~~Disclosing the current interest rate and payment in the same table allows consumers to readily compare them with the estimated or actual adjusted rate and new payment. Consumer testing revealed that nearly all participants were readily able to identify and understood the table and its contents.[99] The estimated or actual new interest rate and payment and date the first new payment is due is key information the consumer must know in order to commence payment at the new rate. For these reasons, the Bureau proposes locating this information prominently in the disclosure.~~

Section 1026.36 Prohibited Acts or Practices in Connection with Credit Secured by a Dwelling

36(c) Servicing Practices

Existing § 1026.36(c) provides requirements for servicers in connection with a consumer credit transaction secured by a consumer's principal dwelling. Essentially, such servicers must promptly credit payments, must not "pyramid" late fees, and must provide payoff statements at the consumer's request. The Dodd-Frank Act essentially codifies the § 1026.36(c) provisions on prompt crediting and payoff statements with minor changes, as discussed below. The Bureau is amending Regulation Z both to implement the new statutory requirements, and to address the related issue of the handling of partial payments. Currently, Regulation Z addresses prompt crediting in § 1026.36(c)(1)(i). The Bureau is proposing limiting the scope of existing § 1026.36(c)(1)(i) to full contractual payments, and addressing partial payments (anything less than a full contractual payment) in proposed § 1026.36(c)(1)(ii), as discussed below. The Bureau proposes to retain the substantive requirements on non-conforming payments currently in § 1026.36(c)(2), but to move them to paragraph (c)(1)(iii). Likewise, the Bureau does not propose to change the Regulation Z provision addressing "pyramiding" of late fees currently in § 1026.36(c)(1)(ii), but only to move the provision to new paragraph (c)(3). Finally, the Bureau is proposing four substantive changes to the provisions on payoff statements, currently located in § 1026.36(c)(1)(iii), as well as to move these provisions to proposed paragraph 36(c)(3).

The Bureau believes these changes to Regulation Z are best implemented by restructuring paragraph (c) and simplifying some of the language. This restructuring generally is not intended to make any substantive changes. All substantive changes to the paragraph (c) are discussed below.

36(c)(1)(i) Full Contractual Payments

DFA section 1464(a) established TILA section 129F, which codifies existing Regulation Z § 1026.36(c)(1)(i) with regard to prompt crediting of mortgage loan payments. The statute and the existing regulation both provide generally that "no servicer shall fail to credit a payment to the consumer's loan account as of the date of receipt, except when a delay in crediting does not result in any charge to the consumer or in the reporting of negative information to a consumer reporting agency." Proposed new paragraph (c)(1)(i) generally restates existing (c)(1)(i) with the only change that the existing regulation applies to all payments, while proposed (c)(1)(i) would be limited to full contractual payments. The Bureau is proposing to establish new § 1026.36(c)(1)(ii) to clarify servicers' obligations when they receive a partial payment (anything less than a full contractual payment), as discussed below.

[99] *Id.* at vii.

As discussed above, proposed § 1026.36(c)(i) generally tracks the Dodd-Frank Act and current regulation, but changes the reference to "a payment" to "a full contractual payment" and makes minor modifications to reflect the proposed restructuring of the regulation. The proposed regulation text provides that a full contractual payment covers principal, interest, and escrow (if applicable), but not late fees. The Bureau engaged in outreach and found that many servicers already apply payments that cover principal, interest, and escrow (if applicable) without deducting late fees. This ensures that consumers get the full benefit of having made a payment. The Bureau seeks comment as to whether late fees should also be included in the definition of a full contractual payment.

36(c)(1)(ii) Partial Payments

Current Regulation Z does not define what constitutes a "payment" for purposes of the crediting requirement, but leaves that question to be determined by the contractual documents and other applicable law. Specifically, current comment 36(c)(1)(i)-2 refers to "the legal obligation between the consumer and the creditor" as determined by "applicable state or other law" to determine whether a partial payment is a "payment" under the payment crediting provisions. Outreach to consumer and industry stakeholders revealed that partial payments are currently handled in a variety of ways. Some lenders do not accept partial payments, some lenders apply partial payments, and some lenders send partial payments to a suspense or unapplied funds account. Currently there is no Federal regulation that governs such accounts. The Bureau is proposing to address partial payments in new § 1026.36(c)(1)(ii).

Proposed § 1026.36(c)(1)(ii) provides specific rules regarding the handling of partial payments and suspense accounts. New paragraph (c)(1)(ii) would require, consistent with the proposed periodic statement requirements in § 1026.41 discussed below, that if a servicer holds a partial payment, meaning any payment less than a full contractual payment, in a suspense or unapplied funds account, the servicer must disclose on the periodic statement the amount of funds held in such account. The servicer must also disclose when such funds will be applied to the outstanding payments due on the account. This proposed requirement is authorized under TILA section 129(f), which requires creditors, assignees, and servicers to send statements for each billing cycle including "[s]uch other information as the Bureau may prescribe in regulations."

Additionally, proposed § 1026.36(c)(1)(ii) provides that if a servicer holds a partial payment in a suspense or unapplied funds account, once there are sufficient funds in the account to cover a full contractual payment, the servicer must apply those funds to the oldest outstanding payment due. The proposed requirement that the funds be applied to the oldest outstanding payment would advance the date of delinquency by one billing cycle, and thus benefit the consumer. For example, suppose a previously current consumer must make a $1,000 monthly payment, and the consumer paid $500 on January 1st and $500 on February 1st. When the second $500 payment is made, a full contractual payment of $1,000 (assuming late fees are not included in the definition of full contractual payment) is in the suspense account and must be applied to the January payment. Thus, this consumer would only be one month delinquent at the end of February. The Bureau interprets the language in TILA section 129F(a), that servicers must "credit" payments as of the date of receipt, except when a delay in crediting does not result in "any charge" to the consumer to authorize the proposed requirement that partial payments held in suspense accounts be credited to the oldest outstanding payment when a full contractual payment accumulates. Crediting the funds to a payment that was not the most delinquent would result in a

charge to the consumer by extending the duration of the delinquency. To the extent not required under TILA section 129F(a), the Bureau believes this proposed requirement regarding crediting of funds is authorized under TILA section 105(a). As explained above, the Bureau believes the requirement is necessary and proper to effectuate the purpose of TILA to protect consumers against inaccurate and unfair credit billing practices by ensuring that funds held in a suspense account are promptly applied to the oldest outstanding payment when sufficient funds accumulate in such an account to cover a full contractual payment.

Proposed comment 36(c)(1)(ii)-1 describes the servicer's options upon receipt of a partial payment, including: crediting the payment on receipt, returning the payment, or holding the payment in a suspense or unapplied funds account.

The proposed regulation would leave servicers significant flexibility in the handling of partial payments in accordance with contractual terms and other applicable law, for instance by rejecting the payment, crediting it immediately, or holding it in a suspense account. However, the proposed rule would also ensure greater consistency in the handling of suspense accounts by requiring, consistent with proposed § 1026.41, that servicers disclose on the periodic statement that the funds are being held in such accounts and, once sufficient funds accumulate to cover a full contractual payment, that the servicer apply the funds to the oldest outstanding payment owed by the consumer. If sufficient funds accumulate to cover more than one full contractual payment, these funds would be applied to the next oldest outstanding payment. Partial payment amounts would be treated as described above.

The Bureau believes this proposed approach would clarify servicers' obligations in processing both full contractual payment and partial payments, as well as ensure all payments are properly applied. The proposed disclosures would help consumers understand that their payments are being held in a suspense account rather than having been applied, and when those partial payments would be applied. Additionally, requiring application to the oldest outstanding payment when a full payment accumulates will provide protection to consumers, as well as reduce the outstanding principal balance on certain consumer loans.

Finally, the Bureau seeks comment on if this approach is the proper way to address suspense accounts, and specifically, whether there should be time requirements on returning partial payments. If a servicer chooses not to accept a partial payment, must that payment be returned within a specific amount of time, and if so, how long should that time be? Additionally, 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.[100] 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.

36(c)(1)(iii) Non-conforming payments

TILA section 129F(b) further provides that "[i]f a servicer specifies in writing requirements for the consumer to follow in making payments, but accepts a payment that does not conform to the requirements, the servicer shall credit the payment as of 5 days after receipt." This provision codifies the treatment of non-conforming payments in current § 1026.36(c)(2).

[100] SBREFA Final Report, *supra* note 22, at 32.

The Bureau is not making any substantive changes to this provision, as the current rule is clear and provides protection for consumers, but the Bureau proposes to redesignate the section as new § 1026.36(c)(1)(iii).

The Bureau notes that payments held in a suspense or unapplied funds account, as addressed in proposed § 1026.36(c)(1)(ii) discussed above, would not be considered to have been "accepted" by the servicer. Thus, under the Bureau's proposal, partial payments retained in suspense or unapplied funds accounts are treated as payments that have not been accepted subject to § 1026.36(c)(1)(ii), as opposed to non-conforming payments that have been accepted subject to proposed § 1026.36(c)(1)(iii), which must be credited within five days of receipt.

36(c)(2) Prohibition on Pyramiding of Late Fees

The Bureau is not proposing any substantive changes to existing 36(c)(1)(ii), prohibiting the pyramiding of late fees. However the Bureau proposes redesignating this as new paragraph 36(c)(2).

36(c)(3) Payoff Statements

DFA section 1464(b) established TILA section 129G, which requires that a creditor or servicer send an accurate payoff balance amount to the consumer within a reasonable time, but in no case more than seven business days, after the receipt of a written request for such balance from or on behalf of the consumer. This provision generally codifies existing § 1026.36(c)(1)(iii) of Regulation Z regarding provision of payoff statements with four substantive changes. First, while existing Regulation Z only applied the requirements to servicers, the statute applies the requirements to both servicers and creditors. Second, the statute applies the prompt response requirement to "home loans," rather than consumer credit transactions secured by the consumer's principal dwelling. Third, the statute limits the reasonable time for responding to not more than seven business days; by contrast, existing comment 36(c)(1)(iii)-1 generally creates a five business day safe harbor for responding, but notes that it might be reasonable to take longer to respond in certain circumstances. Fourth, the statute requires a prompt response only to written requests for payoff amounts, while the existing regulation requires a prompt response to all such requests. Due to the reorganization of paragraph (c), the proposed provisions on payoff statements will be located in paragraph (c)(3).

Covered persons. Existing § 1026.36(c)(1)(iii) applies to servicers. TILA section 129G, as established by DFA section 1464(b), applies the payoff statement requirement to creditors and servicers. For the reasons discussed in the section-by-section analysis of § 1026.20(d) above, the Bureau interprets this to mean the payoff statement provision applies to creditors, assignees, and servicers as applicable. Proposed comment 36(c)(3)-1 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 payoff statement requirements. The Bureau notes that the other subparts of paragraph (c) continue to be limited to servicers.

Scope. Existing § 1026.36(c)(1)(iii) is limited to consumer credit transactions secured by *principal* dwellings. The Bureau is proposing to expand the scope of the provision to consumer credit transactions secured by *all* dwellings. TILA section 129G, as established by DFA section 1464(b), applies the payoff statement requirement to "home loans," a term not used elsewhere in TILA. The Bureau interprets this term to expand the scope of the requirement from consumer credit transaction secured by principal dwellings to consumer credit transactions secured by any

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(c)(1)(iii) requires the payoff statement to be sent within a reasonable amount of time, and comment 36(c)(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(c)(3) reflects this change. Because of this change, the Bureau proposes removing existing comment 36(c)(1)(iii)-1.

Written requests. Existing § 1026.36(c)(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 (c)(3) would require payoff statements to be provided after receipt of a written request. Related comment (c)(3)-3 (renumbered from (c)(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 extend 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).