vi. Model H–4(I) illustrates the introductory rate disclosure required by § 226.18(s)(2)(iii) for an adjustable-rate mortgage transaction with an introductory rate.

vii. Model H–4(J) illustrates the balloon payment disclosure required by § 226.18(s)(5) for a mortgage transaction with a balloon payment term.

viii. Model H–4(K) illustrates the no-guarantee-to-refinance statement required by § 226.18(t) for a mortgage transaction.

* * * * *

By order of the Board of Governors of the Federal Reserve System, August 13, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–20663 Filed 9–23–10; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Docket No. R–1378]

Regulation Z; Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; official staff commentary.

SUMMARY: The Board is publishing final rules amending Regulation Z (Truth in Lending). The final rule implements Section 131(g) of the Truth in Lending Act (TILA), which was enacted on May 20, 2009, as Section 404(a) of the Helping Families Save Their Homes Act. TILA Section 131(g) became effective immediately upon enactment and established a new requirement for notifying consumers of the sale or transfer of their mortgage loans.

Consistent with the statute, the final rule requires a purchaser or assignee that acquires a loan to provide the disclosures in writing no later than 30 days after the date on which the loan was sold, transferred or assigned. Certain exceptions may apply if the covered person transfers or assigns the loan to another party on or before the 30th day.

DATES: *Effective Date.* This final rule is effective on January 1, 2011.

Mandatory Compliance Date. The mandatory compliance date is January 1, 2011. Covered persons may immediately comply with this amendment or continue to comply with 12 CFR 226.39 until the mandatory compliance date.

FOR FURTHER INFORMATION CONTACT: Jelena McWilliams, Attorney, or Paul Mondor, Senior Attorney; Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or (202) 452–3667. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.,* seeks to promote the informed use of consumer credit by requiring disclosures about its costs and terms. TILA requires additional disclosures for loans secured by consumers' homes and permits consumers to rescind certain transactions that involve their principal dwelling. TILA directs the Board to prescribe regulations to carry out its purposes. TILA specifically authorizes the Board, among other things, to issue regulations that contain such classifications, differentiations, or other provisions, or that provide for such adjustments and exceptions for any class of transactions, that in the Board's judgment are necessary or proper to effectuate the purposes of TILA, facilitate compliance with TILA, or prevent circumvention or evasion of TILA. 15 U.S.C. 1604(a). TILA is implemented by the Board's Regulation Z. 12 CFR part 226. An Official Staff Commentary interprets the requirements of the regulation and provides guidance to creditors in applying the rules to specific transactions. *See* 12 CFR part 226, Supp. I.

On May 20, 2009, the Helping Families Save Their Homes Act of 2009 (the "2009 Act") was signed into law. Public Law 111–22, 123 Stat. 1632. Section 404(a) of the 2009 Act amended TILA to establish a new requirement for notifying consumers of the sale or transfer of their mortgage loans. The purchaser or assignee that acquires the loan must provide the required disclosures no later than 30 days after the date on which it acquired the loan. This provision is contained in TILA Section 131(g), 15 U.S.C. 1641(g), which applies to any consumer credit transaction secured by the principal dwelling of a consumer. Consequently, the disclosure requirements in Section 131(g) apply to both closed-end mortgage loans and open-end home equity lines of credit.

Section 131(g) became effective immediately upon enactment on May 20, 2009, and did not require the issuance of implementing regulations. Mortgage loans sold, or otherwise transferred on or after that date became subject to the requirements of Section 131(g), and failure to comply can result in civil liability under TILA Section 130(a). *See* 15 U.S.C. 1640(a). In November 2009, the Board issued an interim rule that was effective immediately upon publication, so that parties subject to the rule would have guidance on how to interpret and comply with the statutory requirements. 74 FR 60143, Nov. 20, 2009.

Under the Real Estate Settlement Procedures Act (RESPA), consumers must be notified when the servicer of their mortgage loan has changed.[1] The 2009 Act's legislative history reflects that, in addition to the information provided under RESPA, the Congress intended to provide consumers with information about the identity of the owner of their mortgage loan. In some cases, consumers that have an extended right to rescind the loan under TILA Section 125, 15 U.S.C. 1635, can assert that right against the purchaser or assignee. *See* TILA Section 131(c), 15 U.S.C. 1641(c). Among other things, the 2009 Act seeks to ensure that consumers attempting to exercise this right know the identity of the assignee and how to contact the assignee or its agent for that purpose. *See* 155 Cong. Rec. S5098–99 (daily ed. May 5, 2009); 155 Cong. Rec. S5173–74 (daily ed. May 6, 2009). The legislative history indicates, however, that TILA Section 131(g) was not intended to require notice when a transaction "does not involve a change in the ownership of the physical note," such as when the note holder issues mortgage-backed securities but does not transfer legal title to the loan. 155 Cong. Rec. S5099.

II. Summary of the Final Rule

The final rule requires an acquiring party to provide the disclosures in writing no later than 30 days after the date on which the loan was sold, transferred or assigned. Under the final rule, the disclosures must state (1) The name, address, and telephone number of the new owner; (2) the transfer date; (3) the name, address, and telephone number of an agent or other party authorized to receive the consumer's rescission notice and resolves issues concerning the consumer's payments on the loan (if other than owner); and (4) where the transfer of ownership is recorded.

Consistent with the statute and legislative intent, the final rule implements Section 404(a) of the 2009 Act by applying the new disclosure requirements to any person or entity that acquires ownership of an existing consumer mortgage loan, whether the acquisition occurs as a result of a

[1] RESPA is implemented by Regulation X, 24 CFR part 3500, which is issued by the Department of Housing and Urban Development (HUD).

purchase or other transfer or assignment. A person is covered by the rule if it acquires legal title to the debt obligation. Although TILA and Regulation Z generally apply only to persons to whom the credit obligation is initially made payable and that regularly engage in extending consumer credit, Section 404(a) and the final rule apply to persons that acquire mortgage loans without regard to whether they also extend consumer credit by originating mortgage loans. However, the final rule applies only to persons that acquire more than one mortgage loan in any 12-month period. A party servicing the mortgage loan is not treated as the owner of the obligation if the obligation was assigned to the servicer solely for the administrative convenience of the servicer in servicing the obligation.

To prevent the confusion that could result if consumers receive disclosures from multiple parties or outdated contact information for parties that no longer own their loan, the final rule provides three exceptions. Under the final rule, a covered person must mail or deliver the required disclosures on or before the 30th day following the date that the covered person acquired the loan. The disclosures need not be given, however, if the covered person transfers or assigns all of its interest in the loan to another party on or before that date. For example, a covered person that acquires a mortgage loan on March 15 must mail or deliver the disclosures on or before April 14. However, if the covered person sells or assigns the loan to a third party on April 14 (or earlier), the covered person need not provide the disclosures, but subsequent purchasers would have to comply with the rule. If the covered person transfers a partial interest in the loan on or before the 30th day following its acquisition and retains a partial interest in the loan, the covered person would have to comply with the rule unless one of the other exceptions applies.

A second exception applies when the owner of the mortgage loan transfers the legal title in a transaction that is subject to a repurchase agreement. In that case, the disclosures are not required if the transferor is obligated to repurchase the loan. This exception also applies when the acquiring party obtains a loan through an intermediary party instead of the transferor that is obligated to repurchase the loan. If the transferor does not repurchase the mortgage loan, the acquiring party must make the disclosures within 30 days after the date that the transaction is recognized as an acquisition on its own books and records.

A third exception applies when the covered person acquires only a partial interest in the loan and the party authorized to resolve issues concerning the consumer's payments on the loan or receive the rescission notice on behalf of a current owner does not change as a result of the transfer.

III. Legal Authority

General Rulemaking Authority

As noted above, TILA Section 105(a) directs the Board to prescribe regulations to carry out the act's purposes. 15 U.S.C. 1604(a). Section 404(a) of the 2009 Act became effective immediately without any requirement that the Board first issue implementing rules. Nevertheless, the Board finds that the legislative purpose of Section 404(a) will be furthered and its effectiveness enhanced by the issuance of rules that specify the manner in which covered persons can comply with its provisions. In addition, the Board believes that implementing regulations will facilitate covered persons' compliance with the statutory provisions.

TILA specifically authorizes the Board, among other things, to:

- Issue regulations that contain such classifications, differentiations, or other provisions, or that provide for such adjustments and exceptions for any class of transactions, that in the Board's judgment are necessary or proper to effectuate the purposes of TILA, facilitate compliance with the act, or prevent circumvention or evasion. 15 U.S.C. 1604(a).
- Exempt from all or part of TILA any class of transactions if the Board determines that TILA coverage does not provide a meaningful benefit to consumers in the form of useful information or protection. The Board must consider factors identified in the act and publish its rationale at the time it proposes an exemption for comment. 15 U.S.C. 1604(f).

After considering the comments received and based on its experience in implementing and enforcing Regulation Z, for the reasons discussed in this notice the Board is using its rulemaking authority under TILA Section 105(a) and (f) to implement Section 404(a) of the 2009 Act.

IV. Overview of Comments Received

In response to the interim rule, the Board received thirty-five comment letters. Twenty letters were received from financial institutions, financial services trade associations and law firms representing the financial industry. Three letters were received from consumer groups, and twelve letters were received from individual consumers.

Financial institutions and financial services trade associations generally supported the interim rule because it clarifies statutory requirements and offers guidance to creditors and other parties that acquire mortgage loans. A few of these commenters stated that the Board should narrow the scope of the rule's coverage and broaden the exceptions. Three industry commenters sought an exemption for transfers that occur as a result of a corporate merger, acquisition, or reorganization. One commenter representing industry requested that the Board expand the exemption applicable to repurchase agreements to other short-term purchase arrangements even if the transferor is not obligated to repurchase the loan.

Consumer groups generally supported the interim rule because it ensures consumers will receive meaningful information in a timely manner. However, consumer advocates sought to expand the scope of the rule's coverage and narrow the scope of exceptions to provide additional consumer protection. Individual consumers that commented generally supported the interim rule. The comments are discussed in more detail below in part V of the **SUPPLEMENTARY INFORMATION**.

V. Section-by-Section Analysis

Section 226.39—Mortgage Transfer Disclosures

39(a) Scope

Interim Rule

Section 226.39(a) defines the scope of the interim rule's coverage. Under the interim rule, the disclosure requirements of § 226.39 apply to any "covered person" with certain exceptions specified in the rule. For purposes of the interim rule, a "covered person" includes any person (as defined in § 226.2(a)(22)) that acquires more than one existing mortgage loan in any 12-month period. Consistent with the statute, the interim rule applies to all consumer mortgage transactions secured by the principal dwelling of a consumer, whether the transaction is a closed-end mortgage loan or an extension of credit under an open-end plan.

Generally, TILA and Regulation Z apply to parties that regularly extend consumer credit. However, Section 404(a) of the 2009 Act is not limited to persons that extend credit by originating loans. Section 404(a) imposes the disclosure requirements on the "creditor that is the new owner or assignee of the debt." The Board believes that, to give effect to the legislative purpose, the

term "creditor" in Section 404(a) must be construed to refer to the owner of the debt following the sale, transfer or assignment, without regard to whether that party would be a "creditor" for other purposes under TILA or Regulation Z. In issuing the interim rule, the Board declined to limit Section 404(a) to parties that originate consumer loans because such an interpretation would exempt a significant percentage of mortgage transfers to persons that purchase loans in the secondary market but do not extend consumer credit and are not "creditors" for purposes of other provisions of Regulation Z.

The interim rule also clarified that Section 404(a) does not alter the definition of "creditor" as used in TILA or Regulation Z. Thus, the fact that a person purchases mortgage loans and provides disclosures under § 226.39 does not by itself make that person a "creditor" for purposes of TILA and Regulation Z. Accordingly, in describing the persons subject to the requirements of § 226.39, the interim rule uses the term "covered person" rather than the term "creditor."

Under the interim rule, the disclosure requirements under § 226.39 apply only to persons that acquire more than one consumer mortgage transaction in any 12-month period. Generally, TILA and Regulation Z cover only parties that are regularly engaged in consumer credit transactions, who are expected to have the capacity to put systems in place to ensure compliance with the rules. In issuing the interim rule, the Board indicated that it found nothing in the legislative history indicating that Section 404(a) was intended to apply more broadly than the general TILA and Regulation Z requirements. For example, individual homeowners might choose to facilitate the sale of their home by providing seller financing and accepting the buyer's promissory note for a portion of the purchase price. At a later date, ownership of the debt obligation might transfer to another family member or to a trust for estate planning purposes, or to another person if the original note holder dies. The Board determined that a formal notice under Section 404(a) was not needed in situations involving individual transfers because the acquiring party is likely to provide adequate information to borrowers to ensure that they know to whom the loan payments should be made.

Accordingly, to prevent undue burden on individuals under the interim rule, a person who acquires only one existing mortgage loan in any 12-month period is not a covered person. The interim rule excludes persons who are not regularly engaged in the business of purchasing or investing in consumer mortgages loans, are involved in such transactions only infrequently, and would not have systems in place to comply.

Consistent with the legislative purpose, to become a "covered person" subject to § 226.39, a person must become the owner of an existing mortgage loan by acquiring legal title to the debt obligation. Consequently, § 226.39 does not apply to persons who acquire only a beneficial interest or a security interest in the loan, such as when the owner of the debt obligation uses the loan as security to obtain financing and the party providing the financing obtains a security interest in the loan. Section 226.39 also does not apply to a party that assumes the credit risk without acquiring legal title to the loans. Accordingly, an investor who purchases an interest in a pool of loans (such as mortgage-backed securities, pass-through certificates, participation interests, or real estate mortgage investment conduits) but does not acquire legal title in the underlying mortgage loan, is not covered by § 226.39. See 155 Cong. Rec. S5098–99 (daily ed. May 5, 2009). The interim rule also clarifies that the disclosures are required under § 226.39 for transfers that occur as a result of a corporate merger, acquisition, or reorganization when ownership of the loan is transferred to a different legal entity.

Section 131(f) of TILA addresses the treatment of loan servicers under the provisions of Section 131(g) which were added by the 2009 Act. Under TILA Section 131(f)(2), a party servicing the mortgage loan is not treated as the owner of the obligation if the obligation was assigned to the servicer solely for the administrative convenience. Accordingly, the requirements of § 226.39 under the interim rule do not apply to a loan servicer if the servicer holds legal title to the loan solely for administrative convenience.

Public Comment

The Board solicited comment on the definition of a "covered person" and whether the scope of the interim rule's coverage is appropriate, or whether a different standard should apply in determining which persons must comply with the disclosure requirements of § 226.39. Comment was specifically requested on whether the Board should use the same Regulation Z standard used to determine whether a person is regularly engaged in extending consumer credit, which would limit the application of § 226.39 to persons that have acquired more than five mortgage loans in the preceding or current calendar year. *See* § 226.2(a)(17)(i), footnote 3.

The Board received several comments that addressed the scope of the rule. A few industry commenters stated that the rule should cover only persons that acquire more than five mortgage loans in the preceding or current calendar year based on the standard used to determine whether a person is a "creditor" for purposes of Regulation Z. These commenters stated that a threshold of one loan in 12 months is too low.

One financial institution commenter requested that the Board exempt transfers that occur in connection with a merger of entities with no accompanying change in the servicing of the mortgage loan. The commenter stated that a merger results in a mortgage loan being combined with the assets of another entity, rather than being sold or transferred. An industry trade group requested that the Board exempt transfers that occur as a result of a merger of entities with no accompanying change in either the name or the contact information for the covered person. The commenter also stated that some corporate reorganizations or asset sales may not allow enough advance planning for the acquiring party to produce and deliver the disclosures required by § 226.39 in a timely manner. This commenter suggested that the final rule should contain a general exemption for transfers that occur as a result of a merger, or to provide a longer compliance period for such transfers.

Consumer group commenters stated that the rule should cover any person that acquires a mortgage loan, without exception. They also asserted that transfers to servicers that hold legal title solely for administrative convenience should be covered. These commenters stated that if the rule exempts servicers that take legal title solely for administrative convenience, the rule should also clarify that submitting a rescission notice to the servicer should be effective as to the actual holder. They also requested that the final rule address the remedies available in court when a violation occurs.

Final Rule

The final rule adopts the same definition of "covered person" used in the interim rule. Under the final rule, a "covered person" includes any person (as defined in § 226.2(a)(22)) that acquires more than one existing mortgage loan in any 12-month period.

Like the interim rule, the final rule exempts individual transfers because

the potential benefit of covering such transactions would not outweigh the likely burden on persons who do not regularly engage in mortgage transactions. Generally, TILA only covers parties that regularly engage in consumer credit transactions who are expected to have the capacity to put systems in place to ensure compliance with the rules. The Board believes that persons who engage in a single transaction should not be expected to comply. Moreover, the Board believes that the disclosures required under § 226.39 are not needed in situations involving individual transfers because the acquiring party is directly involved with the borrower and has an incentive to ensure that the borrower knows where to send loan payments.

Like the interim rule, the final rule clarifies that, to become a "covered person" subject to the disclosure requirements under § 226.39, a person must become the owner of an existing mortgage loan by acquiring legal title to the loan. Comment 39(a)(1)–2(i) is added in the final rule to clarify that a party may become a covered person by acquiring a partial interest in a mortgage loan. Comment 39(a)(1)–2(ii) is added in the final rule to clarify that all persons that jointly acquire legal title to the loan are subject to the disclosure requirements of § 226.39. Multiple persons are deemed to jointly acquire legal title if each acquires a partial interest in the loan pursuant to the same agreement or they otherwise act in concert to acquire their interest in the loan. Comment 39(a)(1)–2(iii) is added to clarify that an acquiring party that is a separate legal entity from the transferor must provide the disclosures required by § 226.39 even if the parties are affiliated entities.

The final rule, like the interim rule, does not apply to persons who acquire only a beneficial interest or a security interest in the loan, such as when the owner of the debt obligation uses the loan as security to obtain financing and the party providing the financing obtains only a security interest in the loan. The final rule also does not apply to a party that assumes the credit risk without acquiring legal title to the loans such as an investor who purchases mortgage-backed securities.

Consistent with TILA Section 131(f), the final rule does not apply to a party servicing the mortgage loan if the obligation was assigned to the servicer solely for administrative convenience. Consumer group commenters requested that, if the final rule exempts transfers to servicers for administrative convenience, it should provide that consumers may submit a rescission notice to the servicer. The Board is addressing this issue concerning consumers' ability to send rescission notices to the servicer in a separate proposed rule published elsewhere in today's **Federal Register** (Docket No. R–1390). Consumer group commenters also requested that the final rule set forth appropriate remedies for violations of the disclosures requirements under § 226.39. The Board notes that a determination of court remedies is outside of the scope of this rulemaking. Nonetheless, in using the term "covered person" rather than "creditor" in § 226.39, the Board is not determining whether or not TILA Section 130 applies. The Board notes that Section 404(a) of the 2009 Act specifically adds TILA Section 131(g) to the list of sections covered under TILA Section 130.

The Board does not believe that an exemption for transfers that occur as a result of a corporate merger, acquisition, or reorganization is appropriate when there is a transfer of ownership to a different legal entity. The final rule is consistent with the legislative goal that consumers be notified of transfers that would require them to seek assistance from or assert their rights against a different legal entity, even if the parties are affiliated entities. The fact that a merger results in a mortgage loan being combined with the assets of another entity is not dispositive of whether the disclosure requirements under § 226.39 are triggered. If legal title in the loan is held by the same legal entity before and after the merger, there is no transfer of title and the disclosure requirements of § 226.39 are not triggered. Thus, combining assets with another entity is not in itself dispositive of whether the disclosures under § 226.39 are required.

The Board also believes that a longer compliance period for transfers that occur as a result of a merger, acquisition or reorganization would not be appropriate under the statute. Consistent with the statute and the interim rule, the final rule requires the purchaser or assignee that acquires the loan to provide the disclosures in writing no later than 30 days after the date on which the loan is sold, transferred or assigned.

39(b) Disclosure Required

Interim Rule

Section 226.39(b) contains the general requirement for covered persons to provide the disclosures required under Section 404(a) of the 2009 Act, unless one of the exceptions specified in § 226.39(c) applies. Under the interim rule, the disclosures must be mailed or delivered to the consumer on or before the 30th calendar day following the date that the covered person acquires the loan. Under the interim rule, the date on which the covered person acquires the loan is the acquisition date recognized in the books and records of the acquiring party. If there is more than one covered person, the interim rule provides that only one disclosure shall be given on behalf of all covered persons. If there is more than one consumer, a covered person may mail or deliver the disclosures to any consumer who is primarily liable on the obligation. This is consistent with the rule generally applicable to TILA disclosures. *See* TILA Section 121(a) and § 226.17(d) of Regulation Z.

The disclosure requirements of § 226.39 apply when the acquiring party is a separate legal entity from the transferor, even if the parties are affiliated entities. If there are multiple transfers, the regulation allows multiple covered persons to combine their disclosures in a single document, provided that the disclosure meets the applicable timing requirements for each person. Comment 39(b)–2 provides guidance on how multiple parties may provide a single disclosure.

Public Comment

Consumer group commenters opposed the provision in the interim rule allowing covered persons to provide the disclosures to any consumer who is primarily liable on the loan. They suggested that the final rules instead require a covered person to provide the disclosure to every consumer who is liable on the mortgage loan and any person entitled to rescind. In addition to obligors, other persons may have a right to rescind if their ownership interest in their principal dwelling will be subject to the creditor's security interest.

One industry commenter suggested that the final rule should provide more flexibility in determining the acquisition date. This commenter stated that covered persons may use an electronic mortgage registry that automatically generates and provides the disclosures when the transferor enters the closing date for the transfer and the acquirer confirms the acquisition. Because the transferor and the acquirer may not recognize the same date of transfer due to differences in their accounting systems, the commenter suggested that the disclosure should be permitted to state either the acquisition date recognized on the purchaser's books, or the date recognized on the transferor's books.

Two other industry commenters asked the Board to clarify that disclosures

required by § 226.39 may be combined with other materials or disclosures, including notices of mortgage servicing transfers required by RESPA, 12 U.S.C. 2601 *et seq.*

Final Rule

The final rule clarifies that the disclosures required by § 226.39 must be provided clearly and conspicuously in writing, in a form that the consumer may keep. Consistent with the standard that applies to other disclosures under Regulation Z, the disclosures also 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.* The final rule also clarifies that the disclosures under § 226.39 can be combined with other materials or disclosures, including the transfer of servicing notices required by RESPA so long as the combined disclosure satisfies the timing and other requirements in § 226.39.

Consistent with the interim rule, the final rule allows a covered person to provide notice to any consumer primarily liable on the obligation. Because § 226.39 applies to loans secured by the consumer's principal dwelling, additional copies sent to multiple obligors would typically be delivered to the same address, and would not significantly enhance consumer protection. Requiring covered persons to also deliver the disclosures to non-obligors who may be entitled to rescind would create operational difficulties because the party acquiring the loan would not necessarily know which parties other than the obligor had an interest in the property and a right to rescind at the time the credit was initially extended.

Section 404(a) requires that disclosures be provided "not later than 30 days after the date on which the mortgage loan is sold or otherwise transferred or assigned to a third party." Public Law 111–22, 123 Stat. 1632. The interim rule refers to the date of transfer as the "acquisition date" which is defined in the interim rule as "the date of acquisition recognized in the books and records of the acquiring party." The Board recognizes that different entities may use different accounting methods so that the date of transfer on the transferor's books might differ from the date of acquisition on the purchaser's books. To facilitate compliance, the final rule has been revised to clarify that the disclosures must be provided on or before the 30th day following the "date of transfer" which may be either the acquisition date recognized by the transferee, or the date recognized by the transferor. Similarly, either date may be stated on the disclosure as the date of transfer.

Multiple transfers. Like the interim rule, § 226.39(b)(4) of the final rule provides that, if a mortgage loan is acquired by one covered person and subsequently transferred to another covered person, a single disclosure may be provided on behalf of both covered persons if the disclosure satisfies the timing and content requirements applicable to each covered person. For example, if a covered person acquires a loan on March 15 with the intent to assign it to another entity on April 30, the covered person could mail a single disclosure on or before April 14, providing information for both entities, and indicating when the subsequent transfer is expected to occur. No comments were received on this aspect of the rule.

The Board recognizes, however, that in this circumstance, the exact date of a subsequent transfer may not be known at the time the disclosure is provided. Consistent with the standard in current § 226.31(d)(2), the date on which one covered person expects to transfer the loan to another covered person may be estimated when the exact information is unknown at the time the disclosure is made. Comment 39(b)(4)–2 has been added for clarification. The comment further states that information is unknown if it is not reasonably available to the covered person at the time the disclosure is made. The "reasonably available" standard requires that the covered person, acting in good faith, exercise due diligence in obtaining information. The commentary provides that a covered person normally may rely on the representations of other parties in obtaining information, and may make the disclosure using an estimated date based on information known at the time the disclosure is made, even though more precise information will be available at a later date. For example, if the covered person acquires the loan on March 15, a disclosure may be provided on April 1 stating that the loan will be assigned to another entity "on or around" April 30, even if the covered person expects to obtain information before April 14 about the expected transfer date.

Comment 39(b)(4)–3 clarifies that even if one covered person provides the disclosures for another, each person has a duty to ensure that disclosures related to its acquisition are accurate and provided in a timely manner unless an exception in § 226.39(c) applies.

Multiple covered persons. Comment 39(b)(5)–1 in the final rule clarifies that multiple covered persons who jointly acquire the loan in a single transaction must provide a single disclosure that satisfies the timing requirements for each person. If multiple covered persons jointly acquire the loan and complete the acquisition on separate dates, a single disclosure must be provided on behalf of all persons on or before the 30th calendar day following the earliest acquisition date.

Comment 39(b)(5)–2 further clarifies that if multiple covered persons each acquire a partial interest in the loan in separate and unrelated agreements and not jointly, each covered person has a duty to ensure that disclosures related to its acquisition are accurate and provided in a timely manner, unless an exception in § 226.39(c) applies. The parties may, but are not required to, provide a single disclosure that satisfies the timing and content requirements applicable to each covered person. Comment 39(b)(5)–3 clarifies that a single disclosure provided on behalf of multiple covered persons must satisfy the timing and content requirements applicable to each covered person unless an exception in § 226.39(c) applies. Comment 39(b)(5)–4 provides that even though one person provides the disclosures for another covered person, each has a duty to ensure that disclosures related to its acquisition are accurate and provided in a timely manner unless an exception in § 226.39(c) applies.

39(c) Exceptions

Interim Rule

Section 226.39(c) of the interim rule contains two exceptions to the disclosure requirements. Under § 226.39(c)(1), a covered person need not provide the disclosures if it transfers or assigns the loan to another party on or before the 30th calendar date following the date that it acquired the loan. This provision was adopted pursuant to the Board's authority to make exceptions and exemptions under TILA Sections 105(a) and 105(f). 15 U.S.C. 1604(a), 1604(f). For example, if a mortgage loan is originated on March 1 and the original creditor sells the loan to a covered person on March 15, the covered person would not be required to provide the disclosures if the loan is subsequently sold to a third party on or before April 14 under this exception.

The Board stated in the interim rule that this exception is necessary and proper to effectuate the purposes of Section 404(a) and to facilitate compliance. This exception seeks to

prevent the confusion that could result if consumers receive outdated contact information for parties that no longer own their loans. After origination, a loan might be assigned to one or more entities for only a few days before it is transferred to an entity that will hold it for a much longer time period. The disclosures sent by temporary holders would provide information that most consumers are unlikely to need or use. Moreover, the disclosures from temporary holders could create information overload for many consumers and hinder their ability to determine which party should be contacted to address a concern. Thus, the Board adopted the exception in § 226.39(c)(1) pursuant to TILA Section 105(a) to effectuate TILA's purposes and facilitate compliance.

The Board also considered the relevant statutory factors in TILA Section 105(f). The Board found that use of Section 105(f) is appropriate because the disclosure of ownership interests that are held less than 30 days would not provide a meaningful benefit to consumers in the form of useful information or consumer protection. Requiring temporary holders to provide the disclosures would complicate compliance and impose unnecessary burden and expense that would not be outweighed by the benefits to consumers.[2]

Section 226.39(c)(2) of the interim rule contains a second exception to the disclosure requirements of § 226.39. In some cases, the original creditor or owner of the mortgage loan may sell or transfer the legal title to the loan to a third party to secure business financing. This is generally done in connection with a repurchase agreement that obligates the original creditor or owner to repurchase the loan. Under § 226.39(c)(2) of the interim rule, if the original creditor or owner has a repurchase obligation and does not recognize the transaction as a sale of the loan on its books and records, the acquiring party is not subject to the disclosure requirements of § 226.39. However, if the transferor does not repurchase the mortgage loan, the acquiring party must make the disclosures required by § 226.39 within 30 days after the date that the transaction is recognized as an acquisition on its books and records.

This exception was adopted pursuant to the Board's authority in TILA Sections 105(a) and 105(f). As with the exception in § 226.39(c)(1), the exception for transfers subject to a repurchase agreement in § 226.39(c)(2) was intended to prevent consumer confusion that could arise from the receipt of outdated disclosures. The Board found that requiring disclosures for these transactions would not provide a meaningful benefit to consumers in the form of useful information or protection. Without an exemption for these transactions, consumers would receive two notices: One at the time legal title in the loan is transferred, and another when the loan is repurchased shortly after. Thus, the disclosure of transfers subject to repurchase agreements would complicate compliance and impose unnecessary burden and expense for covered persons that would not be outweighed by the benefits to consumers.

Public Comment

The Board requested comment on whether the exemption in § 226.39(c)(1) is appropriate and whether a 30-day period should be shorter or longer. Consumer group commenters stated that the 30-day exception is appropriate so long as the subsequent owners are required to disclose information about any prior owner who did not provide the disclosure. These commenters suggested that the final rule clarify that each covered person must disclose a full chain of title so that all transfers of ownership throughout the history of the loan are listed in each disclosure. Consumer advocates also stated that, if the 30-day period is lengthened in the final rule, the rule should provide that (1) no foreclosure action is permitted without first providing information to the consumer about the current holder of the note and mortgage, and (2) no foreclosure action is permitted in the name of a party that no longer owns the loan.

Industry commenters generally supported the exception in § 226.39(c)(1). Several industry commenters stated that a 30-day period is too short because it fails to capture many short-term acquisitions that may be finalized shortly after the 30th day. These commenters requested that 30 days be changed to at least 60 days and preferably 90 days, so that a covered person that transfers or assigns the loan to another party on or before the 60th or 90th day would not be required to deliver the disclosures. A few industry commenters stated that listing all previous owners in every disclosure would increase the risk of consumers contacting an incorrect party that no longer owns their loan.

The Board also requested comment on whether the exception in § 226.39(c)(2) for transfers that are subject to a repurchase agreement is appropriate. Consumer group commenters opposed the exception. They believe that a disclosures should be provided with the initial transfer and a second disclosure should be provided when the transferor repurchases the loan. One industry trade association asked the Board to clarify that loans transferred under a repurchase agreement are exempt from the disclosure requirements under § 226.39 regardless of how the loan is recognized on the seller's books and records because the acquiring party may not have that information. One industry commenter stated that the exception for repurchase agreements in § 226.39(c)(2) of the interim rule is too narrow. This commenter suggested that the final rule clarify that the exception applies even if the loan is acquired from an intermediary as long as the prior holder is obligated to repurchase the loan. According to the commenter, this set of transactions usually takes between 5 days and 90 days to complete, during which time the original creditor continues to recognize the loan on its books and records.

A law firm that represents secondary market participants urged the Board to exempt certain short-term acquisitions even if they are not subject to a repurchase agreement. This commenter stated that under some financing arrangements, the acquiring party enters into a commitment to acquire the loan, then aggregate it with other loans, and subsequently transfer a pool of mortgage loans to a third party. However, the acquiring party's commitment to transfer the loans it acquires to a third party does not apply to any particular mortgage loan; rather, it applies to the type of loan described in the purchase agreement. Because the transfer to the third party might take longer than 30 days, the acquiring party cannot rely on the exception in § 226.39(c)(1) for these transactions. The commenter suggested that the final rule should exempt these kinds of transfers from the disclosure requirements of § 226.39, or, alternatively, expand the exception in

[2] In exercising its exemption authority under Section 105(f), Board must determine whether coverage of such transactions provides a meaningful benefit to consumers in light of specific factors. 15 U.S.C. 1604(f)(2). These factors, which the Board has reviewed, are (1) The amount of the loan and whether the disclosure provides a benefit to consumers who are parties to the transaction involving a loan of such amount; (2) the extent to which the requirement complicates, hinders, or makes more expensive the credit process; (3) the status of the borrower, including any related financial arrangements of the borrower, the financial sophistication of the borrower relative to the type of transaction, and the importance to the borrower of the credit, related supporting property, and coverage under TILA; (4) whether the loan is secured by the principal residence of the borrower; and (5) whether the exemption would undermine the goal of consumer protection.

§ 226.39(c)(1) from 30 to 60 days to accommodate these transactions.

Several industry commenters requested additional exceptions. A credit union and a credit union trade association suggested that the final rule should exempt transfers of partial ownership interests to multiple covered persons in accordance with participation agreements. According to one commenter, the originating credit union retains at least ten percent of the interest in the underlying loan, and the participants generally designate a single agent to handle all matters concerning the consumer's inquiries about the loan, including rescission and modification. For example, if the consumer sends a notice of rescission to the appointed agent, the notice is deemed to be received by all participants. These commenters suggested that disclosures under § 226.39 should not be required if the originating entity retains an interest in the underlying loan, and the agent does not change as a result of the transfer. These commenters also stated that consumers may be confused by a disclosure stating that a portion of their loan has been transferred to one or more entities when the originating creditor still holds a partial interest and the agent has not changed.

One industry commenter requested that the Board exempt the assignment of a mortgage loan that is initiated by the consumer in connection with a refinancing by the assignee. This commenter explained that in some states, the refinancing lender may purchase the existing mortgage loan and enter into a modification agreement with the consumer to avoid certain costs associated with a new extension of credit. In this commenter's view, since the consumer initiated the transaction with the assignee and receives the disclosures from the new lender at closing, it may confuse the consumer to receive another set of disclosures within 30 days after the loan is modified. The commenter also expressed concerns about the unnecessary cost and burden of the additional disclosures.

Final Rule

The final rule retains the exceptions in § 226.39(c)(1) and (2) of the interim rule and also provides an additional exception which is contained in new § 226.39(c)(3). With respect to § 226.39(c)(1), the Board has retained the exception for covered persons that do not hold a loan for more than 30 calendar days after acquiring it. The Board recognizes that under some short-term financing arrangements, the covered persons may acquire the loan only temporarily, but for a period that exceeds 30 days. However, the Board believes that lengthening the 30-day period would undermine the legislative purpose. A 60-day exemption would cause some parties to wait up to 60 days before determining whether to make the disclosure for a particular loan or claim an exemption. The exemption contained in the final rule is consistent with the legislative intent that consumers receive the disclosure within 30 days after a transfer occurs, while eliminating disclosures from parties that no longer own the loan.

Comment 39(c)(1)–1 has been revised to clarify that a covered person is not required to provide the disclosures required under § 226.39 if it sells, transfers or assigns all of its interest in the mortgage loan on or before the 30th calendar day following the date that it acquired the mortgage loan. Comment 39(c)(1)–2 has been added in the final rule to address transfers of a partial interest in the mortgage loan. It clarifies that a covered person that transfers only a partial interest in the loan on or before the 30th calendar day following the date that it acquired the loan must comply with the disclosure requirements so long as it retains a partial interest in the loan on the 30th day.

The final rule does not require a covered person to disclose information about former holders of legal title. The Board is concerned that a disclosure reflecting the full chain of ownership would be complex and could create unnecessary confusion for consumers trying to determine what party to contact about their loan. Moreover, such a requirement would impose a duty on a covered person to verify the identity of all prior owners or risk liability for providing an incorrect disclosure. It is unclear whether assignees would routinely have access to this information within their own records.

The final rule also retains the exception in § 226.39(c)(2) of the interim rule which covers transfers subject to a repurchase agreement. However, in response to commenters' requests, the final rule does not require the transferor who is obligated to repurchase the loan to continue to recognize the loan as an asset on its books and records. While most repurchase arrangements are structured so that the transferor does not recognize the sale of the asset on its books and records, the Board recognizes that the acquiring party may not know how the transferor treats the asset on its books. Under the final rule, if the original owner does not repurchase the loan, the acquiring party must provide the disclosures within 30 calendar days after it recognizes the loan as an asset on its own the books and records.

The final rule has been modified to address a concern raised by one commenter about transactions involving intermediaries. Comment 39(c)(2)–2 is added to the final rule to clarify that the exception for transfers subject to a repurchase agreement applies even when the covered person acquires the loan from an intermediary party who is not the party obligated to repurchase the loan.

Consumer group commenters asked the Board to require disclosures when a loan is transferred subject to a repurchase agreement and when the repurchase occurs. The Board believes that the disclosure of all transfers subject to repurchase agreements would impose unnecessary burden and expense for covered persons that would not be outweighed by the benefits to consumers.

The final rule does not exempt short-term acquisitions for longer than 30 days that are not subject to a repurchase agreement, as requested by one commenter. These financing arrangements differ from repurchase arrangements in that the original creditor is under no obligation to repurchase the loan. Moreover, the specific loan is not subject to a purchase commitment even though it may be the type of loan described in the purchase agreement. The Board does not believe that a covered person should be exempt from the disclosure requirements if the transferor is not obligated to repurchase the loan. In addition, compliance with the exemption requested by the commenter would be difficult to enforce because the individual loan covered by the exception is not subject to a specific repurchase agreement by any other party.

The final rule includes an additional exception designated as § 226.39(c)(3), which was not included in the interim rule, in response to commenters' requests to exempt covered persons that acquire partial interests in the loan. The exemption in § 226.39(c)(3) applies to a covered person that acquires only a partial interest in the loan if the party authorized to receive the consumer's notice of the right to rescind and resolve issues concerning the consumer's payments on the loan does not change as a result of the transfer. This exception is adopted pursuant to the Board's authority in TILA Sections 105(a) and 105(f). As with the exceptions in § 226.39(c)(1) and (2), the exception for transfers of a partial interest in § 226.39(c)(3) is intended to prevent consumer confusion that could arise from the receipt of multiple disclosures.

The Board believes that Section 105(f) is appropriate for the exception in § 226.39(c)(3) because the disclosure of a partial ownership interest would not provide a meaningful benefit to consumers in the form of useful information or consumer protection. Requiring such disclosures would complicate compliance and impose unnecessary burden and expense that would not be outweighed by the benefits to consumers. The legislative history reflects that the statute was intended to ensure that consumers know the identity of the party they can contact to rescind or seek to modify the loan terms. The Board believes that the exception in § 226.39(c)(3) will not undermine the legislative purpose of Section 404(a) so long as the transfer of a partial interest does not result in a change for these purposes. The Board believes that disclosures regarding transfers of partial interests could create consumer confusion. However, if as a result of the transfer of a partial interest in the loan, a different agent or party is authorized to receive the rescission notice and resolve issues concerning the consumer's payments, the disclosures under § 226.39 must be provided. Comment 39(c)(3)–2 is added to the final rule to provide examples of when disclosures would be required in connection with a transfer of a partial interest in the loan.

The final rule does not provide an exception for transfers initiated by consumers who seek to refinance their mortgage loans. A covered person's compliance with such a rule would be difficult to determine because it would depends on a case by case factual determination. To ease the compliance burden, the covered person has the option to provide the disclosures required by § 226.39 along with other disclosures at the time of refinancing instead of 30 days later.

39(d) Content of Required Disclosures

Section 226.39(d) of the interim rule sets forth the contents of the disclosure that must be provided under this section. The disclosures must identify the loan that was acquired or transferred and, consistent with the statute, contain the following: (1) The identity, address, and telephone number of the covered person that owns the mortgage loan; (2) the date of the acquisition or transfer; (3) contact information that the consumer can use to reach an agent or party having authority to act on behalf of the covered person; (4) the location of the place where the transfer of the ownership of the debt is recorded.

Identifying the Loan

Interim rule. Under the interim rule, the disclosures required by § 226.39 must identify the loan that was acquired or transferred. The interim rule provides flexibility for covered persons to determine what information to provide for this purpose. For example, the covered person may identify the loan by stating the address of the mortgaged property along with the account number or other identification number previously known to the consumer, which may appear in a truncated format. The covered person might instead identify the loan by specifying the date on which the credit was extended and the original amount of the loan or credit line.

Public comment. One industry commentator stated that providing the account number alone should be sufficient for consumers to identify the loan, and would reduce the risk of mailing sensitive information. The commentator suggested that the final rule should clarify that the account number alone (or other identifying information already provided to the consumer) is adequate to identify the loan.

Final rule. To provide flexibility and ease compliance while protecting consumer's confidential information, the final rule provides that a covered person may use any information that would reasonably inform a consumer which loan was acquired or transferred. Comment 39(d)–1 in the interim rule has been retained and provides examples that are merely illustrations, including that the covered person may identify the loan by stating the address of the mortgages property along with the account number, or just the loan number previously disclosed to the consumer.

Name, Address, and Telephone Number of Covered Person

Interim rule. Section 226.39(d)(1) implements the requirement that covered persons provide their name, address and telephone number. Under the interim rule, the party identified must be a covered person who owns the mortgage loan, regardless of whether another party services the loan or is the covered person's agent. The covered person has the option of also providing an electronic mail address or internet Web site address but is not required to do so. Section 226.39(d)(1) provides that if there is more than one covered person, the required information must be provided for each person.

Public comment. The Board specifically solicited comments on whether the identification of multiple parties might confuse consumers and whether the final rule should limit the number of covered persons identified. One industry commenter asserted that providing information for multiple covered persons would confuse consumers, and that the disclosure should contain only the address and telephone number of one covered person authorized to receive payments and handle questions about the loan.

Final rule. Like the interim rule, the final rule requires covered persons to state their name, address and telephone number on the disclosure. Under § 226.39(b)(4) in the final rule, if a mortgage loan is acquired by a covered person and subsequently transferred to another covered person, a single disclosure may be provided on behalf of both persons so long as the disclosure satisfies the timing and content requirements applicable to each person. Section 226.39(d)(1) of the final rule specifies that a single disclosure provided for multiple transfers must state the name, address, and telephone number of each covered person.

Section 226.39(b)(5) of the final rule provides that, if multiple covered persons jointly acquire the loan, a single disclosure must be provided on behalf of all covered persons. Section 226.39(d)(1) of the final rule provides that the single disclosure must provide the name, address and telephone number of each covered person unless one of the covered persons has been authorized in accordance with § 226.39(d)(3) to receive the consumer's notice of the right to rescind and to resolve issues concerning the consumer's payments on the loan. In that case, the disclosure may state the name, address and telephone number only for that covered persons.

The Board recognizes that transfers occur under a variety of circumstances and, in case of multiple covered persons, it may not always be clear which covered person should be identified to best effectuate the legislative goal, particularly if none of them serves as agent or servicer. Based on comments received, it is the Board's understanding that most transfers of partial interests to multiple parties in a joint acquisition generally involve a transfer to a single entity created specifically to facilitate the transaction. In that case, only the name of that single entity that acquires legal title to the loan may be shown as the owner on the disclosure. However, to the extent that partial interests in the loan are held by multiple persons that jointly acquire the loan, the name, address and telephone

number of each covered person must be provided on the disclosure.

Providing contact information for multiple covered persons when there are multiple transactions under § 226.39(b)(4) should not create confusion because disclosure of the date of transfer for each covered person should clarify which covered party currently owns the loan. The final rule also provides additional flexibility when multiple covered persons that jointly acquire the loan are identified under § 226.39(b)(5). Section 226.39(d)(1) of the final rule has been revised so that contact information need only be provided for one covered person if that person is also authorized in accordance with § 226.39(d)(3) to receive the rescission notice and resolve issues concerning the consumer's payments on the loan. If no covered person is authorized for these purposes, the disclosure must state the name, address and telephone number for all covered persons.

Similarly, comment 39(d)(1)(ii)–2 has been added to clarify that if multiple covered persons acquire partial interests in the loan in separate transactions and not jointly, each covered person has to comply with the disclosure requirements under § 226.39 by providing its name, address and telephone number.

Acquisition Date

Interim rule. Section 226.39(d)(2) in the interim rule requires disclosure of the date that the covered person acquired the loan, which is "the date of acquisition recognized in the books and records of the acquiring party."

Public comment. One industry commenter noted that the date of acquisition on the purchaser's books may not be same date recognized on the transferor's books. This commenter requested that the purchaser be permitted to disclose either the acquisition date recognized on the purchaser's books or the date recognized on the transferor's books.

Final rule. To facilitate compliance, the final rule permits a covered person to disclose either the date of acquisition recognized in the books and records of the acquiring party, or the date of transfer recognized in the books and records of the transferring party, as discussed above. The date disclosed in the notice would also be used to determine if the disclosure was provided in a timely manner.

Agent's Contact Information

Interim rule. Under § 226.39(d)(3), a covered person must identify and provide contact information for the agent or party having authority to act on behalf of the covered person. Under the interim rule, the disclosure must identify one or more persons who are authorized to receive legal notices on behalf of the covered person and resolve issues concerning the consumer's payments on the loan. However, contact information for an agent is not required under § 226.39(d)(3) if the consumer can use the information for the covered persons provided under paragraph § 226.39(d)(1) for these purposes. The interim rule does not require that a covered person designate an agent or other party, but merely requires that contact information be disclosed when there is such an agent, so that consumers can direct their inquiries to the appropriate party.

The interim rule also recognizes that separate entities may be authorized by the owner of the loan to act on its behalf for different purposes. The interim rule requires a covered person to identify the party authorized to receive legal notices to ensure that consumers have sufficient information to assert legal claims, including a right to rescind the loan, if applicable. If the covered person appoints a different agent to resolve loan servicing issues, contact information must be provided for each agent, and the disclosure must state the extent to which the authority of each agent differs. For example, the disclosure should indicate if only one of the agents is authorized to receive legal notices or only one is authorized to resolve issues concerning payments.

Under the interim rule, a covered person may comply with § 226.39(d)(3) by providing only the name and telephone number of the agent or authorized party if the consumer can use the telephone number to obtain that party's address. Comment was solicited on whether the rule should require that the address be included in the disclosure.

Public comment. Consumer group commenters stated that the agent's address should be required in the disclosure because borrowers may mistakenly use the telephone number to rescind, which must be done in writing. They also requested that the Board require more information to be disclosed about the consumer's right to file qualified written requests under RESPA.

Several industry groups stated that the requirement to identify an agent or person authorized to receive "legal notice" is too vague, and noted that the rules for serving legal process vary by type of action and jurisdiction. They asserted that the general reference to "legal notice" would create compliance difficulties.

Several industry commenters stated that disclosing multiple contacts for different purposes would increase the risk that consumers may contact the wrong party. One industry commenter suggested that the Board require the identification of an agent or person authorized to receive "rescission and modification requests," and, if no such person has been authorized, the owner should be required to state that such requests should be directed to the owner. Another industry commenter was concerned that covered persons would be required to list all agents, and noted that the statute does not reference rescission claims.

Final rule. The final rule is revised to require a covered person to provide the name, address and telephone number for the agent or other party having authority to receive a rescission notice and resolve issues concerning the consumer's payments on the loan. Section 226.39(d)(3) does not require a covered person to list contact information for an agent or other party if the consumer can use the covered person's contact information for these purposes. If multiple agents are listed on the disclosure, the disclosure must state which one is authorized to receive the rescission notice and which one is authorized to resolve issues concerning the consumer's payments on the loan. The Board is requiring that the agent's address be included on the disclosure to avoid consumer confusion about the need to provide a written notice regarding rescission.

To facilitate compliance and simplify the disclosure, comment 39(d)(3)–1 provides that, if an agent or other party is authorized to receive the rescission notice and resolve issues concerning the consumer's payments on the loan, the disclosure need only state that the consumer may contact that agent regarding any questions concerning consumer's account without specifically mentioning rescission or payment issues.

Recording Location

Interim rule. Section 404(a) and the interim rule require that the disclosure state the location of the place where the transfer of ownership of the debt is recorded. When a mortgage loan is sold, however, the transfer in ownership of the debt instrument typically is not recorded in public records. The new owner's security interest in the property that secures the debt may or may not be recorded in the public land records or, if it is recorded, it may not yet be

recorded at the time the disclosure is sent.

Under the interim rule, if the transfer of ownership has not been recorded in public records at the time the disclosure is provided, the covered person can comply with the rule by stating this fact. Whether or not the transfer of ownership has been recorded in public records at the time the disclosure is made, the disclosure may state that the transfer "is or may be recorded" at the specified location. A covered person is not required to provide the postal address for the governmental office where the covered person's ownership interest is recorded or the name of the jurisdiction where the property is located. For example, under the interim rule it is sufficient to disclose that the transaction is or may be recorded in the office of public land records or the recorder of deeds office "for the county or local jurisdiction where the property is located."

Under the interim rule, the covered person also has the option of disclosing the location where the covered person's security interest in the property is or may be recorded. In light of the fact that the transfer in ownership of the debt instrument usually is not recorded in public records, the Board specifically solicited comment on whether disclosure of the location where the security interest is recorded should be required.

Public comment. Consumer group commenters generally supported the approach in the interim rule, and asked the Board to require disclosure of the location where the security interest is filed. One industry trade association commented that requiring a disclosure regarding the filing of the security interest would impose considerable burden and cost, and stated that the disclosure required by the interim rule is sufficient. Another industry trade association agreed that most borrowers are already aware of the location where the security interest is recorded, and requiring a more specific disclosure would place considerable burden on the industry since most loan servicers do not have easy access to this information in their servicing systems.

Final rule. The final rule is substantially the same as the interim rule, with some modifications for clarity. Section 226.39(d)(4) requires the covered person to disclose where transfer of ownership of the debt to the covered person is or may be recorded, or, alternatively, that the transfer of ownership has not been recorded in public records at the time the disclosure is provided. Comment 39(d)(4)–1 clarifies that the disclosure may state that the transfer of ownership of the debt has not been recorded in public records at the time the disclosure is provided, if that is the case, or that it is or may be recorded in the office of public land records or the recorder of deeds office for the county or local jurisdiction where the property is located.

As stated in the interim rule, the Board believes that § 226.39(d)(4) appropriately addresses the operational issues regarding the land recording process and provides the necessary flexibility for compliance purposes without impairing the legislative purpose. The Board adopted this approach after considering the relative costs and benefits of requiring that the disclosure provide more detailed information. Industry representatives stated that this information may not be readily accessible to the acquiring party. A requirement to provide the name and address of the governmental office would require parties that provide such notices to develop and maintain a system for matching the property address to the correct governmental office, and keeping the database up to date with correct address information. The Board does not believe that this would provide substantial benefit to consumers because they presumably know the county or jurisdiction in which the property is located and can easily obtain the address of the governmental office from public directories or other sources.

39(e) Optional disclosures

Interim Rule

Section 226.39(e) of the interim rule states that a covered person may, at its option, provide with the disclosures "any other relevant information" regarding the transaction. For example, the covered person may choose to inform consumers that the location where they should send mortgage payments has not changed. The Board solicited comment on whether the rule should include any additional disclosure requirements.

Public Comment

Two industry trade associations requested the Board to specify in the final rule that the disclosure requirements may include a statement requiring the consumer to contact only the authorized agent, such as the servicer, rather than the covered party. These commenters expressed concerns that consumers may seek to contact a covered person that invests in the loan but does not have the capacity to handle consumer inquiries

Final Rule

Consistent with the statute and the interim rule, the final rule permits covered persons, in their sole discretion, to include additional information that they might deem relevant or helpful to consumers. The Board believes that it would be inconsistent with the statutory goal to permit covered persons to disclose that the consumer is not permitted to use the contact information provided for the covered person.

V. Final Regulatory Flexibility Analysis

In accordance with Section 4 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* the Board is publishing a final regulatory flexibility analysis for the final rule. The RFA generally requires an agency to assess the impact a rule is expected to have on small entities.[3] However, under Section 605(b) of the RFA, 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under Section 604 of the RFA is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and stated the factual basis for such certification.

The Board continues to believe that this final rule will not have a significant economic impact on a substantial number of small entities. The final rule is narrowly designed to implement the statutory amendments to TILA made by Section 404(a) of the 2009 Act. Covered persons, including small entities, had to comply with Section 404(a) immediately upon its enactment on May 20, 2009, whether or not the Board amends Regulation Z to conform the regulation to the statute. The Board's final rule is intended to provide guidance to persons covered by the rule on how to interpret and comply with the statutory requirements, and to ensure that consumers receive meaningful notices consistent with the legislative goal.

A. Reasons for the Final Rule

As indicated above, the 2009 Act was signed into law on May 20, 2009. Section 404(a) amended TILA to establish a new requirement for notifying consumers of the sale, assignment, or other transfer of their mortgage loans. This requirement

[3] Under standards the U.S. Small Business Administration sets (SBA), an entity is considered "small" if it had $175 million or less in assets for banks and other depository institutions; and $6.5 million or less in revenues for non-bank mortgage lenders, mortgage brokers, and loan servicers. U.S. Small Business Administration, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, available at *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

became effective immediately upon enactment on May 20, 2009, and did not require the issuance of implementing regulations.

Congress enacted TILA based on findings that economic stability would be enhanced and competition among consumer credit providers would be strengthened by the informed use of credit resulting from consumers' awareness of the cost of credit. One of the stated purposes of TILA is to provide meaningful disclosure of credit terms to enable consumers to compare credit terms available in the marketplace more readily and avoid the uninformed use of credit.

B. Summary of the 2009 Act

As described previously, the purchaser or assignee that acquires a loan must provide the required disclosures no later than 30 days after the date on which the loan is acquired. Section 226.39(c) of the rule provides an exception if the covered person transfers or assigns the loan to another party on or before that date. Section 226.39(d) sets forth the content of the disclosure. Consistent with the statute, the final rule requires that the disclosure contain the following: (1) The name, address, and telephone number of the covered person who owns the mortgage loan; (2) the date of transfer; (3) the name, address and telephone number of an agent or other party authorized to act on behalf of the owner; and (4) where the transfer of ownership of the debt is or may be recorded.

C. Statement of Objectives and Legal Basis

The **SUPPLEMENTARY INFORMATION** sets forth the objectives and the legal basis for the final rule. The legal basis for the final rule is in TILA Sections 105(a), 105(f). 15 U.S.C. 1604(a), 1604(f). A more detailed discussion of the Board's rulemaking authority is set forth in the **SUPPLEMENTARY INFORMATION**.

D. Description of Small Entities to Which the Final Rule Applies

The final rule applies to all persons that acquire more than one existing mortgage loan in any 12-month period, other than servicers that take title solely as an administrative convenience to enable them to service the loans. The Board cannot identify with certainty the number of small entities that meet this definition. The Board can estimate, however, approximate numbers of small entities that purchase mortgage loans, as discussed below.

The Board can identify through data from Reports of Condition and Income ("call reports") approximate numbers of small depository institutions that would be subject to the final rules if they acquire more than one mortgage loan in a 12-month period. Based on March 2010 call report data, approximately 8,845 small institutions would be subject to the final rule. Approximately 15,658 depository institutions in the United States filed call report data, approximately 11,148 of which had total domestic assets of $175 million or less and thus were considered small entities for purposes of the Regulatory Flexibility Act. Of 3,898 banks, 523 thrifts and 6,727 credit unions that filed call report data and were considered small entities, 3,776 banks, 496 thrifts, and 4,573 credit unions, totaling 8,845 institutions, extended mortgage credit. For purposes of this analysis, thrifts include savings banks, savings and loan entities, co-operative banks and industrial banks.

The Board cannot identify with certainty the number of small non-depository institutions because they do not file call reports. Neither can the Board determine with certainty how many of the 11,148 institutions identified above as small entities acquired mortgage loans in 2009. Although an estimated 8,845 such institutions extended mortgage credit, the Board recognizes that not all entities that extend mortgage credit also acquire existing mortgage loans. Moreover, the reverse is also true: There are entities that acquire existing mortgage loans but do not extend mortgage credit.

The Board has another source of information, data obtained under the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. 2801 *et seq.;* 12 CFR part 203. Based on loan purchases reported for 2008 under HMDA, the Board estimates that 553 of the reporting institutions engaged in more than one mortgage acquisition. The 8,388 lenders covered by HMDA in 2008 accounted for the majority, but not all, of the home lending in the United States. Accordingly, the 553 institutions that reported loan purchases in 2008 probably do not represent all mortgage acquirers; institutions must report loan purchases only if they are required to report under HMDA based on loan originations and assets. Nevertheless, the Board's experience has been that the HMDA data are reasonably representative of the whole mortgage market.

A total of 2,921,684 loan purchases were reported under HMDA in 2008 by entities reporting more than one purchase (and thus subject to the final rule). Of those loan purchases, 2,773,918 were reported by depository institutions. Of those depository institution loan purchases, 2,122,288 (76.5%) were reported by large depository institutions (assets greater than $175 million), and 651,630 (23.5%) were reported by small depository institutions (assets of $175 million or less). Of the 553 HMDA reporters reporting more than one loan purchase, 502 were depository institutions. Of those 502 depository institutions, 387 (77.1%) were large and 115 (22.9%) were small. Those 115 small depository institutions represent just slightly less than one percent (0.97%) of the 11,907 total small institutions estimated above from call report data.

A total of 147,766 loan purchases were reported under HMDA by non-depository institutions that reported more than one loan purchase in 2008. The Board cannot tell from the HMDA data how many of those loan purchases were reported by small entities. Neither can the Board tell how many of the 51 non-depository institutions that reported those loan purchases are small entities. If the relative shares of small entities among small and large non-depository institutions do not differ significantly from those among depository institutions, however, the shares for non-depository institutions can be estimated. On that basis, the Board estimates that 12 small non-depository institutions reported 34,725 loan purchases and that 39 large non-depository institutions reported 113,041 loan purchases (estimates are rounded to whole numbers).

Using the foregoing numbers from 2008 HMDA data for depository institutions and the foregoing estimates for non-depository institutions, the Board estimates the following numbers for all entities reporting under HMDA combined: Of the 2,921,684 loan purchases reported by 553 entities reporting more than one purchase, 2,235,329 (76.5%) were reported by 426 large entities (77%), and 686,355 (23.5%) were reported by 127 small entities (23%). Based on these estimates, less than one-quarter of the institutions reporting covered loan purchases under HMDA were small entities, and less than one-quarter of the covered loan purchases reported were reported by small entities.

The foregoing data are not complete in many respects. Not all depository institutions that file call reports are reporters under HMDA, and not all HMDA reporters file call reports. Further, some unknown number of entities purchase more than one mortgage loan in any 12-month period and yet file neither call reports nor HMDA data; how many of those are small entities also is unknown.

Nevertheless, if one assumes that the existing data are reasonably representative of the market as a whole, they present an overall picture of minimal economic impact on small entities. For all these reasons, the Board believes that the final rule will not have a significant economic impact on a substantial number of small entities.

E. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The compliance requirements of the final rules are described in the **SUPPLEMENTARY INFORMATION**. As indicated above, the Board is adopting a new disclosure rule requiring that consumers receive notice when ownership of their mortgage loan is transferred. The Board is aware that numerous covered persons are already complying with these statutory provisions, which became effective on May 20, 2009. Therefore the additional burden imposed by the Board's rule itself is likely to be minimal. Furthermore, the information required to be provided is easily obtainable by covered persons. The covered person must provide contact information for itself and any agent (but is not required to designate an agent), may use the acquisition date on its own books and records, and may generally describe the location where the covered person's interest in the property securing the mortgage loan is or may be recorded. This information generally is already required by the statute.

Based on informal surveys of industry representatives and practices in effect, the Board understands that entities are likely to designate servicers as their agents. Servicers already respond to consumer requests on the behalf of covered persons. Therefore, other than providing the disclosure itself, covered persons (including those who are small entities) are not likely to incur significant burden in responding to consumer requests. Furthermore, the Board has provided an exception to the rule for mortgage owners who do not hold the loan more than 30 days. The Board believes that this exception balances the needs of consumers for information with the burdens on industry of compliance and the potential for confusion to consumers of receiving multiple disclosures.

F. Other Federal Rules

The Board has not identified other rules that conflict with the final rule. As indicated previously, under RESPA and HUD's Regulation X, consumers must be notified when the servicer of their mortgage loan has changed. Therefore, the disclosure of contact information for the agent of the owner of the mortgage loan, typically the servicer under applicable agreements, is already generally required by law. As a result of existing requirements, servicers must disclose their contact information and are subject to consumer calls regarding administration of payment information.

G. Significant Alternatives to the Final Rule

As noted above, the final rule implements the statutory requirements of the 2009 Act that were effective on May 20, 2009. The Board has implemented these requirements to minimize burden while retaining benefits to consumers. The Board was not required to issue rules but has decided that rules are needed to clarify who is subject to the requirements and what information must be disclosed, and to ensure that consumers receive disclosures of ownership that are consistent with legislative objectives. The Board did not receive comment on any significant alternatives that would minimize the impact of the final rule on small entities.

VI. Effective Date

This final rule will become effective on October 25, 2010, however, compliance with the final rule will not become mandatory until January 1, 2011. Prior to the mandatory compliance date, covered persons continue to be subject to the statutory requirements but have the option to comply with either the interim rule or this final rule. This should facilitate compliance by covered persons who might need to revise their disclosures or implement other changes under the final rule. Specifically, under the interim rule, the required disclosure need to state only the name and telephone number for an agent that is authorized to receive legal notices on behalf of the owner, so long as the telephone number can be used to obtain the agent's address. Under the final rule, however, the agent's address must be included on the disclosure. This may require some secondary market purchasers to revise their disclosure forms. The Board believes that it is reasonable to afford covered persons until January 1, 2011 to implement the changes required by the final rule.

TILA Section 105(d) generally provides that a regulation requiring any disclosure that differs from the disclosures previously required shall have an effective date no earlier than "that October 1 which follows by at least six months the date of promulgation." The Board finds, however, that the legislative mandate represented by Section 404(a) is inconsistent with the significant delay that would be imposed under the literal language of Section 105(d). In enacting Section 404(a), the Congress imposed disclosure requirements that became mandatory immediately, without any requirement for implementing regulations. Thus, the disclosure requirements imposed by Section 404(a) have been mandatory since May 20, 2009.

The Board has clear authority under TILA Section 105(a) to issue implementing rules, including rules that interpret the statutory requirements and establish exceptions. The Board believes that the Congress did not intend to permit the Board to issue rules to implement Section 404(a) and clarify a covered persons' compliance duty while also allowing the issuance of such rules to delay implementation of Section 404(a) which, on its face, was effective immediately upon enactment. Accordingly, the Board issued interim rules in November 2009 that became effective upon publication. The Board finds that the public interest is best served by making these final rules effective in the manner described above, which gives effect to the legislative intent of Section 404(a) rather than the provisions of TILA Section 105(d).

VII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR Part 1320 Appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The collection of information that is required by this final rule is found in 12 CFR 226.39. The Board may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control number is 7100–0199.

This information collection is required to provide benefits for consumers and is mandatory (15 U.S.C. 1601 *et seq.*). Since the Board does not collect any information, no issue of confidentiality arises. The respondents/recordkeepers are persons or entities that acquire legal title to more than one mortgage loan in any 12-month period, including for-profit financial institutions and small businesses.

TILA and Regulation Z are intended to ensure effective disclosure of the costs and terms of credit to consumers. For closed-end loans, such as mortgage and installment loans, cost disclosures are required to be provided prior to consummation. Special disclosures are required in connection with certain

products, such as reverse mortgages, certain variable-rate loans, and certain mortgages with rates and fees above specified thresholds. To ease the burden and cost of complying with Regulation Z (particularly for small entities), the Board provides model forms, which are appended to the regulation. TILA and Regulation Z also contain rules concerning credit advertising. Creditors are required to retain evidence of compliance with Regulation Z for 24 months (12 CFR 226.25), but Regulation Z does not specify the types of records that must be retained.

Under the PRA, the Board accounts for the paperwork burden associated with Regulation Z for the state member banks and other entities supervised by the Board that engage in activities covered by Regulation Z and, therefore, are respondents under the PRA. Appendix I of Regulation Z defines the institutions supervised by the Federal Reserve System as: State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act. Other federal agencies account for the paperwork burden imposed on the entities for which they have administrative enforcement authority under TILA.

As mentioned in the preamble, on November 20, 2009, a notice of interim final rulemaking was published in the **Federal Register** (74 FR 60143). The comment period for this notice expired January 19, 2010. No comments specifically addressing the burden estimate were received; therefore, the burden estimates will remain unchanged as published in the notice. The final rule will increase the total annual burden under Regulation Z by 9,248 hours from 1,488,114 [4] to 1,497,362 hours.

The other federal financial agencies: Office of the Comptroller of the Currency (OCC), Office of Thrift Supervision (OTS), the Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA) are responsible for estimating and reporting to OMB the total paperwork burden for the domestically chartered commercial banks, thrifts, and federal credit unions and U.S. branches and agencies of foreign banks for which they have primary administrative enforcement jurisdiction under TILA Section 108(a), 15.U.S.C.1607(a). These agencies are permitted, but are not required, to use the Federal Reserve's burden estimation methodology. Using the Federal Reserve's method, the total current estimated annual burden for the approximately 16,200 domestically chartered commercial banks, thrifts, and federal credit unions and U.S. branches and agencies of foreign banks supervised by the Federal Reserve, OCC, OTS, FDIC, and NCUA under TILA would be approximately 19,610,245 hours. The new requirement will impose a one-time increase in the estimated annual burden for such institutions by 648,000 hours to 20,258,245 hours. On a continuing basis the new requirement will impose an increase in the estimated annual burden by 1,555,200 to 21,165,445 hours. The above estimates represent an average across all respondents; the Federal Reserve expects variations between institutions based on their size, complexity, and practices.

The Board has a continuing interest in public opinion on its collections of information. At any time, comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for enhancing the quality of information collected and ways for reducing the burden on respondent, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100–0199), Washington, DC 20503.

List of Subjects in 12 CFR Part 226

Consumer protection, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in Lending.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board amends Regulation Z, 12 CFR part 226, as follows:

PART 226—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604, 1637(c)(5), and 1639(l); Pub. L. 111–24 § 2, 123 Stat. 1734.

Subpart E—Special Rules for Certain Home Mortgage Transactions

■ 2. Revise § 226.39 to read as follows:

§ 226.39 Mortgage transfer disclosures.

(a) *Scope.* The disclosure requirements of this section apply to any covered person except as otherwise provided in this section. For purposes of this section:

(1) A "*covered person*" means any person, as defined in § 226.2(a)(22), that becomes the owner of an existing mortgage loan by acquiring legal title to the debt obligation, whether through a purchase, assignment or other transfer, and who acquires more than one mortgage loan in any twelve-month period. For purposes of this section, a servicer of a mortgage loan shall not be treated as the owner of the obligation if the servicer holds title to the loan, or title is assigned to the servicer, solely for the administrative convenience of the servicer in servicing the obligation.

(2) A "*mortgage loan*" means any consumer credit transaction that is secured by the principal dwelling of a consumer.

(b) *Disclosure required.* Except as provided in paragraph (c) of this section, each covered person is subject to the requirements of this section and shall mail or deliver the disclosures required by this section to the consumer on or before the 30th calendar day following the date of transfer.

(1) *Form of disclosures.* The disclosures required by this section shall be provided clearly and conspicuously in writing, in a form that the consumer may keep. 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.*).

(2) *The date of transfer.* For purposes of this section, the date of transfer to the covered person may, at the covered person's option, be either the date of acquisition recognized in the books and records of the acquiring party, or the date of transfer recognized in the books and records of the transferring party.

(3) *Multiple consumers.* If more than one consumer is liable on the obligation, a covered person may mail or deliver the disclosures to any consumer who is primarily liable.

(4) *Multiple transfers.* If a mortgage loan is acquired by a covered person and subsequently sold, assigned, or otherwise transferred to another covered person, a single disclosure may be provided on behalf of both covered

[4] The burden estimate for this final rulemaking includes burden addressing changes to implement provisions of the Credit Card Accountability Responsibility and Disclosure (CCARD) Act of 2009 (Docket no. R–1370) (75 FR 7658), however, it does not include the burden addressing changes to implement the following provisions announced in separate rulemakings:

• Closed-End Mortgages (Docket No. R–1366) (74 FR 43232), or

• Home-Equity Lines of Credit (Docket No. R–1367) (74 FR 43428).

persons if the disclosure satisfies the timing and content requirements applicable to each covered person.

(5) *Multiple covered persons.* If an acquisition involves multiple covered persons who jointly acquire the loan, a single disclosure must be provided on behalf of all covered persons.

(c) *Exceptions.* Notwithstanding paragraph (b) of this section, a covered person is not subject to the requirements of this section with respect to a particular mortgage loan if:

(1) The covered person sells, or otherwise transfers or assigns legal title to the mortgage loan on or before the 30th calendar day following the date that the covered person acquired the mortgage loan which shall be the date of transfer recognized for purposes of paragraph (b)(2) of this section;

(2) The mortgage loan is transferred to the covered person in connection with a repurchase agreement that obligates the transferor to repurchase the loan. However, if the transferor does not repurchase the loan, the covered person must provide the disclosures required by this section within 30 days after the date that the transaction is recognized as an acquisition on its books and records; or

(3) The covered person acquires only a partial interest in the loan and the party authorized to receive the consumer's notice of the right to rescind and resolve issues concerning the consumer's payments on the loan does not change as a result of the transfer of the partial interest.

(d) *Content of required disclosures.* The disclosures required by this section shall identify the loan that was sold, assigned or otherwise transferred, and state the following:

(1) The name, address, and telephone number of the covered person.

(i) If a single disclosure is provided on behalf of more than one covered person, the information required by this paragraph shall be provided for each of them unless paragraph (d)(1)(ii) of this section applies.

(ii) If a single disclosure is provided on behalf of more than one covered person and one of them has been authorized in accordance with paragraph (d)(3) of this section to receive the consumer's notice of the right to rescind and resolve issues concerning the consumer's payments on the loan, the information required by paragraph (d)(1) of this section may be provided only for that covered person.

(2) The date of transfer.

(3) The name, address and telephone number of an agent or party authorized to receive notice of the right to rescind and resolve issues concerning the consumer's payments on the loan. However, no information is required to be provided under this paragraph if the consumer can use the information provided under paragraph (d)(1) of this section for these purposes.

(4) Where transfer of ownership of the debt to the covered person is or may be recorded in public records, or, alternatively, that the transfer of ownership has not been recorded in public records at the time the disclosure is provided.

(e) *Optional disclosures.* In addition to the information required to be disclosed under paragraph (d) of this section, a covered person may, at its option, provide any other information regarding the transaction.

■ 3. In Supplement I to Part 226, under Subpart E, the entry for *Section 226.39—Mortgage Transfer Disclosures* is revised to read as follows:

Supplement I to Part 226—Official Staff Interpretations

Subpart E—Special Rules for Certain Home Mortgage Transactions

* * * * *

Section 226.39—Mortgage transfer disclosures

39(a) Scope.

Paragraph 39(a)(1).

1. *Covered persons.* The disclosure requirements of this section apply to any "covered person" that becomes the legal owner of an existing mortgage loan, whether through a purchase, or other transfer or assignment, regardless of whether the person also meets the definition of a "creditor" in Regulation Z. The fact that a person purchases or acquires mortgage loans and provides the disclosures under this section does not by itself make that person a "creditor" as defined in the regulation.

2. *Acquisition of legal title.* To become a "covered person" subject to this section, a person must become the owner of an existing mortgage loan by acquiring legal title to the debt obligation.

i. *Partial interest.* A person may become a covered person by acquiring a partial interest in the mortgage loan. If the original creditor transfers a partial interest in the loan to one or more persons, all such transferees are covered persons under this section.

ii. *Joint acquisitions.* All persons that jointly acquire legal title to the loan are covered persons under this section, and under § 226.39(b)(5), a single disclosure must be provided on behalf of all such covered persons. Multiple persons are deemed to jointly acquire legal title to the loan if each acquires a partial interest in the loan pursuant to the same agreement or by otherwise acting in concert. *See* comments 39(b)(5)–1 and 39(d)(1)(ii)–1 regarding the disclosure requirements for multiple persons that jointly acquire a loan.

iii. *Affiliates.* An acquiring party that is a separate legal entity from the transferor must provide the disclosures required by this section even if the parties are affiliated entities.

3. *Exclusions.*

i. *Beneficial interest.* Section 226.39 does not apply to a party that acquires only a beneficial interest or a security interest in the loan, or to a party that assumes the credit risk without acquiring legal title to the loan. For example, an investor that acquires mortgage-backed securities, pass-through certificates, or participation interests and does not acquire legal title in the underlying mortgage loans is not covered by this section.

ii. *Loan servicers.* Pursuant to TILA Section 131(f)(2), the servicer of a mortgage loan is not the owner of the obligation for purposes of this section if the servicer holds title to the loan as a result of the assignment of the obligation to the servicer solely for the administrative convenience of the servicer in servicing the obligation.

4. *Mergers, corporate acquisitions, or reorganizations.* Disclosures are required under this section when, as a result of a merger, corporate acquisition, or reorganization, the ownership of a mortgage loan is transferred to a different legal entity.

Paragraph 39(a)(2).

1. *Mortgage transactions covered.* Section 226.39 applies to closed-end or open-end consumer credit transactions secured by the principal dwelling of a consumer.

39(b) Disclosure required.

1. *Generally.* A covered person must mail or deliver the disclosures required by this section on or before the 30th calendar day following the date of transfer, unless an exception in § 226.39(c) applies. For example, if a covered person acquires a mortgage loan on March 15, the disclosure must be mailed or delivered on or before April 14.

39(b)(1) Form of disclosure.

1. *Combining disclosures.* The disclosures under this section can be combined with other materials or disclosures, including the transfer of servicing notices required by the Real Estate Settlement Procedure Act (12 U.S.C. 2601 *et seq.*) so long as the combined disclosure satisfies the timing and other requirements of this section.

39(b)(4) Multiple transfers.

1. *Single disclosure for multiple transfers.* A mortgage loan might be acquired by a covered person and subsequently transferred to another entity that is also a covered person required to provide the disclosures under this section. In such cases, a single disclosure may be provided on behalf of both covered persons instead of providing two separate disclosures if the disclosure satisfies the timing and content requirements applicable to each covered person. For example, if a covered person acquires a loan on March 15 with the intent to assign the loan to another entity on April 30, the covered person could mail the disclosure on or before April 14 to provide the required information for both entities and indicate when the subsequent transfer is expected to occur.

2. *Estimating the date.* When a covered person provides the disclosure required by this section that also describes a subsequent transfer, the date of the subsequent transfer may be estimated when the exact date is unknown at the time the disclosure is made.

Information is unknown if it is not reasonably available to the covered person at the time the disclosure is made. The "reasonably available" standard requires that the covered person, acting in good faith, exercise due diligence in obtaining information. The covered person normally may rely on the representations of other parties in obtaining information. The covered person might make the disclosure using an estimated date even though the covered person knows that more precise information will be available in the future. For example, a covered person may provide a disclosure on March 31 stating that it acquired the loan on March 15 and that a transfer to another entity is expected to occur "on or around" April 30, even if more precise information will be available by April 14.

3. *Duty to comply.* Even though one covered person provides the disclosures for another covered person, each has a duty to ensure that disclosures related to its acquisition are accurate and provided in a timely manner unless an exception in § 226.39(c) applies.

39(b)(5) Multiple covered person.

1. *Single disclosure required.* If multiple covered persons jointly acquire the loan, a single disclosure must be provided on behalf of all covered persons instead of providing separate disclosures. *See* comment 39(a)(1)–2(ii) regarding a joint acquisition of legal title, and comment 39(d)(1)(ii)–1 regarding the disclosure requirements for multiple persons that jointly acquire a loan. If multiple covered persons jointly acquire the loan and complete the acquisition on separate dates, a single disclosure must be provided on behalf of all persons on or before the 30th day following the earliest acquisition date. For examples, if covered persons A and B enter into an agreement with the original creditor to jointly acquire the loan, and complete the acquisition on March 15 and March 25, respectively, a single disclosure must be provided on behalf of both persons on or before April 14. If the two acquisition dates are more than 30 days apart, a single disclosure must be provided on behalf of both persons on or before the 30th day following the earlier acquisition date, even though one person has not completed its acquisition. *See* comment 39(b)(4)–2 regarding use of an estimated date of transfer.

2. *Single disclosure not required.* If multiple covered persons each acquire a partial interest in the loan pursuant to separate and unrelated agreements and not jointly, each covered person has a duty to ensure that disclosures related to its acquisition are accurate and provided in a timely manner unless an exception in § 226.39(c) applies. The parties may, but are not required to, provide a single disclosure that satisfies the timing and content requirements applicable to each covered person.

3. *Timing requirements.* A single disclosure provided on behalf of multiple covered persons must satisfy the timing and content requirements applicable to each covered person unless an exception in § 226.39(c) applies.

4. *Duty to comply.* Even though one covered person provides the disclosures for another covered person, each has a duty to ensure that disclosures related to its acquisition are accurate and provided in a timely manner unless an exception in § 226.39(c) applies. *See* comments 39(c)(1)–2, 39(c)(3)–1 and 39(c)(3)–2 regarding transfers of a partial interest in the mortgage loan.

39(c) Exceptions.

Paragraph 39(c)(1).

1. *Transfer of all interest.* A covered person is not required to provide the disclosures required by this section if it sells, assigns or otherwise transfers all of its interest in the mortgage loan on or before the 30th calendar day following the date that it acquired the loan. For example, if covered person A acquires the loan on March 15 and subsequently transfers all of its interest in the loan to covered person B on April 1, person A is not required to provide the disclosures required by this section. Person B, however, must provide the disclosures required by this section unless an exception in § 226.39(c) applies.

2. *Transfer of partial interests.* A covered person that subsequently transfers a partial interest in the loan is required to provide the disclosures required by this section if the covered person retains a partial interest in the loan on the 30th calendar day after it acquired the loan, unless an exception in § 226.39(c) applies. For example, if covered person A acquires the loan on March 15 and subsequently transfers fifty percent of its interest in the loan to covered person B on April 1, person A is required to provide the disclosures under this section if it retains a partial interest in the loan on April 14. Person B in this example must also provide the disclosures required under this section unless an exception in § 226.39(c) applies. Either person A or person B could provide the disclosure on behalf of both of them if the disclosure satisfies the timing and content requirements applicable to each of them. In this example, a single disclosure for both covered persons would have to be provided on or before April 14 to satisfy the timing requirements for person A's acquisition of the loan on March 15. *See* comment 39(b)(4)–1 regarding a single disclosure for multiple transfers.

Paragraph 39(c)(2).

1. *Repurchase agreements.* The original creditor or owner of the mortgage loan might sell, assign or otherwise transfer legal title to the loan to secure temporary business financing under an agreement that obligates the original creditor or owner to repurchase the loan. The covered person that acquires the loan in connection with such a repurchase agreement is not required to provide disclosures under this section. However, if the transferor does not repurchase the mortgage loan, the acquiring party must provide the disclosures required by this section within 30 days after the date that the transaction is recognized as an acquisition on its books and records.

2. *Intermediary parties.* The exception in § 226.39(c)(2) applies regardless of whether the repurchase arrangement involves an intermediary party. For example, legal title to the loan may transfer from the original creditor to party A through party B as an intermediary. If the original creditor is obligated to repurchase the loan, neither party A nor party B is required to provide the disclosures under this section. However, if the original creditor does not repurchase the loan, party A must provide the disclosures required by this section within 30 days after the date that the transaction is recognized as an acquisition on its books and records unless another exception in § 226.39(c) applies.

Paragraph 39(c)(3).

1. *Acquisition of partial interests.* This exception applies if the covered person acquires only a partial interest in the loan, and there is no change in the agent or person authorized to receive notice of the right to rescind and resolve issues concerning the consumer's payments. If, as a result of the transfer of a partial interest in the loan, a different agent or party is authorized to receive notice of the right to rescind and resolve issues concerning the consumer's payments, the disclosures under this section must be provided.

2. *Examples.*

i. A covered person is not required to provide the disclosures under this section if it acquires a partial interest in the loan from the original creditor who remains authorized to receive the notice of the right to rescind and resolve issues concerning the consumer's payments after the transfer.

ii. The original creditor transfers fifty percent of its interest in the loan to covered person A. Person A does not provide the disclosures under this section because the exception in § 226.39(c)(3) applies. The creditor then transfers the remaining fifty percent of its interest in the loan to covered person B and does not retain any interest in the loan. Person B must provide the disclosures under this section.

iii. The original creditor transfers fifty percent of its interest in the loan to covered person A and also authorizes party X as its agent to receive notice of the right to rescind and resolve issues concerning the consumer's payments on the loan. Since there is a change in an agent or party authorized to receive notice of the right to rescind and resolve issues concerning the consumer's payments, person A is required to provide the disclosures under this section. Person A then transfers all of its interest in the loan to covered person B. Person B is not required to provide the disclosures under this section if the original creditor retains a partial interest in the loan and party X retains the same authority.

iv. The original creditor transfers all of its interest in the loan to covered person A. Person A provides the disclosures under this section and notifies the consumer that party X is authorized to receive notice of the right to rescind and resolve issues concerning the consumer's payments on the loan. Person A then transfers fifty percent of its interest in the loan to covered person B. Person B is not required to provide the disclosures under this section if person A retains a partial interest in the loan and party X retains the same authority.

39(d) Content of required disclosures.

1. *Identifying the loan.* The disclosures required by this section must identify the loan that was acquired or transferred. The

covered person has flexibility in determining what information to provide for this purpose and may use any information that would reasonably inform a consumer which loan was acquired or transferred. For example, the covered person may identify the loan by stating:

i. The address of the mortgaged property along with the account number or loan number previously disclosed to the consumer, which may appear in a truncated format;

ii. The account number alone, or other identifying number, if that number has been previously provided to the consumer, such as on a statement that the consumer receives monthly; or

iii. The date on which the credit was extended and the original amount of the loan or credit line.

Paragraph 39(d)(1).

1. *Identification of covered person.* Section 226.39(d)(1) requires a covered person to provide its name, address, and telephone number. The party identified must be the covered person who owns the mortgage loan, regardless of whether another party services the loan or is the covered person's agent. In addition to providing its name, address and telephone number, the covered person may, at its option, provide an address for receiving electronic mail or an internet Web site address, but is not required to do so.

39(d)(1)(i)

1. *Multiple transfers, single disclosure.* If a mortgage loan is acquired by a covered person and subsequently transferred to another covered person, a single disclosure may be provided on behalf of both covered persons instead of providing two separate disclosures as long as the disclosure satisfies the timing and content requirements applicable to each covered person. *See* comment 39(b)(4)–1 regarding multiple transfers. A single disclosure for multiple transfers must state the name, address, and telephone number of each covered person unless § 226.39(d)(1)(ii) applies.

39(d)(1)(ii)

1. *Multiple covered persons, single disclosure.* If multiple covered persons jointly acquire the loan, a single disclosure must be provided on behalf of all covered persons instead of providing separate disclosures. The single disclosure must provide the name, address, and telephone number of each covered person unless § 226.39(d)(1)(ii) applies and one of the covered persons has been authorized in accordance with § 226.39(d)(3) of this section to receive the consumer's notice of the right to rescind and resolve issues concerning the consumer's payments on the loan. In such cases, the information required by § 226.39(d)(1) may be provided only for that covered person.

2. *Multiple covered persons, multiple disclosures.* If multiple covered persons each acquire a partial interest in the loan in separate transactions and not jointly, each covered person must comply with the disclosure requirements of this section unless an exception in § 226.39(c) applies. *See* comment 39(a)(1)–2(ii) regarding a joint acquisition of legal title, and comment 39(b)(5)–2 regarding the disclosure requirements for multiple covered persons.

Paragraph 39(d)(3).

1. *Identifying agents.* Under § 226.39(d)(3), the covered person must provide the name, address and telephone number for the agent or other party having authority to receive the notice of the right to rescind and resolve issues concerning the consumer's payments on the loan. If multiple persons are identified under this paragraph, the disclosure shall provide the name, address and telephone number for each and indicate the extent to which the authority of each person differs. Section 226.39(d)(3) does not require that a covered person designate an agent or other party, but if the consumer cannot contact the covered person for these purposes, the disclosure must provide the name, address and telephone number for an agent or other party that can address these matters. If an agent or other party is authorized to receive the notice of the right to rescind and resolve issues concerning the consumer's payments on the loan, the disclosure can state that the consumer may contact that agent regarding any questions concerning the consumer's account without specifically mentioning rescission or payment issues. However, if multiple agents are listed on the disclosure, the disclosure shall state the extent to which the authority of each agent differs by indicating if only one of the agents is authorized to receive notice of the right to rescind, or only one of the agents is authorized to resolve issues concerning payments.

2. *Other contact information.* The covered person may also provide an agent's electronic mail address or internet Web site address, but is not required to do so.

Paragraph 39(d)(4).

1. *Where recorded.* Section 226.39(d)(4) requires the covered person to disclose where transfer of ownership of the debt to the covered person is recorded if it has been recorded in public records. Alternatively, the disclosure can state that the transfer of ownership of the debt has not been recorded in public records at the time the disclosure is provided, if that is the case, or the disclosure can state where the transfer may later be recorded. An exact address is not required and it would be sufficient, for example, to state that the transfer of ownership is recorded in the office of public land records or the recorder of deeds office for the county or local jurisdiction where the property is located.

39(e) Optional disclosures.

1. *Generally.* Section 226.39(e) provides that covered persons may, at their option, include additional information about the mortgage transaction that they consider relevant or helpful to consumers. For example, the covered person may choose to inform consumers that the location where they should send mortgage payments has not changed. *See* comment 39(b)(1)–1 regarding combined disclosures.

By order of the Board of Governors of the Federal Reserve System, August 13, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

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