

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

Docket No. CFPB-2017-0030

RIN 3170-AA75

Amendments to the 2016 Amendments to the 2013 Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Proposed rule with request for public comment.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is proposing amendments to certain Regulation Z mortgage servicing rules issued in 2016 relating to the timing for servicers to transition to providing modified or unmodified periodic statements and coupon books in connection with a consumer's bankruptcy case. The Bureau requests public comment on these proposed changes.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: You may submit comments, identified by Docket No. CFPB-2017-0030 or RIN 3170-AA75, by any of the following methods:

- *Email:* FederalRegisterComments@cfpb.gov. Include Docket No. CFPB-2017-0030 or RIN 3170-AA75 in the subject line of the email.
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street, NW, Washington, DC 20552.
- *Hand Delivery / Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street, NW, Washington, DC 20552.

Instructions: All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to <http://www.regulations.gov>. In addition, comments will be available for public inspection and copying at 1700 G Street, NW, Washington, DC 20552, on official business days between the hours of 10 a.m. and 5:00 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning 202-435-7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Joel L. Singerman, Counsel; or William R. Corbett or Laura A. Johnson, Senior Counsels, Office of Regulations, at 202-435-7700 or <https://reginquiries.consumerfinance.gov/>.

SUPPLEMENTARY INFORMATION:

I. Summary of the Proposed Rule

On August 4, 2016, the Bureau issued the Amendments to the 2013 Mortgage Rules Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act

(Regulation Z) (2016 Mortgage Servicing Final Rule) amending certain of the Bureau's mortgage servicing rules.¹ The Bureau has learned, through its outreach in support of industry's implementation of the 2016 Mortgage Servicing Final Rule, that certain technical aspects of the rule relating to the timing for servicers to transition to providing modified or unmodified periodic statements and coupon books in connection with a consumer's bankruptcy case may create unintended challenges in implementation. To alleviate any unintended challenges, the Bureau is proposing to address the timing provisions in this proposed rule.²

Among other things, the 2016 Mortgage Servicing Final Rule addresses Regulation Z's periodic statement and coupon book requirements when a person is a debtor in bankruptcy.³ It includes a single-billing-cycle exemption from the requirement to provide a periodic statement or coupon book in certain circumstances after one of several specific triggering events occurs resulting in a servicer needing to transition to or from providing bankruptcy-specific disclosures. The single-billing-cycle exemption applies only if the payment due date for that billing cycle is no more than 14 days after the triggering event. The 2016 Mortgage Servicing Final Rule also includes specific timing requirements for servicers to provide the next modified or unmodified statement or coupon book after the single-billing-cycle exemption has applied.

Based on feedback received regarding implementation of the 2016 Mortgage Servicing Final Rule, the Bureau understands that certain aspects of the single-billing-cycle exemption and timing requirements may be more complex and operationally challenging than the Bureau

¹ 81 FR 72160 (Oct. 19, 2016).

² The Bureau is addressing in a separate interim final rule another disclosure timing provision of the 2016 Mortgage Servicing Final Rule that would otherwise become effective October 19, 2017.

³ The provisions of Regulation Z discussed herein were amended by the 2016 Mortgage Servicing Final Rule but are not effective until April 19, 2018. To simplify review of this notice and differentiate between those amendments and this proposed rule, this notice generally refers to the 2016 amendments as though they already are in effect.

realized, and that the relevant provisions may be subject to different interpretations, as discussed more below. The Bureau is therefore proposing several revisions to § 1026.41(e)(5)(iv)(B) and (C) and their official interpretations to replace the single-billing-cycle exemption with a single-statement exemption. The Bureau is proposing to revise § 1026.41(e)(5)(iv)(B) and its related commentary to provide a single-statement exemption for the next periodic statement or coupon book that a servicer would otherwise have to provide, regardless of when in the billing cycle the triggering event occurs. The Bureau is also proposing to add new comments 41(e)(5)(iv)(B)–1 through –3 to clarify the operation of the proposed single-statement exemption. The Bureau is proposing to remove § 1026.41(e)(5)(iv)(C) and its related commentary as no longer necessary in light of the changes to § 1026.41(e)(5)(iv)(B) and its related commentary.

The Bureau believes that these proposed changes would provide a clearer and more straightforward standard than the timing requirement adopted in the 2016 Mortgage Servicing Final Rule, offering greater certainty for implementation and compliance, without unnecessarily disadvantaging consumers. The Bureau seeks public comment on these proposed changes.

II. Background

A. 2016 Mortgage Servicing Final Rule and Implementation Support

In August 2016, the Bureau issued the 2016 Mortgage Servicing Final Rule, which amends certain of the Bureau’s mortgage servicing rules in Regulations X and Z.⁴ Most of these rules become effective on October 19, 2017, except that the provisions relating to bankruptcy

⁴ 81 FR 72160 (Oct. 19, 2016). The amendments cover nine major topics and focus primarily on clarifying, revising, or amending provisions regarding force-placed insurance notices, policies and procedures, early intervention, and loss mitigation requirements under Regulation X’s servicing provisions; and prompt crediting and periodic statement requirements under Regulation Z’s servicing provisions. The amendments also address proper compliance regarding certain servicing requirements when a person is a potential or confirmed successor in interest, is a debtor in bankruptcy, or sends a cease communication request under the FDCPA.

periodic statements and successors in interest become effective on April 19, 2018. The Bureau has worked to support implementation by providing an updated compliance guide, other implementation aids, a technical corrections final rule,⁵ policy guidance regarding early compliance,⁶ and informal guidance in response to regulatory inquiries. Information regarding the Bureau's implementation support initiative and available implementation resources can be found on the Bureau's regulatory implementation website at

[https://www.consumerfinance.gov/policy-compliance/guidance/implementation-](https://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/mortserv/)

[guidance/mortserv/](https://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/mortserv/). Based on its ongoing outreach, the Bureau believes that industry has made substantial implementation progress regarding the 2016 Mortgage Servicing Final Rule.

However, the Bureau believes that a limited disclosure timing provision under Regulation Z from the 2016 Mortgage Servicing Final Rule may pose unintended implementation challenges as discussed herein.

B. Purpose and Scope of Proposal

As a result of feedback and questions received from servicers, the Bureau has decided to propose amendments to Regulation Z provisions relating to the timing for servicers to transition to providing modified or unmodified periodic statements and coupon books under Regulation Z in connection with a consumer's bankruptcy case. The Bureau believes the proposal provides clearer and more straightforward standards than the timing requirements adopted in the 2016 Mortgage Servicing Final Rule, offering greater certainty for implementation and compliance,

⁵ Amendments to the 2013 Mortgage Rules Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z); Correction, 82 FR 30947 (July 5, 2017).

⁶ Policy Guidance on Supervisory and Enforcement Priorities Regarding Early Compliance With the 2016 Amendments to the 2013 Mortgage Rules Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z), 82 FR 29713 (June 30, 2017).

without unnecessarily disadvantaging consumers.

The Bureau does not intend to revisit major policy decisions in this rulemaking or distract from industry's implementation efforts, which the Bureau believes have been moving forward. The Bureau continues to facilitate industry's implementation progress, including by responding to informal guidance inquiries and publishing additional implementation materials, as appropriate.

III. Legal Authority

The Bureau is proposing this rule pursuant to its authority under TILA and the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),⁷ including the authorities discussed below. In general, the provisions this proposed rule would amend were previously adopted by the Bureau in the 2016 Mortgage Servicing Final Rule. In doing so, the Bureau relied on one or more of the authorities discussed below, as well as other authority. The Bureau is issuing this proposed rule in reliance on the same authority and for the same reasons relied on in adopting the relevant provisions of the 2016 Mortgage Servicing Final Rule, as discussed in detail in the Legal Authority and Section-by-Section Analysis parts of the 2016 Mortgage Servicing Final Rule.

A. TILA

Section 105(a) of TILA, 15 U.S.C. 1604(a), authorizes the Bureau to prescribe regulations to carry out the purposes of TILA. Under section 105(a), such regulations may contain such additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions, as in the

⁷ Public Law 111-203, 1245 Stat. 11376 (2010).

judgment of the Bureau are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. Under section 102(a), 15 U.S.C. 1601(a), the purposes of TILA are “to assure a meaningful disclosure of credit terms so that the consumers will be able to compare more readily the various credit terms available and avoid the uninformed use of credit” and to protect consumers against inaccurate and unfair credit billing practices. For the reasons discussed in this proposal, the Bureau is proposing to adopt amendments to Regulation Z to carry out TILA’s purposes and such additional requirements, adjustments, and exceptions as, in the Bureau’s judgment, are necessary and proper to carry out the purposes of TILA, prevent circumvention or evasion thereof, or to facilitate compliance therewith.

Section 105(f) of TILA, 15 U.S.C. 1604(f), authorizes the Bureau to exempt from all or part of TILA any class of transactions if the Bureau determines that TILA coverage does not provide a meaningful benefit to consumers in the form of useful information or protection. For the reasons discussed in this notice, the Bureau is proposing amendments relating to exemptions for certain transactions from the requirements of TILA pursuant to its authority under section 105(f) of TILA.

This proposed rule also includes amendments to the official Bureau commentary in Regulation Z. Good faith compliance with the interpretations would afford protection from liability under section 130(f) of TILA.

B. The Dodd-Frank Act

Section 1022(b)(1) of the Dodd-Frank Act, 12 U.S.C. 5512(b)(1), authorizes the Bureau to prescribe rules “as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent

evasions thereof.” TILA and title X of the Dodd-Frank Act are Federal consumer financial laws.

Section 1032(a) of the Dodd-Frank Act, 12 U.S.C. 5532(a), provides that the Bureau “may prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.” The authority granted to the Bureau in section 1032(a) of the Dodd-Frank Act is broad and empowers the Bureau to prescribe rules regarding the disclosure of the “features” of consumer financial products and services generally. Accordingly, the Bureau may prescribe rules containing disclosure requirements even if other Federal consumer financial laws do not specifically require disclosure of such features.

Section 1032(c) of the Dodd-Frank Act, 12 U.S.C. 5532(c), provides that, in prescribing rules pursuant to section 1032 of the Dodd-Frank Act, the Bureau “shall consider available evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services.” Accordingly, in proposing to amend provisions authorized under section 1032(a) of the Dodd-Frank Act, the Bureau has considered available studies, reports, and other evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services.

IV. Proposed Effective Date

Regulation Z § 1026.41(e)(5), as amended by the 2016 Mortgage Servicing Final Rule, becomes effective April 19, 2018. The Bureau is not proposing to extend the effective date of that provision, as finalized in the 2016 Mortgage Servicing Final Rule, because if the Bureau

were to issue a final rule based on this proposal (after considering comments), it expects to do so sufficiently before the April 19, 2018, effective date to enable servicers to meet that date.

Thus, the Bureau is proposing an effective date of April 19, 2018, for the proposed revisions to § 1026.41(e)(5)(iv). The Bureau believes that the proposed revisions should not require substantial reprogramming of systems and notes that the Regulation Z bankruptcy-specific periodic statement requirements otherwise become effective April 19, 2018. The Bureau invites comment on the proposed effective date.

V. Section-by-Section Analysis

Section 1026.41 Periodic Statements for Residential Mortgage Loans

41(e) Exemptions.

41(e)(5) Certain Consumers in Bankruptcy.

41(e)(5)(iv) Timing of Compliance Following Transition.

The Bureau is proposing to revise § 1026.41(e)(5)(iv)(B) and related commentary, and to remove § 1026.41(e)(5)(iv)(C) and related commentary. Section 1026.41(e)(5)(iv)(B) sets forth a single-billing-cycle exemption from the requirement to provide a periodic statement or coupon book in certain circumstances after one of several specific triggering events occurs resulting in a servicer needing to transition to or from providing bankruptcy-specific disclosures. The single-billing-cycle exemption applies only if the payment due date for that billing cycle is no more than 14 days after the triggering event. The Bureau is proposing to revise § 1026.41(e)(5)(iv)(B) to instead provide a single-statement exemption for the next periodic statement or coupon book that a servicer would otherwise have to provide, regardless of when in the billing cycle the triggering event occurs. Section 1026.41(e)(5)(iv)(C) establishes timing requirements for resuming compliance after the single-billing-cycle exemption. The Bureau is proposing to

remove § 1026.41(e)(5)(iv)(C) and its related commentary because proposed revisions to comment 41(e)(5)(iv)(B)–1 would clarify the timing of the single-statement exemption and when a servicer must resume compliance. The Bureau is also proposing to add new comments 41(e)(5)(iv)(B)–2 and –3 to clarify how the proposed single-statement exemption would operate in specific circumstances. Proposed comment 41(e)(5)(iv)(B)–2 is similar in content to comment 41(e)(5)(iv)(C)–3.

Under existing § 1026.41(a)(2), a servicer generally must provide a consumer, for each billing cycle, a periodic statement meeting certain requirements. Existing § 1026.41(e)(5) provides a blanket exemption from § 1026.41 for a mortgage loan while a consumer is a debtor in bankruptcy under title 11 of the United States Code. The 2016 Mortgage Servicing Final Rule, however, generally limits this exemption to only certain consumers in bankruptcy.⁸ When a consumer either is a debtor in bankruptcy under title 11 of the United States Code or has discharged personal liability for the mortgage loan pursuant to 11 U.S.C. 727, 1141, 1228, or 1328, so long as an exemption under § 1026.41(e) does not otherwise apply, the 2016 Mortgage Servicing Final Rule requires a servicer to provide a periodic statement or coupon book with certain bankruptcy-specific modifications. In this circumstance, a servicer must transition from providing unmodified periodic statements or coupon books to providing periodic statements or

⁸ Section 1026.41(e)(5)(i) states that a servicer is generally exempt from the requirements of § 1026.41 with regard to a mortgage loan if (A) any consumer on the mortgage loan is a debtor in bankruptcy under title 11 of the United States Code or has discharged personal liability for the mortgage loan pursuant to 11 U.S.C. 727, 1141, 1228, or 1328; and (B) with regard to any consumer on the mortgage loan: (1) the consumer requests in writing that the servicer cease providing a periodic statement or coupon book; (2) the consumer's bankruptcy plan provides that the consumer will surrender the dwelling securing the mortgage loan, provides for the avoidance of the lien securing the mortgage loan, or otherwise does not provide for, as applicable, the payment of pre-bankruptcy arrearage or the maintenance of payments due under the mortgage loan; (3) a court enters an order in the bankruptcy case providing for the avoidance of the lien securing the mortgage loan, lifting the automatic stay pursuant to 11 U.S.C. 362 with regard to the dwelling securing the mortgage loan, or requiring the servicer to cease providing a periodic statement or coupon book; or (4) the consumer files with the court overseeing the bankruptcy case a statement of intention pursuant to 11 U.S.C. 521(a) identifying an intent to surrender the dwelling securing the mortgage loan and a consumer has not made any partial or periodic payment on the mortgage loan after the commencement of the consumer's bankruptcy case.

coupon books with bankruptcy modifications. Similarly, when a consumer exits bankruptcy, a servicer generally must transition back to providing unmodified periodic statements or coupon books.

During the rulemaking process leading up to the 2016 Mortgage Servicing Final Rule, the Bureau learned that, after a consumer files for or exits bankruptcy, servicers sometimes need time to transition their systems to reflect the change in bankruptcy status. Industry representatives suggested that the rule should afford a servicer enough time to transition to providing modified statements after a consumer's bankruptcy filing.⁹ The Bureau therefore finalized a single-billing-cycle exemption in the 2016 Mortgage Servicing Final Rule.¹⁰ Section 1026.41(e)(5)(iv)(B) provides that a servicer is exempt from the requirements of § 1026.41 with respect to a single billing cycle when the payment due date for that billing cycle is no more than 14 days after the date on which one of the three triggering events listed under § 1026.41(e)(5)(iv)(A) occurs: (1) a mortgage loan becomes subject to the requirement to provide a modified periodic statement; (2) a mortgage loan ceases to be subject to the requirement to provide a modified periodic statement; or (3) the servicer ceases to qualify for an exemption pursuant to § 1026.41(e)(5)(i). Section 1026.41(e)(5)(iv)(C) sets forth the timeframe within which a servicer must provide the next periodic statement after an event listed in § 1026.41(e)(5)(iv)(A) occurs.¹¹

⁹ See 81 FR 72160, 72325 (Oct. 19, 2016).

¹⁰ See generally *id.* at 72324–26.

¹¹ Section 1026.41(e)(5)(iv)(C) provides that, when one of the triggering events listed in § 1026.41(e)(5)(iv)(A) occurs, a servicer must provide the next modified or unmodified periodic statement by delivering it or placing it in the mail within a reasonably prompt time after the first payment due date, or the end of any courtesy period for the payment's corresponding billing cycle, that is more than 14 days after the date on which the applicable event listed in § 1026.41(e)(5)(iv)(A) occurs.

In the preamble to the 2016 Mortgage Servicing Final Rule, the Bureau stated its belief that the exemption and timing set forth in § 1026.41(e)(5)(iv) provide an appropriate transition period for a servicer while also not unnecessarily disadvantaging consumers. However, since issuing the 2016 Mortgage Servicing Final Rule, the Bureau has received questions indicating that the single-billing-cycle exemption may be more complex and operationally challenging than the Bureau realized, and that the provisions setting forth the exemption and transition timing requirements may be subject to different interpretations.

The Bureau believes that addressing these concerns is appropriate. To provide a clearer standard and simplify compliance for servicers without unnecessarily disadvantaging consumers, the Bureau is proposing to revise § 1026.41(e)(5)(iv)(B) to provide a single-statement exemption. As proposed, § 1026.41(e)(5)(iv)(B) provides that, as of the date on which one of the events listed in § 1026.41(e)(5)(iv)(A) occurs, a servicer is exempt from the requirements of § 1026.41 with respect to the next periodic statement or coupon book that would otherwise be required but thereafter must provide modified or unmodified periodic statements or coupon books that comply with the requirements of § 1026.41.

The Bureau also proposes to revise comment 41(e)(5)(iv)(B)–1 to clarify a servicer’s obligations under proposed § 1026.41(e)(5)(iv)(B). Proposed comment 41(e)(5)(iv)(B)–1 explains that the exemption applies with respect to a single periodic statement or coupon book following an event listed in § 1026.41(e)(5)(iv)(A) and provides two examples illustrating the timing. Both examples assume that a mortgage loan has a monthly billing cycle, each payment due date is on the first day of the month following its respective billing cycle, and each payment due date has a 15-day courtesy period.

Proposed comment 41(e)(5)(iv)(B)–1.i explains that, if an event listed in § 1026.41(e)(5)(iv)(A) occurs on October 6, before the end of the 15-day courtesy period provided for the October 1 payment due date, and the servicer has not yet provided a periodic statement or coupon book for the billing cycle with a November 1 payment due date, the servicer is exempt from providing a periodic statement or coupon book for that billing cycle. The comment further states that the servicer is required thereafter to resume providing periodic statements or coupon books that comply with the requirements of § 1026.41 by providing a modified or unmodified periodic statement or coupon book for the billing cycle with a December 1 payment due date within a reasonably prompt time after November 1 or the end of the 15-day courtesy period provided for the November 1 payment due date.

Proposed comment 41(e)(5)(iv)(B)–1.ii provides an example for when a servicer already timely provided a periodic statement or coupon book for a billing cycle in which an event listed in § 1026.41(e)(5)(iv)(A) occurs. It provides that, if an event listed in § 1026.41(e)(5)(iv)(A) occurs on October 20, after the end of the 15-day courtesy period provided for the October 1 payment due date, and the servicer timely provided a periodic statement or coupon book for the billing cycle with a November 1 payment due date, the servicer is not required to correct the periodic statement or coupon book already provided and is exempt from providing the next periodic statement or coupon book, which is the one that would otherwise be required for the billing cycle with a December 1 payment due date. The servicer is required thereafter to resume providing periodic statements or coupon books that comply with the requirements of § 1026.41 by providing a modified or unmodified periodic statement or coupon book for the billing cycle with a January 1 payment due date within a reasonably prompt time after December 1 or the end of the 15-day courtesy period provided for the December 1 payment due date.

Because proposed comments 41(e)(5)(iv)(B)–1.i and –1.ii describe when a servicer must provide periodic statements or coupon books following the exemption, § 1026.41(e)(5)(iv)(C) and related commentary would be unnecessary. Thus, the Bureau is proposing to remove § 1026.41(e)(5)(iv)(C) and related commentary.

The Bureau is also proposing to add new comments 41(e)(5)(iv)(B)–2 and –3 to clarify how the proposed exemption would operate in additional specific circumstances. Proposed comment 41(e)(5)(iv)(B)–2 is similar in content to comment 41(e)(5)(iv)(C)–3. Proposed comment 41(e)(5)(iv)(B)–2 states that, if a servicer provides a coupon book instead of a periodic statement under § 1026.41(e)(3), § 1026.41 requires the servicer to provide a new coupon book after one of the events listed in § 1026.41(e)(5)(iv)(A) occurs only to the extent the servicer has not previously provided the consumer with a coupon book that covers the upcoming billing cycle. Proposed comment 41(e)(5)(iv)(B)–3 clarifies that the single-statement exemption in § 1026.41(e)(5)(iv)(B) might apply more than once over the life of a loan. For example, assume the exemption applies beginning on April 14 because the consumer files for bankruptcy on that date and the bankruptcy plan provides that the consumer will surrender the dwelling, such that the mortgage loan becomes subject to the requirements of § 1026.41(f). If the consumer later exits bankruptcy on November 2 and has not discharged personal liability for the mortgage loan pursuant to 11 U.S.C. 727, 1141, 1228, or 1328, such that the mortgage loan ceases to be subject to the requirements of § 1026.41(f), the single-statement exemption would apply again beginning on November 2.

The Bureau believes that the single-statement exemption in proposed § 1026.41(e)(5)(iv)(B) would provide a more straightforward standard than the single-billing-cycle exemption adopted in the 2016 Mortgage Servicing Final Rule. The Bureau also believes

that the proposed exemption would still provide servicers enough time to transition their systems but not so long that it unnecessarily disadvantages consumers. Finally, the proposed exemption should provide servicers relief in more circumstances than the exemption adopted under the 2016 Mortgage Servicing Final Rule. Under this proposal, there would always be a single-statement exemption when servicers transition to providing modified or unmodified periodic statements or coupon books following one of the events listed in § 1026.41(e)(5)(iv)(A). Under the 2016 Mortgage Servicing Final Rule, servicers would not necessarily have the benefit of the single-billing-cycle exemption because of its requirement that the payment due date fall no more than 14 days after the applicable triggering event.

The Bureau solicits comment on the proposed changes, including whether they would pose operational challenges in implementation or execution.

VI. Dodd-Frank Act Section 1022(b) Analysis

In developing this proposed rule, the Bureau has considered the potential benefits, costs, and impacts as required by section 1022(b)(2) of the Dodd-Frank Act. Specifically, section 1022(b)(2) calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of consumer access to consumer financial products or services, the impact on depository institutions and credit unions with \$10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act, and the impact on consumers in rural areas. In addition, 12 U.S.C. 5512(b)(2)(B) directs the Bureau to consult, before and during the rulemaking, with appropriate prudential regulators or other Federal agencies, regarding consistency with the objectives those agencies administer. The Bureau consulted, or offered to consult with, the prudential regulators, the Securities and Exchange Commission, the Department of Housing and Urban Development (HUD), the HUD

Office of Inspector General, the Federal Housing Finance Agency, the Federal Trade Commission, the Department of the Treasury, the Department of Agriculture, and the Department of Veterans Affairs, including regarding consistency with any prudential, market, or systemic objectives administered by these agencies.

The Bureau previously considered the benefits, costs, and impacts of the 2016 Mortgage Servicing Final Rule's major provisions.¹² The baseline¹³ for this discussion is the mortgage servicing market as it would exist "but for" this proposed rule; that is, the Bureau considers the benefits, costs, and impacts of this proposed rule on consumers and covered persons relative to the baseline established by the 2016 Mortgage Servicing Final Rule.

In considering the relevant potential benefits, costs, and impacts of this proposed rule, the Bureau has used feedback received to date and has applied its knowledge and expertise concerning consumer financial markets. The discussion below of these potential costs, benefits, and impacts is qualitative, reflecting both the specialized nature of the proposed amendments and the fact that the 2016 Mortgage Servicing Final Rule, which establishes the baseline for the Bureau's analysis, is not yet in effect. The Bureau requests comment on this discussion generally as well as the submission of data or other information that could inform the Bureau's consideration of the potential benefits, costs, and impacts of this proposed rule.

The proposed rule generally would decrease burden incurred by industry participants by clarifying the timing requirements for certain disclosures required under the 2016 Mortgage Servicing Final Rule. As is described in more detail below, the Bureau does not believe that

¹² 81 FR 72160, 72351 (Oct. 19, 2016).

¹³ The Bureau has discretion in any rulemaking to choose an appropriate scope of analysis with respect to potential benefits, costs, and impacts and an appropriate baseline.

these changes would have a significant enough impact on consumers or covered persons to affect consumer access to consumer financial products and services.

Timing for servicers to transition to providing modified or unmodified periodic statements and coupon books in connection with a consumer's bankruptcy case. A mortgage servicer generally must provide a consumer, for each billing cycle, a periodic statement or coupon book meeting certain requirements. Under the 2016 Mortgage Servicing Final Rule, servicers generally must provide a modified periodic statement or coupon book to certain consumers who are debtors in bankruptcy or who have discharged personal liability for the mortgage loan. The Bureau is proposing to amend § 1026.41(e)(5)(iv) to provide that, when a servicer must transition to sending either modified periodic statements or to sending unmodified periodic statements, the servicer is exempt from the requirements of § 1026.41 with respect to the next periodic statement or coupon book that would otherwise be required but thereafter must provide modified or unmodified periodic statements or coupon books that comply with the requirements of § 1026.41. This single-statement exemption would replace the single-billing-cycle exemption in the 2016 Mortgage Servicing Final Rule.

The Bureau expects that these proposed changes would reduce the cost to servicers of providing periodic statements. The Bureau understands that implementing the single-billing-cycle exemption provided under the 2016 Mortgage Servicing Rule may prove more complex and operationally challenging for servicers than the Bureau realized and believes that a single-statement exemption would be clearer and operationally easier to implement. In addition, the single-billing-cycle exemption would apply only when the payment due date falls no more than 14 days after the event that triggers the transition to or from modified periodic statements, whereas the proposed single-statement exemption would apply to these transitions regardless of

when during the billing cycle the triggering event occurs. The Bureau believes that servicers would benefit from the more straightforward proposed standard and from the additional time afforded for some transitions.

The proposal could delay the transition to or from modified periodic statements for some consumers. This could disadvantage some consumers who could receive certain disclosures later than they might otherwise under the single-billing-cycle exemption. However, the delay would generally be at most one billing cycle, and servicers generally are required to provide consumers the information in periodic statements on request. Thus, the Bureau does not expect that the overall effect on consumers will be significant.

Potential specific impacts of the proposed rule. The Bureau believes that a large fraction of depository institutions and credit unions with \$10 billion or less in total assets that are engaged in servicing mortgage loans qualify as “small servicers” for purposes of the mortgage servicing rules because they service 5,000 or fewer loans, all of which they or an affiliate own or originated. Small servicers are not subject to Regulation Z § 1026.41, and so would not be affected by the amendments in this proposed rule.

With respect to servicers that are not small servicers as defined in § 1026.41(e)(4), the Bureau believes that the consideration of benefits and costs of covered persons presented above provides a largely accurate analysis of the impacts of the final rule on depository institutions and credit unions with \$10 billion or less in total assets that are engaged in servicing mortgage loans.

The Bureau has no reason to believe that the additional timing flexibility offered to covered persons by this proposed rule would differentially impact consumers in rural areas. The Bureau requests comment regarding the impact of the proposed provisions on consumers in rural areas and how those impacts may differ from those experienced by consumers generally.

VII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act,¹⁴ as amended by the Small Business Regulatory Enforcement Fairness Act of 1996,¹⁵ (RFA) requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations.¹⁶ The RFA defines a “small business” as a business that meets the size standard developed by the Small Business Administration (SBA) pursuant to the Small Business Act.¹⁷

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities.¹⁸ The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small entity representatives prior to proposing a rule for which an IRFA is required.¹⁹

As discussed above, the proposed rule would amend certain Regulation Z mortgage servicing rules issued in 2016 relating to the timing for servicers to transition to providing modified or unmodified periodic statements and coupon books under Regulation Z in connection with a consumer’s bankruptcy case.

¹⁴ Public Law 96–354, 94 Stat. 1164 (1980).

¹⁵ Public Law 104–21, section 241, 110 Stat. 847, 864–65 (1996).

¹⁶ 5 U.S.C. 601 through 612. The term “‘small organization’ means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes [an alternative definition under notice and comment].” 5 U.S.C. 601(4). The term “‘small governmental jurisdiction’ means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes [an alternative definition after notice and comment].” 5 U.S.C. 601(5).

¹⁷ 5 U.S.C. 601(3). The Bureau may establish an alternative definition after consulting with the SBA and providing an opportunity for public comment. *Id.*

¹⁸ 5 U.S.C. 601 *et seq.*

¹⁹ 5 U.S.C. 609.

When it issued the proposed rule that was finalized as the 2016 Mortgage Servicing Final Rule, the Bureau concluded that those provisions would not have a significant economic impact on a substantial number of small entities and that an IRFA was therefore not required.²⁰ That conclusion remained unchanged for the 2016 Mortgage Servicing Final Rule.²¹

Similarly, the Bureau concludes that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, and therefore an IRFA is not required. As discussed above, the Bureau believes that the proposed changes would not create a significant economic impact on any covered persons, including small entities. In addition, the proposed amendments would not affect servicers that are “small servicers” for purposes of the mortgage servicing rules. Small servicers are exempt from the requirements that the proposed rule would amend, and the Bureau believes that a large fraction of small entities that are engaged in servicing mortgage loans qualify as small servicers because they service 5,000 or fewer loans, all of which they or an affiliate own or originated. Therefore, an IRFA is not required for this proposal.

Accordingly, the undersigned certifies that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities. The Bureau requests comment on the analysis above and requests any relevant data.

VIII. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA),²² Federal agencies are generally required to seek Office of Management and Budget (OMB) approval for information collection

²⁰ 79 FR 74176, 74279 (Dec. 15, 2014).

²¹ 81 FR 72160, 72364 (Oct. 19, 2016).

²² 44 U.S.C. 3501 *et seq.*

requirements prior to implementation. The collections of information related to the 2016 Mortgage Servicing Final Rule have been reviewed and approved by OMB previously in accordance with the PRA and assigned OMB Control Numbers 3170–0016 (Regulation X) and 3170–0015 (Regulation Z). Under the PRA, the Bureau may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to an information collection unless the information collection displays a valid control number assigned by OMB.

The Bureau has determined that this proposed rule would provide firms with additional flexibility and clarity with respect to what must be disclosed under the 2016 Mortgage Servicing Final Rule; therefore, it would have only minimal impact on the industry-wide aggregate PRA burden relative to the baseline. The Bureau welcomes comments on this determination or any other aspects of this proposal for purposes of the PRA. Comments should be submitted to the Bureau as instructed in the **ADDRESSES** part of this notice and to the attention of the Paperwork Reduction Act Officer. All comments will become a matter of public record.

List of Subjects

12 CFR Part 1026

Advertising, Appraisal, Appraiser, Banking, Banks, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

Authority and Issuance

For the reasons set forth in the preamble, the Consumer Financial Protection Bureau proposes to amend 12 CFR part 1026 as follows:

PART 1026—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 1026 continues to read as follows:

AUTHORITY: 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

Subpart E—Special Rules for Certain Home Mortgage Transactions

2. Amend § 1026.41 by:

- a. Revising paragraph (e)(5)(iv)(B); and
- b. Removing paragraph (e)(5)(iv)(C).

The revisions read as follows:

§ 1026.41 Periodic statements for residential mortgage loans.

* * * * *

(e) * * *

(5) * * *

(iv) * * *

(B) *Single-statement exemption.* As of the date on which one of the events listed in paragraph (e)(5)(iv)(A) of this section occurs, a servicer is exempt from the requirements of this section with respect to the next periodic statement or coupon book that would otherwise be required but thereafter must provide modified or unmodified periodic statements or coupon books that comply with the requirements of this section.

* * * * *

3. Amend Supplement I to Part 1026 as follows:

a. Under *Section 1026.41—Periodic Statements for Residential Mortgage Loans:*

i. Under *41(e) Exemptions*, the heading *41(e)(5)(iv)(B) Transitional single-billing-cycle exemption* is revised;

- ii. Under revised heading *41(e)(5)(iv)(B) Single-statement exemption*, paragraph 1 is revised and paragraphs 2 and 3 are added; and
- iii. Under *41(e)(5)(iv)(C) Timing of first modified or unmodified statement or coupon book after transition*, the heading and paragraphs 1 through 3 are removed.

The revisions and additions read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Section 1026.41—Periodic Statements for Residential Mortgage Loans

* * * * *

41(e)(5)(iv)(B) Single-statement exemption.

1. *Timing.* The exemption in § 1026.41(e)(5)(iv)(B) applies with respect to a single periodic statement or coupon book following an event listed in § 1026.41(e)(5)(iv)(A). For example, assume that a mortgage loan has a monthly billing cycle, each payment due date is on the first day of the month following its respective billing cycle, and each payment due date has a 15-day courtesy period. In this scenario:

- i. If an event listed in § 1026.41(e)(5)(iv)(A) occurs on October 6, before the end of the 15-day courtesy period provided for the October 1 payment due date, and the servicer has not yet provided a periodic statement or coupon book for the billing cycle with a November 1 payment due date, the servicer is exempt from providing a periodic statement or coupon book for that billing cycle. The servicer is required thereafter to resume providing periodic statements or coupon books that comply with the requirements of § 1026.41 by providing a modified or unmodified periodic statement or coupon book for the billing cycle with a December 1 payment

due date within a reasonably prompt time after November 1 or the end of the 15-day courtesy period provided for the November 1 payment due date. *See* § 1026.41(b).

ii. If an event listed in § 1026.41(e)(5)(iv)(A) occurs on October 20, after the end of the 15-day courtesy period provided for the October 1 payment due date, and the servicer timely provided a periodic statement or coupon book for the billing cycle with the November 1 payment due date, the servicer is not required to correct the periodic statement or coupon book already provided and is exempt from providing the next periodic statement or coupon book, which is the one that would otherwise be required for the billing cycle with a December 1 payment due date. The servicer is required thereafter to resume providing periodic statements or coupon books that comply with the requirements of § 1026.41 by providing a modified or unmodified periodic statement or coupon book for the billing cycle with a January 1 payment due date within a reasonably prompt time after December 1 or the end of the 15-day courtesy period provided for the December 1 payment due date. *See* § 1026.41(b).

2. *Duplicate coupon books not required.* If a servicer provides a coupon book instead of a periodic statement under § 1026.41(e)(3), § 1026.41 requires the servicer to provide a new coupon book after one of the events listed in § 1026.41(e)(5)(iv)(A) occurs only to the extent the servicer has not previously provided the consumer with a coupon book that covers the upcoming billing cycle.

3. *Subsequent triggering events.* The single-statement exemption in § 1026.41(e)(5)(iv)(B) might apply more than once over the life of a loan. For example, assume the exemption applies beginning on April 14 because the consumer files for bankruptcy on that date and the bankruptcy plan provides that the consumer will surrender the dwelling, such that the mortgage loan becomes subject to the requirements of § 1026.41(f). *See*

§ 1026.41(e)(5)(iv)(A)(1). If the consumer later exits bankruptcy on November 2 and has not discharged personal liability for the mortgage loan pursuant to 11 U.S.C. 727, 1141, 1228, or 1328, such that the mortgage loan ceases to be subject to the requirements of § 1026.41(f), the single-statement exemption would apply again beginning on November 2. *See*

§ 1026.41(e)(5)(iv)(A)(2).

* * * * *

[THIS SIGNATURE PAGE PERTAINS TO THE PROPOSED RULE TITLED
“AMENDMENTS TO THE 2016 AMENDMENTS TO THE 2013 MORTGAGE
SERVICING RULES UNDER THE REAL ESTATE SETTLEMENT PROCEDURES
ACT (REGULATION X) AND THE TRUTH IN LENDING ACT (REGULATION Z)”]

Dated: October 2, 2017.



Richard Cordray,

Director, Bureau of Consumer Financial Protection.