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creditor includes such a provision in the initial agreement.

(3) Change any term, except that a creditor may:

(i) Provide in the initial agreement that it may prohibit additional extensions of credit or reduce the credit limit during any period in which the maximum annual percentage rate is reached. A creditor also may provide in the initial agreement that specified changes will occur if a specified event takes place (for example, that the annual percentage rate will increase a specified amount if the consumer leaves the creditor's employment).

(ii) Change the index and margin used under the plan if the original index is no longer available, the new index has an historical movement substantially similar to that of the original index, and the new index and margin would have resulted in an annual percentage rate substantially similar to the rate in effect at the time the original index became unavailable.

(iii) Make a specified change if the consumer specifically agrees to it in writing at that time.

(iv) Make a change that will unequivocally benefit the consumer throughout the remainder of the plan.

(v) Make an insignificant change to terms.

(vi) Prohibit additional extensions of credit or reduce the credit limit applicable to an agreement during any period in which:

(A) The value of the dwelling that secures the plan declines significantly below the dwelling's appraised value for purposes of the plan;

(B) The creditor reasonably believes that the consumer will be unable to fulfill the repayment obligations under the plan because of a material change in the consumer's financial circumstances;

(C) The consumer is in default of any material obligation under the agreement;

(D) The creditor is precluded by government action from imposing the annual percentage rate provided for in the agreement;

(E) The priority of the creditor's security interest is adversely affected by government action to the extent that the value of the security interest is

less than 120 percent of the credit line; or

(F) The creditor is notified by its regulatory agency that continued advances constitute an unsafe and unsound practice.

(4) For reverse mortgage transactions that are subject to §1026.33, terminate a plan and demand repayment of the entire outstanding balance in advance of the original term except:

(i) In the case of default;

(ii) If the consumer transfers title to the property securing the note;

(iii) If the consumer ceases using the property securing the note as the primary dwelling; or

(iv) Upon the consumer's death.

(g) *Refund of fees.* A creditor shall refund all fees paid by the consumer to anyone in connection with an application if any term required to be disclosed under paragraph (d) of this section changes (other than a change due to fluctuations in the index in a variable-rate plan) before the plan is opened and, as a result, the consumer elects not to open the plan.

(h) *Imposition of nonrefundable fees.* Neither a creditor nor any other person may impose a nonrefundable fee in connection with an application until three business days after the consumer receives the disclosures and brochure required under this section. If the disclosures and brochure are mailed to the consumer, the consumer is considered to have received them three business days after they are mailed.

§ 1026.41 Periodic statements for residential mortgage loans.

(a) *In general—(1) Scope.* This section applies to a closed-end consumer credit transaction secured by a dwelling, unless an exemption in paragraph (e) of this section applies. A closed-end consumer credit transaction secured by a dwelling is referred to as a *mortgage loan* for purposes of this section.

(2) *Periodic statements.* A servicer of a transaction subject to this section shall provide the consumer, for each billing cycle, a periodic statement meeting the requirements of paragraphs (b), (c), and (d) of this section. If a mortgage loan has a billing cycle shorter than a period of 31 days (for example, a bi-weekly billing cycle), a

periodic statement covering an entire month may be used. For the purposes of this section, *servicer* includes the creditor, assignee, or servicer, as applicable. A creditor or assignee that does not currently own the mortgage loan or the mortgage servicing rights is not subject to the requirement in this section to provide a periodic statement.

(b) *Timing of the periodic statement.* The periodic statement must be delivered or placed in the mail within a reasonably prompt time after the payment due date or the end of any courtesy period provided for the previous billing cycle.

(c) *Form of the periodic statement.* The servicer must make the disclosures required by this section clearly and conspicuously in writing, or electronically if the consumer agrees, and in a form that the consumer may keep. Sample forms for periodic statements are provided in appendix H-30. Proper use of these forms complies with the requirements of this paragraph (c) and the layout requirements in paragraph (d) of this section.

(d) *Content and layout of the periodic statement.* The periodic statement required by this section shall include:

(1) *Amount due.* Grouped together in close proximity to each other and located at the top of the first page of the statement:

- (i) The payment due date;
- (ii) The amount of any late payment fee, and the date on which that fee will be imposed if payment has not been received; and
- (iii) The amount due, shown more prominently than other disclosures on the page and, if the transaction has multiple payment options, the amount due under each of the payment options.

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

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

- (ii) The total sum of any fees or charges imposed since the last statement; and

(iii) Any payment amount past due.

(3) *Past payment breakdown.* The following items, grouped together in close proximity to each other and located on the first page of the statement:

- (i) The total of all payments received since the last statement, including a breakdown showing the amount, if any, that was applied to principal, interest, escrow, fees and charges, and the amount, if any, sent to any suspense or unapplied funds account; and

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

(4) *Transaction activity.* A list of all the transaction activity that occurred since the last statement. For purposes of this paragraph (d)(4), *transaction activity* means any activity that causes a credit or debit to the amount currently due. This list must include the date of the transaction, a brief description of the transaction, and the amount of the transaction for each activity on the list.

(5) *Partial payment information.* If a statement reflects a partial payment that was placed in a suspense or unapplied funds account, information explaining what must be done for the funds to be applied. The information must be on the front page of the statement or, alternatively, may be included on a separate page enclosed with the periodic statement or in a separate letter.

(6) *Contact information.* A toll-free telephone number and, if applicable, an electronic mailing address that may be used by the consumer to obtain information about the consumer's account, located on the front page of the statement.

(7) *Account information.* The following information:

- (i) The amount of the outstanding principal balance;
- (ii) The current interest rate in effect for the mortgage loan;

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(iii) The date after which the interest rate may next change;

(iv) The existence of any prepayment penalty, as defined in §1026.32(b)(6)(i), that may be charged;

(v) The Web site to access either the Bureau list or the HUD list of homeownership counselors and counseling organizations and the HUD toll-free telephone number to access contact information for homeownership counselors or counseling organizations; and

(8) *Delinquency information.* If the consumer is more than 45 days delinquent, the following items, grouped together in close proximity to each other and located on the first page of the statement or, alternatively, on a separate page enclosed with the periodic statement or in a separate letter:

(i) The length of the consumer's delinquency;

(ii) A notification of possible risks, such as foreclosure, and expenses, that may be incurred if the delinquency is not cured;

(iii) An account history showing, for the previous six months or the period since the last time the account was current, whichever is shorter, the amount remaining past due from each billing cycle or, if any such payment was fully paid, the date on which it was credited as fully paid;

(iv) A notice indicating any loss mitigation program to which the consumer has agreed, if applicable;

(v) A notice of whether the servicer has made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, if applicable;

(vi) The total payment amount needed to bring the account current; and

(vii) A reference to the homeownership counselor information disclosed pursuant to paragraph (d)(7)(v) of this section.

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

(2) *Timeshare plans.* Transactions secured by consumers' interests in timeshare plans, as defined by 11 U.S.C. 101(53D), are exempt from the requirements of this section.

(3) *Coupon books.* The requirements of paragraph (a) of this section do not

apply to fixed-rate loans if the servicer:

(i) Provides the consumer with a coupon book that includes on each coupon the information listed in paragraph (d)(1) of this section;

(ii) Provides the consumer with a coupon book that includes anywhere in the coupon book:

(A) The account information listed in paragraph (d)(7) of this section;

(B) The contact information for the servicer, listed in paragraph (d)(6) of this section; and

(C) Information on how the consumer can obtain the information listed in paragraph (e)(3)(iii) of this section;

(iii) Makes available upon request to the consumer by telephone, in writing, in person, or electronically, if the consumer consents, the information listed in paragraph (d)(2) through (5) of this section; and

(iv) Provides the consumer the information listed in paragraph (d)(8) of this section in writing, for any billing cycle during which the consumer is more than 45 days delinquent.

(4) *Small servicers—(i) Exemption.* A creditor, assignee, or servicer is exempt from the requirements of this section for mortgage loans serviced by a small servicer.

(ii) *Small servicer defined.* A small servicer is a servicer that:

(A) Services, together with any affiliates, 5,000 or fewer mortgage loans, for all of which the servicer (or an affiliate) is the creditor or assignee;

(B) Is a Housing Finance Agency, as defined in 24 CFR 266.5; or

(C) Is a nonprofit entity that services 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities, for all of which the servicer or an associated nonprofit entity is the creditor. For purposes of this paragraph (e)(4)(ii)(C), the following definitions apply:

(1) The term "nonprofit entity" means an entity having a tax exemption ruling or determination letter from the Internal Revenue Service under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3); 26 CFR 1.501(c)(3)-1), and;

(2) The term "associated nonprofit entities" means nonprofit entities that

by agreement operate using a common name, trademark, or servicemark to further and support a common charitable mission or purpose.

(iii) *Small servicer determination.* In determining whether a servicer satisfies paragraph (e)(4)(ii)(A) of this section, the servicer is evaluated based on the mortgage loans serviced by the servicer and any affiliates as of January 1 and for the remainder of the calendar year. In determining whether a servicer satisfies paragraph (e)(4)(ii)(C) of this section, the servicer is evaluated based on the mortgage loans serviced by the servicer as of January 1 and for the remainder of the calendar year. A servicer that ceases to qualify as a small servicer will have six months from the time it ceases to qualify or until the next January 1, whichever is later, to comply with any requirements from which the servicer is no longer exempt as a small servicer. The following mortgage loans are not considered in determining whether a servicer qualifies as a small servicer:

(A) Mortgage loans voluntarily serviced by the servicer for a non-affiliate of the servicer and for which the servicer does not receive any compensation or fees.

(B) Reverse mortgage transactions.

(C) Mortgage loans secured by consumers' interests in timeshare plans.

(D) Transactions serviced by the servicer for a seller financier that meets all of the criteria identified in §1026.36(a)(5).

(5) *Certain consumers in bankruptcy—*
(i) *Exemption.* Except as provided in paragraph (e)(5)(ii) of this section, a servicer is exempt from the requirements of this section 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 mort-

gage 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.

(ii) *Reaffirmation or consumer request to receive statement or coupon book.* A servicer ceases to qualify for an exemption pursuant to paragraph (e)(5)(i) of this section with respect to a mortgage loan if the consumer reaffirms personal liability for the loan or any consumer on the loan requests in writing that the servicer provide a periodic statement or coupon book, unless a court enters an order in the bankruptcy case requiring the servicer to cease providing a periodic statement or coupon book.

(iii) *Exclusive address.* A servicer may establish an address that a consumer must use to submit a written request under paragraph (e)(5)(i)(B)(1) or (e)(5)(ii) of this section, provided that the servicer notifies the consumer of the address in a manner that is reasonably designed to inform the consumer of the address. If a servicer designates a specific address for requests under paragraph (e)(5)(i)(B)(1) or (e)(5)(ii) of this section, the servicer shall designate the same address for purposes of both paragraphs (e)(5)(i)(B)(1) and (e)(5)(ii) of this section.

(iv) *Timing of compliance following transition—*(A) *Triggering events for transitioning to modified and unmodified periodic statements.* A servicer transitions to providing a periodic statement

or coupon book with the modifications set forth in paragraph (f) of this section or to providing a periodic statement or coupon book without such modifications when one of the following three events occurs:

(1) A mortgage loan becomes subject to the requirements of paragraph (f) of this section;

(2) A mortgage loan ceases to be subject to the requirements of paragraph (f) of this section; or

(3) A servicer ceases to qualify for an exemption pursuant to paragraph (e)(5)(i) of this section with respect to a mortgage loan.

(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.

(6) *Charged-off loans.* (i) A servicer is exempt from the requirements of this section for a mortgage loan if the servicer:

(A) Has charged off the loan in accordance with loan-loss provisions and will not charge any additional fees or interest on the account; and

(B) Provides, within 30 days of charge-off or the most recent periodic statement, a periodic statement, clearly and conspicuously labeled “Suspension of Statements & Notice of Charge Off—Retain This Copy for Your Records.” The periodic statement must clearly and conspicuously explain that, as applicable, the mortgage loan has been charged off and the servicer will not charge any additional fees or interest on the account; the servicer will no longer provide the consumer a periodic statement for each billing cycle; the lien on the property remains in place and the consumer remains liable for the mortgage loan obligation and any obligations arising from or related to the property, which may include property taxes; the consumer may be required to pay the balance on the account in the future, for example, upon sale of the property; the balance on the

account is not being canceled or forgiven; and the loan may be purchased, assigned, or transferred.

(ii) *Resuming compliance.* (A) If a servicer fails at any time to treat a mortgage loan that is exempt under paragraph (e)(6)(i) of this section as charged off or charges any additional fees or interest on the account, the obligation to provide a periodic statement pursuant to this section resumes.

(B) *Prohibition on retroactive fees.* A servicer may not retroactively assess fees or interest on the account for the period of time during which the exemption in paragraph (e)(6)(i) of this section applied.

(f) *Modified periodic statements and coupon books for certain consumers in bankruptcy.* While any consumer on a mortgage loan is a debtor in bankruptcy under title 11 of the United States Code, or if such consumer has discharged personal liability for the mortgage loan pursuant to 11 U.S.C. 727, 1141, 1228, or 1328, the requirements of this section are subject to the following modifications with regard to that mortgage loan:

(1) *Requirements not applicable.* The periodic statement may omit the information set forth in paragraphs (d)(1)(ii) and (d)(8)(i), (ii), and (v) of this section. The requirement in paragraph (d)(1)(iii) of this section that the amount due must be shown more prominently than other disclosures on the page shall not apply.

(2) *Bankruptcy notices.* The periodic statement must include the following:

(i) A statement identifying the consumer’s status as a debtor in bankruptcy or the discharged status of the mortgage loan; and

(ii) A statement that the periodic statement is for informational purposes only.

(3) *Chapter 12 and chapter 13 consumers.* In addition to any other provisions of this paragraph (f) that may apply, with regard to a mortgage loan for which any consumer with primary liability is a debtor in a chapter 12 or chapter 13 bankruptcy case, the requirements of this section are subject to the following modifications:

(i) *Requirements not applicable.* In addition to omitting the information set forth in paragraph (f)(1) of this section,

the periodic statement may also omit the information set forth in paragraphs (d)(8)(iii), (iv), (vi), and (vii) of this section.

(ii) *Amount due.* The amount due information set forth in paragraph (d)(1) of this section may be limited to the date and amount of the post-petition payments due and any post-petition fees and charges imposed by the servicer.

(iii) *Explanation of amount due.* The explanation of amount due information set forth in paragraph (d)(2) of this section may be limited to:

(A) The monthly post-petition payment amount, including a breakdown showing how much, if any, will be applied to principal, interest, and escrow;

(B) The total sum of any post-petition fees or charges imposed since the last statement; and

(C) Any post-petition payment amount past due.

(iv) *Transaction activity.* The transaction activity information set forth in paragraph (d)(4) of this section must include all payments the servicer has received since the last statement, including all post-petition and pre-petition payments and payments of post-petition fees and charges, and all post-petition fees and charges the servicer has imposed since the last statement. The brief description of the activity need not identify the source of any payments.

(v) *Pre-petition arrearage.* If applicable, a servicer must disclose, grouped in close proximity to each other and located on the first page of the statement or, alternatively, on a separate page enclosed with the periodic statement or in a separate letter:

(A) The total of all pre-petition payments received since the last statement;

(B) The total of all pre-petition payments received since the beginning of the consumer's bankruptcy case; and

(C) The current balance of the consumer's pre-petition arrearage.

(vi) *Additional disclosures.* The periodic statement must include, as applicable:

(A) A statement that the amount due includes only post-petition payments and does not include other payments

that may be due under the terms of the consumer's bankruptcy plan;

(B) If the consumer's bankruptcy plan requires the consumer to make the post-petition mortgage payments directly to a bankruptcy trustee, a statement that the consumer should send the payment to the trustee and not to the servicer;

(C) A statement that the information disclosed on the periodic statement may not include payments the consumer has made to the trustee and may not be consistent with the trustee's records;

(D) A statement that encourages the consumer to contact the consumer's attorney or the trustee with questions regarding the application of payments; and

(E) If the consumer is more than 45 days delinquent on post-petition payments, a statement that the servicer has not received all the payments that became due since the consumer filed for bankruptcy.

(4) *Multiple obligors.* If this paragraph (f) applies in connection with a mortgage loan with more than one primary obligor, the servicer may provide the modified statement to any or all of the primary obligors, even if a primary obligor to whom the servicer provides the modified statement is not a debtor in bankruptcy.

(5) *Coupon books.* A servicer that provides a coupon book instead of a periodic statement under paragraph (e)(3) of this section must include in the coupon book the disclosures set forth in paragraphs (f)(2) and (f)(3)(vi) of this section, as applicable. The servicer may include these disclosures anywhere in the coupon book provided to the consumer or on a separate page enclosed with the coupon book. The servicer must make available upon request to the consumer by telephone, in writing, in person, or electronically, if the consumer consents, the information listed in paragraph (f)(3)(v) of this section, as applicable. The modifications set forth in paragraphs (f)(1) and (f)(3)(i) through (iv) and (vi) of this section apply to a coupon book and other information a servicer provides to the consumer under paragraph (e)(3) of this section.

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(g) *Successor in interest.* If, upon confirmation, a servicer provides a confirmed successor in interest who is not liable on the mortgage loan obligation with a written notice and acknowledgment form in accordance with Regulation X, §1024.32(c)(1) of this chapter, the servicer is not required to provide to the confirmed successor in interest any written disclosure required by this section unless and until the confirmed successor in interest either assumes the mortgage loan obligation under State law or has provided the servicer an executed acknowledgment in accordance with Regulation X, §1024.32(c)(1)(iv) of this chapter, that the confirmed successor in interest has not revoked.

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§ 1026.42 Valuation independence.

(a) *Scope.* This section applies to any consumer credit transaction secured by the consumer's principal dwelling.

(b) *Definitions.* For purposes of this section:

(1) "Covered person" means a creditor with respect to a covered transaction or a person that provides "settlement services," as defined in 12 U.S.C. 2602(3) and implementing regulations, in connection with a covered transaction.

(2) "Covered transaction" means an extension of consumer credit that is or will be secured by the consumer's principal dwelling, as defined in §1026.2(a)(19).

(3) "Valuation" means an estimate of the value of the consumer's principal dwelling in written or electronic form, other than one produced solely by an automated model or system.

(4) "Valuation management functions" means:

(i) Recruiting, selecting, or retaining a person to prepare a valuation;

(ii) Contracting with or employing a person to prepare a valuation;

(iii) Managing or overseeing the process of preparing a valuation, including by providing administrative services such as receiving orders for and receiving a valuation, submitting a completed valuation to creditors and un-

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derwriters, collecting fees from creditors and underwriters for services provided in connection with a valuation, and compensating a person that prepares valuations; or

(iv) Reviewing or verifying the work of a person that prepares valuations.

(c) *Valuation of consumer's principal dwelling—(1) Coercion.* In connection with a covered transaction, no covered person shall or shall attempt to directly or indirectly cause the value assigned to the consumer's principal dwelling to be based on any factor other than the independent judgment of a person that prepares valuations, through coercion, extortion, inducement, bribery, or intimidation of, compensation or instruction to, or collusion with a person that prepares valuations or performs valuation management functions.

(i) Examples of actions that violate paragraph (c)(1) include:

(A) Seeking to influence a person that prepares a valuation to report a minimum or maximum value for the consumer's principal dwelling;

(B) Withholding or threatening to withhold timely payment to a person that prepares a valuation or performs valuation management functions because the person does not value the consumer's principal dwelling at or above a certain amount;

(C) Implying to a person that prepares valuations that current or future retention of the person depends on the amount at which the person estimates the value of the consumer's principal dwelling;

(D) Excluding a person that prepares a valuation from consideration for future engagement because the person reports a value for the consumer's principal dwelling that does not meet or exceed a predetermined threshold; and

(E) Conditioning the compensation paid to a person that prepares a valuation on consummation of the covered transaction.

(2) *Mischaracterization of value—(i) Misrepresentation.* In connection with a covered transaction, no person that prepares valuations shall materially misrepresent the value of the consumer's principal dwelling in a valuation. A misrepresentation is material for purposes of this paragraph (c)(2)(i)