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►*Section 41-- Periodic Statements for Residential Mortgage Loans*

41(a) In General

1. *Recipient of Periodic Statement*. When two consumers are joint obligors with primary liability on a mortgage loan, the disclosures may be given to either one of them. For example, if a husband and wife jointly own a home, the servicer need not send statements to both the husband and the wife; a single statement may be sent.

2. *Billing Cycles Shorter than a 31-Day Period*. 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. Such statement should separately list the upcoming payment due dates and amounts due, as required by paragraph (d)(1), and list all transaction activity that occurred during the related time period, as required by paragraph (d)(4). Such statement may aggregate the information for the Explanation of Amount Due, as required by paragraph (d)(2), and Past Payment Breakdown, as required by paragraph (d)(3).

3. *One Statement per Billing Cycle*. The periodic statement requirement applies to the "creditor, assignee, or servicer as applicable." The creditor, assignee, or servicer are all subject to this requirement, however only one statement must be sent to the consumer each billing cycle. When two or more parties are subject to this requirement, they may decide among themselves who will send the statement.

4. *As Applicable*. A creditor who no longer owns the mortgage loan or the mortgage servicing rights is not "applicable" and therefore is not subject to the requirements of this section to provide a periodic statement.

41(b) Timing of the Periodic Statement

1. *Reasonably Prompt Time.* Delivering or placing the periodic statement in the mail within 4 days of close the grace period of the previous billing cycle would be considered reasonably prompt.

41(c) Form of the Periodic Statement

1. *Clear and Conspicuous Standard*. The "clear and conspicuous" standard generally requires that disclosures be in a reasonably understandable form. Except where otherwise provided, the standard does not prohibit adding to the required disclosures, as long as the additional information does not overwhelm or obscure the required disclosures. For example, while certain information about the escrow account (such as the account balance) is not required on the periodic statement, this information may be included.

2. *Additional information; disclosures required by other laws.* Nothing in this subpart prohibits a servicer from including additional information or combining disclosures required by other laws with the disclosures required by this subpart, unless such prohibition is expressly set forth in this subpart, such as the grouping requirements of paragraph 41(d) or other applicable law.

3. *Electronic Distribution.* The periodic statement may be provided electronically if the consumer agrees. The consumer must give affirmative consent to receive statements electronically. Due to concerns about information security, if statements are provided

electronically, the creditor, assignee or servicer may send the consumer a notification that their statement is available, with a link to where the statement can be accessed.

41(d) Content and Format of the Periodic Statement

1. *Close Proximity*. Paragraph (d) requires several disclosures to be provided in close proximity. To meet this requirement, the items to be provided in close proximity must be grouped together, and set off from the other groupings of items. This could be accomplished in a variety of ways, for example, by presenting the information in boxes, or by arranging the items on the document and including spacing between the groupings. Items in close proximity may not have any intervening text between them.

2. *Not Applicable*. If an item required by paragraph (d) or (e) of this section is not applicable to the loan, it may be omitted from the periodic statement or coupon book. For example, if there is no prepayment penalty associated with a loan, the prepayment penalty disclosures need not be provided on the periodic statement.

3. *Terminology.* A servicer may use terminology other than that found on the sample periodic statement, so long as the new terminology is commonly understood. For example, servicers may take into consideration regional differences in terminology and refer to the account for the collection of taxes and insurance, commonly referred to as the "escrow account," as an "impound account."

41(d)(3) Past Payment Breakdown

1. *Partial Payments.* The disclosure of any portion of payments since the last statement that was applied to a partial payment or suspense account as required by (d)(3)(i) should reflect any funds that were received in the time period covered by the transaction activity of that statement and that were sent to a suspense or unapplied funds account. The disclosure of any portion of payments since the beginning of the calendar year that was sent to a partial payment or suspense account as required by (d)(3)(ii) should reflect all funds that are currently held in a suspense or unapplied funds account. For example:

(i) Suppose a payment of $1000 is due, but the consumer only sends in $600 on January 1, which is held in a suspense account. Further assume there are no fees charged on this account. Assuming there are no other funds in suspense account, the January statement should reflect: Unapplied funds since last statement - $600. Unapplied funds YTD - $600.

(ii) Assuming the same facts as Example (i) above, except that during February the consumer sends in $300 and this too is held in the suspense account. The statement should reflect: Unapplied funds since last statement - $300. Unapplied funds YTD - $900.

(iii) Assuming the same facts at Example (ii) above, except that during March the consumer sends in $400. Of this payment, $100 completes a full contractual payment when added to the $900 in funds already held in the suspense account. This $1000 should be applied to the January payment, and the remaining $300 would be held in the suspense account. The statement should reflect: Unapplied funds since last statement - $300. Unapplied Funds YTD - $300.

41(d)(4) Transaction Activity

1. *Meaning.* Transaction activity includes any activity that credits or debits the outstanding account balance. Examples of transactions include, without limitation:

(i) Payments received and applied;

(ii) Payments received and held in a suspense account;

(iii) The imposition of any fees (for example late fees); and

(iv) The imposition of any charges (for example, private mortgage insurance).

2. *Description of Late Fees.* The description of any late fee charges includes the date of the late fee, the amount of the late fee, and the fact that a late fee was imposed.

3. *Partial Payments.* If a partial payment is sent to a suspense or unapplied funds account, this fact must be in the transaction description along with the date and amount of the payment, an explanation of what must be done for the payments to be applied must be provided on the front of the statement, and the funds must be included as unapplied funds in the information required by (d)(3) Past Payment Breakdown.

41(d)(6) Contact Information

1. A toll-free telephone number is required. Additional contact information, such as a web address, may also be provided at the servicer's option.

2. If servicer has provided a telephone number for error resolution and inquiries pursuant to 12 CFR 1024.35 and § 1024.36, that number should be provided in the contact information section.

41(d)(7)(iv) Prepayment Penalty

1. *Examples of prepayment penalties.* For purposes of § 1026.41(d)(7)(iv), the following are examples of prepayment penalties:

i. 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. "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. For example, "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). Thus, under the terms of a loan contract providing for monthly interest accrual amortization, if the amount of interest due on May 1 for the preceding month of April is $3,000, the loan contract will require payment of $3,000 in interest for the month of April whether the payment is made on April 20, on May 1, or on May 10. In this example, if the consumer prepays the loan in full on April 20 and if the accrued interest as of that date is $2,000, then assessment of a charge of $3,000 constitutes a prepayment penalty of $1,000 because the amount of interest actually earned through April 20 is only $2,000.

ii. 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.

iii. A minimum finance charge in a simple interest transaction.

iv. 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). For purposes of computing a refund

of unearned interest, if using the actuarial method defined by applicable State law results in a refund that is greater than the refund calculated by using the method described in section 933(d) of the Housing and Community Development Act of 1992, creditors should use the State law definition in determining if a refund is a prepayment penalty.

2. *Fees that are not prepayment penalties*. For purposes of § 1026.41(d)(7)(iv), fees which are not prepayment penalties include, for example:

i. Fees imposed for preparing and providing documents when a loan is paid in full, if such fees are imposed whether or not the loan is prepaid. Examples include a loan payoff statement, a reconveyance document, or another document releasing the creditor's security interest in the dwelling that secures the loan.

ii. Loan guarantee fees.

41(e) Exemptions

1. *Information made available.* Information made available by the servicer may be obtained through the inquiry process in § 1024.36.

41(e)(3) Coupon Book Exemption

1. *Fixed Rate.* "Fixed rate" is to be construed consistently with § 1026.18(s)(7)(iii).

2. *Coupon Book.* A coupon book is a booklet provided to the consumer with a page for each billing cycle during a set period of time (often covering one year). These pages are designed to be torn off and returned to the servicer with a payment for each billing cycle. Additional information about the loan is often included on or inside the front or back cover, or on filler pages in the coupon book.

3. *Information location.* The information required by paragraph (e)(3)(ii) need not be provided on each coupon, but should be provided somewhere in the coupon book. Such information could be located *e.g.,* on or inside the front or back cover, or on filler pages in the coupon book.

4. *Outstanding Principal Balance*. Paragraph (e)(3)(ii)(A) requires the information listed in paragraph (d)(7) to be included in the coupon book. Paragraph (d)(7)(i) requires the disclosure of amount of the outstanding principal balance. For the purposes of the coupon book, the servicer need only disclose the principal balance at the beginning of the time period covered by the coupon book.

41(e)(4) Small Servicers

1. *Loans obtained by merger or acquisition.* Any mortgage loans obtained by a servicer or an affiliate as part of a merger or acquisition, or as part of the acquisition of all of the assets or liabilities of a branch office of a lender should be considered mortgage loans for which the servicer or an affiliate are the lender to whom the mortgage loan is initially payable. A branch office means either an office of a depository institution that is approved as a branch by a Federal or state supervisory agency or an office of a for-profit mortgage lending institution (other than a depository institution) that takes applications from the public for mortgage loans.

2. Threshold. 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 compliance other than as a small servicer. Examples:

i. A servicer that crosses the loan threshold on October 1 would no longer be considered a small servicer on April 1 of the following year.

ii. A servicer that crosses the loan threshold on February 1 would no longer be considered a small servicer on January 1 of the following year.

3. *Small servicers that do not qualify for the exemption.* A servicer that services any mortgage loans that are not owned by the servicer or an affiliate or for which the servicer or an affiliate were not the entity to whom the obligation was initially payable is not a small servicer. For example, if a servicer acquires mortgage servicing rights to service mortgage loans the servicer or an affiliate does not own and did not originate is not a small servicer.

4. *Master servicing responsibilities.* The periodic statement requirements apply to master servicers. A subservicer that meets the small servicer definition cannot claim the benefit of any small servicer exemption for mortgage loans that are master serviced by an entity that does not qualify for the small servicer exemption.◄

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

~~1. *Permissible changes.* Although use of the model forms and clauses is not required, creditors using them properly will be deemed to be in compliance with the regulation with regard to those disclosures. ►For purposes of the model forms and samples in H-4(D), the term creditors refers to creditors, assignees, and servicers.◄ Creditors may make certain changes in the format or content of the forms and clauses and may delete any disclosures that are inapplicable to a transaction or a plan without losing the Act's protection from liability, except formatting changes may not be made to model forms and samples in ►H-4(D),◄H-18, H-19, H-20, H-21, H-22, H-23, G-2(A), G-3(A), G-4(A), G-10(A)-(E), G-17(A)-(D), G-18(A) (except as permitted pursuant to § 1026.7(b)(2), G-18(B)-(C), G-19, G-20, and G-21, or to the model clauses in H-4(E), H-4(F), H-4(G), and H-4(H). Creditors may modify the heading of the second column shown in Model Clause H-4(H) to read "first adjustment" or "first increase," as applicable, pursuant to § 1026.18(s)(2)(i)(C). The rearrangement of the model forms and clauses may not be so extensive as to affect the substance, clarity, or meaningful sequence of the forms and clauses. Creditors making revisions with that effect will lose their protection from civil liability. Except as otherwise specifically required, acceptable changes include, for example:~~

~~i. Using the first person, instead of the second person, in referring to the borrower.~~

~~ii. Using "borrower" and "creditor" instead of pronouns.~~

~~iii. Rearranging the sequences of the disclosures.~~

~~iv. Not using bold type for headings.~~

~~v. Incorporating certain State "plain English" requirements.~~

~~vi. Deleting inapplicable disclosures by whiting out, blocking out, filling in "N/A" (not applicable) or "0," crossing out, leaving blanks, checking a box for applicable items, or circling applicable items. (This should permit use of multipurpose standard forms.)~~