

KBYO Proposed Rule Changes

**Comments Due** – Oct 18, 2016.

### **How to Comment**

Email: [FederalRegisterComments@cfpb.gov](mailto:FederalRegisterComments@cfpb.gov) and including “Docket No. CFPB--2016--0038” or “RIN 3170--AA61” in the subject line of the email, on the <http://www.regulations.gov> website, or by mail or physical delivery to the CFPB as described in the proposal.

**Why Comment** – if comment is helpful and you agree, you should comment to that end. Keep in mind someone else, or another group, might vehemently disagree with the change and write in opposition.

**Other Key Dates** – CFPB says they expect to issue final rule April 1, 2017 (April Fools’ Day) and propose implementation 120 days later (Aug 1, 2017)

The CFPB stated that its focus in the proposal is on “providing additional clarity to facilitate compliance and doing so on an expedited schedule.” The CFPB acknowledged that there are a “handful” of substantive changes, it stated that it “does not intend to revisit major policy decisions” in the rule.

### **What it DID NOT address:**

- Simultaneous issuance of title ins. premiums
- Cure Provisions
- Issues in Appraisals as result of zero tolerance fee

### **Partial Items proposed / covered**

- Expansion/ clarification for TRID to include Co-ops. (Not applicable to CMC)
- The “Black Hole” fix
- Privacy issue of sharing documents with settlement agents, etc and consumer non-public, personally-identifiable information
- Down Payment Assistance clarifications
- Total of Payments – Loan Costs and a New tolerance allowed.

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

- *General tolerance.* To that end, the CFPB proposed to revise the rule and other relevant provisions to expressly provide a tolerance for the Total of Payments, including a tolerance for rescission purposes. Specifically, the CFPB proposed to revise

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

- *Rescission tolerances.* In addition, the CFPB proposed to revise 1026.23(g)(1) and (2) and (h)(2) to add new provisions that expressly provide that the existing rescission tolerances for the finance charge and disclosures affected by the finance charge also apply to the total of payments (*i.e.*, the \$35, .5% and 1% understatement tolerances, and the tolerance for overstatements, as applicable). The CFPB also proposed to revise comment 23(h)(2)--1 to clarify that the new tolerance is based on the accuracy of the total of payments taken as a whole, rather than its components, and to add comment 23(h)(2) to cross--reference guidance under comment 38(o)--1.
- *Loan Costs.* Regarding which Loan Costs are included in the Total of Payments calculation, the CFPB stated in the preamble that it is aware of the differences in interpretation on this issue and proposed to amend comment 38(o)(1)--1 to clarify that the Total of Payments calculation excludes Loan Costs that are designated on the CD as paid by the seller or paid by others, *i.e.*, it only includes borrower--paid Loan Costs. The CFPB stated that this difference in treatment of specific credits for Loan Costs between the LE and CD is “appropriate given the difference between the information available to the creditor when it provides the [LE] and when it provides the [CD].” In addition, the CFPB stated that, “unlike the [CD] form, the [LE] form does not allow for the itemized disclosure of costs paid by the seller or others.”
- **SSPL – Written List of Providers**
  - Failure to provide the WLSP results in 0% tolerance. Significantly, the CFPB proposed to amend comments 19(e)(3)(ii)--2 and 19(e)(3)(iii)--2 to provide that if the creditor permits the consumer to shop but fails to provide the WLSP or provides a non--compliant list, the charge would be subject to the 0% tolerance.
  - Itemization of services on the list. The CFPB proposed to clarify that the WLSP does not need to identify each individual service that is part of a package or combination of settlement services offered by a single service provider
- **Other “Tolerance” changes**
  - Clarification of the 10% tolerance. The CFPB proposed to clarify in comment 19(e)(3)(ii)--2 that the 10% threshold applies to all charges the consumer is permitted to shop for, even if such a charge was not disclosed on the LE but charged at consummation.
  - Revised CDs for interest rate locks. The CFPB proposed to add a new comment to clarify that, even if the interest rate is locked after the CD was provided, the creditor cannot provide a revised LE to the consumer. The proposed comment states that if

interest rate is locked after a CD is provided causing inaccuracies in that CD, the creditor must provide a corrected CD at or before consummation reflecting any changed terms.

- **Construction Loans**

- If you disclose the C and P separately (which we do not)
  - Allocation of the fees for each disclosure
- Applicability of option to use combined disclosures under 1026.17(c)(6)(ii). The CFPB also proposed to add a new comment 17(c)(6)--6 to clarify the meaning of “may be permanently financed by the same creditor,” which is a condition of the ability to disclose a construction--to--permanent transaction as either a combined transaction or separate transactions under 1026.17(c)(6)(ii). The CFPB proposed to clarify that this condition is satisfied if “the creditor generally makes both construction and permanent financing available to qualifying consumers, unless a consumer expressly states that the consumer will not obtain permanent financing from the creditor.”
- Construction Loan Inspection / Handling fees
  - Clarified to only disclose fees for charges completed prior to closing as “loan Costs” fees for inspection, etc subsequent to closing under a new header “Inspection and Handling Fees Collected After Closing”
- **Loan Term.** Comment app. D--7.i would clarify how the Loan Term should be disclosed on the LE and CD. For combined disclosures, the loan would be the total combined term of the construction and permanent phases. For separate disclosures, the Loan Term for the permanent phase would be counted from the date that interest for the first scheduled periodic payment for the permanent phase begins to accrue.
- **Product.** Comment app. D--7.ii would clarify how to disclose the duration of the “Interest Only” feature. The comment clarifies that for separate disclosures, the final payment will typically be a balloon payment, and as such, would not be considered an interest only payment. The comment states that this means for a construction phase of one year, the duration of the Interest Only feature would be 11 months. The comment also clarifies that for combined disclosures, the duration of the Interest Only feature would be the full term of the construction phase.
- **Loan Terms – Interest Rate.** Comment app. D--7.iii would clarify how to disclose the Interest Rate under 1026.37(b)(2) and 1026.38(b) for the permanent phase when it is disclosed at consummation before the permanent phase begins. For separate disclosures where the permanent phase will have an adjustable rate, the Interest Rate disclosed for the permanent phase would be the fully-indexed rate. And for a fixed rate, the interest rate would be based on the best information reasonably available at the time of disclosure. The comment would also clarify that if the interest rate changes at the time of conversion to permanent financing, resulting a payment change, the creditor must provide the rate and adjustment disclosures required by 1026.20(c).

- **Summaries of Transactions.** The CFPB also proposed to revise comment 38(k)--1 to add construction purpose loans (as defined under 1026.37(a)(9)(iii)) as an example of transactions in which the seller's table is not required.
- **Comment on how to disclose principal curtailments**
  - Specifically trying to assist where program guides don't allow cash to borrower, etc.