

~~*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.