

~~dwelling. Thus, the proposed regulation applies to consumer credit transactions (both open and closed end), secured by a dwelling, not just a principal dwelling. The Bureau notes that the other subparts of paragraph (c) continue to be limited to consumer credit transactions secured by a consumer's principal dwelling.~~

~~*Seven business days.* Existing § 1026.36(e)(1)(iii) requires the payoff statement to be sent within a reasonable amount of time, and comment 36(e)(1)(iii)-1 clarifies that a reasonable time is “within 5 business days under most circumstances.” New TILA section 129G provides that a reasonable time may not be more than seven business days after the receipt of the request. Proposed § 1026.36(e)(3) reflects this change. Because of this change, the Bureau proposes removing existing comment 36(e)(1)(iii)-1.~~

~~*Written requests.* Existing § 1026.36(e)(1)(iii) requires the payoff statement to be sent after a request is received from the consumer. New TILA section 129G limits the requirement to provide a prompt response to “written requests” for payoff statements. Thus proposed new paragraph (e)(3) would require payoff statements to be provided after receipt of a written request. Related comment (e)(3)-3 (renumbered from (e)(1)(iii)-3)), which provides examples of reasonable requirements the servicer may establish for payoff requests, is also updated to reflect this change.~~

~~The SBREFA Panel recommended the Bureau consider if additional flexibility can be provided in the proposed rule for small servicers, to the extent their current practices differ from the proposal and provide appropriate consumer protections.¹⁰¹ The Bureau seeks comment on whether the proposed rule differs from existing small servicer practices, and if so, how additional flexibility can be provided while still providing appropriate consumer protection.~~

Section 1026.41 Periodic Statements for Residential Mortgage Loans

Proposed § 1026.41 would establish the periodic statement requirement for residential mortgage loans. This section implements TILA section 128(f) as established by DFA section 1420. The statute requires the periodic statement to disclose seven items of information (the amount of the principal obligation, current interest rate and reset date if applicable, information on prepayment penalties and late fees, contact information for the servicer, and housing counselor information), as well as such other information as the Bureau may prescribe in regulations.¹⁰² The Bureau believes the periodic statement would provide the greatest value to consumers by also providing information regarding upcoming payment obligations and the application of past payments; a list of recent transaction activity; additional account information; and delinquency information. Thus, the Bureau proposes pursuant to TILA section 129(f)(1)(H) that each periodic statement also include this additional information.

TILA section 128(f) applies the requirement to provide a periodic statement to creditors, assignees, and servicers of residential mortgage loans. To increase readability, proposed § 1026.41 uses the term “servicer” to describe the entities covered by the proposed requirement, and defines servicer to mean creditors, assignees, or servicers for the purposes of § 1026.41. This terminology is also used in the section-by-section analysis for proposed § 1026.41. The statute applies the periodic statement to “the creditor, assignee, or servicer.” Comment 41(a)-3

¹⁰¹ *Id.*

¹⁰² TILA section 129(f)(1).

clarifies that only one periodic statement must be sent to the consumer each billing cycle, while the creditor, assignee and servicer are subject to the periodic statement requirement, they may decide among themselves who will send the statement. Comment 41(a)-4 clarifies that a creditor who no longer owns the mortgage loan or the mortgage servicing rights is not “applicable” and therefore not subject to the requirements. The Bureau interpretation of the statute would not apply the on-going periodic statement requirements to an entity that originated the loan, but has sold both the loan and the servicing rights and no longer has any connection to the loan.

As proposed, the periodic statement carefully balances the need to provide consumers with sufficient information against the risk of overwhelming consumers with too much information. The proposed requirements are designed to make the statement easy to read, whether provided in a paper form or electronically. The Bureau believes that imposing a requirement that information be grouped would present the information in a logical format, while allowing servicers flexibility in customizing the statement. Thus, the proposed regulations discussed below would require the following groupings of information:

- *The Amount Due:* The most prominent disclosure on the statement would be the amount due. The due date of the payment due and information on the late fee is also included in this grouping.
- *Explanation of Amount Due:* This grouping would include a breakdown of the amount due, showing allocation to principal, interest, and escrow. This grouping would also provide the total sum of any fees or charges imposed, and any amount of past due payment.
- *Past Payment Breakdown:* This grouping would include a breakdown of how previous payments were applied.
- *Transaction Activity:* This grouping would be a list of any activity that credits or debits the outstanding account balance, for example, charges imposed or payments received.

The periodic statement would also include the following information:

- Certain messages as required at certain times (for example, information on funds held in a suspense or unapplied funds account).
- Contact information for the servicer.
- Account information as required by the statute, including the amount of the principal obligation, current interest rate, and when it might change (if applicable), information on prepayment penalties (if applicable) and late fees, contact information for the servicer, and housing counselor information.
- Finally, additional delinquency information would be required when a consumer is more than 45 days delinquent on his or her loan. Each of these disclosures is discussed below.

Additionally, the proposed regulation sets forth requirements regarding the timing and form of the periodic statement and establishes exemptions to the requirement to provide a periodic statement.

41(a) In general

Proposed § 1026.41(a) states the general requirement that, for a closed-end consumer credit transaction secured by a dwelling, a creditor, assignee, or servicer must transmit to the consumer for each billing cycle a periodic statement meeting the timing, form, and content requirements of § 1026.41, unless an exemption applies. As discussed below, the proposed requirements and exemptions are authorized under TILA sections 128(f), and 105(a) and (f), and DFA sections 1032(a) and 1405(b).

As discussed above, the periodic statement is intended to serve a variety of purposes, including informing consumers of their payment obligations, providing information about the mortgage loan, creating a record of transactions that increase or decrease the outstanding balance, providing the information needed to identify and assert errors, and providing information when borrowers are delinquent. To meet these goals, paragraphs (b), (c), and (d) respectively, propose the requirements for the timing, form, content, and layout of the periodic statement. Paragraph (e) proposes exemptions from the proposed periodic statement requirement.

Entities covered. TILA section 128(f) imposes the periodic statement requirement on creditors, assignees, and servicers. Proposed § 1026.41(a) would implement this provision by specifying that the duty to transmit periodic statements applies to the servicer, defined to mean creditor, assignee, or servicer. The consumer is only required to receive one periodic statement each billing cycle, but creditors, assignees, and servicers would all be responsible for ensuring that the consumer receives a periodic statement that meets the requirements of § 1026.41.

Scope. Under TILA section 128(f), the periodic statement requirement applies to residential mortgage loans. The term “residential mortgage loan” is generally defined in TILA section 103(cc)(5) to mean any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real property that includes a dwelling, other than a consumer credit transaction under an open-end credit plan. Consistent with this definition, proposed paragraph (a) would apply the periodic statement requirement to “any closed-end consumer credit transaction secured by a dwelling.” This language implements the substantive scope of the statute; no substantive change is intended.

Transmit to the consumer. Proposed § 1026.41(a) would require the servicer to transmit the periodic statement to the consumer. The term “transmit” is used in the statute. Use of this term would indicate that the servicer must do more than simply make the statement available; the statement would be required to be sent to the consumer. Paper statements mailed to the consumer would meet this requirement. As discussed below with respect to proposed § 1026.41(c), if the servicer is using an electronic method of distribution, a servicer may send the consumer an email indicating that the statement is available, rather than attaching the statement itself, to account for information security concerns.

Proposed comment 41(a)-1 clarifies that joint obligors need not receive separate statements; a single statement addressed to both of them would satisfy the periodic statement requirement.

Billing cycles. Proposed § 1026.41(a) would require a periodic statement to be sent each “billing cycle.” The billing cycle corresponds to the frequency of payments, as established by the legal obligation of the consumer as determined by the mortgage note and any subsequent

modifications to that obligation. Thus, if a loan requires the consumer to make monthly payments, that consumer will have a monthly billing cycle. Likewise, if a consumer makes quarterly payments, that consumer will have a quarterly billing cycle.

Based on industry outreach, the Bureau has learned of other alternatives to monthly billing cycles. Some loans may be timed to accommodate consumers employed in seasonal industries (for example, a loan may have 10 payments over the course of a year). For such loans the billing cycle may not align with the calendar months. Another non-monthly payment arrangement may occur when payments are made every other week, or other similar less-than-monthly periods. For example, servicers and consumers may arrange a bi-weekly payment program to align mortgage payments with the consumer's paychecks. Such billing cycles may be arrangements with the servicer that do not modify the legal obligation of the consumer. In such cases, a periodic statement may, but is not required to, reflect this modified payment cycle.

The Bureau realizes that a requirement to provide statements every other week may be costly for servicers and unhelpful to consumers. In addition, such a short cycle may cause problems with information on the statement being outdated. Thus, paragraph (a) allows that if a loan has a billing cycle shorter than a period of 31 days (for example, a bi-weekly billing cycle), a periodic statement covering an entire month may be used. Related proposed comment 41(a)-2 clarifies how such a single statement would aggregate information from multiple billing cycles.

Authority. Proposed paragraph (a) implements new TILA section 128(f)(1) requiring that a creditor, assignee, or servicer, with respect to any closed-end consumer credit transaction secured by a dwelling must transmit a periodic statement to the consumer. In addition, the Bureau proposes in paragraph (a) to use its authority under TILA section 105(a) and (f) and DFA section 1405(b) to exempt creditors, assignees, and servicers of residential mortgage loans from the requirement in TILA section 128(f)(1)(G) to transmit periodic statement each billing cycle when the billing cycle is less than a month, and to instead permit servicers to provide an aggregated periodic statement covering an entire month. For the reasons discussed above, the Bureau believes that the proposed exception is necessary and proper under TILA section 105(a) both to effectuate the purposes of TILA -- to promote the informed use of credit and protect consumers against inaccurate and unfair credit billing practices -- and to facilitate compliance. Moreover, the Bureau believes, in light of the factors in TILA section 105(f), that sending periodic statements more than once a month would not provide a meaningful benefit to consumers. Specifically, the Bureau considers that the exemption is proper irrespective of the amount of the loan, the status of the borrower (including related financial arrangements, financial sophistication, and the importance to the borrower of the loan), or whether the loan is secured by the principal residence of the consumer. Further, in the estimation of the Bureau, consistent with DFA section 1405(b), the proposed exemption will prevent the consumer confusion that might result from receiving multiple periodic statements in close sequence, thus furthering the consumer protection purposes of the statute.

Paragraph (b) interprets the statutory requirement that a periodic statement must be provided for each billing cycle by requiring the periodic statement be delivered or placed in the mail within a reasonably prompt time after the close of the grace period of the previous billing cycle.

Paragraph (c) invokes authority under TILA sections 105(a), 122, and 128(f)(2) to require that the disclosures must be made clearly and conspicuously in writing, or electronically if the

consumer agrees, and in a form the consumer may keep. The Bureau also interprets the statute to mandate certain of these form requirements.

As discussed in more detail below, the Bureau generally proposes to impose the periodic statement requirement pursuant to its authority under TILA sections 128(f) and 105(a), and DFA sections 1032(a) and 1405(b).

41(b) Timing of the Periodic Statement

Proposed § 1026.41(b) provides that the periodic statement must be sent within a reasonably prompt time after the close of the grace period of the previous billing cycle. Proposed comment 41(b)-1 provides that four days after the close of any grace period would be considered reasonably prompt.

For the first payment on the mortgage loan, proposed paragraph (b) would require that the first periodic statement be sent no later than 10 days before this first payment is due. This adjustment is necessary because there is no previous billing cycle from which to time the sending of the first statement.

The periodic statement serves the dual purposes of giving an accounting of payments received since the previous periodic statement, and reminding the consumer about the upcoming payment. To achieve these dual purposes, the periodic statement must arrive after the last payment was received and before the next payment is due, which can be a relatively narrow window. If a payment is due on the first of the month, grace periods may give the consumer as late as the 15th of the month to make that payment. Thus, if a statement is sent before the 15th of the month, that statement may not reflect the consumer's most recent payment, or any late charge imposed due to a late payment. However, if a statement is sent at the close of the month, that statement may not arrive before the next payment is due on the first day of the next month. Allowing a few days for processing and mailing of statements creates a tight timeframe. The Bureau seeks comment on whether the proposed regulation appropriately addresses this timeframe. Additionally, the Bureau seeks comment on whether it is operationally difficult to have the first statement delivered or placed in the mail 10 days before the first payment is due.

The Bureau interprets the requirement in TILA section 128(f) that periodic statements be sent for "each billing cycle" to authorize the timing requirements proposed in § 1026.41(b). In addition, the proposed timing requirements are authorized under TILA section 105(a), and DFA sections 1032(a) and 1405(b). For the reasons noted above, the Bureau believes, consistent with TILA section 105(a), that the proposed requirements are necessary and proper to effectuate the purposes of TILA to assure a meaningful disclosure of credit terms and protect consumers against inaccurate and unfair credit billing practices by assuring that consumers receive the periodic statement at a time that is useful to them. In addition, consistent with DFA section 1032(a), the Bureau believes that the proposed timing requirements help ensure that the features of consumers' residential mortgage loans, both initially and over the term of the loan, are effectively disclosed to consumers in a manner that permits them to understand the costs, benefits, and risks associated with the loan. Moreover, consistent with DFA section 1405(b), the Bureau believes that the proposed timing requirements would improve consumer awareness and understanding of their residential mortgage loans by assuring that consumers receive the periodic statements at a meaningful time, after their last payment is made and before their next payment is due, and that proposed requirements are thus in the interest of consumers.

41(c) Form of the Periodic Statement

Proposed § 1026.41(c) provides that the periodic statement disclosures required by section § 1026.41 must be made clearly and conspicuously in writing, or electronically, if the consumer agrees, and in a form the consumer may keep. TILA section 128(f)(1) specifies that periodic statements must be “conspicuous and prominent,” and TILA section 128(f)(2) requires the Bureau to develop and prescribe a standard form to be transmitted in writing or electronically. The Bureau proposes to implement these provisions, in part through the form requirements set forth in proposed § 1026.41(c) and the related forms provided in Appendix H-28. In addition, the proposed form requirements are authorized under TILA section 122, which requires the disclosures under TILA be clear and conspicuous, TILA section 105(a) and DFA sections 1032(a) and 1405(b). As discussed below, the Bureau believes, consistent with TILA section 105(a), that the proposed form requirements are necessary and proper to effectuate the purposes of TILA to assure a meaningful disclosure of credit terms and protect the consumer against inaccurate and unfair credit billing practices by assuring that the periodic statement sent to consumers is in a form that they can understand. In addition, consistent with DFA section 1032(a), the Bureau believes that the proposed form requirements help ensure that the features of consumers’ residential mortgage loans, both initially and over the term of the loan, are effectively disclosed to consumers in a manner that permits them to understand the costs, benefits, and risks associated with the loan. Moreover, consistent with DFA section 1405(b), the Bureau believes that the proposed form requirements would improve consumer awareness and understanding of their residential mortgage loans by assuring that the periodic statements sent to consumers are in a useable form that is easy to understand and that the form requirements are thus in the interest of consumers and the public interest.

Clear and conspicuous. TILA section 122 requires that disclosures under TILA be clear and conspicuous. Existing § 1026.31(b) generally implements this requirement with respect to disclosures required by subpart E, where new § 1026.41 will be located. Section 1026.31(b) applies only to creditors, however. Thus, to make this requirement applicable to servicers (defined to include creditors and assignees), proposed paragraph 41(c) would require, consistent with TILA section 122 and existing § 1026.31(b), that the periodic statement be clear and conspicuous. Proposed comment 41(c)-1 clarifies the clear and conspicuous standard, stating that it generally requires that disclosures be in a reasonably understandable form, and explains that other information may be included on the statement, so long as that other information does not overwhelm or obscure the required disclosures. Thus, information that is traditionally found on their periodic statements, but not proposed as required by this regulation, such as the servicer’s logo, information on payment methods, or additional information on escrow accounts, may continue to be included on periodic statements.

Additional information. Proposed comment 41(c)-2 states that nothing in this subpart prohibits a servicer from including additional information or combining disclosures required by other laws with the disclosures required by § 1026.41, unless such prohibition is expressly set forth in § 1026.41 or the applicable law. For example, the grouping requirements discussed below may not be overridden by additional information in the statement.

Based on industry outreach, the Bureau understands that some institutions provide a combined statement for mortgage loans and other financial products. For example if a consumer has both a checking account and a mortgage with a credit union, the consumer may receive a single combined statement. The Bureau seeks comment on how servicers would actually

combine statements. In particular, the Bureau notes that difficulties may arise when different disclosures have different timing requirements, and when multiple disclosures have requirements that information be presented on the first page of the statement. For example, if both mortgage loan disclosures and credit card disclosures are required to be on the first page of a statement, how would these statements be combined?

Electronic distribution. TILA section 128(f)(2) provides that periodic statements “may be transmitted in writing or electronically.” Consistent with this provision, proposed § 1026.41(c) would allow statements to be provided electronically, if the consumer agrees. As discussed above, the requirement to transmit a periodic statement to the consumer may be met by sending the consumer an e-mail notification that the statement is available, rather than e-mailing the statement itself in light of information security concerns. This paragraph would require only affirmative consent by the consumer to receive statements, not compliance with E-Sign verification procedures. The Bureau does not believe E-Sign consent is required by the statute. E-Sign is designed to provide an electronic alternative to required writings. The statute, however, requires only periodic “statements” as opposed to “writings” to be transmitted to consumers. Additionally, the statute contemplates electronic statements, as TILA section 129(f)(2) provides that the Bureau shall prescribe a standard form, taking into account that the statements required may be transmitted in writing or electronically. Thus, the Bureau believes that Congress did not intend to require E-Sign verification procedures. The Bureau seeks comment as to whether additional requirements should be placed on when a consumer consents to receiving electronic statements. For example, must consent be obtained or confirmed electronically in a manner that demonstrates that the consumer is able to access information electronically? The Bureau also seeks comment on whether consumers who already receive electronic statements should be deemed as having consented to receive statements electronically. Additionally, the Bureau seeks comment on whether consumers who have auto-debit set up to deduct payments from their bank account should be deemed as having consented to receive statements electronically.

Retainability. Proposed § 1026.41(c) would require the disclosure be provided in a form the consumer may keep. Paper statements sent by mail or provided in person, would satisfy this requirement. If electronic statements are used, they must be in a form which the consumer can print or download.

Sample forms. Proposed § 1026.41(c) also states that sample forms are provided in Appendix H-28, and that appropriate use of these forms will be deemed to comply with the section. The sample forms were developed through consumer testing as discussed in part III.B above, and are intended to give guidance regarding compliance with proposed § 1026.41. However, they are not required forms, and any arrangements of the information that meet the requirements of proposed § 1026.41 would be considered in compliance with the section. The sample forms also contain additional information (for example, a tear-off coupon on the bottom) that is not required to be on the form, but is included to give context to the sample. These proposed regulations and sample forms were crafted to give servicers flexibility in designing their periodic statements. The Bureau proposes these sample forms pursuant to its authority, inter alia, under TILA section 128(f)(2).

41(d) Content and Layout of the Periodic Statement

Proposed § 1026.41(d) contains content and layout requirements that implement, in part, TILA section 128(f), and is additionally authorized under TILA section 105(a) and DFA sections 1302(a) and 1405(b).

The content required by paragraph (d) is authorized under TILA section 128(f)(1). Such content is authorized as follows:

- *Statutorily-required content:* TILA sections 128(f)(1)(a) through (g) requires the inclusion of certain items of information in the periodic statement. The proposed regulation generally implement these provisions by requiring the content set forth in § 1026.41(d)(1)(ii), (6) and (7), and the description of late fees in § 1026.41(d)(4).
- *Additional content:* TILA section 128(f)(1)(H) requires inclusion in periodic statements of such other information as the Bureau may prescribe by regulation. The remainder of the content of the periodic statement is proposed under this authority.

The grouping and other form requirements of the layout in paragraph (d) implement, in part, the requirement under TILA section 128(f)(1) that the content of the periodic statement be presented in a conspicuous and prominent manner, and under TILA section 128(f)(2) for the Bureau to develop and prescribe a standard form for the periodic statement disclosure. In addition, as discussed above with respect to the form requirements under § 1026.41(c) and for the reasons explained below, the proposed grouping and form requirements under § 1026.41(d) are authorized under TILA section 105(a) and DFA sections 1032(a) and 1405(b).

The periodic statement is designed to provide the consumer with information in an easy-to-read format. The goal of the proposed grouping and form requirements is to highlight key information – the amount due – and organize information so the statement would not be overwhelming to the consumer. The commentary to paragraph (d), discussed below, reflects these goals.

Exemptions and adjustments: TILA section 128(f)(1)(G) requires the periodic statement to include the names, addresses and other contact information for government-certified counseling agencies or programs reasonably available to the consumer. For the reasons discussed below, the Bureau proposes to use its authority under TILA section 105(a) and (f) to exempt servicers from having to include this information in periodic statements to and to instead require the periodic statement to include contact information for the State housing finance authority for the State in which the property is located and information to access the HUD list or Bureau list of homeownership counselors or counseling organizations. This adjustment is additionally authorized under DFA section 1405(b).

Close proximity. Proposed § 1026.41(d) would require specific disclosures be grouped together and presented in close proximity. Information is grouped together to aid the consumer in understanding relatively complex information about their mortgage. The General Design Principles discussed in the Macro final report (Macro Report) include grouping together related concepts and figures because consumers are likely to find it easier to absorb and make sense of financial forms if the information is grouped in a logical way.¹⁰³

¹⁰³ Macro Report, *supra* note 38, at 4.

Proposed comment 41(d)-1 clarifies that close proximity requires items to be grouped together and set off from the other groupings of items. This can be accomplished, for example, by including lines or boxes on the statement, or by including white space between the groupings. Items required to be in close proximity should not have any intervening text between them. The close proximity standard is found in other parts of Regulation Z, including §§ 1026.24(b) and 1026.48. In both provisions, the commentary interprets close proximity to require the information to be located immediately next to or directly above or below, without any intervening text or graphical displays.¹⁰⁴

Information not applicable. Proposed comment 41(d)-2 provides that information that is not applicable to the loan may be omitted from a periodic statement. For example, if a loan does not have a prepayment penalty, the periodic statement may omit the prepayment penalty disclosure.

Terminology. Proposed comment 41(d)-3 provides that the periodic statement may use terminology other than that found on the sample forms so long as the new terminology is commonly understood. This gives servicers the flexibility to use regional terminology or commonly used terms with which consumers are familiar. For example, during consumer testing in California, participants were confused by the use of the term “escrow.” One participant explained that in California, the term “escrow” refers to an account set up to hold funds until a homebuyer closes on the house. This participant said he was more familiar with the term “impound account” to refer to the account holding funds for taxes and insurance.¹⁰⁵ In this example, use of the term “impound account” to refer to the escrow account for taxes and insurance would be permitted for periodic statements provided to consumers in California.

41(d)(1) Amount Due

Proposed § 1026.41(d)(1) would require the periodic statement to provide information on the amount due, the payment due date, and the amount of any fee that would be assessed for a late payment, as well as the date on which that fee would be imposed if payment is not received. This information would have to be grouped together and located at the top of the first page of the statement. The amount due would have to be more prominent than any information on the page. This is consistent with the general principle of designing disclosures to highlight the most important information for consumers to make it easy for them to find.¹⁰⁶ A primary purpose of the periodic statement is to alert the consumer to upcoming payment obligations. The Bureau interprets TILA section 129(f)(E), which requires the periodic statement to include a description of any late payment fees, to require disclosure of the amount of any fees that would be assessed for late payments as well as the date the fee would be imposed if the payment has not been received, as well as other information regarding late fees discussed below. Although information concerning the amount due and the payment due date is not enumerated in the statute, the Bureau believes that this is the information the consumer is most likely to need. Because of the importance of this information, it is placed in the prominent position of the top of the first page, and the total amount must be the most prominent item on the page. In consumer testing, all

¹⁰⁴ See comments 24(b)-2 and 48-3 respectively.

¹⁰⁵ Macro Report, *supra* note 38, at 12.

¹⁰⁶ *Id.* at 4.

participants were able to identify the amount due on the sample periodic statement presented to them.¹⁰⁷

If the consumer has a payment-option loan, each of the payment options must be displayed with the amount due information. An example of such a statement is included in proposed Appendix H-28(C).

41(d)(2) Explanation of Amount Due

Proposed § 1026.41(d)(2) would require periodic statements to include an explanation of the amount due, providing the monthly payment amount, including the allocation of that payment to principal, interest and escrow (if applicable). Additionally, the statement would have to provide the total fees or charges incurred since the last statement, and any amount past-due (which would include both over-due payments and over-due fees). This information would have to be grouped together in close proximity and located on the first page of the statement.

The Explanation of Amount Due is intended to give consumers a snapshot of why they are being asked to pay the amount due. At a glance, consumers would be able to see their payment amount; how much is allocated to principal, interest and escrow (if applicable); and the total fees or other charges incurred since the last statement; and any post-due amounts. In this section, the fees incurred since the last statement would be shown in aggregate; a breakdown of the individual fees would be provided in the Transaction Activity section, discussed below. Additionally, this section would show the total of past due payments and fees from previous billing cycles. In the first round of consumer testing, Macro tested the form to see if participants were able to understand what charges constituted the total amount due. The sample form used in testing showed a late payment fee. After looking at the Explanation of Amount Due, all participants understood the amount due included a regular monthly payment and a late fee.¹⁰⁸ This indicates that the Explanation of Amount Due helps consumers understand the amount they need to pay.

If the consumer has a payment-option loan, a breakdown of each of the payment options would be required in the Explanation of Amount Due. Additionally, the Explanation of Amount Due would require inclusion of information about how each of the payment options will affect the outstanding loan balance. A form with such a box was tested during consumer testing. All but one of the participants were able to understand the effects the different payment options would have on their loan balance – that the loan balance would decrease, stay the same (for interest-only payments) or increase.¹⁰⁹ A sample form is provided in Appendix H-28(C).

41(d)(3) Past Payment Breakdown

Proposed paragraph (d)(3) would require periodic statements to include a snapshot of how past payments have been applied. Proposed § 1026.41(d)(3)(i) would require the periodic statement to include both the total of all payments received since the last statement and a breakdown of how those payments were applied to principal, interest, escrow, fees, and charges, and any partial payment or suspense account (if applicable). Proposed § 1026.41(d)(3)(ii) would require the total of all payments received since the beginning of the calendar year and a

¹⁰⁷ See *id.* at 6.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 14.

breakdown of how those payments were applied to principal, interest, escrow, fees, and charges, as well as the amount currently held in any partial payment or suspense account (if applicable). This information would have to be grouped together in close proximity, and located on the first page of the statement.

The past payment breakdown disclosure serves several purposes on the periodic statement, including creating a record of payment application, providing the consumer information needed to assert any errors, and providing information about the mortgage expenses.

The breakdown in paragraph (d)(3)(i), showing all payments made since the last statement, would allow the consumer to confirm that his or her payments was properly applied. If the payments were not properly applied, the breakdown would provide the consumers the information needed to assert an error. Although testing participants had some confusion about partial payments as discussed below, they were able to identify how their payments had been applied based on the past payment breakdown information included on the sample statement.¹¹⁰

Both the breakdown since the last billing cycle and the breakdown of the year-to-date play an important role in educating the consumer. The payments since the last statement inform consumers of how much their outstanding principal has decreased, while the year-to-date information educates consumers on the costs of their mortgage loan. Consumer testing revealed that consumers may be surprised by how much of their payment is going to interest or fees as opposed to principal. Aggregated over the year-to-date can bring this expense to a consumers' attention, and motivate them to possibly change behaviors that are generating significant expenses. For example, consumers who habitually submit their payment a few days late may correct this behavior if they realize it is costing them hundreds of dollars a year. The breakdown of all payments made in the current calendar year to date is of particular importance in educating consumers about their loans, especially since there is no other mandated year-end summary of all payments received and their application. The past payment breakdown, of both the payments since the last statement, and payments for the year to date, provides the consumer with important information that is not currently required to be disclosed.

Partial Payments. Proposed comment 41(d)(3)-1 provides guidance on how partial payments that have been sent to a suspense account should be reflected in the past payments breakdown section of the periodic statement. The proposed comment provides illustrative examples of how partial payments sent to a suspense account should be listed as unapplied funds since the last statement and year to date. Consumer testing revealed that consumers have very little understanding about how partial payments are handled.¹¹¹ As discussed in part IV.C above, the periodic statement is designed to help consumers understand how partial payments are processed. The past payment breakdown is useful in communicating information about partial payments and suspense accounts to consumers.

41(d)(4) Transaction Activity

Proposed § 1026.41(d)(4) would require the periodic statement to include a Transaction Activity section that lists any activity since the last statement that credits or debits the outstanding account balance. For each transaction, the statement would include the date of the

¹¹⁰ *Id.* at 9.

¹¹¹ *Id.* at 11.

transaction, a description of the transaction, and the amount of the transaction. This information must be grouped together, but may be provided anywhere on the statement.

Proposed comment 41(d)(4)-1 clarifies that transaction activity includes any activity that credits or debits the outstanding loan balance. For example, proposed comment 41(d)(4)-1 states that transaction activity would include, without limitation, payments received and applied, payments received and sent to a suspense account, and the imposition of any fee or charge. Thus, the Transaction Activity section would provide a list of all charges and payments, covering the time from the last statement until the current statement is printed. This disclosure would allow the consumer to understand what charges are being imposed and provide further detail regarding the aggregated numbers found in the “Explanation of Amount Due” section. The Transaction Activity section would provide a record of the account since the last statement, allowing the consumer to review for errors, ensure payments were received, and understand any and all costs. If a servicer receives a partial payment and decides to return the payment to the consumer, such a payment would not need to be included as a line item in the Transaction Activity section, because this activity would neither credit nor debit the outstanding account balance. The Bureau seeks comment on whether the periodic statement should be required to include a message under paragraph (d)(5) when a partial payment is returned to the consumer.

Late fee description. Proposed comment 41(d)(4)-2 clarifies that the description of any late fee charge in the transaction activity section includes the date of the late fee, the amount of the late fee, and the fact that a late fee was imposed. The Bureau interprets TILA section 129(f)(E), which requires that the periodic statement include “a description” of any late payment fees, to require disclosure of this information, as well as information regarding late fees discussed above.

Suspense accounts. Proposed comment 41(d)(4)-3 clarifies that if a partial payment is sent to a suspense account, the fact of the transfer should be reflected in the transaction description (for example, a partial payment entry in the transaction activity might read: “Partial payment sent to suspense account”), the funds sent to the suspense account should be reflected in the unapplied funds section of the past payment breakdown, and an explanation of what must be done to release the funds should be provided in the messages section. The messages section, discussed below, should include an explanation of what the consumer must do to release the funds from the suspense account.

41(d)(5) Messages

Proposed § 1026.41(d)(5) would require a message on the front of the statement if a partial payment of funds is being held in a suspense account regarding what must be done for the funds to be applied.

The Bureau seeks comment on what, if any, additional messages should be required. In particular, the Bureau seeks comment on whether there should be a required disclosure where the consumer has a negatively-amortizing or interest-only loan. Additionally, the Bureau seeks comment on whether there should be a required disclosure on private mortgage insurance and when it may be eliminated. Finally, the Bureau seeks comment as to if more than one message is required, and if so, should these be grouped together and should these messages be required to be on the first page of the statement?

41(d)(6) Contact Information

Proposed § 1026.41(d)(6) would require that the periodic statement contain contact information specifying where a consumer may obtain information regarding the mortgage. Proposed comment 41(d)(6)-2 clarifies that this contact information must be the same as the contact information for asserting errors or requesting information. The Bureau seeks comment on whether consumers are likely to contact the servicer for information other than errors or inquiries, which would necessitate a different number being included on the periodic statement. Proposed § 1026.41(d)(6) provides that the contact information provided must include a toll-free telephone number. Proposed comment 41(d)(6)-1 clarifies that the servicer may provide additional information, such as a web address, at its option. Proposed § 1026.41(d)(6) does not require that the contact information be set off in a separate section, but simply that it be included on the front page of the statement. This proposed requirement would allow servicers to include this information with their company name and logo at the top of the page or elsewhere on the statement.

41(d)(7) Account Information

Proposed § 1026.41(d)(7) would require that the following information about the mortgage, as required by the statute, be included on the statement: the amount of principal obligation, the current interest rate in effect for the loan, the date on which the interest rate may next reset or adjust, the amount of any prepayment penalty, and information on housing counselors. This information may be included anywhere on the statement. This information may, but need not be, grouped together. While the sample form has this information on the first page, the servicer is not required to include this information on the first page.

Prepayment penalty. Proposed § 1026.41(d)(7)(iv) defines a prepayment penalty as “a charge imposed for paying all or part of a transaction’s principal before the date on which the principal is due.” This definition is further clarified in the proposed commentary. Proposed comment 41(d)(7)(iv)-1 gives the following examples of prepayment penalties: (1) a charge determined by treating the loan balance as outstanding for a period of time after prepayment in full and applying the interest rate to such “balance,” even if the charge results from interest accrual amortization used for other payments in the transaction under the terms of the loan contract; (2) a fee, such as an origination or other loan closing cost, that is waived by the creditor on the condition that the consumer does not prepay the loan; (3) a minimum finance charge in a simple interest transaction; and (4) computing a refund of unearned interest by a method that is less favorable to the consumer than the actuarial method, as defined by section 933(d) of the Housing and Community Development Act of 1992, 15 U.S.C. 1615(d). Proposed comment 41(d)(7)(iv)-1.i further clarifies that “interest accrual amortization” refers to the method by which the amount of interest due for each period (*e.g.*, month) in a transaction’s term is determined and states, for example, that “monthly interest accrual amortization” treats each payment as made on the scheduled, monthly due date even if it is actually paid early or late (until the expiration of any grace period). The proposed comment also provides an example where a prepayment penalty of \$1,000 is imposed because a full month’s interest of \$3,000 is charged even though only \$2,000 in interest was accrued in the month during which the consumer prepaid.

Proposed comment 41(d)(7)(iv)-2 clarifies that a prepayment penalty does not include: (1) fees imposed for preparing and providing documents when a loan is paid in full, if the fees are imposed whether or not the loan is prepaid, such as a loan payoff statement, a reconveyance

document, or another document releasing the creditor's security interest in the dwelling that secures the loan; or (2) loan guarantee fees.

The definition of prepayment penalty in proposed § 1026.41(d)(7)(iv) and comments 41(d)(7)(iv)-1 and -2 substantially incorporate the definitions of and guidance on prepayment penalties from the Board's 2009 Closed-End Proposal, 2010 Mortgage Proposal, and 2011 ATR Proposal and, as necessary, reconciles their differences. For example, the Bureau is proposing to incorporate the language from the Board's 2009 Closed-End Proposal and 2010 Mortgage Proposal but omitted in the Board's 2011 ATR Proposal listing a minimum finance charge as an example of a prepayment penalty and stating that loan guarantee fees are not prepayment penalties, because similar language is found in longstanding Regulation Z commentary. Based on the differing approaches taken by the Board in its recent mortgage proposals, however, the Bureau seeks comment on whether a minimum finance charge should be listed as an example of a prepayment penalty and whether loan guarantee fees should be excluded from the definition of the term prepayment penalty.

The Bureau expects to coordinate the definition of the term prepayment penalty in proposed § 1026.41(d)(7)(iv) with the definitions in other pending rulemakings relating to mortgages.

The Bureau seeks comment on the feasibility of disclosing the amount of any prepayment penalty, as the amount of the penalty could depend on the timing or amount of prepayment, and if a preferable alternative would be to disclose the maximum amount of a prepayment penalty. Alternatively, the Bureau seeks comment on whether a better alternative would be for the periodic statement to disclose the existence of a prepayment penalty in place of the amount.

Housing counselors. Proposed § 1026.41(d)(7)(v) would require the periodic statement to include contact information for the State housing finance authority for the State in which the property is located, and information to access either the either the Bureau list or the HUD list of homeownership counselors or counseling organizations.

TILA section 128(f)(1)(G) requires the periodic statement to include the names, addresses, telephone numbers and internet addresses of counseling agencies or programs reasonably available to the consumer that have been certified or approved and made publically available by the Secretary of Housing and Urban Development or a State housing finance authority.

On July 9, 2012, the Bureau released the 2012 HOEPA Proposal to implement other Dodd-Frank Act provisions, including the requirement to provide a list of housing counselors in connection with the application process for mortgage loans.¹¹² In connection with those requirements, the Bureau proposed to require creditors to provide a list of five homeownership counselors or counseling organizations to applicants for various categories of mortgage loans. The Bureau also indicated that it is expecting to develop a website portal that would allow lenders to type in the loan applicant's zip code to generate the requisite list, which could then be

¹¹² See 2012 HOEPA Proposal, available at http://files.consumerfinance.gov/f/201207_cfpb_proposed-rule_high-cost-mortgage-protections.pdf, at 29-35.

printed for distribution to the loan applicant. This will allow creditors to access lists of the housing counselors with a minimum amount of effort.¹¹³

In connection with the periodic statement requirement, however, the Bureau is proposing to use its exception authority to require servicers simply to list where consumers can find a list of counselors, rather than to reproduce a list of counselors in each billing cycle. The Bureau believes that this approach appropriately balances consumer and servicer interests based on several considerations.

First, the Bureau is concerned about information overload for consumers. The periodic statement contains a significant amount of information already. While consumers who are deciding whether to take out a mortgage loan in the first instance may greatly benefit from consultation with a housing counselor, that likelihood is greatly reduced with regard to consumers receiving regular periodic statements on existing loans.

Second, the burden on servicers to import the list of counselors into a periodic statement document or to attach a list with each billing cycle is significantly higher than with regard to a single provision of the list. Space on the periodic statements is limited, and importing updated information from the CFPB website each cycle would involve more programming burden than simply listing the two agencies' websites in the first instance.

To address these concerns, the proposal would require that the periodic statements include the contact information to access the State housing finance authority for the State in which the property is located, and the website and telephone number to access either the Bureau list or the HUD list of homeownership counselors or counseling organizations.¹¹⁴ Directing consumers to this information would allow them to choose a program or agency conveniently located for them, and would allow the consumer to locate other programs or agencies if those contacted initially could not help the consumer at that time. The Bureau seeks comment on whether this proposal strikes an appropriate balance, and on the benefits and burdens to both borrowers and servicers of requiring that a list of several individual housing counselors be included in or with the periodic statement.

Because housing counselor information may not be relevant to consumers who are current and not facing any problems, the proposal does not require this information to be on the front of the statement. The Bureau seeks comment if this information should be required to be located on the front of this statement. In a related requirement, when the delinquency information is provided, the proposed regulations would require that the delinquency information contain a reference to this housing counselor information. This would ensure that the housing counselor information would be brought to the attention of delinquent consumers. These provisions are discussed further below.

¹¹³ The list provided by the lender pursuant to the 2012 HOEPA Proposal would include only homeownership counselors or counseling organizations from either the most current list of homeownership counselors or counseling organizations made available by the Bureau for use by lenders, or the most current list maintained by HUD of homeownership counselors or counseling organizations certified by HUD, or otherwise approved by HUD. *See id.* at 32-33.

¹¹⁴ At the time of publishing, the Bureau list was not yet available and the HUD list is available at <http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm>.

The Bureau expects to coordinate the housing counselor information requirement in proposed § 1026.41(d)(7)(v) with the definitions in other pending rulemakings concerning mortgage loans that address housing counselors. The Bureau believes that, to the extent consistent with consumer protection objectives, adopting a consistent approach to providing housing counselor information across its various pending rulemakings will facilitate compliance. The Bureau notes that other housing counselor requirements (for example, the ARMs initial interest rate adjustment notification) require the contact information for the State housing finance authority for the State *in which the consumer resides* (as opposed to the State in which the property is located). While the Bureau expects the State in which the property is located will most often be the State where the consumer resides, under certain circumstances (a vacation home), these may be different States. Additionally, the Bureau notes that a difference in regulation requirements for different disclosures may increase compliance costs for servicers. The Bureau seeks comment on which State housing finance authority's contact information should be required on the periodic statement.

The Bureau proposes to use its authority under TILA section 105(a) and (f) and DFA section 1405(b) to exempt creditors, assignees, and servicers of residential mortgage loans from the requirement in TILA section 128(f)(1)(G) to include in periodic statements contact information for government-certified counseling agencies or programs reasonably available to the consumer, and to instead require that periodic statements disclose the State housing finance authority for the State in which the property is located and information to access either the Bureau list or HUD list of homeownership counselors or organizations. For the reasons discussed above, the Bureau believes that the proposed exception and addition is necessary and proper under TILA section 105(a) both to effectuate the purposes of TILA -- to promote the informed use of credit and protect consumers against inaccurate and unfair credit billing practices -- and to facilitate compliance. Moreover, the Bureau believes, in light of the factors in TILA section 105(f), that disclosure of the information specified in TILA section 128(f)(1)(G) would not provide a meaningful benefit to consumers. Specifically, the Bureau considers that the exemption is proper irrespective of the amount of the loan, the status of the borrower (including related financial arrangements, financial sophistication, and the importance to the borrower of the loan), or whether the loan is secured by the principal residence of the consumer. Further, in the estimation of the Bureau, the proposed exemption will simplify the periodic statement, and improve the housing counselor information provided to the consumer, thus furthering the consumer protection purposes of the statute. In addition, consistent with DFA section 1405(b), the Bureau believes that the proposed modification of the requirements in TILA section 128(f)(1)(G) will improve consumer awareness and understanding and is in the interest of consumers and in the public interest.

41(d)(8) Delinquency Notice

Proposed § 1026.41(d)(8) would require that if the consumer is more than 45 days delinquent, the servicer must include on the periodic statement certain delinquency information grouped together. The accounting of mortgage payments is confusing at best, and becomes significantly more complicated in a delinquency scenario. The combination of fees, partial payments being sent to suspense accounts, and application of payments to oldest outstanding payments due can quickly lead to confusion. Additionally, consumers in delinquency are often facing stress due to the situation that left them unable to make their mortgage payments. The proposed early intervention rules would require servicers to disclose information about loss

mitigation or loan modification, but this information would not be customized to individual consumers. The delinquency notice, discussed below, would provide information that is tailored to the specific consumer. This information would benefit the consumer in several ways. First, this notice would ensure that the consumer is aware of the delinquency as well as potential consequences. Second, this information would ensure that the consumer has the information about his or her loan. For example, certain loan modification programs are tied to specific timelines in delinquency. This information would ensure that consumers understand the timeline for their delinquency so they can benefit from early intervention information. Finally, the delinquency information would create a record of how payments were applied, which would both help consumers understand the amount due and give consumers the information needed to become aware of any errors so they can use the appropriate error resolution procedures.

Delinquency date and risks. Proposed paragraph (d)(8)(i) would require the periodic statement to include the date on which the consumer became delinquent. Many timelines relevant to the loss mitigation and foreclosure processes are based on the number of days of delinquency. For example, under certain programs consumers may not be eligible for a loan modification unless they are at least 60 days delinquent. However consumers may not know the date on which he or she was first considered delinquent. This can be especially confusing in a scenario where the consumer is making partial payments. Proposed paragraph (d)(8)(ii) would require the periodic statement to include a statement reminding the consumer of potential risks of delinquency, for example, late fees may be assessed or, after a number of months, the consumer can be subject to foreclosure.

A recent account history. Proposed paragraph (d)(8)(iii) would require the periodic statement to include a recent account history as part of the delinquency information. The accounting associated with mortgage loan payments is complicated, and can be even more so in delinquency situations. The accrual of fees and the application of payments to past months can make it very difficult for consumers to understand the exact amount he or she owes on the loan, and how that total was calculated. Additionally, this complex accounting makes it very difficult for a consumer to identify errors in of payment allocations. Although some of this information would be available from previous periodic statements, the Bureau believes that providing a separate recent account history is warranted under the circumstances.

The Bureau believes that the recent account history would enable the consumer to understand how past payments were applied, provide the information needed to identify any errors, and provide the information necessary to make financial decisions. Proposed paragraph (d)(8)(iii) would require the account history to show the amount due for each billing cycle, or the date on which a payment for a billing cycle was considered fully paid. The date on which the payment was considered fully paid is included to help a consumer understand that a past payment that was previously delinquent has been considered paid. For example, suppose a delinquent consumer does not make a payment in January, but makes a regular payment in February. Without the account history, the consumer would not be able to verify that payments were properly applied. The account history is limited to the lesser of the past 6 months or the last time the account was current to avoid creating a long list that could overwhelm the rest of the periodic statement.

Notice of any loan modification programs. Proposed paragraph (d)(8)(iv) would require the periodic statement to include as part of the delinquency information in the periodic statement

notice of any acceptance into a modification program, either trial or permanent, create a record of acceptance into the modification program.

Notice if the loan has been referred to foreclosure. Proposed paragraph (d)(8)(v) would require the periodic statement to include, as part of the delinquency information notice, that the loan has been referred to foreclosure, if applicable, to ensure that the consumer is aware of any pending foreclosure.

Total amount to bring the loan current. Proposed paragraph (d)(8)(vi) would require that the total amount needed to bring the loan current be included in the delinquency information to ensure that consumers knows how much money they must pay to bring the loan back to current status.

Housing counselor information reference. Proposed paragraph (d)(8)(vii) would require that the delinquency notice also contain a statement directing the consumer to the housing counselor information located on the statement, as proposed by paragraph (d)(7)(v). For example, if the housing counselor information is on the back of the statement, the delinquency information, on the front of the statement, would direct consumers to the back of the statement.

45 Days. The delinquency information is intended to assist consumers who have fallen behind on their mortgage payments. The proposal would not require provision of this information until the consumer is 45 days delinquent. The Bureau recognizes that not all delinquencies indicate troubled consumers; a single missed payment may be the result of other factors such as misdirected mail. Such consumers would likely be notified of a single missed payment by their servicer, and the lack of payment received would be reflected on the next periodic statement. These consumers would receive minimal additional benefit from the delinquency information, and, if this is a frequent occurrence, such consumers might become accustomed to ignoring the delinquency information. By contrast, two missed payments likely indicate a potentially more serious issue, unlike simply failing to remember to send in a payment on time. Thus, the delinquency information would be required at 45 days to ensure receipt of this information by a borrower who missed two consecutive payments.

41(e) Exemptions

41(e)(1) Reverse Mortgages

Proposed § 1026.41(e)(1) exempts reverse mortgages, as defined by § 1026.33(a), from the periodic statement requirement. The Bureau is proposing this exemption for reverse mortgages because the periodic statement requirement was designed for a traditional mortgage product. Information that would be relevant and useful on a reverse mortgage statement differs substantially from the information required on the periodic statement. Incorporating the unique aspects of a reverse mortgage into the periodic statement regulations would require massive alterations to the form and regulation. The Bureau believes that it is more appropriate to address consumer protections relating to reverse mortgages in a separate comprehensive rulemaking.

The Bureau proposes to use its authority under TILA sections 105(a) and (f) and DFA section 1405(b) to exempt reverse mortgages from the requirement in TILA section 128(f) to provide periodic statements. For the reasons discussed above, the Bureau believes the proposed exemption is necessary and proper under TILA section 105(a) both to effectuate the purposes of TILA, and to facilitate compliance.

Moreover, the Bureau believes, in light of the factors in TILA section 105(f), that disclosure of the information specified in TILA section 128(f)(1) would not provide a meaningful benefit to consumers of reverse mortgages. Specifically, the Bureau considers that the exemption is proper irrespective of the amount of the loan, the status of the borrower (including related financial arrangements, financial sophistication, and the importance to the borrower of the loan), or whether the loan is secured by the principal residence of the consumer. Further, in the estimation of the Bureau, the proposed exemption would further the consumer protection purposes of the statute by avoiding the consumer confusion that would result by applying the same disclosure requirements to reverse mortgages as other mortgages and leaving reverse mortgages to be addressed in a comprehensive reverse mortgage rulemaking.

In addition, consistent with DFA section 1405(b), the Bureau believes that the proposed modification of the requirements in TILA section 128(f) to exempt reverse mortgages would improve consumer awareness and understanding and is in the interest of consumers and in the public interest.

41(e)(2) Time Shares

Proposed § 1026.41(e)(2) would clarify that timeshares as defined by 11 U.S.C. 101 (53(D)) are exempt from the periodic statement requirement. TILA section 128(f) provides that the periodic statement requirement applies to residential mortgage loans. The definition of residential mortgage loans set forth in TILA section 103(cc)(5) specifies that timeshares do not fall under this definition.

41(e)(3) Coupon Book Exemption

Proposed § 1026.41(e)(3) would implement the statutory exemption for fixed-rate loans for which the servicer provides a coupon book containing substantially similar information as found in the periodic statement. The Bureau recognizes the value of the coupon book as striking a balance between ensuring consumers receive important information, and providing a low burden method for servicers to comply with the periodic statement requirements. As such, the Bureau seeks to effectuate the coupon book exemption. The nature of a coupon book (both its smaller size and static nature) creates difficulties in including substantially similar information as would be on a periodic statement. The main problem is the static nature of a coupon book. Because a coupon book may cover an entire year or more, it cannot include information that changes on a monthly basis. By contrast, a periodic statement can provide dynamic information that changes on a monthly basis. To address this problem, the Bureau is proposing to modify the coupon book exception permitted by TILA section 128(f)(3) to apply the exception where the coupon book contains certain static information and other dynamic information is made accessible to the consumer.

Proposed comment 41(e)(3)-1 defines “fixed-rate” by reference to § 1026.18(s)(7)(iii), which defines “fixed-rate mortgage” as a transaction secured by a dwelling that is not an adjustable-rate or a step-rate mortgage. Proposed comment 41(e)(3)-2 explains what a coupon book is.

The Bureau proposes to use its authority under TILA section 105(a) to give effect to the coupon book exemption in TILA section 128(f)(3). TILA section 128(f)(3) provides an exemption to the periodic statement for fixed-rate loans when a coupon book that contains substantially similar information to the periodic statement is provided. Using its authority under

TILA section 128(f)(1)(H), the Bureau has added certain dynamic items to the periodic statement that would be infeasible to include in a coupon book. The Bureau is proposing to use its TILA 105(a) authority to permit use of a coupon book even where certain dynamic information is not included in the book so long as such information is made available via the inquiry process. The Bureau believes this proposed exemption is necessary and proper to facilitate compliance.

Information in the coupon book. Proposed paragraph (e)(3)(i) would require the following information to be included on each coupon within the book: the payment due date, the amount due, and the amount and date that any late fee will be incurred. In specifying the amount due on each coupon, servicers would assume that all prior payments have been paid in full.

Proposed paragraph (e)(3)(ii) would require the following information to be included in the coupon book itself, though it need not be on each coupon: the amount of the principal loan balance, the interest rate in effect for the loan, the date on which the interest rate may next change; the amount of any prepayment fee that may be charged, the contact information for the servicer, and housing counselor information. Each of these items is discussed above in the section-by-section analysis of proposed paragraph (d). The coupon book would also be required to disclose information on how the consumer may obtain the dynamic information discussed below. The information described above may, but is not required to be, included on each coupon. Instead, it may be included anywhere in the coupon book, including on the covers, or on filler pages, as explained by proposed comment 41(e)(3)-3.

Because the outstanding principal balance will typically change during the time period covered by the coupon book, proposed comment 41(e)(3)-4 clarifies that a coupon book need only include the outstanding principal balance at the beginning of that time period.

Information made available. As discussed above, due to the static nature of the coupon book, certain dynamic information that is required to be included on periodic statements cannot be included. To use the coupon book provision, the proposed rule would require that the dynamic information be made available upon the consumer's request. The servicer could provide the information orally, or in writing, or electronically, if the consumer consents. Thus, proposed paragraph (e)(3)(iii) would require the following dynamic information be made available to the consumer upon request: the monthly payment amount, including a breakdown showing how much, if any, will be allocated to principal, interest, and any escrow account; the total of fees or charges imposed since the last payment period; any payment amount past due; the total of all payments received since the beginning of the payment period, including a breakdown of how much, if any, of those payments was applied to principal, interest, escrow, fees and charges, and any partial payment suspense accounts; the total of all payments received since the beginning of the calendar year, including a breakdown of how much, if any, of those payments was applied to principal, interest, escrow, fees and charges, and how much is currently in any partial payment or suspense account; and a list of all the transaction activity (as defined in proposed comment 41(d)(4)-1) that occurred since the payment period.

The Bureau seeks comment on whether requiring servicers to make this information available would impose significant burden or costs that exceed consumer benefits. In particular, the Bureau seeks comment on whether providing the past payment breakdown information would impose greater burden than benefits.

Delinquency information. Because of the importance of the delinquency information, proposed paragraph (e)(3)(iv) would require that to qualify for the coupon book exception, the delinquency information required by proposed § 1026.41(d)(8), discussed above, to be sent to the consumer in writing for each billing cycle for which the consumer is more than 45 days delinquent at the beginning of the billing cycle.

41(e)(4) Small Servicer Exemption

Proposed paragraph (e)(4) would exempt certain smaller servicers from the duty to provide periodic statements for certain loans. A small servicer would be defined as a servicer (i) who services 1,000 or fewer mortgage loans; and (ii) only services mortgage loans for which the servicer or an affiliate is the owner or assignee, or for which the servicer or an affiliate is the entity to whom the mortgage loan obligation was initially payable.

The Bureau has decided to propose this exemption after careful consideration of the benefits and burdens of the periodic statement requirement. As proposed, the Bureau believes that the periodic statement will be helpful to consumers because it will provide a well-integrated communication that not only contains information about upcoming payments due, but also information about loan status, fees charged, past payment crediting, and potential resources and other useful information for consumers who have fallen behind in their payments. The Bureau believes that providing a single-integrated document, in place of a number of other communications that contain fragments of this information can be more efficient for consumers and servicers alike. And in light of the historic problems that have been reported in parts of the servicing industry, the periodic statement could be a useful tool for consumers to monitor their servicers' performance and identify any issues or errors as soon as they occur.

At the same time, the Bureau recognizes that the servicing industry is not monolithic. Producing a periodic statement with the elements proposed in § 1026.41 requires sophisticated programming to place individualized information on each borrower's statement for each billing cycle. The Bureau recognizes that very small servicers would likely have to rely on outside vendors to develop or modify existing systems to produce statements in compliance with the rule. As discussed further below, the Bureau received detailed information from the SBREFA panel process confirming the technological and operational challenges faced by small servicers, as well as postage and other expenses that would be associated with providing periodic statements on an ongoing basis. Because small servicers maintain small portfolios, the SBREFA participants emphasized that they cannot spread fixed costs across a large number of loans the way that larger servicers can.

Where small servicers *already* have incentives to provide high levels of customer contact and information, the Bureau believes that the circumstances may warrant exempting those servicers from complying with the periodic statement requirement. In particular, small servicers that make loans in their local communities and then either hold their loans in portfolio or retain the servicing rights have incentives to maintain "high-touch" customer service models. Affirmative communications with consumers help such servicers (and their affiliates) to ensure loan performance, protect their reputations in their communities, and market other consumer financial products and services.¹¹⁵ Because those servicers have a long-term relationship with

¹¹⁵ See *Re-Thinking Loan Servicing*, Prime Alliance Loan Servicing, p. 8 (April 2010) available at: http://cuinsight.com/media/doc/WhitePaper_CaseStudy/wpcs_ReThinking_LoanServicing_May2010.pdf

the borrowers, their incentives with regard to charging fees and other servicing practices may be more aligned with borrower interests. These motivations to ensure a good relationship incentivize good customer service, including making information about upcoming payments, fees charged and payment history, and information for distressed borrowers easily available to consumers by other means

The Bureau believes, however, that *both* conditions are necessary to warrant a possible exemption from the periodic statement rule—that is, that an exemption may be appropriate only for servicers that service a relatively small number of loans *and* that originated the loans and either retained ownership or servicing rights. Larger servicers are likely to be much more reliant on and sophisticated users of computer technology in order to manage their operations efficiently. In such situations, implementation of the periodic statement requirement is likely to be somewhat easier to accomplish and perhaps even provide technological benefits for the servicers. Larger servicers also generally operate in a larger number of communities under circumstances in which the “high touch” model of customer service is not practicable. In light of this fact and the consumer benefits from integrated communications, the Bureau does not believe it would be appropriate to exempt all servicers who originate loans that they then hold in portfolio or with respect to which they retain servicing rights, without regard to size.

SBREFA Panel. The proposed exemption is consistent with feedback that the Bureau received from small entity representatives during the SBREFA panel process regarding the potentially significant burdens that would be imposed by a periodic statement requirement.

Participants explained that they already provided much of the information in the proposed periodic statement through alternative means, including correspondence, more limited periodic statements, coupon books, passbooks, and telephone conversations.¹¹⁶ Even where SERs did not affirmatively provide particular items of information to borrowers, they stated that their companies would generally provide it on request. However, the participants emphasized repeatedly that consolidating all of the information into a single monthly dynamic statement would be difficult for small servicers.¹¹⁷

The SERs explained that due to their small size, they generally do not maintain in-house technological expertise and would generally use third-party vendors to develop periodic statements. Due to their small size, they believed they would have no control over these vendor costs.¹¹⁸ Additionally, the small servicers have smaller portfolios over which to spread the fixed costs of producing periodic statements. Such servicers stated they are unable to gain cost efficiencies and cannot effectively spread the implementation costs of periodic statements across their loan portfolios. Finally, several SERs stated that simply mailing periodic statements could cost thousands of dollars per month beyond some of their current alternative communication channels, such as coupon books or passbooks.

Small Servicer Defined. The Bureau lacks the data necessary to precisely calibrate the amount of burden that would be imposed by the periodic statement requirement on servicers of different sizes. However, the Bureau believes that a threshold of 1,000 loans serviced may be an appropriate approximation to limit the proposed exemption to smaller servicers in the market.

¹¹⁶ SBREFA Final Report, *supra* note 22, at 16-19.

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 17.

Assuming that, on average, most loans are refinanced about every five years, this threshold works out to an average of 200 originations per year. The Bureau estimates that a small servicer of this size would earn about \$600,000 annually in servicing fee revenues.¹¹⁹ The SERs estimated that the periodic statement burden could cost thousands of dollars each month.¹²⁰ For comparison, the Bureau notes that the top 100 mortgage servicers, as measured by size of unpaid principal balance serviced, (which together have approximately 82% of the mortgage servicing market share¹²¹) each service in excess of \$3 billion of unpaid principal balance.

In addition to the 1,000 loan threshold, the exemption from the periodic statement would be limited to entities that exclusively service loans that they or an affiliate originated or was the entity to which the obligation was initially payable. A servicer must both exclusively service such loans and satisfy the 1000-loan threshold to qualify for the small servicer exemption. The exemption is limited to these servicers because of the incentive discussed above.

The proposed commentary clarifies the application of the small servicer definition. Proposed comment 41(e)(4)-1 states that loans obtained by a servicer or an affiliate in connection with a merger or acquisition are considered loans for which the servicer or an affiliate is the creditor to whom the mortgage loan is initially payable.

The proposed rule also states that in determining whether a small servicer services 1,000 mortgage loans or less, a servicer is evaluated based on its size as of January 1 for the remainder of the calendar year. A servicer that, together with its affiliates, crosses the threshold will have six months or until the beginning of the next calendar year, whichever is later, to begin providing periodic statements. Proposed comment 41(e)(4)-2 gives examples for calculating when a servicer who crosses the 1,000 loan threshold would need to begin sending periodic statements. The purpose of this provision is to permit a servicer that crosses the 1,000 loan threshold a period of time (the greater of either six months, or until the beginning of the next calendar year) to bring the servicer's operations into compliance with the periodic statement provisions for which the servicer was previously exempt.

Proposed comments 41(e)(4)-3 clarifies when subservicers or servicers who do not own the loans they are servicing, do not qualify for the small servicer exemption, even if such servicers are below the 1,000 loan threshold.

¹¹⁹ This estimate assumes that a servicer generates a net mortgage servicing fee rate of 35 basis points and that the average unpaid principal balance on the 1,000 loans is \$175,000. The 35 basis points represents a blend of different mortgage servicing asset quality. Mortgage servicing fees for conventional servicing are generally 25 basis points; mortgage servicing fees for subprime mortgage loans or loans sold to trusts guaranteed by Ginnie Mae may vary between 40-50 basis points. Servicers are also able to generate ancillary income from sources other than the mortgage servicing fee, including additional fee revenue, such as late fees, and float on principal, interest and escrow payments, the composition of which may vary significantly among servicers. The Bureau believes that 35 basis points is a reasonable assumption in current market conditions. See, e.g., Newcastle Investment Corp., Form 10-Q, filed May 10, 2012, at 15-16, *available at* http://www.sec.gov/Archives/edgar/data/1175483/000138713112001455/nct-10q_033112.htm (last accessed June 13, 2012 (describing REIT investment in excess mortgage servicing rights (MSRs) from a portfolio of MSRs generating an initial weighted average total mortgage servicing fee amount of 35 basis points).

¹²⁰ SBREFA Final Report, *supra* note 22, at 19. (One SER estimated it could cost an additional \$11,000 per month in on-going support, another SER estimated that a vendor might charge \$1,000 - \$2,000 per month in fees, a third SER estimated monthly costs of \$2,200 based on a cost of \$1 per statement).

¹²¹ Inside Mortgage Finance, Issue 2012:13 (March 30, 2012) at 12.

Proposed comment 41(e)(4)-4 clarifies if a servicer subservices mortgage loans for a master servicer that does not meet the small servicer exemption, the subservicer cannot claim the benefit of the exemption, even if it services 1,000 or fewer loans. The Bureau believes that permitting an exemption in such circumstance could potentially exempt a larger master servicer from the obligation to provide periodic statements, even if it has master servicing responsibility for several thousand loans.

The Bureau seeks comment on all aspects of the proposed exemption, particularly whether the regulation should exempt small servicers¹²², and, if so, whether the proposed scope and definition of a small servicer is appropriate. Specifically, should the test be the one proposed regarding origination, and is 1,000 or less the appropriate size threshold? The Bureau particularly requests data on implementation costs and the level of general activity by small servicers. The Bureau also seeks comment on whether it would be appropriate to exempt small servicers from other elements of the proposed servicing rules under TILA and RESPA.

Authority. The Bureau proposes to exercise its authority under TILA section 105(a) and (f), and DFA section 1405(b) to exempt small servicers from the periodic statement requirement under TILA section 128(f). For the reasons discussed above, the Bureau believes the proposed exemption is necessary and proper under TILA section 105(a) to facilitate compliance. As discussed above, it would be very expensive for small servicers to incur the initial costs of setting up a system to send periodic statements, as a result, such servicers may choose to exit the market. In addition, consistent with TILA section 105(f) and in light of the factors in that provision, the Bureau believes that requiring small servicers to comply with the periodic statement requirement specified in TILA section 128(f) would not provide a meaningful benefit to consumers in the form of useful information or protection. The Bureau believes that the business model of small servicers ensures their consumers already receive the necessary information, and that requiring them to provide periodic statements would impose significant costs and burden. Specifically, the Bureau believes that the exemption is proper without regard to the amount of the loan, the status of the borrower (including related financial arrangements, financial sophistication, and the importance to the borrower of the loan), or whether the loan is secured by the principal residence of the consumer. In addition, consistent with DFA section 1405(b), for the reasons discussed above, the Bureau believes that the proposed modification of the requirements in TILA section 128(f) to exempt small servicers would further the consumer protection purposes of TILA.

Appendix H to Part 1026

~~The Bureau proposes to exercise its authority under TILA section 105(e) to propose model and sample forms for § 1026.20(e) and (d).~~

~~*Appendix H-4(D) to Part 1026*~~

~~The Bureau proposes to exercise its authority under TILA section 105(e) to propose model and sample forms for § 1026.20(e) and (d).~~

~~*Appendices G and H – Open-End and Closed-End Model Forms and Clauses*~~

¹²² As discussed above, for the purposes of § 1026.41, the term “servicer” includes creditors, assignees and servicers.