 1000, 1100, 1200, 1300, and 1400. The form may be shortened correspondingly. The number of a deleted item shall not be used for a substitute or new item, but the number of a blank space on the HUD-1 may be used for a substitute or new item.

**(b) Reproduction of the Closing Disclosure**~~HUD-1 must conform to the terminology, sequence, and numbering of line items as presented in \_\_\_\_\_ . The form may be shortened correspondingly.~~

(4) Charges not listed on the HUD-1, but that are customary locally or pursuant to the lender's practice, may be inserted in blank spaces. Where existing blank spaces on the HUD-1 are insufficient, additional lines and spaces may be added and numbered in sequence with spaces on the HUD-1.

(5) The following variations in layout and format are within the discretion of persons reproducing the HUD-1 and do not require prior HUD approval: size of pages; tint or color of pages; size and style of type or print; vertical spacing between lines or provision for additional horizontal space on lines (for example, to provide sufficient space for recording time periods used in prorations); printing of the HUD-1 contents on separate pages, on the front and back of a single page, or on one continuous page; use of multicopy tear-out sets; printing on rolls for computer purposes; reorganization of sections B through I, when necessary to accommodate computer printing; and manner of placement of the HUD number, but not the OMB approval number, neither of which may be deleted. The expiration date associated with the OMB number listed on the form may be deleted. Any changes in the HUD number or OMB approval number may be announced by notice in the FEDERAL REGISTER, rather than by amendment of this part.

(6) The borrower's information and the seller's information may be provided on separate pages.

(7) Signature lines may be added.

(8) The HUD-1 may be translated into languages other than English.

(9) An additional page may be attached to the HUD-1 for the purpose of including customary recitals and information used locally in real estate settlements; for example, breakdown of payoff figures, a breakdown of the borrower's total monthly mortgage payments, check disbursements, a statement indicating receipt of funds, applicable special stipulations between buyer and seller, and the date funds are transferred. If space permits, such information may be added at the end of the HUD-1.

(10) As required by HUD/FHA in FHA-insured loans.

(11) As allowed by § 1024.17, relating to an initial escrow account statement.

**(b) Permissible changes—HUD-1A.** The changes and insertions on the HUD-1 permitted under paragraph (a) of this section are also permitted when the HUD-1A settlement statement is reproduced, except the changes described in paragraphs (a)(3) and (6) of this section.

(c) *Written approval.* Any other deviation in the HUD-1 or HUD-1A forms is permissible only upon receipt of written approval of the Bureau; provided, however, that notwithstanding contrary instructions in this section or Appendix A, reproducing the HUD-1 or HUD-1A forms with the Bureau's OMB approval number displayed in place of HUD's OMB approval number does not require the written approval of the Bureau. A request to the Bureau for approval shall be submitted in writing to the address indicated in § 1024.3 and shall state the reasons why the applicant believes such deviation is needed. The prescribed form(s) must be used until approval is received.

## **§ 1024.10 One-day advance inspection of HUD-1 or HUD-1A settlement statement; delivery; recordkeeping; exempt transactions.**

(a) *Inspection one day prior to settlement upon request by the borrower.* The settlement agent shall permit the borrower to inspect the HUD-1 or HUD-1A settlement statement, completed to set forth those items that are known to the settlement agent at the time of inspection, during the business day immediately preceding settlement. Items related only to the seller's transaction may be omitted from the HUD-1.

(b) *Delivery.* The settlement agent shall provide a completed HUD-1 or HUD-1A to the borrower, the seller (if there is one), the lender (if the lender is not the settlement agent), and/or their agents. When the borrower's and seller's copies of the HUD-1 or HUD-1A differ as permitted by the instructions in Appendix A to this part, both copies shall be provided to the lender (if the lender is not the settlement agent). The settlement agent shall deliver the completed HUD-1 or HUD-1A at or before the settlement, except as provided in paragraphs (c) and (d) of this section.

(c) *Waiver.* The borrower may waive the right to delivery of the completed HUD-1 or HUD-1A no later than at settlement by executing a written waiver at or before settlement. In such case, the completed HUD-1 or HUD-1A shall be mailed or delivered to the borrower, seller, and lender (if the lender is not the settlement agent) as soon as practicable after settlement.

(d) *Exempt transactions.* When the borrower or the borrower's agent does not attend the settlement, or when the settlement agent does not conduct a meeting of the parties for that purpose, the transaction shall be exempt from the requirements of paragraphs (a) and (b) of this section, except that the HUD-1 or HUD-1A shall be mailed or delivered as soon as practicable after settlement.

(e) *Recordkeeping.* The lender shall retain each completed HUD-1 or HUD-1A and related documents for five years after settlement, unless the lender disposes of its interest in the mortgage and does not service the mortgage. In that case, the lender shall provide its copy of the HUD-1 or HUD-1A to the owner or servicer of the mortgage as a part of the transfer of the loan file. Such owner or servicer shall retain the HUD-1 or HUD-1A for the remainder of the five-year period. The Bureau shall have the right to inspect or require copies of records covered by this paragraph (e).

(f) Exemption of Certain Loans. For any loan that is subject to the special disclosure requirements for certain consumer credit transactions secured by real property set forth in Regulation Z, 12 CFR 1026.19(e) and (f), a settlement agent shall comply with the requirements set out in Section 1024.8(c) in lieu of this Section.

## **§ 1024.11 Mailing.**

The provisions of this part requiring or permitting mailing of documents shall be deemed to be satisfied by placing the document in the mail (whether or not received by the addressee) addressed to the addresses stated in the loan application or in other information submitted to or obtained by the lender at the time of loan application or submitted or obtained by the lender or settlement agent, except that a revised address shall be used where the lender or settlement agent has been expressly informed in writing of a change in address.

## **§ 1024.12 No fee.**

No fee shall be imposed or charge made upon any other person, as a part of settlement costs or otherwise, by a lender in connection with a federally related mortgage loan made by it (or a loan for the purchase of a manufactured home), or by a servicer (as that term is defined under 12 U.S.C. 2605(i)(2)) for or on account of the preparation and distribution of the HUD-1 or HUD-1A settlement statement, escrow account statements required pursuant to section 10 of RESPA (12 U.S.C. 2609), or statements required by the Truth in Lending Act (15 U.S.C. 1601 *et seq.* ).

## **§ 1024.13 Relation to state laws.**

(a) State laws that are inconsistent with RESPA or this part are preempted to the extent of the inconsistency. However, RESPA and these regulations do not annul, alter, affect, or exempt any person subject to their provisions from complying with the laws of any state with respect to settlement practices, except to the extent of the inconsistency.

(b) Upon request by any person, the Bureau is authorized to determine if inconsistencies with state law exist; in doing so, the Bureau shall consult with appropriate Federal agencies.

(1) The Bureau may not determine that a state law or regulation is inconsistent with any provision of RESPA or this part, if the Bureau determines that such law or regulation gives greater protection to the consumer.

(2) In determining whether provisions of state law or regulations concerning affiliated business arrangements are inconsistent with RESPA or this part, the Bureau may not construe those

provisions that impose more stringent limitations on affiliated business arrangements as inconsistent with RESPA so long as they give more protection to consumers and/or competition.

(c) Any person may request the Bureau to determine whether an inconsistency exists by submitting to the address indicated in § 1024.3, a copy of the state law in question, any other law or judicial or administrative opinion that implements, interprets or applies the relevant provision, and an explanation of the possible inconsistency. A determination by the Bureau that an inconsistency with state law exists will be made by publication of a notice in the FEDERAL REGISTER. “Law” as used in this section includes regulations and any enactment which has the force and effect of law and is issued by a state or any political subdivision of a State.

(d) A specific preemption of conflicting state laws regarding notices and disclosures of mortgage servicing transfers is set forth in § 1024.21(h).

[H-25\(A\) Mortgage Loan Transaction Closing Disclosure - Blank](#)

[H-25\(B\) Mortgage Loan Transaction Closing Disclosure - Fixed-Rate Loan Sample H-25\(C\)](#)

[Mortgage Loan Transaction Closing Disclosure - Sample of Borrower Funds from Second-Lien Loan in Summaries of Transactions H-25\(D\) Mortgage Loan Transaction Closing Disclosure - Sample of Borrower Satisfaction of Seller's Second-Lien Loan Outside of Closing in Summaries of Transactions](#)

[H-25\(E\) Mortgage Loan Transaction Closing Disclosure - Sample of Refinance Transaction](#)

[H-25\(F\) Mortgage Loan Transaction Closing Disclosure - Sample of Refinance Transaction \(19\(e\)\(3\) violation\)](#)

[H-25\(G\) Mortgage Loan Transaction Closing Disclosure - Sample of Refinance Transaction with Financed Closing Costs](#)

[H-25\(H\) Mortgage Loan Transaction Closing Disclosure – Modification to Closing Cost Details](#)

[H-25\(I\) Mortgage Loan Transaction Closing Disclosure – Modification to Closing Disclosure for Disclosure Provided to Seller](#)

[H-25\(J\) Mortgage Loan Transaction Closing Disclosure – Modification to Closing Disclosure for Transaction Not Involving Seller](#)

**H-25(A) Mortgage Loan Transaction Closing Disclosure - Blank**

Description: This is a blank Closing Disclosure that illustrates the content requirements in § 1026.38. This form provides two variations of page one, one page two, one page three, four variations of page four, and two variations of page five, reflecting the variable content requirements in § 1026.38. This form does not reflect modifications permitted under § 1026.38(t).

H-25(B) Mortgage Loan Transaction Closing Disclosure - Fixed-Rate Loan Sample

Description: This is an example of a completed Closing Disclosure for the fixed-rate loan illustrated by form H-24(B). The purpose, sale price, loan amount, loan term, and interest rate have not changed from the estimates provided on the Loan Estimate. The creditor requires an escrow account and that the consumer pay for private mortgage insurance for the transaction.

H-25(C) Mortgage Loan Transaction Closing Disclosure - Sample of Borrower Funds from Second-Lien Loan in Summaries of Transactions

Description: This is an example of the information required on the Closing Disclosure by § 1026.38(j) for disclosure of consumer funds from a simultaneous second-lien credit transaction not otherwise disclosed pursuant to § 1026.38(j)(2)(iii) or (iv) that is used to finance part of the purchase price of the property subject to the transaction.

H-25(D) Mortgage Loan Transaction Closing Disclosure - Sample of Borrower Satisfaction of Seller's Second-Lien Loan Outside of Closing in Summaries of Transactions

Description: This is an example of the information required on the Closing Disclosure by § 1026.38(j) and (k) for the satisfaction of a junior-lien transaction by the consumer, which was not paid from closing funds.

**H-25(E) Mortgage Loan Transaction Closing Disclosure - Sample of Refinance Transaction**

Description: This is an example of a completed Closing Disclosure for the refinance transaction illustrated by form H-24(D). The purpose, loan amount, loan term, interest rate, and prepayment penalty have not changed from the estimates provided on the Loan Estimate. The creditor requires an escrow account and that the consumer pay for private mortgage insurance for the transaction.

H-25(F) Mortgage Loan Transaction Closing Disclosure - Sample of Refinance Transaction (19(e)(3) violation)

Description: This is an example of a completed Closing Disclosure for the refinance transaction illustrated by form H-24(D). The Closing Costs have increased in violation of § 1026.19(e)(3) by \$100, for which the creditor has provided a credit.

H-25(G) Mortgage Loan Transaction Closing Disclosure - Sample of Refinance Transaction with Financed Closing Costs

Description: This is an example of a completed Closing Disclosure for the refinance transaction illustrated by form H-24(D). The consumer has financed \$4,500 of the Closing Costs in the Loan Amount.

**H-25(H) Mortgage Loan Transaction Closing Disclosure – Modification to Closing Cost Details**

*Description:* This is an example of the modification to Closing Cost Details permitted by § 1026.38(t)(5)(v).

H-25(I) Mortgage Loan Transaction Closing Disclosure – Modification to Closing Disclosure for Disclosure Provided to Seller

Description: This is an example of the modification permitted by § 1026.38(t)(5)(vii).

H-25(J) Mortgage Loan Transaction Closing Disclosure – Modification to Closing Disclosure for Transaction Not Involving Seller

Description: This is an example of the modification permitted by § 1026.38(t)(5)(viii).

## Suggested Changes to Proposed Rule

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

6. 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.*

7. Section 1026.1 is amended by revising paragraphs (a), (b), (c)(5), (d)(5), and (e) 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.*). ◀ 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) ◀.

(b) *Purpose.* The purpose of this part is to promote the informed use of consumer credit by requiring disclosures about its terms and cost►, to ensure that consumers are provided with greater and more timely information on the nature and costs of the residential real estate settlement process, and to result in a more effective advance disclosure to home buyers and sellers of settlement costs ◀. The regulation also includes substantive protections. It gives consumers the right to cancel certain credit transactions that involve a lien on a consumer's principal dwelling, regulates certain credit card practices, and provides a means for fair and timely resolution of credit billing disputes. The regulation does not generally govern charges for consumer credit, except that several provisions in subpart G set forth special rules addressing certain charges applicable to credit card accounts under an open-end (not home-secured) consumer credit plan. The regulation requires a maximum interest rate to be stated in variable-rate contracts secured by the consumer's dwelling. It also imposes limitations on home-equity plans that are subject to the requirements of § 1026.40 and mortgages that are subject to the requirements of § 1026.32. The regulation prohibits certain acts or practices in

connection with credit secured by a dwelling in § 1026.36, and credit secured by a consumer's principal dwelling in § 1026.35. The regulation also regulates certain practices of creditors who extend private education loans as defined in § 1026.46(b)(5). ►In addition, it imposes certain limitations on increases in costs for mortgage transactions subject to § 1026.19(e) and (f). ◀

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

(d) *Organization.* \* \* \*

(5) Subpart E contains special rules for mortgage transactions. Section 1026.32 requires certain disclosures and provides limitations for closed-end loans that have rates or fees above specified amounts. Section 1026.33 requires special disclosures, including the total annual loan cost rate, for reverse mortgage transactions. Section 1026.34 prohibits specific acts and practices in connection with closed-end mortgage transactions that are subject to § 1026.32. Section 1026.35 prohibits specific acts and practices in connection with closed-end higher-priced mortgage loans, as defined in § 1026.35(a). Section 1026.36 prohibits specific acts and practices in connection with an extension of credit secured by a dwelling. ►Sections 1026.37 and 1026.38 set forth the special disclosure requirements for certain closed-end transactions secured by real property, as required by §

1026.19(e),(f), and (g). ◀

\* \* \* \* \*

13. Section 1026.19 is amended by revising paragraph (a)(1)(i) and (ii), removing paragraph (a)(5), and adding new paragraphs (e), (f), and (g), to read as follows:

**§ 1026.19 Certain mortgage and variable-rate transactions.**

\* \* \* \* \*

**ALTERNATIVE 1—PARAGRAPH (f)(1)**

(f) *Mortgage loans secured by real property—Final disclosures.* (1) *Provision.* (i) *Scope.* In a closed-end consumer credit transaction secured by real property, other than a reverse mortgage subject to § 1026.33, the creditor shall provide the consumer with the disclosures in § 1026.38 reflecting the actual terms of the transaction.

(ii) *Timing.* (A) *In general.* Except as provided in paragraph (f)(1)(ii)(B) or (f)(2) of this section, the creditor shall ensure that the consumer receives the disclosures required under paragraph (f)(1)(i) of this section simultaneously, and as a single document, with the disclosures prepared by the person conducting the settlement and required under Section 1024.38 (f)(1)(i) no later than three business days before consummation.

(B) *Timeshares.* For transactions secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D), the creditor shall ensure that the consumer receives the disclosures required under paragraph (f)(1)(i) of this section simultaneously, and as a single document, with the

disclosures prepared by the creditor and required under Section 1024.38 (f)(1)(i) no later than consummation.

(iii) *Delivery*. If any disclosures required under paragraph (f)(1)(i) of this section are not provided to the consumer in person, the consumer is presumed to have received the disclosures three business days after they are mailed or delivered to the address specified by the consumer.

(iv) *Consumer's waiver of waiting period before consummation*. If the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency, the consumer may modify or waive the three-business-day waiting period for the disclosures required under paragraph (f)(1)(ii) of this section, after receiving the disclosures required under paragraph (f)(1)(i) of this section. To modify or waive a waiting period, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the waiting period, and bears the signature of all consumers who are primarily liable on the legal obligation. Printed forms for this purpose are prohibited.

## **ALTERNATIVE 2 – PARAGRAPH (f)(1)**

- (f) *Mortgage loans secured by real property—Final disclosures.* (1) *Provision.* (i) *Scope.* In a closed end consumer credit transaction secured by real property, other than a reverse mortgage subject to § 1026.33, the creditor shall provide the consumer with the disclosures in § 1026.38 reflecting the actual terms of the transaction.
- (ii) *Timing.* (A) *In general.* Except as provided in paragraph (f)(1)(ii)(B) or (f)(2) of this section, the creditor shall ensure that the consumer receives the disclosures required under paragraph (f)(1)(i) of this section no later than three business days before consummation.
- (B) *Timeshares.* For transactions secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D), the creditor shall ensure that the consumer receives the disclosures required under paragraph (f)(1)(i) of this section no later than consummation.
- (iii) *Delivery.* If any disclosures required under paragraph (f)(1)(i) of this section are not provided to the consumer in person, the consumer is presumed to have received the disclosures three business days after they are mailed or delivered to the address specified by the consumer.
- (iv) *Consumer's waiver of waiting period before consummation.* If the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency, the consumer may modify or waive the three business day waiting period for the disclosures required under paragraph (f)(1)(ii) of this section, after receiving the disclosures required under paragraph (f)(1)(i) of this section. To modify or waive a waiting period, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the waiting period, and bears the signature of all consumers who are primarily liable on the legal obligation. Printed forms for this purpose are prohibited.
- (v) *Settlement agent.* A settlement agent may provide a consumer with the disclosures required under paragraph (f)(1)(i) of this section, provided the settlement agent complies with all requirements of this paragraph (f) as if it were the creditor. The creditor shall ensure that disclosures are provided in accordance with the requirements of this paragraph (f). Disclosures provided by a settlement agent in accordance with the requirements of this paragraph (f) satisfy the creditor's obligation under paragraph (f)(1)(i) of this section.
- (2) *Subsequent changes.* If the disclosure provided pursuant to paragraph (f)(1)(i) of this section is subsequently revised for any of the reasons described in this paragraph (f)(2), a creditor need not comply with the timing requirements in paragraph (f)(1)(ii) of this section when providing a revised disclosure:

- (i) *Changes due to consumer and seller negotiations.* If, after the creditor provides the consumer with the disclosures required under paragraph (f)(1)(i) of this section, the consumer and the seller agree to make changes to the transaction that affect items disclosed pursuant to paragraph (f)(1)(i) of this section, the creditor shall deliver revised disclosures reflecting such changes at or before consummation.
- (ii) *Changes to the amount actually paid by the consumer.* If the amount actually paid by the consumer does not exceed the amount disclosed pursuant to § 1026.38(d)(1) by more than one hundred dollars the creditor shall deliver revised disclosures at or before consummation.
- (iii) *Changes due to events occurring after consummation.* If an event occurs after consummation that causes disclosures required under paragraph (f)(1)(i) of this section to become inaccurate, and such inaccuracy results solely from payments to a government entity in connection with the transaction, the creditor shall deliver revised disclosures to the consumer not later than the third business day after the event occurs, provided the consumer receives the revised disclosures no later than 30 days after consummation.
- (iv) *Changes due to clerical errors.* A creditor does not violate section (f)(1)(i) if the disclosures provided under (f)(1)(i) contain non-numeric clerical errors, provided the creditor delivers revised disclosures as soon as reasonably practicable and no later than 30 days after consummation.
- (v) *Refunds related to the good faith analysis.* If amounts paid by the consumer exceed the amounts specified under paragraph (e)(3)(i) or (ii) of this section, the creditor complies with paragraph (e)(1)(i) of this section if the creditor refunds the excess to the consumer as soon as reasonably practicable and no later than 30 days after consummation, and the creditor complies with paragraph (f)(1)(i) of this section if the creditor delivers revised disclosures that reflect such refund as soon as reasonably practicable and no later than 30 days after consummation.

- (3) *Charges disclosed.* (i) *Actual charge.* The amount imposed upon the consumer for any settlement service shall not exceed the amount actually received by the service provider for that service, except as otherwise provided in paragraph (f)(3)(ii) of this section.
- (ii) *Average charge.* A creditor or settlement service provider may charge a consumer or seller the average charge for a settlement service if the following conditions are satisfied:
  - (A) The average charge is no more than the average amount paid for that service by or on behalf of all consumers and sellers for a class of transactions;
  - (B) The creditor or settlement service provider defines the class of transactions based on an appropriate period of time, geographic area, and type of loan;

(C) The creditor or settlement service provider uses the same average charge for every transaction within the defined class; and

(D) The creditor or settlement service provider does not use an average charge:

(1) For any type of insurance;

(2) For any charge based on the loan amount or property value; or

(3) If doing so is otherwise prohibited by law.

(4) *Transactions involving a seller.* (i) *Provision to seller.* In a closed-end consumer credit transaction secured by real property that involves a seller, other than a reverse mortgage subject to § 1026.33, the person conducting the real estate closing shall provide the seller with the disclosures in Regulation X, 12 CFR § 10246.XX38 that relate to the seller's transaction.

~~(ii) *Timing.* The person conducting the real estate closing shall provide the disclosures required under paragraph (f)(4)(i) of this section no later than the day of consummation. If an event occurs after consummation that causes disclosures required under paragraph (f)(4)(i) of this section to become inaccurate, and such inaccuracy results solely from payments to a government entity, the person conducting the real estate closing shall deliver revised disclosures to the seller no later than 30 days after consummation.~~

~~(iii) *Charges disclosed.* The amount imposed on the seller for any settlement service shall not exceed the amount actually received by the service provider for that service, except as otherwise provided in paragraph (f)(3)(ii) of this section.~~

~~(5) *No fee.* No fee may be imposed on any person, as a part of settlement costs or otherwise, by a creditor or by a servicer (as that term is defined under 12 U.S.C. 2605(i)(2)) for the preparation or delivery of the disclosures required under paragraph (f)(1)(i) of this section, escrow account statements required pursuant to section 10 of RESPA (12 U.S.C. 2609), or statements required by the Truth in Lending Act, 15 U.S.C. 1601 et seq.~~

\* \* \* \* \*

15. Section 1026.25 is amended by revising paragraph (a) and adding new paragraph (c) to read as follows:

### **§ 1026.25 Record retention.**

(a) *General rule.* A creditor shall retain evidence of compliance with this part (other than advertising requirements under §§ 1026.16 and 1026.24►, and other than the requirements under § 1026.19(e) and (f)◄) for [2]► two◄ years after the date disclosures are required to be made or action is required to be taken. The administrative agencies responsible for enforcing the regulation may

require creditors under their jurisdictions to retain records for a longer period if necessary to carry out their enforcement responsibilities under section 108 of the Act.

\* \* \* \* \*

►(c) *Records related to certain requirements for mortgage loans.* (1) *Records related to requirements for loans secured by real property.* (i) *General rule.* Except as provided under paragraph (c)(1)(ii) of this section, a creditor shall retain evidence of compliance with the requirements of § 1026.19(e) and (f) for three years after the later of the date of consummation, the date disclosures are required to be made, or the date the action is required to be taken.

(ii) *Closing Disclosures.* (A) A creditor shall retain each completed disclosure required under § 1026.19(f)(1)(i) or (f)(4)(i), and all documents related to such disclosures, for five years after consummation. (B) If a creditor sells, transfers, or otherwise disposes of its interest in a mortgage and does not service the mortgage, the creditor shall provide a copy of the disclosures required under § 1026.19(f)(1)(i) or (f)(4)(i) to the owner or servicer of the mortgage as a part of the transfer of the loan file. Such owner or servicer shall retain such disclosures for the remainder of the five-year period described under paragraph (c)(1)(ii)(A) of this section.

(C) The Bureau shall have the right to require provision of copies of records related to the disclosures required under § 1026.19(f)(1)(i) and (f)(4)(i).

(iii) *Electronic records.* A creditor shall retain evidence of compliance in electronic, machine readable format.

(2) [Reserved] ◀

16. Section 1026.28 is amended by revising paragraph (a)(1) to read as follows:

**§ 1026.28 Effect on State laws.**

(a) *Inconsistent disclosure requirements.* (1) Except as provided in paragraph (d) of this section, State law requirements that are inconsistent with the requirements contained in chapter 1 (General Provisions), chapter 2 (Credit Transactions), or chapter 3 (Credit Advertising) of the Act and the implementing provisions of this part are preempted to the extent of the inconsistency. A State law is inconsistent if it requires a creditor to make disclosures or take actions that contradict the requirements of the Federal law. A State law is contradictory if it requires the use of the same term to represent a different amount or a different meaning than the Federal law, or if it requires the use of a term different from that required in the Federal law to describe the same item. A creditor, State, or other interested party may request the Bureau to determine whether a State law requirement is inconsistent. After the Bureau determines that a State law is inconsistent, a creditor may not make disclosures using the inconsistent term or form. ►A determination as to whether a State law is

inconsistent with the requirements of sections 4 and 5 of RESPA (other than the RESPA section 5(c) requirements regarding provision of a list of certified homeownership counselors) and §§ 1026.19(e) and (f), 1026.37, and 1026.38 shall be made in accordance with this section and not 12 CFR

1024.13.◀

17. New § 1026.37 is added to read as follows:

**► § 1026.37 Content of disclosures for certain mortgage transactions (Loan Estimate).**

\*  
—

18. New § 1026.38 is added to read as follows:

**► § 1026.38 Content of disclosures for certain mortgage transactions (Closing Disclosure).**

For each transaction subject to § 1026.19(f), the creditor shall disclose the information in this section, as applicable:

(a) *General information.* (1) *Form title.* The title of the form, “Closing Disclosure,” using that term.

(2) *Form purpose.* The following statement: “This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.”

(3) *Closing information.* Under the heading “Closing Information”:

(i) *Date issued.* The date the disclosures required by this section are delivered to the consumer, labeled “Date Issued.”

(ii) *Closing date.* The date of consummation, labeled “Closing Date.”

(iii) *Disbursement date.* The date the amounts disclosed pursuant to paragraphs (j)(3)(iii) and (k)(3)(iii) of this section are expected to be paid to the consumer and seller, respectively, as applicable, labeled “Disbursement Date.”

(iv) *Agent.* The name of the settlement agent conducting the closing, labeled “Agent.” (v) *File number.* The number assigned to the transaction by the settlement agent for identification purposes, labeled “File #.”

(vi) *Property.* The street address or location of the property required to be disclosed under § 1026.37(a)(6), labeled “Property.”

(vii) *Sale price.* (A) In credit transactions where there is a seller, the contract sale price of the property identified in paragraph (a)(3)(vi) of this section, labeled “Sale Price.”

(B) In credit transactions where there is no seller, the appraised value of the property identified in paragraph (a)(3)(vi) of this section, labeled “Appraised Prop. Value.”

(4) *Transaction information.* Under the heading “Transaction Information”:

(i) *Borrower.* The consumer’s name and mailing address, labeled “Borrower.”

(ii) *Seller*. Where applicable, the seller's name and mailing address, labeled "Seller."

(iii) *Lender*. The name of the creditor making the disclosure, labeled "Lender."

(5) *Loan information*. Under the heading "Loan Information":

(i) *Loan term*. The information required to be disclosed under § 1026.37(a)(8), labeled "Loan Term."

(ii) *Purpose*. The information required to be disclosed under § 1026.37(a)(9), labeled "Purpose."

(iii) *Product*. The information required to be disclosed under § 1026.37(a)(10), labeled "Product."

(iv) *Loan type*. The information required to be disclosed under § 1026.37(a)(11), labeled "Loan Type."

(v) *Loan identification number*. The information required to be disclosed under § 1026.37(a)(12), labeled "Loan ID #." (vi) *Mortgage insurance case number*. The case number for any mortgage insurance policy, if required by the creditor, labeled "MIC #."

(b) *Loan terms*. A separate table under the heading "Loan Terms" that includes the information required by § 1026.37(b).

(c) *Projected payments*. A separate table, under the heading "Projected Payments," that includes and satisfies the following information and requirements:

(1) *Projected payments or range of payments*. The information required to be disclosed pursuant to § 1026.37(c)(1) through (4), other than § 1026.37(c)(4)(vi). In disclosing estimated escrow payments as described in § 1026.37(c)(2)(iii) and (4)(ii), the amount disclosed on the Closing Disclosure:

(i) For transactions subject to RESPA, is determined under the escrow account analysis described in Regulation X, 12 CFR 1024.17;

(ii) For transactions not subject to RESPA, may be determined under the escrow account analysis described in Regulation X, 12 CFR 1024.17 or in the manner set forth in § 1026.37(c)(5).

(2) *Estimated taxes, insurance, and assessments*. A reference to the disclosure required by § 1026.38(l)(7).

(d) *Cash to close*. In a separate table, under the heading "Cash to Close":

(1) The sum of the dollar amounts calculated in accordance with paragraph (j)(3)(iii) of this section, labeled "Cash to Close";

(2) The dollar amount of loan costs that are disclosed as borrower-paid at closing calculated in accordance with paragraph (f)(4) of this section, described as "Loan Costs";

(3) The dollar amount of other costs that are disclosed as borrower-paid at closing and calculated in accordance with paragraph (g)(5) of this section, described as "Other Costs";

- (4) The dollar amount disclosed pursuant to paragraph (h)(3) of this section, described as “Lender Credit”;
- (5) The sum of the amounts disclosed pursuant to paragraphs (d)(2), (d)(3), and (d)(4) of this section, described as “Closing Costs”; and
- (6) A statement referring the consumer to the tables required pursuant to paragraphs (f) and (g) of this section for details.

(f) ~~Closing cost details; loan costs. Under the master heading “Closing Cost Details” with columns stating whether the charge was borrower paid at or before closing, seller paid at or before closing, or paid by others, all loan costs associated with the transaction, listed in a table under the heading “Loan Costs.” The table consists of the items and amounts listed under five labels, described in paragraphs (f)(1) through (5) of this section.~~

(1) ~~Origination charges. Under the label “Origination Charges,” an itemization of the items described in § 1026.37(f)(1) and compensation paid by the creditor to a loan originator in the applicable column and the total of all such itemized amounts that are designated borrower paid at or before closing.~~

(2) ~~Services borrower did not shop for. Under the label “Services Borrower Did Not Shop For,” an itemization of the costs for services required by the creditor and provided by persons other than the creditor or mortgage broker in the applicable column, and the total of all such itemized amounts that are designated borrower paid at or before closing. Items that were disclosed pursuant to § 1026.37(f)(3) must be disclosed under this paragraph (f)(2) when the consumer was provided a written list under § 1026.19(e)(1)(vi)(C) and the consumer selected a provider contained on that written list.~~

(3) ~~Services borrower did shop for. Under the label “Services Borrower Did Shop For,” an itemization of the costs for services required by the creditor and provided by persons other than the creditor or mortgage broker where the consumer was provided a written list under § 1026.19(e)(1)(vi)(C) and the consumer did not select a provider contained on that written list, and the total of all such itemized costs that are designated borrower paid at or before closing.~~

(4) ~~Total loan costs. The total of the amounts disclosed under § 1026.38(f)(5) with the label “Total Loan Costs (Borrower Paid).”~~

(5) ~~Subtotal of loan costs. The sum of loan costs, calculated by totaling the amounts described in paragraphs (f)(1), (2), and (3) of this section for costs designated borrower paid at or before closing, with the label “Loan Costs Subtotal.”~~

~~(g) Closing cost details; other costs.~~ Under the master heading “~~Closing Cost Details~~” disclosed pursuant to paragraph (f) of this section, all other costs associated with the transaction listed in a table with a heading disclosed as “~~Other Costs~~.” The table comprises items and amounts listed under five labels, described in paragraphs (g)(1) through (6) of this section.

~~(1) Taxes and other government fees.~~ Under the label “~~Taxes and Other Government Fees~~,” each amount that is expected to be paid to State and local governments for taxes and government fees and the total of all such itemized amounts that are designated borrower paid at or before closing, as follows:

~~(i) Recording fees and the amounts paid in the applicable columns; and~~

~~(ii) An itemization of transfer taxes and the amounts paid in the applicable columns.~~ ~~(2) Prepays.~~ Under the subheading “~~Prepays~~,” the charges disclosed pursuant to § 1026.37(g)(2) with the actual costs in the applicable columns, and the total of all such itemized amounts that are designated borrower paid at or before closing.

~~(3) Initial escrow payment at closing.~~ Under the label “~~Initial escrow payment at closing~~,” the items described in § 1026.37(g)(3) with their actual costs, the applicable aggregate adjustment pursuant to 12 CFR 1024.17(d)(2), and the total of all such itemized amounts that are designated borrower paid at or before closing.

~~(4) Other.~~ Under the label “~~Other~~,” identify and state any other actual costs for services that are required or obtained in the real estate closing by the consumer, the seller, or other party, and the total of all such itemized amounts that are designated borrower paid at or before closing.

~~(i) For any actual cost that is a component of title insurance, the introductory description “Title” shall appear at the beginning of the label for that actual cost.~~

~~(ii) The parenthetical description “(optional)” shall appear at the end of the label for actual costs designated borrower paid at or before closing for any premiums paid for separate insurance, warranty, guarantee, or event coverage products.~~

~~(5) Total other costs.~~ With the label “~~Total Other Costs (Borrower Paid)~~,” the sum of the amounts disclosed pursuant to paragraphs (g)(6) of this section.

~~(6) Subtotal of costs.~~ The sum of other costs, calculated by totaling the costs disclosed in paragraphs (g)(1) through (4) of this section designated borrower paid at or before closing, labeled “~~Other Costs Subtotal~~.”

~~(h) Closing cost totals.~~ ~~(1) The total of the costs designated borrower paid at or before closing that are disclosed pursuant to paragraph (h)(2) of this section, labeled “~~Total Closing Costs (Borrower Paid)~~.” (2) The total of the amounts disclosed in paragraphs (f)(5) and (g)(6) of this section and the~~

~~total of the costs designated seller paid at or before closing, or paid by others are disclosed pursuant to paragraphs (f) and (g) of this section, and the sum of the amount disclosed in (h)(3) of this section and the amounts designated borrower paid at closing, labeled “Closing Costs Subtotal (Loan Costs + Other Costs).”~~

~~(3) The amount disclosed pursuant to § 1026.37(g)(6)(ii) as a negative number, with the label “Lender Credit” and designated borrower paid at closing.~~

~~(4) The creditor must use descriptions for the charges disclosed pursuant to paragraphs (f) and (g) of this section on the Closing Disclosure in a manner that are consistent with the descriptions used for the charges disclosed on the Loan Estimate pursuant to § 1026.37 of this part. The creditor must also list the charges on the Closing Disclosure in the same sequential order as on the Loan Estimate pursuant to § 1026.37.~~

~~(i) *Calculating cash to close.* In a separate table, under the heading “Calculating Cash to Close,” together with the statement “Use this table to see what has changed from your Loan Estimate”;~~

~~(I) *Total closing costs.* (i) Under the subheading “Estimate,” the “Total Closing Costs” disclosed on the Loan Estimate under § 1026.37(h)(1), labeled using that term together with a reference to the disclosure of “Total Closing Costs” under paragraph (h)(1) of this section.~~

~~(ii) Under the subheading “Final,” the amount disclosed under paragraph (h)(1) of this section, reduced by the amount of any lender credits disclosed under § 1026.38(h)(3).~~

~~(iii) Disclosed more prominently than the other disclosures under this paragraph (i), under the subheading “Did this change?”.~~

~~(A) If the amount disclosed under paragraph (i)(1)(ii) of this section is different than the amount disclosed under paragraph (i)(1)(i) of this section (unless the difference is due to rounding):~~

~~(+) A statement of that fact;~~

~~(2) If the difference in the “Total Closing Costs” is attributable to differences in itemized charges that are included in either or both subtotals, a statement that the consumer should see the total loan costs and total other costs subtotals disclosed under paragraphs (f)(4) and (g)(5) of this section (together with references to such disclosures), as applicable; and~~

~~(3) If the increase exceeds the limitations on increases in closing costs under § 1026.19(e)(3), a statement that such increase exceeds the legal limits by the dollar amount of the excess. Such dollar amount shall equal the sum total of all excesses of the limitations on increases in closing costs under § 1026.19(e)(3), taking into account the different methods of calculating excesses of the limitations on increases in closing costs under § 1026.19(e)(3)(ii) and (iii).~~

- (B) If the amount disclosed under paragraph (i)(1)(ii) of this section is equal to the amount disclosed under paragraph (i)(1)(i) of this section, a statement of that fact.
- (2) *Closing costs subtotal paid before closing.* (i) Under the subheading "Estimate," the dollar amount "\$0," labeled "Closing Costs Subtotal Paid Before Closing."
- (ii) Under the subheading "Final," the amount of "Total Closing Costs" disclosed under paragraph (h)(2) of this section and designated as borrower paid before closing, stated as a negative number.
- (iii) Disclosed more prominently than the other disclosures under this paragraph (i), under the subheading "Did this change?":
- (A) If the amount disclosed under paragraph (i)(2)(ii) of this section is different than the amount disclosed under paragraph (i)(2)(i) of this section (unless the difference is due to rounding), a statement of that fact, along with a statement that the consumer paid such amounts prior to consummation of the transaction; or
- (B) If the amount disclosed under paragraph (i)(2)(ii) of this section is equal to the amount disclosed under paragraph (i)(2)(i) of this section, a statement of that fact.
- (3) *Closing costs financed.* (i) Under the subheading "Estimate," the amount disclosed under § 1026.37(h)(2), labeled "Closing Costs Financed."
- (ii) Under the subheading "Final," the actual amount of the closing costs that are to be paid out of loan proceeds, stated as a negative number.
- (iii) Disclosed more prominently than the other disclosures under this paragraph (i), under the subheading "Did this change?":
- (A) If the amount disclosed under paragraph (i)(3)(ii) of this section is different than the amount disclosed under paragraph (i)(3)(i) of this section (unless the difference is due to rounding), a statement that the amount is different, along with a statement that the consumer included the closing costs in the loan amount, which increased the loan amount; or
- (B) If the amount disclosed under paragraph (i)(3)(ii) of this section is equal to the amount disclosed under paragraph (i)(3)(i) of this section, a statement of that fact.
- (4) *Downpayment/funds from borrower.* (i) Under the subheading "Estimate," the amount disclosed under § 1026.37(h)(3), labeled "Downpayment/Funds from Borrower."
- (ii) Under the subheading "Final":
- (A) In a transaction that is a purchase as defined in § 1026.37(a)(9)(i), the actual amount of the difference between the purchase price of the property and the principal amount of the

~~credit extended, stated as a positive number, labeled using the term “Downpayment/Funds from Borrower”~~; or

~~(B) In a transaction other than the one described in paragraph (i)(4)(ii)(A) of this section, the “Funds from Borrower” as determined in accordance with paragraph (i)(6)(iv) of this section, labeled using the term “Downpayment/Funds from Borrower.”~~

~~(iii) Disclosed more prominently than the other disclosures under this paragraph (i), under the subheading “Did this change?”:~~

~~(A) If the amount disclosed under paragraph (i)(4)(ii) of this section is different than the amount disclosed under paragraph (i)(4)(i) of this section (unless the difference is due to rounding), a statement of that fact, along with a statement that the consumer increased or decreased this payment and that the consumer should see the details disclosed under paragraph (j)(1) or (j)(2) of this section, as applicable; or~~

~~(B) If the amount disclosed under paragraph (i)(4)(ii) of this section is equal to the amount disclosed under paragraph (i)(4)(i) of this section, a statement of that fact.~~

~~(5) *Deposit.* (i) Under the subheading “Estimate,” the amount disclosed under § 1026.37(h)(4), labeled “Deposit.”~~

~~(ii) Under the subheading “Final,” the amount disclosed under paragraph (j)(2)(ii) of this section, stated as a negative number.~~

~~(iii) Disclosed more prominently than the other disclosures under this paragraph (i), under the subheading “Did this change?”:~~

~~(A) If the amount disclosed under paragraph (i)(5)(ii) of this section is different than the amount disclosed under paragraph (i)(5)(i) of this section (unless the difference is due to rounding), a statement of that fact, along with a statement that the consumer increased or decreased this payment, as applicable, and that the consumer should see the details disclosed under paragraph (j)(2)(ii) of this section; or~~

~~(B) If the amount disclosed under paragraph (i)(5)(ii) of this section is equal to the amount disclosed under paragraph (i)(5)(i) of this section, a statement of that fact.~~

~~(6) *Funds for borrower.* (i) Under the subheading “Estimate,” the amount disclosed under § 1026.37(h)(5), labeled “Funds for Borrower.”~~

~~(ii) Under the subheading “Final,” the “Funds for Borrower,” labeled using that term, as determined in accordance with paragraph (i)(6)(iv) of this section.~~

~~(iii) Disclosed more prominently than the other disclosures under this paragraph (i), under the subheading “Did this change?”:~~

- (A) If the amount disclosed under paragraph (i)(6)(ii) of this section is different than the amount disclosed under paragraph (i)(6)(i) of this section (unless the difference is due to rounding), a statement of that fact, along with a statement that the consumer's available funds from the loan amount have increased or decreased, as applicable; or
- (B) If the amount disclosed under paragraph (i)(6)(ii) of this section is equal to the amount disclosed under paragraph (i)(6)(i) of this section, a statement of that fact.
- (iv) The "Funds from Borrower" to be disclosed under paragraph (i)(4)(ii)(B) of this section and "Funds for Borrower" to be disclosed under paragraph (i)(6)(ii) of this section are determined by subtracting the principal amount of the credit extended (excluding any amount disclosed pursuant to paragraph (i)(3)(ii) of this section) from the total amount of all existing debt being satisfied in the real estate closing and disclosed under § 1026.38(j)(1)(v) (except to the extent the satisfaction of such existing debt is disclosed under § 1026.38(g)).
- (A) If the calculation under this paragraph (i)(6)(iv) yields an amount that is a positive number, such amount shall be disclosed under paragraph (i)(4)(ii)(B) of this section, and \$0.00 shall be disclosed under paragraph (i)(6)(ii) of this section.
- (B) If the calculation under this paragraph (i)(6)(iv) yields an amount that is a negative number, such amount shall be disclosed under paragraph (i)(6)(ii) of this section, stated as a negative number, and \$0.00 shall be disclosed under paragraph (i)(4)(ii)(B) of this section.
- (C) If the calculation under this paragraph (i)(6)(iv) yields \$0.00, \$0.00 shall be disclosed under paragraph (i)(4)(ii)(B) of this section and under paragraph (i)(6)(ii) of this section.
- (7) *Seller credits.* (i) Under the subheading "Estimate," the amount disclosed under § 1026.37(h)(6), labeled "Seller Credits."
- (ii) Under the subheading "Final," the amount disclosed under paragraph (j)(2)(v) of this section, stated as a negative number.
- (iii) Disclosed more prominently than the other disclosures under this paragraph (i), under the subheading "Did this change?":
- (A) If the amount disclosed under paragraph (i)(7)(ii) of this section is different than the amount disclosed under paragraph (i)(7)(i) of this section (unless the difference is due to rounding), a statement of that fact, along with a statement that the consumer should see the details disclosed under paragraph (j)(2)(v) of this section; or
- (B) If the amount disclosed under paragraph (i)(7)(ii) of this section is equal to the amount disclosed under paragraph (i)(7)(i) of this section, a statement of that fact.

~~(8) Adjustments and other credits.~~ (i) Under the subheading “Estimate,” the amount disclosed on the Loan Estimate under § 1026.37(h)(7) rounded to the nearest whole dollar, labeled “Adjustments and Other Credits.”

~~(ii) Under the subheading “Final,” the amount equal to the total of the amounts disclosed under paragraphs (j)(1)(v) through (x) of this section reduced by the total of the amounts disclosed under paragraphs (j)(2)(vi) through (xi) of this section.~~

~~(iii) Disclosed more prominently than the other disclosures under this paragraph (i), under the subheading “Did this change?”:~~

~~(A) If the amount disclosed under paragraph (i)(8)(ii) of this section is different than the amount disclosed under paragraph (i)(8)(i) of this section (unless the difference is due to rounding), a statement of that fact, along with a statement that the consumer should see the details disclosed under paragraphs (j)(1)(v) through (x) and (j)(2)(vi) through (xi) of this section; or~~

~~(B) If the amount disclosed under paragraph (i)(8)(ii) of this section is equal to the amount disclosed under paragraph (i)(8)(i) of this section, a statement of that fact.~~

~~(9) Cash to close.~~ (i) Under the subheading “Estimate,” the amount disclosed on the Loan Estimate under § 1026.37(h)(8), labeled “Cash to Close” and disclosed more prominently than the other disclosures under this paragraph (i).

~~(ii) Under the subheading “Final,” the sum of the amounts disclosed under paragraphs (i)(1) through (i)(8) of this section, and disclosed more prominently than the other disclosures under this paragraph (i).~~

~~(j) Summary of borrower’s transaction.~~ Under the heading “Summaries of Transactions,” with a statement to “Use this table to see a summary of your transaction,” two separate tables are disclosed. The first table shall include, under the subheading “Borrower’s Transaction,” the following information and shall satisfy the following requirements:

~~(1) Itemization of amount due from borrower.~~ (i) The total amount due from the consumer at closing, calculated as the sum of items required to be disclosed by paragraph (j)(1)(ii) through (x) of this section, excluding items paid from funds other than closing funds as described in paragraph (j)(4)(i) of this section, labeled “Due from Borrower at Closing”;

~~(ii) The amount of the contract sales price of the property being sold in a purchase real estate transaction, excluding the price of any tangible personal property if the consumer and seller have agreed to a separate price for such items, labeled “Sale Price of Property”;~~

- (iii) The amount of the sales price of any tangible personal property excluded from the contract sales price pursuant to paragraph (j)(1)(ii) of this section, labeled “Sale Price of Any Personal Property Included in Sale”;
- (iv) The total amount of closing costs disclosed that are designated borrower paid at closing, calculated pursuant to paragraph (h)(1) of this section, the labeled “Subtotal Closing Costs Paid at Closing by Borrower”;
- (v) A description and the amount of any additional items that the seller has paid prior to the real estate closing, but reimbursed by the consumer at the real estate closing, and a description and the amount of any other items owed by the consumer at the real estate closing not otherwise disclosed pursuant to paragraph (f), (g), or (j) of this section;
- (vi) The description “Adjustments for Items Paid by Seller in Advance”;
- (vii) The time period that the consumer is responsible for reimbursing the seller for any prepaid taxes, and the prorated amount of any prepaid taxes due from the consumer at the real estate closing, labeled “City/Town Taxes”;
- (viii) The time period that the consumer is responsible for reimbursing the seller for any prepaid taxes, and the prorated amount of any prepaid taxes due from the consumer at the real estate closing, labeled “County Taxes”;
- (ix) The time period that the consumer is responsible for reimbursing the seller for any prepaid assessments, and the prorated amount of any prepaid assessments due from the consumer at the real estate closing, labeled “Assessments”, and
- (x) A description and the amount of any additional items paid by the seller prior to the real estate closing that are due from the consumer at the real estate closing.
- (2) *Itemization of amounts already paid by or on behalf of borrower.* (i) The sum of the amounts disclosed in this paragraphs (j)(2)(ii) through (xi) of this section, excluding items paid from funds other than closing funds as described in paragraph (j)(4)(i) of this section, labeled “Paid Already by or on Behalf of Borrower at Closing”;
- (ii) Any amount that is paid to the seller or held in trust or escrow by an attorney or other party under the terms of the agreement for the sale of real estate, labeled “Deposit”;
- (iii) The amount of the consumer’s new loan or first user loan as disclosed pursuant to paragraph (b)(1) of this section, labeled “Borrower’s Loan Amount”;
- (iv) The amount of those existing loans assumed or taken subject to by the consumer, labeled “Existing Loan(s) Assumed or Taken Subject to”;

- (v) The total amount of money that the seller will provide at the real estate closing as a lump sum to pay for loan costs as determined by paragraph (f) of this section and other costs as determined by paragraph (g) of this section and any other obligations of the seller to be paid directly to the consumer, labeled "Seller Credit";
- (vi) The amount of other items paid by or on behalf of the consumer and not otherwise disclosed pursuant to paragraphs (f), (g), (h), and (j)(2) of this section, labeled "Other Credits";
- (vii) The description "Adjustments for Items Unpaid by Seller";
- (viii) The time period that the seller is responsible for the payment of any unpaid taxes, and the prorated amount of any unpaid taxes due from the seller at the real estate closing, labeled "City/Town Taxes";
- (ix) The time period that the seller is responsible for the payment of any unpaid taxes, and the prorated amount of any unpaid taxes due from the seller at the real estate closing, labeled "County Taxes";
- (x) The time period that the seller is responsible for the payment of any unpaid assessments, and the prorated amount of any unpaid assessments due from the seller at the real estate closing, labeled "Assessments"; and
- (xi) A description and the amount of any additional items which have not yet been paid and which the consumer is expected to pay after the real estate closing, but which are attributable in part to a period of time prior to the real estate closing.

(3) *Calculation of borrower's transaction.* Under the label "Calculation":

- (i) The amount disclosed pursuant to paragraph (j)(1)(i) of this section, labeled "Total Due from Borrower at Closing";
  - (ii) The amount disclosed pursuant to paragraph (j)(2)(i) of this section, disclosed as a negative number, labeled "Total Paid Already by or on Behalf of Borrower at Closing"; and
  - (iii) A statement that the disclosed amount is due from or to the consumer, and the amount due from or to the consumer at the real estate closing, calculated by the sum of the amounts disclosed under paragraphs (j)(3)(i) and (j)(3)(ii) of this section, labeled "Cash to Close."
- (4) *Items paid outside of closing funds.* (i) Costs that are not paid from closing funds but that would otherwise be disclosed in the table required pursuant to paragraph (j) of this section, should be marked with the phrase "Paid Outside of Closing" or the abbreviation "P.O.C." and include the name of the party making the payment.
- (ii) For purposes of this paragraph (j), "closing funds" means funds collected and disbursed at closing.

(k) *Summary of seller's transaction.* Under the heading required by paragraph (j) of this section, a second table under the subheading "Seller's Transaction," that includes the following information and satisfies the following requirements:

- (1) *Itemization of amounts due to seller.* (i) The total amount due to the seller at the real estate closing, calculated as the sum of items required to be disclosed pursuant to paragraph (k)(1)(ii) through (ix) of this section, excluding items paid from funds other than closing funds as described in paragraph (k)(4)(i) of this section, labeled "Due to Seller at Closing";
- (ii) The amount of the contract sales price of the property being sold, excluding the price of any tangible personal property if the consumer and seller have agreed to a separate price for such items, labeled "Sale Price of Property";
- (iii) The amount of the sales price of any tangible personal property excluded from the contract sales price pursuant to paragraph (k)(1)(ii) of this section, labeled "Sale Price of Any Personal Property Included in Sale";
- (iv) A description and the amount of other items paid to the seller by the consumer pursuant to the contract of sale or other agreement, such as charges that were not disclosed pursuant to § 1026.37 on the Loan Estimate or items paid by the seller prior to the real estate closing but reimbursed by the consumer at the real estate closing;
- (v) The description "Adjustments for Items Paid by Seller in Advance";
- (vi) The time period that the consumer is responsible for reimbursing the seller for any prepaid taxes, and the prorated amount of any prepaid taxes due from the consumer at the real estate closing, labeled "City/Town Taxes";
- (vii) The time period that the consumer is responsible for reimbursing the seller for any prepaid taxes, and the prorated amount of any prepaid taxes due from the consumer at the real estate closing, labeled "County Taxes";
- (viii) The time period that the consumer is responsible for reimbursing the seller for any prepaid assessments, and the prorated amount of any prepaid assessments due from the consumer at the real estate closing, labeled "Assessments"; and
- (ix) A description and the amount of additional items paid by the seller prior to the real estate closing that are reimbursed by the consumer at the real estate closing.
- (2) *Itemization of amounts due from seller.* (i) The total amount due from the seller at the real estate closing, calculated as the sum of items required to be disclosed pursuant to paragraph (k)(2)(ii) through (xiii) of this section, excluding items paid from funds other than closing funds as described in paragraph (k)(4)(i) of this section, labeled "Due from Seller at Closing";

- (ii) The amount of any excess deposit retained by the seller at the time of the real estate closing, labeled "Excess Deposit";
- (iii) The amount of closing costs designated seller paid at closing disclosed pursuant to paragraph (h)(1) of this section, labeled "Subtotal Closing Costs Paid at Closing by Seller";
- (iv) The amount of those existing loans assumed or taken subject to at the real estate closing by the consumer, labeled "Existing Loan(s) Assumed or Taken Subject to";
- (v) The amount of any first loan secured by the property that will be paid off as part of the real estate closing, labeled "Payoff of First Mortgage Loan";
- (vi) The amount of any second loan secured by the property that will be paid off as part of the real estate closing, labeled "Payoff of Second Mortgage Loan";
- (vii) The total amount of money that the seller will provide at the real estate closing as a lump sum to pay for loan costs as determined by paragraph (f) of this section and other costs as determined by paragraph (g) of this section and any other obligations of the seller to be paid directly to the consumer, labeled "Seller Credit";
- (viii) A description and amount of any and all other obligations required to be paid by the seller at the real estate closing, including any lien related payoffs, fees, or obligations;
- (ix) The description "Adjustments for Items Unpaid by Seller";
- (x) The time period that the seller is responsible for the payment of any unpaid taxes, and the prorated amount of any unpaid taxes due from the seller at the real estate closing, labeled "City/Town Taxes";
- (xi) The time period that the seller is responsible for the payment of any unpaid taxes, and the prorated amount of any unpaid taxes due from the seller at the real estate closing, labeled "County Taxes";
- (xii) The time period that the seller is responsible for the payment of any unpaid assessments, and the prorated amount of any unpaid assessments due from the seller at the real estate closing, labeled "Assessments"; and (xiii) A description and the amount of any additional items which have not yet been paid and which the consumer is expected to pay after the real estate closing, but which are attributable in part to a period of time prior to the real estate closing.

(3) *Calculation of seller's transaction.* Under the label "Calculation":

- (i) The amount described in paragraph (k)(1)(i) of this section, labeled "Total Due to Seller at Closing";
- (ii) The amount described in paragraph (k)(2)(i) of this section, disclosed as a negative number, labeled "Total Due from Seller at Closing"; and

~~(iii) A statement that the disclosed amount is due from or to the seller, and the amount due from or to the seller at closing, calculated by the sum of the amounts disclosed pursuant to paragraphs (k)(3)(i) and (k)(3)(ii) of this section, labeled “Cash.”~~

~~(4) Items paid outside of closing funds. (i) Charges that are not paid from closing funds but that would otherwise be disclosed in the table described in paragraph (k) of this section, should be marked with the phrase “Paid Outside of Closing” or the acronym “P.O.C.” and include a statement of the party making the payment.~~

~~(ii) For purposes of this paragraph (k), “closing funds” are defined as funds collected and disbursed at closing.~~

(l) *Loan disclosures.* Under the master heading “Additional Information About This Loan” and under the heading “Loan Disclosures”:

\* \* \* \*

(1) *Assumption.* Under the subheading “Assumption,” the information required by § 1026.37(m)(2).

(2) *Demand feature.* Under the subheading “Demand Feature,” a statement of whether the legal obligation permits the creditor to demand early repayment of the loan and, if the statement is affirmative, a reference to the note or other loan contract for details.

(3) *Late payment.* Under the subheading “Late Payment,” the information required by § 1026.37(m)(4).

(4) *Negative amortization.* Under the subheading “Negative Amortization (Increase in Loan Amount),” a statement of whether the regular periodic payments may cause the principal balance to increase.

(i) If the regular periodic payments do not cover all of the interest due, the creditor must provide a statement that the principal balance will increase, such balance will likely become larger than the original loan amount, and increases in such balance lower the consumer’s equity in the property.

(ii) If the consumer may make regular periodic payments that do not cover all of the interest due, the creditor must provide a statement that, if the consumer chooses a monthly payment option that does not cover all of the interest due, the principal balance may become larger than the original loan amount and the increases in the principal balance lower the consumer’s equity in the property.

(5) *Partial payment policy.* Under the subheading “Partial Payment Policy”:

(i) A statement whether the creditor will accept monthly payments that are less than the full amount due and that, if the loan is sold, the new creditor may have a different policy; and

(ii) If partial payments are permitted, a brief description of the creditor's partial payment policy, including the manner and order in which the partial payment would be applied to the principal, interest, or an escrow account for partial payments and whether any penalties apply.

(6) *Security interest.* Under the subheading “Security Interest,” a statement that the creditor will acquire a security interest in the property securing the transaction, the property address, and a statement that the consumer may lose the property if the consumer does not make the required payments or satisfy other requirements under the legal obligation.

(7) *Escrow account.* Under the subheading “Escrow Account”:

(i) Under the reference “For now,” a statement that an escrow account may also be called an impound or trust account, a statement of whether the creditor has established or will establish, at or before consummation, an escrow account in connection with the transaction for the costs that will be paid using escrow account funds described in paragraph (l)(7)(i)(A)(1) of this section:

(A) A statement that the creditor may be liable for penalties and interest if it fails to make a payment for any cost for which the escrow account is established, a statement that the consumer would have to pay such costs directly in the absence of the escrow account, and a table, titled “Escrow” that contains, if an escrow account is or will be established, an itemization of the following:

(1) The total amount the consumer will be required to pay into an escrow account over the first year after consummation for payment of the charges described in § 1026.37(c)(4)(ii), labeled “Escrowed Property Costs over Year 1,” together with a descriptive name of each such charge, calculated as the amount disclosed under paragraph (l)(7)(i)(A)(4) of this section multiplied by the number of periodic payments scheduled to be made to the escrow account during the first year after consummation;

(2) The estimated amount the consumer is likely to pay during the first year after consummation for charges described in § 1026.37(c)(4)(ii) that are known to the creditor and that

will not be paid using escrow account funds, labeled “Non-Escrowed Property Costs over Year 1,” together with a descriptive name of each such charge and a statement that the consumer may have to pay other costs that are not listed;

(3) The total amount disclosed pursuant to paragraph (g)(3) of this section, a statement that the payment is a cushion for the escrow account, labeled “Initial Payment,” and a reference to the information disclosed pursuant to paragraph (g)(3) of this section;

(4) The amount the consumer will be required to pay into the escrow account with each periodic payment during the first year after consummation for payment of the charges described in § 1026.37(c)(4)(ii), labeled “Monthly Payment.”

(5) A creditor complies with the requirements of paragraphs (l)(7)(i)(A)(1) and (l)(7)(i)(A)(4) of this section if the creditor bases the numerical disclosures required by those paragraphs on amounts derived from the escrow account analysis required under Regulation X, 12 CFR 1024.17.

(B) A statement of whether the consumer will not have an escrow account, the reason why an escrow account will not be established, a statement that the consumer must pay all property costs, such as taxes and homeowner's insurance, directly, a statement that the consumer may contact the creditor to inquire about the availability of an escrow account, and a table, titled "No Escrow," that contains, if an escrow account will not be established, an itemization of the following:

- (1) The estimated total amount the consumer will pay directly for charges described in § 1026.37(c)(4)(ii) during the first year after consummation that are known to the creditor and a statement that, without an escrow account, the consumer must pay the identified costs, possibly in one or two large payments, labeled as "Estimated Property Costs over Year 1"; and
- (2) The amount of any fee the creditor imposes on the consumer for not establishing an escrow account in connection with the transaction, labeled "Escrow Waiver Fee."

(ii) Under the reference "In the future":

- (A) A statement that the consumer's property costs may change and that, as a result, the consumer's escrow payments may change;
- (B) A statement that the consumer may be able to cancel any escrow account that has been established, but that the consumer is responsible for directly paying all property costs in the absence of an escrow account; and
- (C) A description of the consequences if the consumer fails to pay property costs, including the actions that a State or local government may take if property taxes are not paid and the actions the creditor may take if the consumer does not pay some or all property costs, such as adding amounts to the loan balance, adding an escrow account to the loan, or purchasing a property insurance policy on the consumer's behalf that may be more expensive and provide fewer benefits than what the consumer could obtain directly.

(m) *Adjustable payment table.* Under the master heading "Additional Information About This Loan" required by paragraph (l) of this section, and under the heading "Adjustable Payment (AP) Table," the table required to be disclosed by § 1026.37(i).

(n) *Adjustable interest rate table.* Under the master heading "Additional Information About This Loan" required by paragraph (l) of this section, and under the heading "Adjustable Interest Rate (AIR) Table," the table required to be disclosed by § 1026.37(j).

(o) *Loan calculations.* In a separate table under the heading "Loan Calculations":

(1) *Total of payments.* The "Total of Payments," using that term and expressed as a dollar amount, and a statement that the disclosure is the total the consumer will have paid after making all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.

(2) *Finance charge*. The “Finance Charge,” using that term and expressed as a dollar amount, and the following statement: “The dollar amount the loan will cost you.” The disclosed finance charge and other disclosures affected by the disclosed finance charge (including the amount financed and the annual percentage rate) shall be treated as accurate if the amount disclosed as the finance charge:

- (i) is understated by no more than \$100; or
- (ii) is greater than the amount required to be disclosed.

(3) *Amount financed*. The “Amount Financed,” using that term and expressed as a dollar amount, and the following statement: “The loan amount available after paying your upfront finance charge.”

(4) *Annual percentage rate*. The “Annual Percentage Rate,” using that term and the abbreviation “APR” and expressed as a percentage, and the following statement: “Your costs over the loan term expressed as a rate. This is not your interest rate.”

(5) *Total interest percentage*. The “Total Interest Percentage,” using that term and the abbreviation “TIP” and expressed as a percentage, and the following statement: “The total amount of interest that you will pay over the loan term as a percentage of your loan amount.”

(6) *Approximate cost of funds*. The “Approximate Cost of Funds,” using that term and the abbreviation “ACF” and expressed as a percentage, and the following statement: “The approximate cost of funds used to make this loan. This is not a direct cost to you.” For purposes of this paragraph (o)(6), “approximate cost of funds” means either the most recent ten-year Treasury constant maturity rate or the creditor’s actual cost of borrowing the funds used to extend the credit, at the creditor’s option.

(p) *Other disclosures*. Under the heading “Other Disclosures”:

(1) *Appraisal*. For transactions subject to 15 U.S.C. 1639h or 1691(e), as implemented in this part or Regulation B, 12 CFR part 1002, respectively, under the subheading “Appraisal,” that:

(i) If there was an appraisal of the property in connection with the loan, the creditor is required to provide the consumer with a copy at no additional cost to the consumer at least three days prior to consummation; and

(ii) If the consumer has not yet received a copy of the appraisal, the consumer should contact the creditor using the information disclosed pursuant to paragraph (r) of this section.

(2) *Contract details*. A statement that the consumer should refer to the appropriate loan document and security instrument for information about nonpayment, what constitutes a default under the legal obligation, circumstances under which the creditor may accelerate the maturity of the obligation, and prepayment rebates and penalties, under the subheading “Contract Details.”

(3) *Liability after foreclosure.* A brief statement of whether, and the conditions under which, the consumer may remain responsible for any deficiency after foreclosure under applicable State law, a brief statement that certain protections may be lost if the consumer refinances or incurs additional debt on the property, and a statement that the consumer should consult an attorney for additional information, under the subheading “Liability after Foreclosure.”

(4) *Refinance.* Under the subheading “Refinance,” the statement required by § 1026.37(m)(5).

(5) *Tax deductions.* Under the subheading “Tax Deductions,” a statement that, if the extension of credit exceeds the fair market value of the property, the interest on the portion of the credit extension that is greater than the fair market value of the property is not tax deductible for Federal income tax purposes and a statement that the consumer should consult a tax adviser for further information.

(q) *Questions notice.* In a separate notice labeled “Questions?”:

- (1) A statement that the consumer should contact the creditor with any questions about the disclosures required pursuant to § 1026.19(f);
- (2) A reference to the Bureau’s website to obtain more information or to make a complaint; and
- (3) A prominent question mark.

(r) *Contact information.* In a separate table, under the heading “Contact Information,” the following information for each creditor (under the subheading “Lender”), mortgage broker (under the subheading “Mortgage Broker”), consumer’s real estate broker (under the subheading “Real Estate Broker (B)”), seller’s real estate broker (under the subheading “Real Estate Broker (S)”), and closing agent (under the subheading “Closing Agent”) participating in the transaction:

- (1) Name of the person, labeled “Name”;
- (2) Address, using that label;
- (3) Nationwide Mortgage Licensing System & Registry identification number or, if none, license number or other unique identifier issued by the applicable jurisdiction or regulating body with which the person is licensed and/or registered, for the persons identified in paragraph (r)(1) of this section, labeled “NMLS/License ID”;
- (4) Name of the natural person who is the primary contact for the consumer with the person identified in paragraph (r)(1) of this section, labeled “Contact”;
- (5) Nationwide Mortgage Licensing System & Registry identification number or, if none, license number or other unique identifier issued by the applicable jurisdiction or regulating body with which the person is licensed and/or registered, for the natural person identified in paragraph (r)(4) of this section, labeled “Contact NMLS/License ID”;
- (6) Email address for the person identified in paragraph (r)(4) of this section, labeled “Email”; and

- (7) Telephone number for the person identified in paragraph (r)(4) of this section, labeled “Phone.”
- (s) *Signature statement.* (1) At the creditor’s option, under the heading “Confirm Receipt,” a line for the signatures of the consumers in the transaction. If the creditor provides a line for the consumer’s signature, the creditor must disclose the statement required to be disclosed under § 1026.37(n)(1).
- (2) If the creditor does not provide a line for the consumer’s signature under the heading “Other Disclosures” required by paragraph (p) of this section, the statement required to be disclosed under § 1026.37(n)(2).

- (t) *Form of disclosures.* (1) *General requirements.* (i) The creditor shall make the disclosures required by this section clearly and conspicuously in writing, in a form that the consumer may keep. The disclosures also shall be grouped together, segregated from everything else, and provided on separate pages that are not commingled with any other documents or disclosures, including any other disclosures required by State or other laws.
- (ii) Except as provided in paragraph (t)(5), the disclosures shall contain only the information required by paragraphs (a) through (s) of this section and shall be made in the same order, and positioned relative to the master headings, headings, subheadings, labels, and similar designations in the same manner, as shown in form H-25, set forth in appendix H to this part.
- (2) *Estimated disclosures.* If a master heading, heading, subheading, label, or similar designation contains the word “estimated” in form H-25, set forth in appendix H to this part, that heading, label, or similar designation shall contain the word “estimated.”
- (3) *Form.* Except as provided in paragraph (t)(5) of this section:
- (i) For a transaction subject to this section that is a federally related mortgage loan, as defined in Regulation X, 12 CFR 1024.2, the disclosures must be made using form H-25, set forth in appendix H to this part.
- (ii) For any other transaction subject to this section, the disclosures must be made with headings, content, and format substantially similar to form H-25, set forth in appendix H to this part.
- (iii) The disclosures required by this section may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*).
- (4) *Rounding.* (i) *Nearest dollar.* The following dollar amounts are required to be rounded to the nearest whole dollar:

- (A) The dollar amounts required to be disclosed by paragraph (b) of this section that are required to be rounded by § 1026.37(o)(4)(i)(A) when disclosed under § 1026.37(b)(6) and (7);
- (B) The dollar amounts required to be disclosed by paragraph (c) of this section that are required to be rounded by § 1026.37(o)(4)(i)(A) when disclosed under § 1026.37(c)(1)(iii);
- (C) The dollar amounts required to be disclosed by paragraph (i) of this section under the subheading “Estimate”;
- (D) The dollar amounts required to be disclosed by paragraph (m) of this section; and
- (E) The dollar amounts required to be disclosed by paragraph (c) of this section that are required to be rounded by § 1026.37(o)(4)(i)(B) when disclosed under § 1026.37(c)(2)(iv).

(ii) *Percentages.* The percentage amounts required to be disclosed under paragraphs (b), (f)(1)(i), (g)(2)(iii), (l), (n), and (o)(5) and (6) of this section shall be disclosed as an exact number up to two or three decimal places. The percentage amount required to be disclosed under paragraph (o)(4) of this section shall be disclosed up to three decimal places. Decimal places shall not be disclosed if the amount is a whole number.

(5) *Exceptions.* (i) *Unit-period.* Wherever the form or this section uses “monthly” to describe the frequency of any payments or uses “month” to describe the applicable unit-period, the creditor shall substitute the appropriate term to reflect the fact that the transaction’s terms provide for other than monthly periodic payments, such as bi-weekly or quarterly payments.

(ii) *Lender credits.* The amount required to be disclosed by paragraph (d)(4) of this section may be omitted from the form if the amount is zero.

(iii) *Administrative information.* The creditor may insert immediately above the information required to be disclosed by paragraph (a)(2) of this section and adjacent to the information required to be disclosed by paragraph (a)(3) of this section any administrative information, text, or codes that assist in identification of the form or the information disclosed on the form.

(iv) *Line numbers (Closing Cost Details).* Line numbers provided on form H-25 in Appendix H to this part for the disclosure of the information required by paragraphs (f)(1), (2), and (3) and (g)(1), (2), (3), and (4) of this section that are not used may be deleted and the deleted line numbers added to the space provided for any other of those paragraphs as necessary to accommodate the disclosure of additional items.

(v) *Additional page (Closing Cost Details).* The information required to be disclosed by paragraphs (f), (g), and (h) of this section may be disclosed on two pages if form H-25 in appendix H to this part, as altered pursuant to paragraph (t)(5)(iv) of this section, does not accommodate an itemization of all of the information required to be disclosed by paragraphs (f), (g), and (h) on one page, provided that

the information required by paragraph (f) is disclosed on a page separate from the information required by paragraph (g). The information required by paragraph (g), if disclosed on a page separate from paragraph (f), shall be disclosed on the same page as the information required by paragraph (h).

(vi) *Separation of consumer and seller information.* The creditor or settlement agent preparing the form may use form H-25 in appendix H to this part for the disclosure provided to both the consumer and the seller, with the following modifications to separate the information of the consumer and seller, as necessary:

(A) The information required to be disclosed by paragraphs (j) and (k) of this section may be disclosed on separate pages to the consumer and the seller, respectively, with the information required by the other paragraph left blank. The information disclosed to the consumer pursuant to paragraph (j) of this section must be disclosed on the same page as the information required by paragraph (i) of this section.

(B) The information required to be disclosed by paragraphs (f) and (g) of this section with respect to costs paid by the consumer may be left blank on the disclosure provided to the seller.

(C) The information required by paragraphs (a)(2), (a)(4)(iii), (a)(5), (b) through (d), (i), (l) through (p), (r) with respect to the creditor and mortgage broker, and (s)(2) of this section may be left blank on the disclosure provided to the seller.

(vii) *Modified version of the form for a seller or third-party.* The information required by paragraphs (a)(2), (a)(4)(iii), (a)(5), (b) through (d), (f) and (g) with respect to costs paid by the consumer, (i), (j), (l) through (p), (q)(1), (r) with respect to the creditor and mortgage broker, and (s) of this section may be deleted from the form provided to the seller or a third-party, as illustrated by form H-25(I) in appendix H to this part.

(viii) *Transaction without a seller.* The following modifications to form H-25 in appendix H to this part may be made for a transaction that does not involve a seller, as illustrated by form H-25(J) in appendix H to this part:

(A) The information required by paragraphs (a)(4)(ii), (f), (g), and (h) with respect to costs paid by the seller, and (k) of this section may be deleted.

(B) A table under the master heading “Closing Cost Details” required by paragraph (f) of this section may be added with the heading “Disbursements to Others” that itemizes the amounts of payments made at closing to other parties from the credit extended to the consumer or funds provided by the consumer in connection with the transaction, including designees of the

consumer; the payees of such disbursements under the subheading “To”; and the total amount of such payments labeled “Total Disbursements to Others.”

(C) The information required by paragraphs (i)(5), (7), and (8) of this section may be deleted from the table required by paragraph (i) of this section. These deletions must be factored into the calculation and disclosure required by paragraph (i)(9) of this section.

(D) The tables required to be disclosed by paragraphs (j) and (k) of this section may be deleted.

(ix) *Translation.* The form may be translated into languages other than English.

(x) *Customary recitals and information.* An additional page may be attached to the form for the purpose of including customary recitals and information used locally in real estate settlements. ◀

19. Section 1026.39 is amended by revising paragraphs (a)(2) and (d) and adding new paragraph (d)(5) to read as follows:

\* \* \* \* \*

\* \* \* \* \*

20. Appendix D to part 1026 is amended by revising paragraph C of part II to read as follows:

**APPENDIX D TO PART 1026—MULTIPLE ADVANCE CONSTRUCTION LOANS**

\* \* \* \* \*

*Part II—Construction and Permanent Financing Disclosed as One Transaction*

\* \* \* \* \*

C. The creditor shall disclose the repayment schedule as follows:

1. For loans under paragraph A.1 of part II, ► other than loans that are subject to § 1026.19(e) and (f), ◀ without reflecting the number or amounts of payments of interest only that are made during the construction period. The fact that interest payments must be made and the timing of such payments shall be disclosed.

2. For loans under paragraph A.2 of part II ► and loans under paragraph A.1 of part II that are subject to § 1026.19(e) and (f) ◀, including any payments of interest only that are made during the construction period.

21. Appendix H to part 1026 is amended by revising H-13 and H-15, adding new H-24 through H-27, and revising and adding their respective entries to the table of contents at the beginning of the appendix in numerical order as follows:

APPENDIX H TO PART 1026— CLOSED-END [MODEL] FORMS AND CLAUSES

\* \* \* \* \*

H-13 ► Closed-End ◀ [Mortgage] Transaction with Demand Feature Sample

\* \* \* \* \*

H-15 ► Closed-End ◀ Graduated-Payment [Mortgage] ► Transaction ◀ Sample

\* \* \* \* \*

► H-24(A) Mortgage Loan Transaction Loan Estimate - Blank

H-24(B) Mortgage Loan Transaction Loan Estimate - Fixed-Rate Loan Sample

H-24(C) Mortgage Loan Transaction Loan Estimate - Interest Only Adjustable-Rate Loan Sample

H-24(D) Mortgage Loan Transaction Loan Estimate – Refinance Sample

H-24(E) Mortgage Loan Transaction Loan Estimate - Balloon Payment Sample

H-24(F) Mortgage Loan Transaction Loan Estimate – Negative Amortization Sample

H-25(A) Mortgage Loan Transaction Closing Disclosure - Blank

H-25(B) Mortgage Loan Transaction Closing Disclosure - Fixed-Rate Loan Sample

~~H-25(C) Mortgage Loan Transaction Closing Disclosure – Sample of Borrower Funds from Second Lien Loan in Summaries of Transactions~~

~~H-25(D) Mortgage Loan Transaction Closing Disclosure – Sample of Borrower Satisfaction of Seller's Second Lien Loan Outside of Closing in Summaries of Transactions~~

H-25(E) Mortgage Loan Transaction Closing Disclosure - Sample of Refinance Transaction

H-25(F) Mortgage Loan Transaction Closing Disclosure - Sample of Refinance Transaction (19(e)(3) violation)

H-25(G) Mortgage Loan Transaction Closing Disclosure - Sample of Refinance Transaction with Financed Closing Costs

~~H-25(H) Mortgage Loan Transaction Closing Disclosure – Modification to Closing Cost Details~~

~~H-25(I) Mortgage Loan Transaction Closing Disclosure – Modification to Closing Disclosure for Disclosure Provided to Seller~~

H-25(J) Mortgage Loan Transaction Closing Disclosure – Modification to Closing Disclosure for Transaction Not Involving Seller

H-26(A) Mortgage Loan Transaction – Pre-Loan Estimate Statement

H-26(B) Mortgage Loan Transaction – Pre-Loan Estimate Statement on Worksheet

H-27(A) Mortgage Loan Transaction – Written List of Providers

H-27(B) Mortgage Loan Transaction – Sample of Written List of Providers

H-27(C) Mortgage Loan Transaction – Sample of Written List of Providers with Services You Cannot Shop For ◀ \* \* \* \* \* H-13 ► Closed-End Transaction ◀ [Mortgage] with Demand Feature Sample

H-25(A) Mortgage Loan Transaction Closing Disclosure - Blank

*Description:* This is a blank Closing Disclosure that illustrates the content requirements in § 1026.38. This form provides two variations of page one, one page two, one page three, four variations of page four, and two variations of page five, reflecting the variable content requirements in § 1026.38. This form does not reflect modifications permitted under § 1026.38(t).



H-25(B) Mortgage Loan Transaction Closing Disclosure - Fixed-Rate Loan Sample

*Description:* This is an example of a completed Closing Disclosure for the fixed-rate loan illustrated by form H-24(B). The purpose, sale price, loan amount, loan term, and interest rate have not changed from the estimates provided on the Loan Estimate. The creditor requires an escrow account and that the consumer pay for private mortgage insurance for the transaction.

~~H-25(C) Mortgage Loan Transaction Closing Disclosure—Sample of Borrower Funds from Second-Lien Loan in Summaries of Transactions~~

*Description:* This is an example of the information required on the Closing Disclosure by § 1026.38(j) for disclosure of consumer funds from a simultaneous second lien credit transaction not otherwise disclosed pursuant to § 1026.38(j)(2)(iii) or (iv) that is used to finance part of the purchase price of the property subject to the transaction.

**H-25(D) Mortgage Loan Transaction Closing Disclosure - Sample of Borrower Satisfaction of Seller's Second Lien Loan Outside of Closing in Summaries of Transactions**

*Description:* This is an example of the information required on the Closing Disclosure by § 1026.38(j) and (k) for the satisfaction of a junior lien transaction by the consumer, which was not paid from closing funds.

**H-25(E) Mortgage Loan Transaction Closing Disclosure - Sample of Refinance Transaction**

*Description:* This is an example of a completed Closing Disclosure for the refinance transaction illustrated by form H-24(D). The purpose, loan amount, loan term, interest rate, and prepayment penalty have not changed from the estimates provided on the Loan Estimate. The creditor requires an escrow account and that the consumer pay for private mortgage insurance for the transaction.

| H-25(F) Mortgage Loan Transaction Closing Disclosure - Sample of Refinance Transaction  
(19(e)(3) violation)

*Description:* This is an example of a completed Closing Disclosure for the refinance transaction illustrated by form H-24(D). The Closing Costs have increased in violation of § 1026.19(e)(3) by \$100, for which the creditor has provided a credit.

| H-25(G) Mortgage Loan Transaction Closing Disclosure - Sample of Refinance Transaction with  
Financed Closing Costs

*Description:* This is an example of a completed Closing Disclosure for the refinance transaction illustrated by form H-24(D). The consumer has financed \$4,500 of the Closing Costs in the Loan Amount.

H 25(H) Mortgage Loan Transaction Closing Disclosure—Modification to Closing Cost Details

*Description:* This is an example of the modification to Closing Cost Details permitted by § 1026.38(t)(5)(v).

H-25(I) Mortgage Loan Transaction Closing Disclosure—Modification to Closing Disclosure for Disclosure Provided to Seller

*Description:* This is an example of the modification permitted by § 1026.38(t)(5)(vii).

| H-25(J) Mortgage Loan Transaction Closing Disclosure – Modification to Closing Disclosure for  
Transaction Not Involving Seller

*Description:* This is an example of the modification permitted by § 1026.38(t)(5)(viii).

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