

~~(2) If 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.~~

~~(3) For purposes of this paragraph (c), the terms “servicer” and “servicing” have the same meanings as provided in 12 CFR 1024.2(b), as amended.]~~

* * * * *

5. Section 1026.41 is amended by adding a section heading and new paragraphs (a) through (e) to read as follows:

► § 1026.41 Periodic statements for residential mortgage loans

(a) *In general.* A servicer of a closed-end consumer credit transaction secured by a dwelling, must transmit to the consumer for each billing cycle a periodic statement meeting the requirements of paragraphs (b), (c), and (d) of this section, unless an exemption in paragraph (e) of this section applies. 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. For the purposes of this section, *servicer* is defined to mean creditor, assignee, or servicer, as applicable.

(b) *Timing of the periodic statement.* The periodic statement must be delivered or placed in the mail within a reasonably prompt time after the payment due date or the end of any grace period provided for the previous billing cycle. The first periodic statement must be sent no later than 10 days before the first payment is due.

(c) *Form of the periodic statement.* The creditor, assignee, or servicer must make the disclosures required by this section clearly and conspicuously in writing, or electronically if the consumer agrees, and in a form that the consumer may keep. Sample forms for periodic statements are provided in Appendix H-28. Proper use of these forms will be deemed in compliance with this section.

(d) *Content and layout of the periodic statement.* The periodic statement shall contain the information in this paragraph (d), in the manner described below.

(1) *Amount due.* The following disclosures must be grouped together in close proximity to each other, and be located at the top of the first page of the statement:

(i) The payment due date;

(ii) The amount of any late payment fee, and the date on which that fee will be imposed if payment has not been received; and

(iii) The amount due. The amount due must be more prominent than other disclosures on the page. If a loan has multiple payment options, the amount due under each of the payment options must be listed.

(2) *Explanation of amount due.* The following items must be grouped together in close proximity to each other and located on the first page of the statement:

(i) The monthly payment amount, including a breakdown showing how much, if any, will be applied to principal, interest, and escrow. If a loan has multiple payment options, a breakdown of each of the payment options must be listed along with a statement whether the principal balance will increase, decrease or stay the same for each option listed;

- (ii) The total sum of any fees or charges imposed since the last statement; and
- (iii) Any payment amount past due.

(3) *Past Payment Breakdown.* The following items must be grouped together in close proximity to each other and located on the first page of the statement:

(i) The total of all payments received since the last statement, including a breakdown showing how much, if any, of those payments was applied to principal, interest, escrow, fees and charges, and any partial payment or suspense account; and

(ii) The total of all payments received since the beginning of the current calendar year, including a breakdown of how much, if any, of those payments was applied to principal, interest, escrow, fees and charges, and the amount currently held in any partial payment or suspense account.

(4) *Transaction activity.* A list of all the transaction activity that occurred since the last statement must be included on the periodic statement. For purposes of this paragraph (d)(4), *transaction activity* means any activity that credits or debits the outstanding account balance. The transaction activity must include the date of the transaction, a brief description of the transaction, and the amount of the transaction for each activity on the list.

(5) *Messages.* If a statement reflects a partial payment that was placed in a suspense or unapplied funds account, the periodic statement must state what must be done for the funds to be applied. Such statement must be on the front page of the statement.

(6) *Contact information.* The periodic statement must include a toll-free telephone number and, if applicable, an electronic mailing address that may be used by the consumer to obtain information about the mortgage, on the front page of the statement.

(7) *Account information.* The following items must be provided on the statement:

- (i) The amount of the outstanding principal balance;
- (ii) The current interest rate in effect for the loan;
- (iii) The date on which the interest rate may next change; and

(iv) The amount of any prepayment penalty that may be charged. For the purposes of this paragraph (d)(7)(iv), *prepayment penalty* means a charge imposed for paying all or part of a transaction's principal before the date on which the principal is due.

(v) *Housing counselor information.* The periodic statement must include the website address, if applicable, and telephone number to access:

(A) any State housing finance authority (as defined in Section 1301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989) for the State in which the property is located; and

(B) Either the Bureau list or the HUD list of homeownership counselors or counseling organizations.

(8) *Delinquency information.* If the consumer is more than 45 days delinquent, the following items must be grouped together in close proximity to each other and located on the first page of the statement:

- (i) The date on which the consumer became delinquent;
- (ii) A statement alerting the consumer to possible risks, such as foreclosure, and expenses that may be incurred if the delinquency is not cured;
- (iii) An account history showing the consumer, for the lesser of the past 6 months or the period since the last time the account was current, the amount due for each billing cycle, or if a payment was fully paid, the date on which it was considered fully paid;
- (iv) Notice of any loan modification programs (trial or permanent) to which the consumer has been accepted, if applicable;
- (v) Notice that the loan has been referred to foreclosure, if applicable;
- (vi) The total payment amount needed to bring the loan current; and
- (vii) A statement directing the consumer to the housing counselor information required by (d)(7)(v).

(e) *Exemptions.*

(1) *Reverse Mortgages.* Reverse mortgage transactions, as defined by § 1026.33(a), are exempt from the requirements of this section.

(2) *Timeshare.* Timeshare plans, as defined by 11 U.S.C. 101(53(D)), are exempt from the requirements of this section.

(3) *Coupon Book Exemption.* The requirements of paragraph (a) do not apply to fixed-rate loans if the creditor, assignee, or servicer:

- (i) Provides the consumer with a coupon book that includes on each coupon the information listed in paragraph (d)(1) above;
- (ii) Provides the consumer with a coupon book that includes anywhere in the coupon book:
 - (A) The account information listed in paragraph (d)(7) above;
 - (B) The contact information for the servicer, listed in paragraph (d)(6) above; and
 - (C) Information on how the consumer can obtain the information listed in paragraph (e)(3)(iii) below.

(iii) Makes the following information available to the consumer by telephone, writing or electronically, if the consumer consents:

- (A) The information in Explanation of Amount Due, listed in paragraph (d)(2) above;
- (B) The past payment breakdown information, listed in paragraph (d)(3) above; and
- (C) The transaction activity information listed in paragraph (d)(4) above;
- (iv) Provides the consumer the information listed in (d)(8) above in writing, for any billing cycle during which the borrower is more than 45 days delinquent.

(4) *Small Servicer Exemption.* A creditor, assignee or servicer is exempt from the requirements of this section for loans serviced by a small servicer. To qualify as a small servicer, a servicer must meet all of the following requirements:

(i) Service 1,000 or fewer mortgage loans. In determining whether a small servicer services 1,000 mortgage loans or fewer, 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.

(ii) Only service mortgage loans for which the servicer (or an affiliate) is the owner or assignee or the servicer (or an affiliate) is the entity to whom the mortgage loan obligation was initially payable. ◀

~~6. Appendix H to Part 1026 is amended by removing the entry for H 4(D) Variable Rate Model Clauses (§ 1026.20(e)), adding entries for H 4(D)(1), H 4(D)(2), H 4(D)(3), and H 4(D)(4), adding entries for H 28(A), H 28(B), H 28(C), and H 28(D), and removing and adding entries in the table of contents at the beginning of the appendix to read as follows:~~

~~APPENDIX H TO PART 1026—CLOSED-END MODEL FORMS AND CLAUSES~~

~~* * * * *~~

~~[H 4(D) Variable Rate Model Clauses (§ 1026.20(e))]~~

~~▶ H 4(D)(1) Adjustable Rate Mortgage Model Form (§ 1026.20(e))~~

~~H 4(D)(2) Adjustable Rate Mortgage Sample Form (§ 1026.20(e))~~

~~H 4(D)(3) Adjustable Rate Mortgage Model Form (§ 1026.20(d))~~

~~H 4(D)(4) Adjustable Rate Mortgage Sample Form (§ 1026.20(d)) ◀~~

~~* * * * *~~

~~▶ H 28(A) Sample Form of Periodic Statement~~

~~H 28(B) Sample Form of Periodic Statement with Delinquency Box~~

~~H 28(C) Sample Form of Periodic Statement for a Payment Options Loan~~

~~H 28(D) Sample Clause for Housing Counselor Contact Information ◀~~

~~* * * * *~~

~~{~~

~~H-4(D)—Variable-Rate Model Clauses~~

~~Your new interest rate will be _____%, which is based on an index value of _____%.~~

~~Your previous interest rate was _____%, which was based on an index value of _____%.~~

~~[The new interest rate does not reflect a change of _____ percentage point in the index value which was not added because of _____.]~~

~~[The new payment will be \$_____.]~~

~~[Your new loan balance is \$_____.]~~

~~[Your (new) (existing) payment will not be sufficient to cover the interest due and the difference will be added to the loan amount. The payment amount needed to pay your loan in full by the end of the term at the new interest rate is \$_____.]~~

~~[The following interest rate adjustments have been implemented this year without changing your payment: _____. These interest rates were based on the following index values: _____.]~~

~~]▶~~