In Response to CFPB's Request for Information Regarding Promoting Access to Mortgage Credit

Comments

to the

Consumer Financial Protection Bureau

regarding

91 Fed. Reg. 42382 (July 9, 2026)
12 CFR Parts 1024 and 1026
Docket No. CFPB-2026-0018

by

National Consumer Law Center (on behalf of our low-income clients), Americans for Financial Reform Education Fund, Consumer Federation of America, National Fair Housing Alliance,

and the

National Housing Law Project

Submitted on August 10, 2026

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The National Consumer Law Center (on behalf of our low-income clients) submits the following comments along with Americans for Financial Reform Education Fund, Consumer Federation of America, National Fair Housing Alliance, and the National Housing Law Project.[1] We thank you for the opportunity to comment on this proposal.

1. Introduction

The Truth and Lending Act (TILA) and Real Estate Settlement Procedures Act (RESPA) were enacted to help borrowers get access to more affordable credit. The CFPB developed the current TRID regime through extensive notice and comment rulemaking, and the mortgage industry has gone to considerable expense to implemented it. Softening the TRID regime will not lower the cost of credit or make access easier. Instead, it will only help disreputable lenders prey on consumers, saddling them with loans that may be easy to get but are too expensive to keep.

We also urge the Bureau to be mindful of the obligations of the statute and the limited nature of its exception authority, especially as it relates to the rules of rescission.

There are, however, some changes that could make disclosures easier to understand and help creditors offer more affordable loans. The Bureau could create "responsive-design" electronic disclosures for different sized devices and allow creditors to use a streamlined disclosure form when including all closing costs in the interest rate (so-called "no cost" loans). It could also develop a carefully-designed, well-tailored reverse mortgage disclosure with scenario assumptions tailored to the borrower. We discuss these recommendations in §§ 6.1–6.2 and 7.1–7.4.

Instead of weakening the existing regulations, we urge the Bureau to focus on better enforcement of the existing regulations, particularly the requirement to provide a Closing Disclosure at least three days in advance. As indicated by comments filed by industry participants, that rule is widely violated.[2]

2. Summary of response to the Bureau's questions

The Bureau's RFI posed twenty-two questions in four categories. Our comments address those most relevant to preserving access to safe, affordable credit. Here, we summarize some of our most important points:

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[1] Please see the appendix for a description of our organization. For questions about these comments, please contact NCLC Senior Attorney Andrew Pizor (APizor@nclc.org).

[2] See discussion and quotations in § 5.4.

- The three-day rescission period is required by statute and remains a vital protection for consumers who were pressured to complete the origination process.[3]
- The extended right of recission is also statutory and remains necessary for consumers who would otherwise be trapped in an unaffordable loan by lender misconduct.[4]
- The three-day pre-consummation disclosure requirement serves a different purpose than the rescission period and is not a substitute. It prevents bait-and-switch by giving consumers time to see the final loan terms before consummation. Mortgage transactions are too complex to digest at the closing table, at the last minute.[5]
- The Bureau should not adopt new materiality standards; they were tried in the 1970s and rejected as highly problematic.[6]
- The Bureau could improve the disclosures by developing responsive-design forms for electronic transactions[7] and by allowing modifications for "no-cost" closings.[8]
- A carefully-designed, well-tailored reverse mortgage disclosure would help consumers make more informed decisions; but a poorly designed one might make consumer confusion and risk even worse.[9]
- Consumers will benefit from a new brochure explaining how reverse mortgages work[10] and a revised explanation of how a reverse mortgage grows over time.[11]

As the Bureau considers these comments and those submitted by others, we urge the Bureau to recognize that its authority to make changes is constrained by limits in TILA.[12] Any changes to existing regulations and guidance must serve the ultimate goal of furthering the purposes of TILA.

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[3] *See* § 5.4.2.
[4] *Id.*
[5] *See* § 5.4.1
[6] *See* § 5.3.
[7] *See* § 6.2.
[8] *See* § 6.1.
[9] *See* § 7.1.
[10] *See* § 7.4.
[11] *See* § 7.3.
[12] *See* § 4.

3. TILA and RESPA are designed to help consumers get better access to affordable credit.

TILA and RESPA (with their implementing regulations) were created to help borrowers get access to affordable credit and to promote transparency and competition in the marketplace. The legislative history of TILA shows Congress was concerned about creditors hiding "extraneous," "exorbitant," and "excessive" fees.[13] As one senator said, "With credit prices made explicit in an accurate and uniform manner, consumers would then have the information to shop around and select the lowest cost credit packages."[14]

TILA was also expected to help creditors. As stated in the first paragraph of the Act itself, "The Congress finds that economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit."[15]

The Congressional Findings and Purpose in RESPA are even more clear and direct:

> The Congress finds that significant reforms in the real estate settlement process are needed to insure that consumers throughout the Nation are provided with greater and more timely information on the nature and costs of the settlement process and are protected from unnecessarily high settlement charges caused by certain abusive practices that have developed in some areas of the country.[16]

TILA and RESPA are designed to bring daylight to the confusing and expensive process of getting a loan. Both laws, their regulations, and TRID were adopted after years of evidence showing lenders and other parties to the loan origination process were using the complexity of the process to stick consumers with unfair charges and inflated prices. These rights are so important that Congress protected consumers who exercise their rights under TILA (housed within the Consumer Credit Protection Act) from credit discrimination based on the exercise of those rights.[17] The timing rules, limits on changes, and the rescission

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[13] 109 Cong. Rec. 2027 (1963) (remarks of Sen. Douglas). *See also* H.R. Rep. No. 1040, 90th Cong., 2d Sess., reprinted in 1968 U.S.C.C.A.N. 1962, 1970
[14] 109 Cong. Rec. 2030 (1963) (remarks of Sen. Douglas).
[15] 15 U.S.C. § 1601(a).
[16] 12 U.S.C. § 2601(a).
[17] *See* 15 U.S.C. 1691(a)(3); 12 CFR 1002.2(z).

period were specifically adopted because industry participants were using bait-and-switch tactics.

Eliminating the protections now targeted by the Bureau will be counter-productive. Instead of helping consumers, the Bureau risks *reducing* access to affordable credit.

4. The Bureau has limited authority to deviate from TILA's mandatory consumer protections.

Before the Bureau proposes any changes to the TILA/RESPA disclosure regime, it must recognize that its authority is limited. Section 105(a)[18] of TILA provides the Bureau with authority to implement the statute's provisions. In addition to the broad regulatory authority provided in the first sentence, Congress gave the Bureau the power to make "classifications, differentiations, or other provisions" and to make "adjustments and exceptions."

> The Bureau shall prescribe regulations to carry out the purposes of this subchapter. Except with respect to the provisions of section 1639 of this title that apply to a mortgage referred to in section 1602(aa) of this title, such regulations may contain such additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions, as in the judgment of the Bureau are necessary or proper to effectuate the purposes of this subchapter, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.[19]

The Bureau's authority is not open-ended. There are essentially three important limitations on the Bureau's exception authority:

- All regulations issued by the Bureau must serve the ultimate goal of furthering the purposes of TILA.
- The classifications, differentiations, adjustments, and exceptions the Bureau is permitted to make to the statutory requirements are only permissible if they also further the purposes of the statute.
- No classifications, differentiations, adjustments or exceptions are permissible at all with regard to the transactions covered by section 103(aa), commonly referred to as "HOEPA loans" or high cost mortgages.

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[18] 15 U.S.C. § 1604.
[19] 15 U.S.C. § 1604(a).

The Bureau's authority to deviate from the Act is limited. Easing the regulatory burden on creditors is not a permissible basis for creating exceptions where doing so will detract from the purpose of the Act or harm consumers.

5. Response to questions about timing requirements (Questions 1-9)

5.1 Overview: TRID's timing requirements are vital.

The TRID timing requirements are vital consumer protections and should not be changed. The old highway-safety warning "speed kills" applies to mortgage lending too. Dishonest lenders often rush consumers to close. This is a high-pressure tactic that prevents victims of abusive tactics from realizing what a bad deal they're getting, until it is too late.

We have seen no evidence that the timing requirements add to the cost of mortgage credit. To the contrary, research has shown that giving consumers time to shop around and negotiate could save them a significant amount.[20]

Even if TRID's requirements did add to the administrative cost of a loan, that cost is substantially outweighed by the benefit to individual borrowers and to the U.S. economy collectively. A mortgage is the most expensive, complex transaction that a typical consumer will ever enter. The stakes are tremendous—not only financially, but because borrowers are putting their family's home on the line. The Great Depression and the Great Recession show the impact of widespread home foreclosures.

5.2 Answer to Q. 7: Making it easier to waive statutory waiting periods would be a roadmap for abuse.

We strongly discourage the Bureau from making waivers easier. This would be a roadmap for abuse. Allowing pre-printed or model forms, in particular, could be easily abused by dishonest originators who could slip the form into a set of electronically signed documents (or even manually signed ones), where consumers might not even realize what they are signing. Predatory lenders could persuade consumers to waive their rights without a bona fide emergency, not realizing the danger of doing so.

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[20] Katie Visalli, Laurie Goodman, Alexei Alexandrov, Urban Institute, Shopping and Negotiating for Mortgage Interest Rates Could Save Borrowers More Than $100 a Month—but Many Don't Know the Option Exists (July 16, 2024), https://web.archive.org/web/20260623115402/https://www.urban.org/urban-wire/shopping-and-negotiating-mortgage-interest-rates-could-save-borrowers-more-100-month.

No changes are necessary. The existing rules are simple and clear. Consumers need only send the creditor an email or letter explaining the emergency. That ensures that obtaining a waiver is easy when needed but not routine.

5.3 Answer to Q. 8: Replacing or supplementing the timing rules with materiality-based standards would create confusion for consumers, lenders, and the secondary market.

Question 8 asks about replacing or supplementing the timing rules with a materiality standard. While it is not clear how such a change would be applied, we are deeply concerned that replacing any of the bright-line rules with a materiality standard would undermine protections for consumers and create problems for both creditors and the secondary market.

Without a precise definition, such as found in Regulation Z §§ 1026.15(a)(3), and 1026.23(a)(3)(ii), any materiality standard will be subject to interpretation according to each party's own interest. It will create confusion over application of the rule and will increase litigation risk for creditors. Moreover, each lender and secondary market participant will likely need to create its own internal guidelines for materiality. Those standards will vary and create more confusion in the market. Changing to a materiality standard will also disadvantage small creditors, like credit unions and community banks, that are less able to take financial risks.

Prior to the 1980 amendments to TILA,[21] there was considerable litigation over which TILA disclosure violations were material.[22] Congress enacted 15 U.S.C. § 1602(v) defining the term "material disclosures" specifically to put creditors "in a better position to know whether a consumer may properly rescind a transaction."[23]

Clear, consistent rules facilitate access to credit in many ways. They facilitate automation and standardization; they reduce the need for loan officers to seek guidance or exceptions; they support the commodification of mortgages in the secondary market; they reduce the risk of illegal discrimination by minimizing

[21] Truth in Lending Simplification and Reform Act. Title V of DIDMCA, codified at 15 U.S.C. §§ 1601–1615.

[22] *See, e.g., In re Gurst*, 79 B.R. 969 (Bankr. E.D. Pa. 1987) (under pre-Simplification TILA, improper disclosure of a security interest was a material violation).

[23] S. Rep. No. 368, 98th Cong., 2d Sess. 29, *reprinted in* 1980 U.S.C.C.A.N. 236, 264. *See also Malone v. Safety-Guard Mfg. Co.*, 748 F.2d 312 (5th Cir. 1984) (materiality determined under old TILA version since creditor elected not to take advantage of TILA Simplification during the transition period).

human judgment calls; and they reduce litigation risk by providing clarity to courts and all parties involved.

We urge the Bureau not to repeat the mistake Congress made when originally drafting TILA. Vague "materiality" standards, such as references to material changes, material delay, material amounts, material errors, or material harm, cause more problems than they solve.

5.4 Answer to Q. 9: The pre- and post-consummation waiting periods are vital consumer protections and should not be changed.

As explained in § 5.1, the three-day pre-consummation disclosure requirement and the three-day right to cancel are invaluable consumer protections that have been proven necessary by extensive experience. The three-day right to cancel is statutory and cannot be changed. But *both* periods remain necessary because they serve different purposes.

5.4.1 Continued need for the pre-consummation disclosure period

The pre-consummation period gives consumers an opportunity to evaluate the lender's final offer before getting to the closing table. Before TRID, lenders routinely engaged in bait-and-switch. They promised borrowers one set of loan terms and then, at the last minute, presented a loan that was radically different and rushed them to sign. The Bureau adopted the three-day pre-consummation period because it recognized that borrowers could not be expected to review and understand a stack of complex documents and make a life-changing decision while confronted with a table full of industry personnel pressuring the borrower to sign, regardless of misgivings or reservations.[24]

5.4.2 Continued need for the three-day right to cancel

The *post*-consummation right to cancel is distinct and important. It "was enacted to give the consumer the opportunity to reconsider any transaction which would have the serious consequence of encumbering the title to his home."[25] Signing a mortgage contract brings clarity to the gravity of the transaction in a way reviewing the contract beforehand does not. Homes are a key part of family stability, the largest asset most families have, and a stepping stone to upward mobility. Rescission acts as a buffer against hasty or unsound decisions that place the family's home at risk.

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[24] *See* 73 Fed. Reg. 1672, 1715-1716 (Jan. 9, 2008).

[25] *See* U.S. Rep. No. 368, 96th Cong. 2nd Sess. 28, reprinted in 1980 U.S.C.C.A.N. 236, 264 ("This provision was enacted to give the consumer the opportunity to reconsider any transaction which would have the serious consequence of encumbering the title to his home.").

Even with the TRID rules, the three-day right to cancel remains necessary. The three-day pre-consummation period does not eliminate the pressure to proceed to closing or the regret a consumer may feel afterwards. Most documents presented at closing are still encountered there for the first time, including the two most important ones—the promissory note and security instrument. The growing practice of using electronic contracts signed on a screen makes it even harder for a consumer to avoid the pressure to quickly sign the documents presented. Some systems enable all documents to be signed with a single click.

The Bureau's RFI states, "A few industry commenters requested that the CFPB eliminate the right of rescission because the TRID Rule's three-day pre-consummation review period gives consumers sufficient time to review the material disclosures . . . ."[26] But, as noted by others to submit comments on this RFI, lenders routinely ignore the duty to provide an accurate disclosure three-days before consummation. Here is a sample of the comments filed before the RFI's deadline:

- "As a real estate closing attorney/title agent in South Carolina, I do not have major issues with the TRID timing requirements. What I do have an issue with is that lenders are issuing the final CDs to Buyers/Borrowers without final balancing (and sometimes without having a Clear to Close from their underwriter) with the closing attorney/title company and then not getting the documents to the closing attorney/title company with enough time for the Buyers/Borrowers to review them and having to rush through signing everything."[27]

- "TRID disrupted the entire real estate process to supposedly make it easier for the Buyers to understand their documents and receive the information on closing costs and interest rates at least 3 days prior to closing. There was also a tolerance for certain items. The 3 day rule is a joke and never followed by any Lenders. They sent out a "initial/dummy" CD that is rarely close to the final. There is no enforcement for the lenders to comply and things are worse than ever."[28]

- "I have seen from the backend how even the most shining and publicly trusted financial institutions regularly violate basic TRID requirements. I can see the lengths they jump through hoops and argue the legal-ese on every single blatant error and misstep in order to avoid paying back what

[26] 91 Fed. Reg. at 42385.

[27] Comment filed by Jackson Miller Law, LLC, https://www.regulations.gov/comment/CFPB-2026-0018-0005.

[28] Comment filed by Shonna Cardello, https://www.regulations.gov/comment/CFPB-2026-0018-0029. An internet search suggests that Ms. Cardello is a title agent.

they stole from the customer. I can see how every fee intolerance violation is always argued as "just a mistake" or "a simple typo done in a rush" despite the fact that it always magically helps the bank partake in a soft bait and switch. I have been on the opposite end of an Loan Officer arguing how properly informing the customer and not tricking them out of extra fees is "wasting precious time" and "actually a detriment to the customer" despite the fact that fixing these errors only ever seems to effect the LO's cut of the check. How curious is it that every single error and misinformation only ever seems to be in the institution's favor."[29]

- "Please establish a rule requiring lenders to have the Closing Disclosure approved and all closing documents delivered to the title company at least three business days prior to the scheduled closing date. Implementing this requirement would significantly improve the closing process. Too often, lenders finalize figures and transmit closing documents at the last minute, which occurs on the vast majority of transactions. This creates unnecessary pressure on title companies, borrowers, real estate agents, attorneys, and everyone else involved in the transaction. The compressed timeline increases the likelihood of errors because there is insufficient time to review documents thoroughly, resolve discrepancies, and ensure everything is accurate before closing."[30]
- "I fin[d] that some lenders are issuing a CD simply to meet the three-day deadline, even when the figures are incomplete or subject to change. Additionally, lenders frequently do not respond to requests for the figures needed to balance the file for an upcoming closing. This makes it very difficult for title companies to provide accurate numbers. Because real estate agents rely on us to give them these figures for their clients, the lack of timely communication from lenders three days prior to closing is causing significant delays and communication gaps."[31]

These comments emphasize the continued need for a post-consummation three-day right to cancel.

In addition, TILA's extended right to rescind is especially important for protecting against creditor malfeasance. It offers homeowners who were given false or misleading disclosures a chance to undo the harm of an unaffordable loan. Without such a right, a creditor that misrepresented the credit terms or

[29] Anonymous comment, https://www.regulations.gov/comment/CFPB-2026-0018-0032.
[30] Anonymous comment, https://www.regulations.gov/comment/CFPB-2026-0018-0002.
[31] Anonymous comment, https://www.regulations.gov/comment/CFPB-2026-0018-0031

the right to rescind would be home free as long as the misrepresentation remained undiscovered for the first three days.

For consumers, who typically trust their lenders and believe that the lenders are looking out for their best interests,[32] uncovering such misrepresentations is always difficult. For borrowers caught in the explosion of predatory lending and exotic loan products that led to the last collapse of the mortgage market, uncovering lender misrepresentations within three days was nearly impossible. Complex contracts with teaser rates hid exploding ARMs and other unconscionable terms. Loans that kept payments at a low level while increasing the interest rate left many homeowners unaware that the loan was negatively amortizing—a concept that consumers find difficult to understand even when disclosure is attempted. Few homeowners realize that they have been the victim of illegal lending practices until a threatened foreclosure forces them to seek legal help.

Without the ability to use rescission to strip away improper and excessive finance charges, those charges will prevent homeowners from refinancing out of predatory loans. The rescission right also has an effect on the overall credit marketplace. It deters bait and switch tactics, as creditors know that consumers will have the right to rescind if they discover that the credit terms differ from those promised. It motivates accurate disclosures and protects honest creditors as well as consumers.

Rescission is particularly important as a means of deterring and remedying irresponsible lending because most loans are sold on the secondary market or securitized, making recourse against the original lender more difficult. Rescission, however, gives the secondary market incentive to police originators.

A key part of this deterrence function is strict liability. Three of the most important factors in deterring violations are the swiftness, certainty, and severity of punishment. Strict liability facilitates both swiftness and certainty by making the law easier to enforce and reducing ambiguity. The severity of rescission creates an economic incentive to comply—it makes compliance less expensive than noncompliance.

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[32] *See, e.g.*, ICF Macro, Summary of Findings: Design and Testing of Truth in Lending Disclosures for Rescission Notices 6, 12 (2010) (majority of participants in consumer testing believe creditor gives borrowers the right of rescission in case the borrower has second thoughts).

6. Response to questions about other TRID requirements (Questions 10-16)

6.1 Answer to Q. 12: Allow streamlined disclosures for "no-cost" loans.

In a standard mortgage transaction, the lender disaggregates all the closing costs, and the consumer must pay them at closing—either in cash or by borrowing extra money. In contrast, in a so-called "no-cost" loan, the consumer does not pay any closing costs. Instead the interest rate on the loan is increased enough to compensate the lender for the closing costs over the loan term.[33] In practice, the lender would recoup these costs when selling the loan onto the secondary market.

Research on FHA loans has shown that no-cost loans have lower closing costs than traditional mortgages and are likely to be cheaper overall despite the higher interest rate.[34] This is likely due to market dynamics that discourage high interest rates but facilitate high closing costs when they are disaggregated.

Shopping for a no-cost loan is also easier because there are fewer relevant variables. When shopping for a mortgage, consumers focus on the interest rate and monthly payment. They usually disregard the impact of closing costs. In a no-cost loan, the impact of closing costs would be reflected in the rate and payment so consumers will be better able to compare otherwise similar loans.[35] While the APR was designed to simplify shopping, the CFPB has moved the APR disclosure to a less prominent location, where consumers are less likely to see it.[36] It is also riddled with exceptions.[37]

Currently, even though no-cost loans do not require borrowers to pay closing costs, lenders must still use the same disclosure regime. The no-cost component is usually accomplished by giving the borrower a credit equal to the total closing costs. This makes mortgage closing disclosures even more confusing than they already are.

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[33] While such a loan is not truly "no cost," that is the term industry uses.

[34] Susan Woodward, A Study of Closing Costs on FHA Mortgages, U.S. Department of Housing and Urban Development, Office of Policy Development and Research (2008), available at http://www.urban.org/UploadedPDF/411682_fha_mortgages.pdf.

[35] While some consumers may elect to pay discount points to buy a lower interest rate, that does not affect this discussion.

[36] *See, e.g.*, 12 C.F.R. 1026, Appendix H-24(A) (Mortgage Loan Transaction Loan Estimate - Model Form).

[37] *See* Elizabeth Renuart and Diane E. Thompson, The Truth, The Whole Truth, and Nothing but the Truth: Fulfilling the Promise of Truth in Lending, 25 Yale J. on Reg. 181 (2008).

Allowing creditors to omit page 2 of the TRID (itemized closing costs) for no-cost loans would benefit both the creditor and consumer. The creditor would save time and money preparing the form and would no longer have to worry about changes in the figures. The consumer would benefit from a simplified disclosure that would aid comprehension and facilitate consumer shopping.

6.2 Answer to Q. 13: Create a version of the TRID forms that can be read on devices of any size, including smartphones.

Even as electronic transactions become increasingly common in consumer credit, TILA's disclosure forms remain in the analog world. The TRID forms are designed to be printed on 8 1/2 x 11 inch paper. But when lenders provide these forms electronically (typically in PDF), consumers must either print them out or view them on their electronic device. In practice, most consumers do not print them and are left viewing the forms on a computer screen or—even worse—a smartphone. This thwarts the goal of comprehensible disclosures.

The Bureau should address this problem by developing electronic disclosures that can be read on any device, regardless of screen size. This concept is known as "responsive design" and is already a common practice on the Internet. According to Microsoft, "[r]esponsive web design (RWD) is a web design approach to make web pages render well on all screen sizes and resolutions while ensuring good usability. It is the way to design for a multi-device web."[38]

The Bureau should conduct consumer testing to ensure that the electronic forms are easy to understand, as the Bureau did when designing the TRID forms.

7. Response to questions about reverse mortgages (Questions 19-22)

7.1 Answer to Q. 19: A carefully-designed, well-tailored reverse mortgage disclosure would help consumers make more informed decisions.

If crafted carefully, with extensive consumer testing and opportunities for public comment, an integrated and tailored set of reverse mortgage disclosures would help consumers make more informed decisions. If done poorly, such a disclosure might only add to consumer confusion and risk.

The dangers to elderly homeowners from reverse mortgages range from overpricing, to misunderstanding the way the loan balance can grow under different scenarios, to a lack of awareness regarding the borrower's obligation to

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[38] Microsoft, Responsive web design, https://web.archive.org/web/20260713051622/https://developer.mozilla.org/en-US/docs/Learn_web_development/Core/CSS_layout/Responsive_Design.

pay property charges going forward.[39] Disclosures alone are not sufficient to protect consumers from these risks. However, in conjunction with robust pre-loan counseling, a tailored, effective, plain-language disclosure could make a significant difference in preventing consumer harms.

7.1.1 Reverse mortgage disclosures must use plain language and be carefully consumer tested, with ample opportunity for public comment.

Reverse mortgages are a particularly complex type of home loan. The borrower must select from among various products that offer different loan amounts and payment scenarios. In addition, the selection should be made in the context of the availability and suitability of other financial products, such as traditional lines of credit.[40] Due to the complexity of this product, extensive consumer testing would be necessary to determine the best way to describe the loan terms in plain language. Public comment through an advance notice of proposed rulemaking and a notice of proposed rulemaking would be appropriate.

A carefully crafted disclosure of the most important features of the reverse mortgage in plain language would be very helpful to consumers, and should be translated into multiple languages.[41]

7.1.2 Reverse mortgage disclosures must be informed by research on decision-making and information retention by older adults.

Plain language disclosures augmented by pre-loan counseling can aid older adults in making decisions about this complex financial product.[42] But social

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[39] Government Accountability Office, Reverse Mortgages: FHA Needs to Improve Monitoring and Oversight of Loan Outcomes and Servicing, GAO-19-702, at 50 (September 2019) available at http://www.gao.gov/new.items/d09606.pdf.

[40] "For example, a reverse mortgage may not be the best option because the upfront fees associated with both the HECM and most proprietary products tend to be high. As a result, the reverse mortgage is often an expensive choice for borrowers who plan to remain in their homes for less than three years.) John S. Insley, Jr., *Reverse Mortgages and Consumer Protection,* Consumer Compliance Outlook (Third Quarter 2008) https://www.consumercomplianceoutlook.org/2008/third-quarter/q3_01/.

[41] Debra Pogrund Stark, Jessica M. Choplin, Joseph A. Mikels, & Amber Schonbrun McDonnell, *Complex Decision-Making and Cognitive Aging Call for Enhanced Protection of Seniors Contemplating Reverse Mortgages*, 46 Ariz. St. L.J. 299 (2014) at 355 "HUD should endeavor to provide translations of the pre-counseling materials and loan documents for the most common non-English languages for seniors where English is a second language."

[42] Housing counselors are responsible for educating borrowers about the financial implications of the transaction and available alternatives, but they cannot recommend if a borrower should take out a reverse mortgage or what loan terms are best. Because the consumer must select a financial option to pursue, it is the lenders' responsibility to provide clear and accurate information about both the benefits and costs of a reverse mortgage. *Id*.

isolation and impaired decision-making capacity among some older adults, puts them at increased risk. Older adults with cognitive impairments are less likely to be able to make the best decision for themselves when faced with complex financial transactions, such as reverse mortgages.[43] Where present, these cognitive deficits make older adults susceptible to false claims from reverse mortgage originators and in advertising. As a 2007 study points out, "complex decision making . . . would be a challenge even for intelligent young adults; however, when one considers possible executive dysfunction, in conjunction with fraudulent and vicious marketing extant in the social system, the degree of decision-making difficulty is greatly augmented for older adults."[44]

Borrowers' abilities to concentrate and focus on information, keep information in mind, and process that information (called working memory) becomes progressively compromised across their lifespan.[45] As they age, borrowers have also have more difficulty holding multiple pieces of information in mind at the same time, a skill that is necessary to integrate all of the information about the reverse mortgage they are considering and come to a final decision.[46] This decline is observable decades before the age at which most consumers who might consider taking out reverse mortgages are faced with this decision.[47] Social isolation, which prevents older consumers from discussing financial decisions with others, compounds this problem.

As a result, mere disclosure is not enough. Borrowers also need effective housing counseling, as we discuss in the next section. A 2013 study on simplifying energy conservation outreach materials found that helping to educate via simplification only works for straightforward information—not for complex material.[48]

Due to the higher complexity of a HECM loan compared with a conventional home loan, and the diminishing cognitive abilities of many older adults, a

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[43] A December 2007 study published in the Annals of the New York Academy of Sciences provides evidence for this. The study found that 35-40 percent of seemingly normal participants in fact had "deficits in reasoning and decision making due to dysfunction in a neural system." Natalie L. Denburg, Catherine A. Cole, Michael Hernandez, Torricia H. Yamada, Daniel Tranel, Antoine Bechara, and Robert B. Wallace, "The Orbitofrontal Cortex, Real-World Decision Making, and Normal Aging," Annals of the New York Academy of Sciences, December 2007.
[44] *Id*. at 2.
[45] Debra Pogrund Stark, Jessica M. Choplin, Joseph A. Mikels, & Amber Schonbrun McDonnell, Complex Decision-Making and Cognitive Aging Call for Enhanced Protection of Seniors Contemplating Reverse Mortgages, 46 Ariz. St. L.J. 299, (2014) at 329.
[46] *Id*. at 330.
[47] *Id*. at 329.
[48] Gabrielle Wong-Parodi, Wandie Bruine de Bruin, and Casey Canfield, *Effects of simplifying outreach materials for energy conservation programs that target low-income consumers*, Energy Policy, vol. 62, pp 1157-1164 (November 2013). https://doi.org/10.1016/j.enpol.2013.07.069

borrower is at great risk of not understanding basic aspects of the HECM, such as the total amount of money that will be disbursed, the total costs of the loan, and the amount of debt and remaining equity projected over time, making deception on these matters easier to accomplish.[49]

7.1.3 HUD-certified pre-loan counseling should be mandatory for all reverse mortgages, not just federally backed loans.

Given the complexity of the reverse mortgage product, pre-loan counseling is necessary to ensure that consumers are aware of all the risks posed by these loans.[50] HUD has developed extensive qualification and counseling guidelines to ensure the quality and integrity of the counseling network and the counseling process. The CFPB should establish this federal standard as the benchmark for **all** reverse mortgage counseling.

To be eligible for a FHA-insured HECM reverse mortgage loan, borrowers must obtain adequate counseling from an independent third party that is neither directly or indirectly associated with the mortgage transaction.[51] Lenders are required to provide every potential HECM borrower with a list of at least ten HUD-approved counseling agencies.[52] In order to ensure the independence of the counselor, borrowers must initiate communication with a counseling agency on their own.

The HECM enabling statute details information that must be discussed with the borrower during the counseling session.[53] Specifically, counselors are required to:

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[49] Stark, supra note 28 at 320-321. Provides an example in of a Detroit-area fraud case and the case of *Kennedy v. World Alliance Financial Corp,* 792 F. Supp. 2d 1103 (E.D. Cal. 2011). In *Kennedy*, the court noted the complicated determination of the maximum loan amount even confused the court.

[50] In 2010, the Federal Reserve Board proposed to extend the counseling requirements for HECMs to proprietary mortgages with Proposed Reg. Z § 226.40(b), but this proposal was never finalized after authority was transferred to the CFPB. As the Board acknowledged, "even sophisticated consumers seeking reverse mortgages may not be sufficiently aware of the risks and obligations of reverse mortgages solely through disclosures provided during the origination process." 75 Fed. Reg. 58539, 58,550 (Sept. 24, 2010).

[51] 12 U.S.C. § 1715z-20(d)(2)(B). Counseling may not be provided by any party that is directly or indirectly associated with or compensated by a party involved in 1) originating or servicing the mortgage, 2) funding the loan, or 3) the sale of annuities, investments, long-term care insurance, or any other type of financial or insurance product. *Id.*

[52] *See* 12 U.S.C. 1715z-20(f); Dep't of Housing and Urban Dev., Mortgage Letter 2009-10 (March 27, 2009).

[53] 12 U.S.C. § 1715z-20(f).

- review options other than a HECM that are available to the homeowner, including other housing, social service, health, and financial options;

- discuss other home equity conversion options that are or may become available to the homeowner, such as sale-leaseback financing, deferred payment loans, and property tax deferral;

- disclose that a HECM may have tax consequences, affect eligibility for assistance under Federal and State programs, and have an impact on the estate and heirs of the homeowner; and

- review the financial implications of entering into a HECM loan.

Furthermore, in order to evaluate possible alternatives to a HECM loan, counselors must perform a budget analysis based on the borrower's income, assets, debts, and monthly expenses.[54] All of these items should be covered in reverse mortgage counseling for *all* loans.[55]

Research shows that requiring two counseling sessions—one before the loan application is processed and one afterwards—would greatly improve the borrower's understanding and reduce complaints.[56] "The decision making that seniors need to go through to determine if a reverse mortgage loan would truly be beneficial to them is beyond the cognitive abilities of most seniors (indeed most consumers in general), even with the required mortgage counseling."[57] By having a second session with the borrower, the counselor can compare the generic financial scenarios they reviewed in the first counseling session with the actual figures for the loan being considered.[58]

Anyone allowed to offer proprietary reverse mortgage counseling should be employed by a HUD-approved housing counseling agency as is required for HECM counseling.[59] This common-sense requirement helps to ensure that individual counselors receive appropriate supervision and oversight. It also

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54 Dep't of Housing and Urban Dev. Mortgagee Letter 2009-10 (Mar. 27, 2009).

55 *See also* Debra Pogrund Stark, Jessica M. Choplin, Joseph A. Mikels, & Amber Schonbrun McDonnell, *Complex Decision-Making and Cognitive Aging Call for Enhanced Protection of Seniors Contemplating Reverse Mortgages*, 46 Ariz. St. L.J. 299 (2014) for recommendations on what questions and counseling protocol should be followed to improve borrower decision-making.

56 *Id*. at 348-349. *See also* Government Accountability Office, *Reverse Mortgages: FHA Needs to Improve Monitoring and Oversight of Loan Outcomes and Servicing,* GAO-19-702, at 50 (September 2019) available at http://www.gao.gov/new.items/d09606.pdf. The third largest complaint category included consumers' concerns about the amount of funds available from their reverse mortgage was less than expected or that interest rate or fees were not disclosed or explained to them.

57 *Id*. at 356.

58 *Id*. at 349.

59 24 C.F.R. § 206.304.

increases accountability, as the individual counselor and the supervising agency are responsible for the implementation of HUD standards.

The absence of this requirement would open the door to fraud and abuse. There would be no guarantee that these unsupervised individuals would abide by the appropriate counseling standards, which should require independence and prohibit steering.

7.2 Answer to Q. 20: The scenario assumptions in the TALC table should be tailored to the borrower.

The scenario assumptions in the TALC table should be as accurate and as tailored as possible. They should reflect a certain amount taken up front as well as additional disbursements over time.

Current Reg. Z § 1026.33(c)(6) requires TALC disclosures of three periods: a two year term, a period equal to the youngest borrower's life expectancy, and a period equal to 1.4 times the youngest borrower's life expectancy. Creditors *may* also include a loan period based on the consumer's life expectancy multiplied by 0.5. This should be required. In weighing the risks and benefits of a reverse mortgage, consumers would benefit from having information based on an intermediate point in time, between 2 years and full life expectancy. Many creditors are doing this now; it would not be a burden to require it.

The TALC also should include an additional home price appreciation figure, such as 2%, to be more helpful to consumers. In a number of property markets, the 4% home price appreciation rate is not likely to be accurate, and neither is zero percent. A 2% scenario is accurate for many cities in the rust belt and the Midwest.

In addition, for the significant percentage of reverse mortgages that include a line of credit, the TALC assumptions should more accurately reflect the likely behavior of most reverse mortgage borrowers. Currently, creditors assume that the borrower will take out half of the credit line at origination and will not take any additional disbursements over the life of the loan. This is highly inaccurate for the vast majority of borrowers. Instead, the TALC and any disclosure of loan growth over time should reflect a certain amount taken up front as well as additional disbursements over time. It might be helpful to consumers to show them the loan cost and growth using several different disbursement scenarios for comparison. One of those scenarios should reflect an assumption that the consumer will draw down all available funds within a relatively short time period after origination.

7.3 Answer to Q. 21: Consumers will benefit from a disclosure explaining how a reverse mortgage grows over time.

A disclosure of how the reverse mortgage loan balance grows over time would be very helpful to borrowers as a supplement to the TALC, but must include accurate assumptions. Borrowers sometimes misinterpret the TALC disclosure. They may have difficulty understanding the rates disclosed on the TALC table.[60] Some consumers guess that rate is the interest rate of the loan, and incorrectly assume that the interest rate on their loan will decrease over time.

The way the loan balance may grow over time under different scenarios is the most important feature for a reverse mortgage borrower to understand. A required disclosure of the loan balance growth over time would be very helpful to consumers, if developed in plain language, with consumer testing, and using accurate assumptions. Below we discuss the important features of such a chart.

7.3.1 Growth of the loan should be disclosed using life expectancy markers rather than fixed periods of years.

Like the TALC, any disclosure of loan balance growth should use the current standard under TILA of assumptions based on life expectancy. Current Reg. Z § 1026.33(c)(6) requires TALC disclosures of three periods: a two-year term, a period equal to the youngest borrower's life expectancy, and a period equal to 1.4 times the youngest borrower's life expectancy. Creditors *may* also include a loan period based on one-half of the consumer's life expectancy. This should be required. In weighing the risks and benefits of a reverse mortgage, consumers need information based on an intermediate amount of time between two years and full life expectancy. The goal of encouraging the informed use of credit is more likely to be achieved if consumers are provided with a simplified disclosure regimen based on two years, half of life expectancy, full life expectancy, and 1.4 times life expectancy.

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[60] *See* Victoria Wong and Norma Paz Garcia, *There's No Place Like Home: The Implications of Reverse Mortgages on Seniors in California*, at 18 Consumers Union (August 1999) (complexity of the disclosure reflects the complexity of the loan itself). This report notes that TALC rates are used by HUD-approved reverse mortgage counselors to help borrowers understand whether the loan is beneficial. However, the TALC calculation has caused some confusion even among counselors themselves. *See* also Summary of Findings: Design and Testing of Truth in Lending Disclosures for Reverse Mortgages, Federal Reserve Board, 2010 (Participants had particular difficulty understanding the meaning of the Total Annual Loan Cost (TALC) rates on the form, which are currently required to be disclosed by statute. Most participants mistakenly thought that the TALC rates were interest rates.)

7.3.2 Open-end loan disclosures should include several disbursement scenarios, including where the consumer draws down all available funds.

Many reverse mortgage borrowers chose the line of credit option under the adjustable-rate HECM.[61] If the consumer has a credit line, the disclosures are based on an assumption that 50% of the principal loan amount is advanced and that no further advances are made during the remaining term of the loan. Although this assumption provides a convenient way to compare different credit lines, it masks the true cost of the loan, which depends in large part on the size and timing of the cash advances requested by the borrower. It also does not show the value of a growing versus non-growing credit line.

7.3.3 Credit line growth is an important feature and should be disclosed.

TILA disclosures should reflect any credit line growth feature that the creditor offers on the loan. The credit line growth feature is an important benefit currently provided to borrowers of HECM reverse mortgages and should be disclosed so that borrowers can properly weigh the benefits of various payout options.

A credit line growth feature allows the unused portion of a line of credit to grow at a specified rate.[62] The existence of this feature means consumers do not have to withdraw a lump-sum up front and put that money into a savings account at a low yield or into an unsuitable investment product.[63]

The creditor should be required to demonstrate a credit line growth feature. Consumers are ill-served by disclosure schemes where an important feature of the product—that will benefit the consumer—is not disclosed properly. When consumers have an accurate understanding of their options, they are more likely to choose the HECM line of credit with the credit growth feature than a full-draw, fixed rate HECM.

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[61] *See* Government Accountability Office, *Reverse Mortgages: Product Complexity and Consumer Protection Issues Underscore Need for Improved Controls Over Counseling for Borrowers*, GAO-09-606, at 8 (June 2009) available at http://www.gao.gov/new.items/d09606.pdf.

[62] For HECM reverse mortgages, that rate is specified in the regulations. 24 C.F.R. §§206.3; 206.25(d). The remaining funds in the line of credit grow by the same rate as the interest rate on the mortgage, plus 0.5%.

[63] *See* AARP, *Home Made Money: A Consumer's Guide to Reverse Mortgages*, at 11 (2007)

7.4 Answer to Q. 22: Consumers would benefit from a brochure explaining how reverse mortgage work.

Consumers would benefit from a brochure that explains the basics of how reverse mortgages work, similar to the CFPB's Reverse Mortgage Discussion Guide.[64]

Research shows that reverse mortgage product knowledge is positively related to demand.[65] Yet homeowners who theoretically could benefit from the products do not have sound product knowledge and may insufficiently evaluate alternative options for their retirement financial planning.[66]

Because borrowers need to go through a number of cognitive steps to make wise decisions, older adults, as a basic starting point, need to understand how reverse mortgages operate[67] and the generic booklets related to closed-end and open-end mortgages still may be helpful for comparison purposes.

8. Use of Artificial Intelligence in Rulemaking: We ask the Bureau to disclose information related to any use of AI as part any rulemaking that results from this RFI and to provide an opportunity for public comment.

We understand that federal administrative agencies may now be using artificial intelligence (AI) in pending rulemakings. We therefore request that the Bureau disclose information related to any use of artificial intelligence as part of this rulemaking and, to the extent such use is significant, provide an additional opportunity for public comment.[68] Under the Administrative Procedure Act's (APA) reasoned decisionmaking requirement, "[w]hen an agency uses a computer model, it must explain the assumptions and methodology used in preparing the model."[69] Moreover, the public must have notice of, and an opportunity to comment on, agencies' uses of models and data, AI-enhanced

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[64] *See* Consumer Financial Protection Bureau, *Reverse Mortgages: A discussion guide,* https://files.consumerfinance.gov/f/documents/cfpb_reverse-mortgage-discussion-guide.pdf.
[65] *See* Thomas Davidoff, Patrick Gerhard and Thomas Post, *Reverse Mortgages: What homeowners (Don't) Know and How it Matters,* Netspar Academic Series (June 18, 2015), https://ssrn.com/abstract=2651032
[66] *Id.* at 25.
[67] Stark, supra note 37.
[68] We adopt the definition of artificial intelligence at Pub. L. 115-232, § 238(g), 132 Stat. 1697–98.
[69] *Owner-Operator Ind. Drivers Ass'n, Inc. v. Fed. Motor Carrier Safety Admin.*, 494 F.3d 188, 204 (D.C. Cir. 2007) (quoting *U.S. Air Tour Ass'n v. FAA,* 298 F.3d 997, 1008 (D.C. Cir. 2002)) (internal quotation marks omitted).

and otherwise, to regulate. Such disclosures are "[t]he safety valves in the use of . . . sophisticated methodology."[70]

Beyond being legally required, disclosure of AI usage is prudent policy. Administrative agencies should uphold the values of transparency and public participation.[71] In particular, the Administrative Conference of the United States has recognized that "[a]gencies' efforts to ensure transparency in connection with their AI systems can serve many valuable goals," and it therefore recommends that "agencies might prioritize transparency in the service of legitimizing its AI systems, facilitating internal or external review of its AI-based decision making, or coordinating its AI-based activities."[72] Among other things, disclosure of AI usage allows the public to confirm that agencies are adhering to relevant laws, apply technical expertise to improve agencies' use of technology, assess the risk that federal policies might be influenced by biased or otherwise faulty methods or products, and learn about an emerging and important field of technology. Indeed, the Office of Management and Budget recently recognized that the government, in using AI, must "provide improved services to the public, while maintaining strong safeguards for civil rights, civil liberties, and privacy."[73]

Consistent with these requirements and principles, we request that the Bureau disclose, first, whether it has used or plans to use AI as part of this rulemaking. If so, the Bureau must disclose the particular AI product it has used and why it was selected, how that product was procured, whether the product was fine-tuned, what prompts or inputs the agency used to elicit responses from the product, and the responses the product produced. The Bureau must also disclose how agency staff used AI-produced information, including any quality control, peer review, or other validation performed. And the Bureau must disclose what measures it took to ensure that its use of AI complied with applicable data security and privacy requirements. To that end, it must disclose whether and to what extent any persons and entities not employed by the

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[70] *Sierra Club v. Costle*, 657 F.2d 298, 334 (D.C. Cir. 1981).
[71] *See* Attorney General's Manual on the Administrative Procedure Act 9 (1947) (describing the APA's purposes to include "requir[ing] agencies to keep the public currently informed of their organization, procedures, and rules" and "provid[ing] for public participation in the rule making process").
[72] Admin. Conf. of the U.S., Statement #20, Agency Use of Artificial Intelligence, 86 Fed. Reg. 6612, 6616 (Jan. 22, 2021).
[73] Memorandum for the Heads of Executive Departments and Agencies from Russell T. Vought, Director, Office of Management & Budget 1, M-25-21 (Apr. 3, 2025), https://www.whitehouse.gov/wp-content/uploads/2025/02/M-25-21-Accelerating-Federal-Use-of-AI-through-Innovation-Governance-and-Public-Trust.pdf.

agency developed, modified, provided access to, or used AI in the course of the agency's decisionmaking process. To the extent the disclosed use of AI is significant, the Bureau must provide an additional opportunity for public comment.

9. Conclusion

Thank you for the opportunity to respond to this Request for Information. If you have any questions about these comments, you may contact Andrew Pizor, Senior Attorney, National Consumer Law Center at apizor@nclc.org.

10. Appendix: Description of Signatories

National Consumer Law Center (NCLC): Since 1969, the nonprofit National Consumer Law Center® has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitative practices, help financially stressed families build and retain wealth, and advance economic fairness. www.nclc.org

Americans for Financial Reform Education Fund (AFREF): The Americans for Financial Reform Education Fund is a coalition of more than 200 consumer, investor, labor, civil rights, business, faith-based, and community groups that works through policy analysis, education, advocacy, and outreach to lay the foundation for a strong, stable, and ethical financial system. Formed in the wake of the 2008 financial crisis, AFREF works to protect and strengthen consumer protections for all people, including advocacy for greater protections against predatory lending, increased access to affordable and sustainable credit, and fairness and transparency in all financial transactions. http://realbankreform.org/

Consumer Federation of America (CFA): For almost 60 years, the Consumer Federation of America has led the charge in championing consumer rights through our research, advocacy, education, and service programs. CFA's over 200 members, united in our mission to advance and defend the consumer interest at the federal, state, and local level, are the foundation of this work and of our lasting impact. https://consumerfed.org/

National Fair Housing Alliance (NFHA): The National Fair Housing Alliance leads a coalition that works to build inclusive, well-resourced, and resilient communities; expand equitable opportunities; and end housing discrimination. www.nationalfairhousing.org

The National Housing Law Project (NHLP): The National Housing Law Project is a non-profit law and advocacy center established in 1968 and based in San Francisco, California. NHLP is dedicated to advancing housing justice by using the power of the law to increase and preserve the supply of decent affordable housing, improve existing housing conditions, expand and enforce low-income tenants' and homeowners' rights, and increase opportunities for racial and ethnic minorities. www.nhlp.org