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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

[Docket No. CFPB-2017-0030]

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Mortgage Servicing Rules Under the Truth in Lending Act (Regulation Z)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is issuing this final rule amending 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.

DATES: This rule is effective April 19, 2018.

FOR FURTHER INFORMATION CONTACT: Adam C. Mayle or Joel L. Singerman, Counsels; or Amanda Quester, Senior Counsel, Office of Regulations, at 202-435-7700 or <https://reginquiries.consumerfinance.gov/>. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION:

I. Summary of the Final 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 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 issued a proposed rule on October 4, 2017, to address the timing provisions.² The Bureau is now finalizing the proposed amendments without revision.

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 ended.

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 82 FR 48463 (Oct. 18, 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 document and differentiate between those amendments and this final rule, this document 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 issuing this final rule revising § 1026.41(e)(5)(iv)(B) and (C) and related commentary to replace the single-billing-cycle exemption with a single-statement exemption. This final rule provides 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 adding new comments 41(e)(5)(iv)(B)–1 through –3 to clarify the operation of the single-statement exemption. The Bureau is also removing § 1026.41(e)(5)(iv)(C) and its related commentary, as they are no longer necessary in light of the changes to § 1026.41(e)(5)(iv)(B) and its related commentary.

The Bureau believes this final rule provides 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.

II. Background

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 amendments became effective October 19, 2017. Provisions relating to bankruptcy periodic statements and successors in interest become effective April 19, 2018.⁵

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 Fair Debt Collection Practices Act.

⁵ In June 2017, the Bureau issued policy guidance on its supervisory and enforcement priorities regarding early compliance with the 2016 Mortgage Servicing Final Rule. 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). The Bureau indicated in the guidance that it does not intend to take supervisory or enforcement action for violations of Regulation X or Regulation Z resulting from a servicer’s compliance with the 2016 Mortgage Servicing Final Rule occurring up to three days before the applicable effective dates. *Id.* at 29713.

Under existing § 1026.41(a)(2) in Regulation Z, 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.⁶ 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 these circumstances, once a consumer enters bankruptcy, a servicer must transition from providing unmodified periodic statements or coupon books to providing periodic statements or 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.

To allow servicers time to make this transition in their systems, the Bureau finalized a single-billing-cycle exemption in the 2016 Mortgage Servicing Final Rule.⁷ Section 1026.41(e)(5)(iv)(B) in the 2016 Mortgage Servicing Final Rule 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

⁶ See § 1026.41(e)(5)(i) (81 FR 72388-89, Oct. 19, 2016).

⁷ See generally 81 FR 72160, 72324-26 (Oct. 19, 2016).

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.⁸

Since issuing the 2016 Mortgage Servicing Final Rule, the Bureau 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 therefore proposed to replace the single-billing-cycle exemption with a single-statement exemption, which the Bureau believed would be a clearer and more straightforward standard.

III. Summary of the Rulemaking Process

The Bureau has supported implementation of the 2016 Mortgage Servicing Final Rule by providing an updated compliance guide, other implementation aids, a technical corrections final rule,⁹ an interim final rule related to timing for certain early intervention notices,¹⁰ policy guidance regarding early compliance,¹¹ 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-guidance/mortserv/>. The Bureau continues to facilitate industry's implementation progress,

⁸ See § 1026.41(e)(5)(iv)(C) (81 FR 72389, Oct. 19, 2016).

⁹ 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).

¹⁰ 82 FR 47953 (Oct. 16, 2017).

¹¹ 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).

including by responding to informal guidance inquiries and publishing additional implementation materials, as appropriate. Based on its ongoing outreach, the Bureau believes that industry has made substantial implementation progress regarding the 2016 Mortgage Servicing Final Rule.

The Bureau also 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. As a result, and to alleviate any unintended challenges, the Bureau issued a proposed rule on October 4, 2017, published in the *Federal Register* on October 18, 2017, to address the timing provisions.¹² The comment period on the proposed rule ended on November 17, 2017. The Bureau received ten comments, including seven from industry trade associations, two from individual consumers, and one from consumer advocacy groups. As discussed in more detail below, the Bureau has considered these comments in adopting this final rule.

IV. Legal Authority

The Bureau is finalizing this rule pursuant to its authority under the Truth in Lending Act (TILA)¹³ and the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),¹⁴ including the authorities discussed below. In general, the provisions in this final rule amend certain provisions 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

¹² 82 FR 48463 (Oct. 18, 2017).

¹³ 15 U.S.C. 1601 *et seq.*

¹⁴ Public Law 111-203, 124 Stat. 1376 (2010).

well as other authority. The Bureau is issuing this final 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 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 consumer will be able to compare more readily the various available credit terms and avoid the uninformed use of credit and to protect the consumer against inaccurate and unfair credit billing practices. For the reasons discussed in this document, the Bureau is adopting these 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 herein, the Bureau is finalizing the amendments relating to exemptions for

certain transactions from the requirements of TILA pursuant to its authority under section 105(f) of TILA.

This final 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.

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.

As finalized in the 2016 Mortgage Servicing Final Rule, § 1026.41(e)(5)(iv)(B) set 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; and § 1026.41(e)(5)(iv)(C) established timing requirements for resuming compliance after that exemption. The Bureau proposed to revise § 1026.41(e)(5)(iv)(B) and related commentary, and to remove § 1026.41(e)(5)(iv)(C) and related commentary. Instead of a single-billing-cycle exemption, proposed § 1026.41(e)(5)(iv)(B) would have provided a single-statement exemption for the next periodic statement or coupon book that a servicer would otherwise have to provide following a triggering event, regardless of when in the billing cycle the triggering event occurs. Proposed comments 41(e)(5)(iv)(B)–1 through –3 would have clarified how the single-statement exemption would operate in specific circumstances. For the reasons discussed below, the Bureau is finalizing § 1026.41(e)(5)(iv)(B) and related commentary as proposed, and is removing § 1026.41(e)(5)(iv)(C) and related commentary, as proposed.

The Bureau received ten comments on the proposal, including seven from industry trade associations, two from individual consumers, and one from consumer advocacy groups. All comments addressing the substance of the proposal supported replacing the single-billing-cycle exemption with the proposed single-statement exemption. Several industry trade association commenters stated that the proposed changes would simplify implementation or improve compliance. They stated, for example, that the proposed single-statement exemption was clearer and more straightforward than the single-billing-cycle exemption, or that the proposed single-statement exemption would vastly reduce the complexity of compliance. The consumer advocacy groups and two consumer commenters also expressed general support for the proposal. One industry trade association supporting the proposal also suggested that the Bureau clarify in commentary that a servicer would not violate proposed § 1026.41(e)(5)(iv)(B) by providing a periodic statement or coupon book while the single-statement exemption applies, and that the servicer would not be required to correct such a statement. The Bureau also received several comments from industry trade associations that requested amendments to aspects of the periodic statement requirements other than the timing requirements addressed in the proposal, as discussed further below.

The Bureau is adopting § 1026.41(e)(5)(iv)(B) and related commentary as proposed. As finalized, § 1026.41(e)(5)(iv)(B) provides that, as of the date on which one of the triggering 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 this section. Comments 41(e)(5)(iv)(B)–1 through –3 describe how the single-statement exemption operates in specific circumstances. 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.

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 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.

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 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 are unnecessary. The Bureau is removing § 1026.41(e)(5)(iv)(C) and related commentary.

The Bureau is also adopting as proposed comments 41(e)(5)(iv)(B)–2 and –3 to clarify how the single-statement exemption would operate in additional specific circumstances. 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. 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 these amendments will provide a clearer and more straightforward standard than the timing requirement finalized in the 2016 Mortgage Servicing Final Rule. The Bureau anticipates that the amendments will offer greater certainty for implementation and compliance, without unnecessarily disadvantaging consumers.

The Bureau declines to adopt one commenter's recommendation to clarify in commentary that a servicer does not violate § 1026.41(e)(5)(iv)(B) by providing a periodic statement or coupon book while the single-statement exemption applies. This clarification is unnecessary because Regulation Z does not prohibit a servicer from providing a periodic statement or coupon book while the single-statement exemption applies. The Bureau notes, however, that servicers choosing to provide a periodic statement or coupon book while an exemption applies should provide accurate disclosures and comply with other applicable laws. The Bureau also notes that § 1026.41 does not prohibit servicers from adding language to a periodic statement or coupon book that may be helpful in limiting any potential liability.

As stated above, the Bureau also received several comments from industry trade associations that requested amendments to aspects of the periodic statement requirements other than the timing requirements addressed in the proposal. For example, one industry trade association recommended expanding the small servicer exemption set forth in § 1024.41(e)(4). Another suggested that, when a consumer files a chapter 12 or 13 bankruptcy case, the servicer should be exempt from providing bankruptcy-specific periodic statements or coupon books under § 1026.41(f) until the consumer's bankruptcy plan is confirmed. The Bureau's proposal did not address the small servicer exemption, nor did it raise the question whether the periodic-

statement requirement should apply only after a plan is confirmed in chapter 12 or 13 bankruptcies. Because these comments are beyond the scope of the proposal, the Bureau declines to adopt their recommendations.

One industry trade association also requested that the Bureau include language in the final rule that could help insulate a servicer that is unable to suppress a periodic statement when an exemption applies. The commenter stated that events triggering an exemption sometimes occur near-in-time to when a servicer is scheduled to provide the periodic statement. The commenter indicated that, because servicers sometimes do not learn of the triggering events in real-time, a servicer might provide a periodic statement containing inaccurate information. The commenter stated that this could be particularly problematic if the servicer provides a standard periodic statement to a consumer who has recently filed for bankruptcy, instead of a periodic statement containing bankruptcy-specific disclosures and disclaimers under § 1026.41.

This recommendation broaches issues beyond the narrow timing requirements addressed in the proposal, and the Bureau is not adopting it. To the extent servicers are concerned about exposure to liability for providing a periodic statement that becomes inaccurate before it reaches the consumer, the Bureau notes that Regulation Z does not prohibit a servicer from adding language that may be helpful in limiting any potential liability. Further, the Bureau learned during outreach before issuing the 2016 Mortgage Servicing Rule that servicers often learn of new bankruptcy filings, important case activity, and case closings quickly, usually within approximately a day.¹⁵ Although some servicers may manually review bankruptcy filings,¹⁶ which may take longer, the Bureau believes that a servicer would typically learn of a consumer's

¹⁵ See 81 FR 72160, 72317.

¹⁶ See *id.*

bankruptcy filing with enough time to suppress periodic statements and make use of the single-statement exemption.

VI. Effective Date

Regulation Z § 1026.41(e)(5), as amended by the 2016 Mortgage Servicing Final Rule, becomes effective April 19, 2018, along with the rest of the Regulation Z bankruptcy-specific periodic statement requirements. Thus, the Bureau proposed an April 19, 2018, effective date for the proposed revisions to § 1024.41(e)(5)(iv).

One commenter requested that the Bureau postpone the effective date of all the provisions relating to bankruptcy periodic statements in both the 2016 Mortgage Servicing Final Rule and this final rule.¹⁷ This comment is beyond the scope of the proposal, and the Bureau did not receive any comments requesting that the Bureau extend the effective date of only the proposed revisions to § 1024.41(e)(5)(iv).

The Bureau is adopting, as proposed, an April 19, 2018, effective date for this final rule and believes that there is no need to delay the effective date of this final rule. The Bureau believes that the revisions to § 1026.41(e)(5)(iv) would not require substantial reprogramming of systems by industry. The Bureau also believes it is issuing this final rule with sufficient time before the April 19, 2018, effective date to enable servicers to meet the requirements of the final rule.

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

In developing this final rule, the Bureau considered the potential benefits, costs, and impacts as required by section 1022(b)(2) of the Dodd-Frank Act. Specifically, section

¹⁷ After the close of the comment period, the Bureau received additional feedback related to the effective date of all the provisions relating to bankruptcy periodic statements in the 2016 Mortgage Servicing Final Rule. As noted above, this feedback is beyond the scope of the proposal.

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.¹⁸ The baseline¹⁹ for this discussion is the mortgage servicing market as it would exist "but for" this final rule; that is, the Bureau considered the benefits, costs, and impacts of this final 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 final rule, the Bureau reviewed the comments received and has applied its knowledge and expertise concerning

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

¹⁹ 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.

consumer financial markets. The discussion below of these potential costs, benefits, and impacts is qualitative, reflecting both the specialized nature of the final 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 requested comment on the discussion of costs, benefits, and impacts in the preamble to the proposed rule 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 final rule. The Bureau did not receive any such comments, data, or other information.

This final rule seeks to 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 these changes will have a significant enough impact on consumers or covered persons to affect consumer access to consumer financial products and services.

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 amending § 1026.41(e)(5)(iv), as proposed, 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 replaces the single-billing-cycle exemption in the 2016 Mortgage Servicing Final Rule.

The Bureau expects that these changes will reduce the cost to servicers of providing periodic statements. The Bureau understands, based on comments received in response to the proposed rule and through other industry outreach that implementing the single-billing-cycle exemption provided under the 2016 Mortgage Servicing Rule might have proved more complex and operationally challenging for servicers than the Bureau realized and believes that a single-statement exemption will be clearer and operationally easier to implement. In addition, the single-billing-cycle exemption would have applied 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 final single-statement exemption will apply to these transitions regardless of when during the billing cycle the triggering event occurs. The Bureau believes that servicers will benefit from the more straightforward single-statement exemption standard and from the additional time afforded for some transitions.

Relative to the baseline established by the 2016 Mortgage Servicing Final Rule, the final rule could sometimes afford servicers a longer exemption than the standard provided in the 2016 Mortgage Servicing Final Rule. As a result, the final rule might extend the period of time some consumers go without receiving any periodic statement or coupon book, which could disadvantage those consumers. However, any such 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, and there is no basis to believe that these changes will have a significant

enough impact on consumers or covered persons to affect consumer access to consumer financial products and services.

Potential specific impacts of the final 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. The Bureau has estimated that 96 percent of insured depositories and credit unions with \$10 billion or less in total assets service 5,000 mortgage loans or fewer.²⁰ Small servicers are not subject to Regulation Z § 1026.41, and so are not affected by the amendments in this final 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 an 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 requested comment regarding the impact of the proposed provisions in rural areas and how those impacts may differ from those experienced by consumers generally. After careful consideration of the comments received and based on the Bureau’s knowledge and expertise concerning consumer financial markets, the Bureau has no reason to believe that the additional timing flexibility offered to covered persons by this final rule will differentially impact consumers in rural areas.

²⁰ Based on an analysis of December 2015 Call Report data as compiled by SNL Financial.

VIII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act,²¹ as amended by the Small Business Regulatory Enforcement Fairness Act of 1996,²² (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.²³ 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.²⁴

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.²⁵ 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.²⁶

As discussed above, the final rule amends 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.

²¹ Public Law 96–354, 94 Stat. 1164 (1980).

²² Public Law 104–21, section 241, 110 Stat. 847, 864–65 (1996).

²³ 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).

²⁴ 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.*

²⁵ 5 U.S.C. 601 *et seq.*

²⁶ 5 U.S.C. 609.

When the Bureau issued the proposed rule that was finalized as the 2016 Mortgage Servicing Final Rule, it 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.²⁷ That conclusion remained unchanged for the 2016 Mortgage Servicing Final Rule.²⁸

Similarly, when the Bureau issued the proposed rule in this rulemaking, it concluded that the proposal would not have a significant economic impact on a substantial number of small entities and that an IRFA was therefore not required.²⁹ For the same reasons, the Bureau concludes that this final rule, as adopted, will not have a significant economic impact on a substantial number of small entities, and therefore a FRFA is not required. As discussed above, the Bureau expects that this final rule will reduce costs to servicers, including small entities, of providing periodic statements. In addition, the final amendments do not affect servicers that are “small servicers” for purposes of the mortgage servicing rules. Small servicers are exempt from the requirements that the final 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, a FRFA is not required for this final rule.

Accordingly, the undersigned certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

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

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

²⁹ 82 FR 48463, 48468 (Oct. 18, 2017).

IX. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA),³⁰ Federal agencies are generally required to seek Office of Management and Budget (OMB) approval for information collection requirements prior to implementation. Further, the Bureau may not conduct or sponsor an information collection unless the OMB approves the collection under the PRA and the information collection displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number. 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).

The Bureau has determined that this final rule will provide firms with additional flexibility and clarity with respect to what must be disclosed under the 2016 Mortgage Servicing Final Rule. It does not materially change the underlying information collections in terms of who is responding or when they must provide the disclosures. Additionally the Bureau believes this will have *de minimis* impact on the reported PRA burden for this collection.

X. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Bureau will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the rule's published

³⁰ 44 U.S.C. 3501 *et seq.*

effective date. The Office of Information and Regulatory Affairs has designated this rule as not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 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 Bureau amends 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 revision reads 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. *41(e)(5)(iv)(B) Transitional single-billing-cycle exemption* is revised; and

ii. *41(e)(5)(iv)(C) Timing of first modified or unmodified statement or coupon book after transition* is removed.

The revision reads 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).

* * * * *

Dated: March 6, 2018.

Mick Mulvaney,

Acting Director, Bureau of Consumer Financial Protection.

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