

Additional mortgage servicing requirements may apply under the new Real Estate Settlement Procedures Act (RESPA) Mortgage Servicing rule issued by CFPB.³ The requirements of the RESPA Mortgage Servicing rule will be addressed in a separate NCUA Regulatory Alert: 14-RA-04.

Background

Prior to the adoption of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), TILA, which is implemented by Regulation Z, set forth requirements on creditors that were carried out by servicers, including disclosures regarding interest rate adjustments on ARMs. Regulation Z also imposes limited requirements directly on servicers, such as requirements to credit payments timely and provide payoff balances.

The Dodd-Frank Act amended TILA to require periodic statements for mortgages, additional disclosures for certain ARMs, and prompt crediting of mortgage payments and responses to requests for payoff amounts. CFPB adopted a rule to implement these Dodd-Frank Act TILA mortgage servicing provisions.

Concurrent with the TILA Mortgage Servicing rule, CFPB also issued a final rule amending RESPA which is implemented by Regulation X, and provides companion mortgage servicing rules. [CFPB Bulletin 2013-12](#) provides clarification on the interplay between the servicing rules, bankruptcy law, and Fair Debt Collection Practices Act (FDCPA).⁴

If your credit union is a creditor, assignee, or servicer of mortgages, you should be familiar with *both* of these mortgage servicing rules to determine whether these rules regulate the loans you service, and if so, what your compliance obligations are under the rules.

How Does a Credit Union Qualify for the Small Servicer Exemption?

Your credit union is considered a small servicer under the both the TILA *and* RESPA Mortgage Servicing rules if:

- **Together with any affiliates, you service 5,000 or fewer mortgages, and you (or an affiliate) are the creditor or assignee for all of them.**⁵

An affiliate is defined as any company that controls your credit union, is controlled by your credit union, or is under common control with your credit union.⁶ For example, a

³ 78 FR 10695 (Feb. 14, 2013), as amended by 78 FR 44685 (July 24, 2013), 78 FR 60381 (Oct.1 2013), and 78 FR 62993 (Oct. 23, 2013) (Interim Final Rule).

⁴ http://files.consumerfinance.gov/f/201310_cfpb_mortgage-servicing_bulletin.pdf.

⁵ Any mortgages you or your affiliates obtain as part of a merger or acquisition, or as part of the acquisition of all of the assets or liabilities of a branch office of a creditor, count as loans for which you (or an affiliate) are the creditor or assignee.

credit union service organization (CUSO) that is owned by a credit union is considered an affiliate.

If you service any mortgage that you (or an affiliate) did not originate or do not own, you do *not* qualify as a small servicer, even if you service 5,000 or fewer loans overall. For example, if you service 2,000 loans – 1,999 of which you own or originated and one of which you neither own nor originated but for which you own the servicing rights – you do *not* qualify as a small servicer because you service a loan for which you (or an affiliate) are not the creditor or assignee.⁷

To determine if you are a small servicer, count “mortgage loans” only. A mortgage loan is a closed-end consumer credit transaction secured by a dwelling. Do not include loans you voluntarily service for a creditor or an assignee that is not an affiliate and for which you do not receive any compensation or fees, reverse mortgages, or timeshare plans.

The small servicer exemption is determined each calendar year based on the loans you and your affiliates service as of January 1 for the remainder of the year. **You can lose the small servicer exemption if you:**

- **Service more than 5,000 loans; or**
- **Take on the servicing of a loan you do not own or did not originate.**

If you lose the exemption, you have six months from the date you stopped being a small servicer or until the next January 1 (whichever is later) to comply with the periodic statement requirements.

I. Periodic Statements

For loans subject to the periodic billing statement provision, a servicer must provide consumers with a statement each billing cycle showing, among other things, information on the payment currently due, fees imposed, transaction activity, application of past payments, contact information for the servicer and housing counselors, and, where applicable, information regarding delinquencies.

Reminder: Small servicers are exempt only from the periodic statement requirements of the rule.

This statement must meet the timing, form, and content requirements provided in the rule. The rule contains sample forms that may be used. Under this section, the term “servicer” includes the creditor, assignee or servicer as applicable.

Creditors or assignees that do not currently own the mortgage loan or the mortgage servicing rights are *not* required to provide a periodic statement.⁸

⁶ 12 CFR § 1026.32(b)(5). Also, an affiliate of a federal credit union is a credit union service organization (CUSO) that is wholly or majority owned by the federal credit union. An affiliate of a state-chartered credit union is a company that is controlled by the credit union. See 12 CFR § 1016.3.

⁷ 12 CFR § 1026.41(e)(4)(ii), Comment 41(e)(4)(ii)-2.ii).

⁸ 12 CFR § 1026.41(a)(2).

Which Loans are Covered?

The periodic statement requirement applies to **any closed-end consumer credit transaction secured by a dwelling.**

Which Loans are Exempt?

The periodic statement requirement does *not* include:

- Open-end transactions;⁹
- Reverse mortgages;
- Timeshare loans;
- Fixed-rate loan coupon books meeting the rule's requirements (coupon books' requirements are discussed below);
- Loans while the member is a debtor in bankruptcy (also discussed below); and
- Loans serviced by small servicers who meet the rule's small servicer exemption requirements outlined above.

What are the Timing Requirements?

You must provide a periodic statement each billing cycle.¹⁰ A billing cycle corresponds to the frequency of payments. If a loan requires the member to make monthly payments, that member will have a monthly billing cycle. If a member makes quarterly payments, that member will have a quarterly billing cycle. You do not need to send statements more frequently than once a month. If a mortgage has a billing cycle shorter than 31 days (for example, a biweekly billing cycle), you may send a periodic statement covering an entire month.

You must deliver or mail the periodic statement for the next billing cycle within a "reasonably prompt" time after the payment due date or the end of any "courtesy period" provided for the previous billing cycle.¹¹ **The term "reasonably prompt" generally means delivering, emailing, or placing the periodic statement in the mail within four days of the close of the "courtesy period" of the previous billing cycle.** The "courtesy period" is the period in which the credit union does not impose a late fee. If there is no courtesy period, the credit union must send the periodic statement no later than four days after the payment due date.

You must continue to send periodic statements to delinquent members or if you are a debt collector to whom a member has sent a written request to cease communication under the FDCPA.¹²

⁹ Open-end transactions have a separate periodic statement requirement not covered in the TILA Mortgage Servicing rule, 12 CFR § 1026.7.

¹⁰ 12 CFR § 1026.41(a)(2).

¹¹ 12 CFR § 1026.41(b), Comment 41(b)-1 and Comment 7(b)(11)-1.

¹² CFPB Bulletin 2013-12 (October 15, 2013) located at http://files.consumerfinance.gov/f/201310_cfpb_mortgage-servicing_bulletin.pdf.

What are the Members' Options?

Regulatory Tip: Your credit union should distinguish between members who agreed to receive *disclosures and statements* electronically and those who opt to *pay* electronically. Choosing an automatic electronic payment method does *not* equal affirmative consent to receive electronic statements.

*Members cannot opt out of receiving periodic statements.*¹³ Paper statements can either be mailed or delivered in person. **If a member gives you affirmative consent, you may send periodic statements electronically.**¹⁴ If you send electronic statements, they must be in a form the member can print or download.¹⁵ Instead of sending the statements themselves, you may send a link to an online site where the member can securely access the statements.¹⁶ If you are currently sending

electronic disclosures for any account (for example, a mortgage or checking account), you do not have to seek affirmative consent from that member again.¹⁷

What Must the Periodic Statement Contain?

The rule requires certain groups of information, including:

- The **amount due** (includes payment due date and amount of late fee if payment is late);
- An **explanation** of the amount due (includes the monthly payment amount and breakdown of how it will be applied to principal, interest, and escrow payment currently due and fees imposed);
- **Past payment breakdown** (includes total of all payments since the last statement and application to principal, interest, escrow, and fees); and
- A list of **all transaction activity** since the last statement.

The periodic statement must also include:

- **Contact** information, such as toll-free number and email address (if applicable) where members may obtain information about their account;
- **Account information**, such as outstanding principal balance, current interest rate, and date when that interest rate may change;
- **Partial payment** information (if applicable);
- **Housing counseling** information – which must include the CFPB website address that provides access to the list of U.S. Department of Housing and Urban Development (HUD) approved housing counseling agencies:
<http://www.consumerfinance.gov/mortgagehelp>; and

¹³ 12 CFR § 1026.41(a), Comment 41(a)-4.

¹⁴ 12 CFR § 1026.41(c). You do not need to follow the full E-SIGN verification procedures before providing a statement electronically. Comment 41(c)-4.

¹⁵ 78 FR 10902, 10962 (Feb. 14, 2013).

¹⁶ 12 CFR § 1026.41(c), Comment 41(c)-3

¹⁷ 12 CFR § 1026.41(c), Comment 41(c)-4

- **Delinquency** information if the member is 45 days or more delinquent (such as the date the member became delinquent and a reference to the housing counseling information previously disclosed).

Both the rule and enclosed CFPB Mortgage Servicing Small Entity Compliance Guide describe in detail the required content for the periodic statement.¹⁸ The rule also mandates where the required information must be located on the statement. Specifically, the rule requires you to put several types of information in close proximity to one another. The rule also indicates whether certain information must be on the first page of the statement, on a separate page, or in a separate letter. Sample periodic statement forms are contained in Appendix H-30 of Regulation Z.¹⁹ You do not have to use the exact terms or layout used in the sample periodic statements found in the Appendix.

Information on the periodic statement must be clear and conspicuous. The “clear and conspicuous” standard generally requires disclosures be presented in a reasonably understandable form.²⁰ You may add information to the disclosures and combine disclosures, so long as the added information does not overwhelm or obscure any of the required disclosures and the combination is not otherwise prohibited by these rules or other applicable law.

Can a Coupon Book Be Provided Instead of Periodic Statements?

Under certain conditions, your credit union can provide a member with a coupon book in lieu of periodic statements. A coupon book is a book with a page for each billing cycle during a set period (often covering one year). Under this arrangement, typically the member tears off the page or a portion of the page and returns it to you with a payment for each billing cycle. Coupon books may be provided in place of a periodic statement as long as:

- The member has a **fixed-rate** loan;
- The coupon book includes certain required information about the loan on the coupon book, including HUD’s toll-free telephone number ((800) 569-4287) to access **contact information for homeownership counseling** and the website address for either CFPB’s information page on homeownership counselors (<http://www.consumerfinance.gov/mortgagehelp/>) or HUD’s list of homeownership counselors and counseling organizations (<http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm>);
- The individual coupon includes required information, including the **payment due date** and the amount of any **late payment fee**;

¹⁸ 12 CFR § 1026.41(d); 2013 Real Estate Settlement Procedures Act (Regulation X) and Truth in Lending Act (Regulation Z) Mortgage Servicing Final Rules Small Entity Compliance Guide, sec. 4.VI (November 27, 2013).

¹⁹ 12 CFR part 1026, Appendix H-30; 2013 Real Estate Settlement Procedures Act (Regulation X) and Truth in Lending Act (Regulation Z) Mortgage Servicing Final Rules Small Entity Compliance Guide, sec. 4.VI (November 27, 2013).

²⁰ 12 CFR § 1026.41(c), Comment 41(c)-4.

- Certain information is made available to the member upon request via telephone, in writing, in person, or if the member has consented, electronically, and includes an explanation of the amount due, a breakdown of past payments, and a list of transaction activity that occurred since the last statement; and
- Certain delinquency information is provided to members who are 45 days or more delinquent (including an account history showing the previous six months or the period since the last time the account was current – whichever is shorter – and a reference to the homeownership counselor information you include in your coupon book).

Both the rule and enclosed CFPB Mortgage Servicing Small Entity Compliance Guide describe in detail the required content for the coupon book, individual coupons, and additional information, including information for delinquent members.²¹

When Can I Stop Sending Periodic Statements?

You may stop sending periodic statements when a loan is:

- **Transferred** to another servicer;
- **Fully paid** or paid off through a refinance or sale of the dwelling; or
- **Discharged** in a foreclosure sale.²²

Also, you no longer have to send periodic statements if the member becomes a debtor in **bankruptcy**.

You will have to *resume* sending periodic statements if the bankruptcy case is dismissed or closed or if the member receives a discharge. However, you do not have to send the periodic statement for any portion of the mortgage debt that is discharged.

II. Adjustable Rate Mortgage (ARM) Disclosure Notices

For the purposes of this rule, an ARM is a closed-end consumer credit transaction in which the annual percentage rate may increase after consummation.

You must make disclosures in connection with the initial reset of an ARM and each time an interest rate adjustment results in a payment change.

Specifically, the rule:

- Creates a new initial interest rate adjustment disclosure notice;
- Modifies the timing and content of the existing interest rate adjustment notice sent to disclose rate adjustments that cause payment changes; and

<p>Reminder: All servicers must comply with the ARM disclosure requirements of the rule.</p>

²¹ 12 CFR § 1026.41(e)(3); 2013 Real Estate Settlement Procedures Act (Regulation X) and Truth In Lending Act (Regulation Z) Mortgage Servicing Final Rules Small Entity Compliance Guide, sec. 4.VIII (November 27, 2013).

²² 12 CFR § 1026.41(e), Comment 41(e)(5)-2.

- Eliminates the current annual notice. (The ongoing interest rate adjustment disclosure notice was previously required both when a rate adjustment caused a payment change and annually – even if there was no payment change.)

The rule contains model forms as guides to developing your own notices and sample forms to provide examples of what actual ARM notices might look like.

Which Loans are Covered?

You must provide the initial and ongoing notices for ARMs secured by the member's principal dwelling.²³

ARMs with a term of one year or less are *exempt* from both initial and ongoing disclosures.

What are the ARM Disclosure Requirements?

There are two types of required disclosures:

- 1) The **initial** interest rate adjustment notice is required only for the first time the interest rate adjusts. It must be provided to a member between **210 days and 240 days before the first payment at the new rate** is due. This notice may contain an estimate of the new rate and new payment.²⁴
- 2) The **ongoing** interest rate adjustment notice must be provided to a member between **60 and 120 days before** each time an interest rate adjustment results in a **payment change**.²⁵

An ongoing interest rate adjustment notice is *not* required the first time the ARM adjusts if the first payment at the adjusted level is due within 210 days after consummation and the new interest rate you disclosed in the notice at consummation was not an estimate.²⁶ The ongoing interest rate adjustment notice is also *not* required if the creditor, assignee or servicer is a debt collector under the FDCPA to whom the member has sent a written cease communication request.²⁷ However, such servicers must still provide the initial interest rate adjustment notice.

What are the Delivery Requirements?

The creditor, assignee, or servicer is responsible for sending the ARM notices.²⁸ The member, however, needs to receive only one notice each time it is required.

²³ 12 CFR § 1026.20(c), (d).

²⁴ 12 CFR § 1026.20(c)(1)(ii)(B).

²⁵ 12 CFR § 1026.20(d).

²⁶ 12 CFR § 1026.20(c).

²⁷ CFPB Bulletin 2013-12 (October 15, 2013) located at http://files.consumerfinance.gov/f/201310_cfpb_mortgage-servicing_bulletin.pdf.

²⁸ 12 CFR § 1026.20(c), (d). If the creditor or assignee no longer owns the loan, it is not required to send the ARM notices.

The **initial** interest rate adjustment notice must be a **separate document**.²⁹ The **ongoing** interest rate adjustment notice must be **segregated** from other information but may be on the same document as other information.

Both ARM notices may be sent in the same envelope with other disclosures, such as the periodic statement.

The rule also provides special timing requirements for frequently adjusting ARMs, ARMs with short look-back periods, and ARMs adjusting soon after consummation.³⁰

What are Content and Format Requirements for the ARM Notices?

The content and format specified in the rule for notices are demonstrated in the model and sample forms. As such, the **proper use of the model and sample forms will comply with both the content and format requirements of this rule**. The model forms may be filled out and used, while the sample forms demonstrate an example of the proper way to fill out the forms. A brief summary of the rule’s content, formatting, timing and delivery requirements for both types of disclosures follows:

	Required for Initial ARM Notice - §1026.20(d)	Required for Ongoing ARM Notice - §1026.20(c)
Required when:	The first time the interest rate adjusts	Every time an interest rate adjustment results in a corresponding change in payment. There is no requirement to send the annual notice if there is no payment change during year.
Timing:	210 to 240 days before the first payment at the new rate is due	60 to 120 days before the first payment at the new rate is due
Estimate:	Estimates may be used	Exact information must be used
Formatting:	See 12 CFR §1026.20(d)(3)	See 12 CFR §1026.20(c)(3)
Sample form:	12 CFR Part 1026, Appendix H-4(D)(4)	12 CFR Part 1026, Appendix H-4(D)(2)
Model form:	12 CFR Part 1026, Appendix H-4(D)(3)	12 CFR Part 1026, Appendix H-4(D)(1)
Delivery:	Must be in a separate document from all other written materials, but can be provided in same envelope as other notices	Must be segregated from other information and can be provided in same envelope as other notices

²⁹ 12 CFR §§ 1026.17(a); 1026.20(d).

³⁰ 12 CFR § 1026.20(c)(2), (d)(2).

III. Prompt Crediting and Payoff Statements

Reminder: All servicers must comply with the prompt crediting and payoff statement provisions.

This provision of the rule covers two distinct subjects – the prompt crediting of periodic payments and providing payoff statements. A periodic payment consists of the amount necessary to cover principal, interest, and escrow (if applicable). **In most cases, periodic payments must be promptly credited as of the day of receipt.**

The new rule clarifies the handling of partial payments, which are not addressed in the current rules.

Also in most cases, creditors, assignees, and servicers must provide an accurate payoff balance to a member no later than seven business days after receipt of a written request from the member for that information.

Which Loans Are Covered?

The prompt crediting and payoff statement provisions apply to different types of mortgages:

- The **prompt crediting** provision applies to **open-end and closed-end** mortgages secured by a **principal dwelling**.
- The **payoff statement** provision applies to **open-end and closed-end** mortgages secured by a **dwelling**.

However, a creditor or assignee that does not currently own the mortgage or servicing rights is not subject to the requirement to provide a payoff statement.

What are the Periodic Payments Requirements?

A periodic payment must generally be credited to the member's account as of the day of receipt, except when a delay in crediting does not result in any charge to the member or in the reporting of negative information to a consumer reporting agency.

Another exception is *non-conforming* payments: If your credit union specified payment requirements in writing for the member to follow and then accepts a payment that does not conform to those specified requirements, you must credit the payment within *five days* after receipt.

The requirements you set must be reasonable – such as requiring that payments be accompanied by the account number or payment coupon, with a cutoff time of 5:00 p.m. for receipt of a mailed check at the address you specify for receiving payments.³¹

³¹ 12 CFR § 1026.36(c), Comment 36(c)(1)(iii)-2 .

Your payment requirements cannot make it difficult for most members to make conforming payments. For example, you may not require consumers to pay solely by preauthorized electronic funds transfer.³²

*If you do not set specific payment requirements, then you must allow members to make payments by cash, money order, draft, or other similar instrument in properly negotiable form during regular business hours at any location where you conduct business, or by electronic fund transfer, if you have agreed to accept electronic payments from the member. Under the general rule, such payments must be credited as of the *day of receipt*.*

Partial Payments

A partial payment is a payment that is less than a periodic payment. If a partial payment is received from a member, you may:

- Credit the partial payment upon receipt;
- Return the partial payment to the borrower; or
- Hold the payment in a suspense or unapplied funds account.

If you retain a partial payment in a suspense or unapplied funds account, you must disclose on the member's periodic statement the total amount of funds you are holding in the suspense or unapplied funds account – if you are required to send the member a periodic statement. Once you have accumulated sufficient funds to cover a periodic payment, you must credit them as you would a periodic payment.

Partial payments you hold as unapplied funds are not “accepted,” and as such, are not required to be applied within five days.

What are the Requirements for Payoff Statements?

If a member or any person acting on behalf of the member makes a written request for a payoff statement, then a creditor, assignee, or servicer, as applicable, must generally provide the statement within **seven business days**.

When a creditor, assignee, or servicer is *not* able to provide the statement within seven business days because the loan is in bankruptcy or foreclosure, or if the loan is a reverse mortgage or shared appreciation mortgage, or because of natural disasters or other similar circumstances, the payoff statement must be provided within a *reasonable time*.

What Other Resources are Available?

In addition to the referenced enclosures on the title page of this document, other resources are available.

³² See Section 913 of the Electronic Fund Transfer Act, 15 U.S.C. 1693k.

The full text of the final TILA Mortgage Servicing rule in the Federal Register is available at <http://www.consumerfinance.gov/regulations/2013-real-estate-settlement-procedures-act-regulation-x-and-truth-in-lending-act-regulation-z-mortgage-servicing-final-rules/>.

CFPB resources to help you understand the TILA Mortgage Servicing rule, information about proposed and subsequent adjustments to the rule,³³ and compliance materials can be found on the [CFPB's Mortgage Rules at a Glance Chart](#).

If you have questions, please contact NCUA's Office of Consumer Protection at (703) 518-1140 or ComplianceMail@ncua.gov, or contact your regional office or state supervisory authority.

Sincerely,

/s/

Debbie Matz
Chairman

³³ The original final rule was published in the Federal Register on February 1, 2013. Adjustments and clarifications to the rule were published on July 24, 2013, October 1, 2013, and October 23, 2013.