Supplement I to Part 1026 – Official Interpretations

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Subpart C – Closed-End Credit

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Section 1026.17–General Disclosures Requirements

17(a) Form of disclosures.

Paragraph 17(a)(1).

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2. * * *

ii. The general segregation requirement described in this subparagraph does not apply to the disclosures required under § 1026.19(b) although the disclosures must be clear and conspicuous.

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17(c) Basis of disclosures and use of estimates.

Paragraph 17(c)(1).

1. *Legal obligation.* The disclosures shall reflect the credit terms to which the parties are legally bound as of the outset of the transaction. In the case of disclosures required under § 1026.20(c) and (d), the disclosures shall reflect the credit terms to which the parties are legally bound when the disclosures are provided. The legal obligation is determined by applicable State law or other law. (Certain transactions are specifically addressed in this commentary. See, for example, the discussion of buydown transactions elsewhere in the commentary to § 1026.17(c).) The fact that a term or contract may later be deemed unenforceable by a court on the basis of

equity or other grounds does not, by itself, mean that disclosures based on that term or contract did not reflect the legal obligation.

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Section 1026.19–Certain Mortgage and Variable-Rate Transactions

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19(b) Certain variable-rate transactions.

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4. *Other variable-rate regulations.* Transactions in which the creditor is required to comply with and has complied with the disclosure requirements of the variable-rate regulations of other Federal agencies are exempt from the requirements of § 1026.19(b), by virtue of § 1026.19(d). The exception is also available to creditors that are required by State law to comply with the Federal variable-rate regulations noted above. Creditors using this exception should comply with the timing requirements of those regulations rather than the timing requirements of Regulation Z in making the variable-rate disclosures.

5. *Examples of variable-rate transactions*. i. * * *

A. * * *

B. * * *

C. "Price-level-adjusted mortgages" or other indexed mortgages that have a fixed rate of interest but provide for periodic adjustments to payments and the loan balance to reflect changes in an index measuring prices or inflation. The disclosures under § 1026.19(b)(1) are not applicable to such loans, nor are the following provisions to the extent they relate to the determination of the interest rate by the addition of a margin, changes in the interest rate, or interest rate discounts: § 1026.19(b)(2)(i), (iii), (iv), (v), (vi), (vii), (viii), and (ix). (See comments 20(c)(1)(ii)-3.ii, 20(d)(1)(ii)-2.ii, and 30-1 regarding the inapplicability of variable-rate adjustment notices and interest rate limitations to price-level-adjusted or similar mortgages.)

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Paragraph 19(b)(2)(xi).

1. *Adjustment notices.* A creditor must disclose to the consumer the type of information that will be contained in subsequent notices of adjustments and when such notices will be provided. (See the commentary to § 1026.20(c) and (d) regarding notices of adjustments.) For example, the disclosure provided pursuant to § 1026.20(d) might state, “You will be notified at least 210, but no more than 240, days before the first payment at the adjusted level is due after the initial interest rate adjustment of the loan. This notice will contain information about the adjustment, including the interest rate, payment amount, and loan balance.” The disclosure provided pursuant to § 1026.20(c) might state, “You will be notified at least 60, but no more than 120, days before the first payment at the adjusted level is due after any interest rate adjustment resulting in a corresponding payment change. This notice will contain information about the adjustment, including the interest rate, payment amount, and loan balance.”

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Section 1026.20—Disclosure Requirements Regarding Post-Consummation Events

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20(c) Rate adjustments with a corresponding change in payment.

1. *Creditors, assignees, and servicers*. Creditors, assignees, and servicers that own either the applicable adjustable-rate mortgage or the applicable mortgage servicing rights or both are subject to the requirements of § 1026.20(c). Creditors, assignees, and servicers are also subject to the requirements of any provision of subpart C that governs § 1026.20(c). For example, the

form requirements of § 1026.17(a) apply to § 1026.20(c) disclosures and thus, assignees and servicers, as well as creditors, are subject to those requirements. While creditors, assignees, and servicers are all subject to the requirements of § 1026.20(c), they may decide among themselves which of them will provide the required disclosures.

2. *Loan modifications*. Under § 1026.20(c), the interest rate adjustment disclosures are required only for interest rate adjustments occurring pursuant to the loan contract. Accordingly, creditors, assignees, and servicers need not provide the disclosures for interest rate adjustments occurring in loan modifications made for loss mitigation purposes. Subsequent interest rate adjustments resulting in a corresponding payment change occurring pursuant to the modified loan contract, however, are subject to the requirements of § 1026.20(c).

3. *Conversions*. In addition to the disclosures required for interest rate adjustments under an adjustable-rate mortgage, § 1026.20(c) also requires the disclosures for an ARM converting to a fixed-rate transaction when the conversion changes the interest rate and results in a corresponding payment change. When an open-end account converts to a closed-end adjustable-rate mortgage, the § 1026.20(c) disclosure is not required until the implementation of an interest rate adjustment post-conversion that results in a corresponding payment change. For example, for an open-end account that converts to a closed-end 3/1 hybrid ARM, *i.e.*, an ARM with a fixed rate of interest for the first three years after which the interest rate adjusts annually, the first § 1026.20(c) disclosure would not be required until three years after the conversion, and only if that first adjustment resulted in a payment change.

Paragraph 20(c)(1)(i).

1. *In general.* An adjustable-rate mortgage, as defined in § 1026.20(c)(1)(i), is a variable-rate transaction as that term is used in subpart C, except as distinguished by comment

§ 1026.20(c)(1)(ii)-3. The requirements of this section are not limited to transactions financing the initial acquisition of the consumer's principal dwelling.

Paragraph 20(c)(1)(ii).

1. *Short-term ARMs.* Under § 1026.20(c)(1)(ii), construction, home improvement, bridge, and other loans with terms of one year or less are not subject to the requirements in § 1026.20(c). In determining the term of a construction loan that may be permanently financed by the same creditor or assignee, the creditor or assignee may treat the construction and the permanent phases as separate transactions with distinct terms to maturity or as a single combined transaction.

2. *First new payment due within 210 days after consummation.* Section 1026.20(c) disclosures are not required if the first payment at the adjusted level is due within 210 days after consummation, when the new interest rate disclosed at consummation pursuant to § 1026.20(d) is not an estimate. For example, the creditor, assignee, or servicer would not be required to provide the disclosures required by § 1026.20(c) for the first time an ARM interest rate adjusts if the first payment at the adjusted level was due 120 days after consummation and the adjusted interest rate disclosed at consummation pursuant to § 1026.20(d) was not an estimate.

3. *Non-adjustable-rate mortgages*. The following transactions, if structured as fixed-rate and not as adjustable-rate mortgages based on an index or formula, are not subject to § 1026.20(c):

i. Shared-equity or shared-appreciation mortgages;

ii. Price-level adjusted or other indexed mortgages that have a fixed rate of interest but provide for periodic adjustments to payments and the loan balance to reflect changes in an index measuring prices or inflation;

iii. Graduated-payment mortgages or step-rate transactions;

iv. Renewable balloon-payment instruments; and

v. Preferred-rate loans.

Paragraph 20(c)(2).

1. *Timing.* The requirement that § 1026.20(c) disclosures be provided to consumers within a certain timeframe means that the creditor, assignee, or servicer must deliver the notice or place it in the mail within that timeframe, excluding any grace or courtesy periods. The requirement that the § 1026.20(c) disclosures must be provided between 25 and 120 days before the first payment at the adjusted level is due for frequently-adjusting ARMs, applies to ARMs that adjust regularly at a maximum of every 60 days.

Paragraph 20(c)(2)(ii)(A).

1. C*urrent and new interest rates*. The current interest rate is the interest rate that applies on the date the disclosure is provided to the consumer. The new interest rate is the actual interest rate that will apply on the date of the adjustment. The new interest rate is used to determine the new payment. The "new interest rate" has the same meaning as the "adjusted interest rate." The requirements of § 1026.20(c)(2)(ii)(A) do not preclude creditors, assignees, and servicers from rounding the interest rate, pursuant to the requirements of the ARM contract.

Paragraph 20(c)(2)(iv).

1. *Rate limits and foregone interest rate increases.* Interest rate carryover, or foregone interest rate increases, is the amount of interest rate increase foregone at any ARM interest rate adjustment that, subject to rate caps, can be added to future interest rate adjustments to increase, or to offset decreases in, the rate determined by using the index or formula. The disclosures

required by § 1026.20(c)(2)(iv) regarding foregone interest rate increases apply only to transactions permitting interest rate carryover.

Paragraph 20(c)(2)(v)(B).

1. *Application of previously foregone interest rate increases.* The disclosures regarding the application of previously foregone interest rate increases apply only to transactions permitting interest rate carryover.

Paragraph 20(c)(2)(vi).

1. *Amortization statement.* For ARMs requiring the payment of interest only, such as interest-only loans, § 1026.20(c)(2)(vi) requires a statement that the new payment covers all of the interest but none of the principal, and therefore will not reduce the loan balance. For negatively-amortizing ARMs, § 1026.20(c)(2)(vi) requires a statement that the new payment covers only part of the interest and none of the principal, and therefore the unpaid interest will be added to the principal balance.

2. *Amortization payment.* Disclosure of the payment needed to amortize fully the outstanding balance at the new interest rate over the remainder of the loan term is required only when negative amortization occurs as a result of the interest rate adjustment. The disclosure is not required simply because a loan has interest-only or partially-amortizing payments. For example, an ARM with a five-year term and payments based on a longer amortization schedule, in which the final payment will equal the periodic payment plus the remaining unpaid balance, does not require disclosure of the payment necessary to amortize fully the loan in the remainder of the five-year term. A disclosure is also not required when the new payment is sufficient to prevent negative amortization but the final loan payment will be a different amount due to rounding.

Paragraph 20(c)(2)(vii).

1. *Prepayment penalty.* The creditor, assignee, or servicer of an ARM with no prepayment penalty, as that term is used in § 1026.20(c)(2)(vii), may decide to exclude the prepayment section from the § 1026.20(c) disclosure, retain the prepayment section and insert after the heading "None" or other indication that there is no prepayment penalty, or indicate there is no prepayment penalty in some other manner. *See also* comment 1.vi to Appendices G and H—Open-End and Closed-End Model Forms and Clauses.

Paragraph 20(c)(3)(i).

1. *Format of disclosures.* The requirements of § 1026.20(c)(3)(i) and (ii) to provide the § 1026.20(c) disclosures in the same order as, and with headings and format substantially similar to, the model and sample forms do not preclude creditors, assignees, and servicers from modifying the disclosures to accommodate particular consumer circumstances or transactions not addressed by the forms. For example, in the case of a consumer bankruptcy or under certain State laws, the creditor, assignee, or servicer may modify the forms to remove language regarding personal liability. Creditors, assignees, and servicers providing the required notice to a consumer whose ARM is converting to a fixed-rate mortgage, may modify the model language to explain that the interest rate will no longer adjust. Creditors, assignees, and servicers electing to provide consumers with interest rate notices in cases where the interest rate adjusts without a corresponding change in payment may modify the forms to fit that circumstance. A payment-option ARM, which is an ARM permitting consumers to choose among several different payment options for each billing period, is an example of a loan that may require modification of the § 1026.20(c) model and sample forms. See appendix H-30(C) for an example of an allocation table for a payment-option loan.

20(d) Initial rate adjustment.

1. *Creditors, assignees, and servicers*. Creditors, assignees, and servicers that own either the applicable adjustable-rate mortgage or the applicable mortgage servicing rights or both are subject to the requirements of § 1026.20(d). Creditors, assignees, and servicers are also subject to the requirements of any provision of subpart C that governs § 1026.20(d). For example, the form requirements of § 1026.17(a) apply to § 1026.20(d) disclosures and thus, assignees and servicers, as well as creditors, are subject to those requirements. While creditors, assignees, and servicers are all subject to the requirements of § 1026.20(d), they may decide among themselves which of them will provide the required disclosures.

2. *Loan modifications*. Under § 1026.20(d), the interest rate adjustment disclosures are required only for the initial interest rate adjustment occurring pursuant to the loan contract. Accordingly, creditors, assignees, and servicers need not provide the disclosures for interest rate adjustments occurring in loan modifications made for loss mitigation purposes. The initial interest rate adjustment occurring pursuant to the modified loan contract, however, is subject to the requirements of § 1026.20(d).

3. *Timing and form of initial rate adjustment.* The requirement that § 1026.20(d) disclosures be provided in writing, separate and distinct from all other correspondence, means that the initial ARM interest rate adjustment notice must be provided to consumers as a separate document but may, in the case of mailing the disclosure, be in the same envelope with other material and, in the case of emailing the disclosure, be a separate attachment from other attachments in the same email. The requirement that the disclosures be provided to consumers between 210 and 240 days "before the first payment at the adjusted level is due" means the creditor, assignee, or servicer must deliver the notice or place it in the mail between 210 and 240

days prior to the due date, excluding any grace or courtesy periods, of the first payment calculated using the adjusted interest rate.

4. *Conversions.* When an open-end account converts to a closed-end adjustable-rate mortgage, the § 1026.20(d) disclosure is not required until the implementation of the initial interest rate adjustment post-conversion. For example, for an open-end account that converts to a closed-end 3/1 hybrid ARM, *i.e.*, an ARM with a fixed rate of interest for the first three years after which the interest rate adjusts annually, the § 1026.20(d) disclosure would not be required until three years after the conversion when the interest rate adjusts for the first time.

Paragraph 20(d)(1)(i).

1. *In general*. An adjustable-rate mortgage, as defined in § 1026.20(d)(1)(i), is a variable-rate transaction as that term is used in subpart C, except as distinguished by comment § 1026.20(d)(1)(ii)-2. The requirements of this section are not limited to transactions financing the initial acquisition of the consumer's principal dwelling.

Paragraph 20(d)(1)(ii).

1. *Short-term ARMs.* Under § 1026.20(d)(1)(ii), construction, home improvement, bridge, and other loans with terms of one year or less are not subject to the requirements in § 1026.20(d). In determining the term of a construction loan that may be permanently financed by the same creditor or assignee, the creditor or assignee may treat the construction and the permanent phases as separate transactions with distinct terms to maturity or as a single combined transaction.

2. *Non-adjustable-rate mortgages*. The following transactions, if structured as fixed-rate and not as adjustable-rate mortgages based on an index or formula, are not subject to § 1026.20(d):

i. Shared-equity or shared-appreciation mortgages;

ii. Price-level adjusted or other indexed mortgages that have a fixed rate of interest but provide for periodic adjustments to payments and the loan balance to reflect changes in an index measuring prices or inflation;

iii. Graduated-payment mortgages or step-rate transactions;

iv. Renewable balloon-payment instruments; and

v. Preferred-rate loans.

Paragraph 20(d)(2)(i).

1. *Date of the disclosure*. The date that must appear on the disclosure is the date the creditor, assignee, or servicer generates the notice to be provided to the consumer.

Paragraph 20(d)(2)(iii)(A).

1. *Current and new interest rates*. The current interest rate is the interest rate that applies on the date of the disclosure. The new interest rate is the interest rate used to calculate the new payment and may be an estimate pursuant to § 1026.20(d)(2). The new payment, if calculated from an estimated new interest rate, will also be an estimate. The "new interest rate" has the same meaning as the "adjusted interest rate." The requirements of § 1026.20(d)(2)(iii)(A) do not preclude creditors, assignees, and servicers from rounding the interest rate, pursuant to the requirements of the ARM contract.

Paragraph 20(d)(2)(v).

1. *Rate limits and foregone interest rate increases.* Interest rate carryover, or foregone interest rate increases, is the amount of interest rate increase foregone at the first ARM interest rate adjustment that, subject to rate caps, can be added to future interest rate adjustments to increase, or to offset decreases in, the rate determined by using the index or formula. The

disclosures required by § 1026.20(d)(2)(v) regarding foregone interest rate increases apply only to transactions permitting interest rate carryover.

Paragraph 20(d)(2)(vii).

1. *Amortization statement.* For ARMs requiring the payment of interest only, such as interest-only loans, § 1026.20(d)(2)(vii) requires a statement that the new payment covers all of the interest but none of the principal, and therefore will not reduce the loan balance. For negatively-amortizing ARMs, § 1026.20(d)(2)(vii) requires a statement that the new payment covers only part of the interest and none of the principal, and therefore the unpaid interest will be added to the principal balance.

2. *Amortization payment.* Disclosure of the payment needed to amortize fully the outstanding balance at the new interest rate over the remainder of the loan term is required only when negative amortization occurs as a result of the interest rate adjustment. The disclosure is not required simply because a loan has interest-only or partially-amortizing payments. For example, an ARM with a five-year term and payments based on a longer amortization schedule, in which the final payment will equal the periodic payment plus the remaining unpaid balance, does not require disclosure of the payment necessary to amortize fully the loan in the remainder of the five-year term. A disclosure is also not required when the new payment is sufficient to prevent negative amortization but the final loan payment will be a different amount due to rounding.

Paragraph 20(d)(2)(viii).

1. *Prepayment penalty.* The creditor, assignee, or servicer of an ARM with no prepayment penalty, as that term is used in § 1026.20(d)(2)(viii), may decide to exclude the prepayment section from the § 1026.20(d) disclosure, retain the prepayment section and insert

after the heading "None" or other indication that there is no prepayment penalty, or indicate there is no prepayment penalty in some other manner. *See also* comment to Appendices G and H—Open-End and Closed-End Model Forms and Clauses-1.vi.

Paragraph 20(d)(3)(i).

1. *Format of disclosures.* The requirements of § 1026.20(d)(3)(i) and (iii) to provide the § 1026.20(d) disclosures in the same order as, and with headings and format substantially similar to, the model and sample forms do not preclude creditors, assignees, and servicers from modifying the disclosures to accommodate particular consumer circumstances or transactions not addressed by the forms. For example, in the case of a consumer bankruptcy or under certain State laws, the creditor, assignee, or servicer may modify the forms to remove language regarding personal liability. A payment-option ARM, which is an ARM permitting consumers to choose among several different payment options for each billing period, is an example of a loan that may require modification of the § 1026.20(d) model and sample forms. See appendix H-30(C) for an example of an allocation table for a payment-option loan.

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Subpart E–Special Rules for Certain Home Mortgage Transactions

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Section 1026.36–Prohibited Acts or Practices in Connection With Credit Secured by a Dwelling

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Paragraph 36(c)(1)(i).

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2. *Method of crediting periodic payments.* The method by which periodic payments shall be credited is based on the legal obligation between the creditor and consumer, subject to applicable law.

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Paragraph 36(c)(1)(ii).

1. *Handling of partial payments.* If a servicer receives a partial payment from a consumer, to the extent not prohibited by applicable law or the legal obligation between the parties, the servicer may take any of the following actions:

i. Credit the partial payment upon receipt.

ii. Return the partial payment to the consumer.

iii. Hold the payment in a suspense or unapplied funds account. If the payment is held in a suspense or unapplied funds account, this fact must be reflected on future periodic statements, in accordance with § 1026.41(d)(3). When sufficient funds accumulate to cover a periodic payment, as defined in § 1026.36(c)(1)(i), they must be treated as a periodic payment received in accordance with § 1026.36(c)(1)(i).

Paragraph 36(c)(1)(iii).

1. *Payment requirements.* The servicer may specify reasonable requirements for making payments in writing, such as requiring that payments be accompanied by the account number or payment coupon; setting a cut-off hour for payment to be received, or setting different hours for payment by mail and payments made in person; specifying that only checks or money orders should be sent by mail; specifying that payment is to be made in U.S. dollars; or specifying one particular address for receiving payments, such as a post office box. The servicer may be

prohibited, however, from requiring payment solely by preauthorized electronic fund transfer. *See* section 913 of the Electronic Fund Transfer Act, 15 U.S.C. 1693k.

2. *Payment requirements—limitations.* Requirements for making payments must be reasonable; it should not be difficult for most consumers to make conforming payments. For example, it would be reasonable to require a cut-off time of 5 p.m. for receipt of a mailed check at the location specified by the servicer for receipt of such check.

3. *Implied guidelines for payments.* In the absence of specified requirements for making payments, payments may be made at any location where the servicer conducts business; any time during the servicer's normal business hours; and by cash, money order, draft, or other similar instrument in properly negotiable form, or by electronic fund transfer if the servicer and consumer have so agreed.

Paragraph 36(c)(2).

1. *Pyramiding of late fees.* The prohibition on pyramiding of late fees in § 1026.36(c)(2) should be construed consistently with the “credit practices rule” of the Federal Trade Commission, 16 CFR 444.4.

Paragraph 36(c)(3).

1. *Person acting on behalf of the consumer.* For purposes of § 1026.36(c)(3), a person acting on behalf of the consumer may include the consumer's representative, such as an attorney representing the individual, a non-profit consumer counseling or similar organization, or a creditor with which the consumer is refinancing and which requires the payoff statement to complete the refinancing. A creditor, assignee or servicer may take reasonable measures to verify the identity of any person acting on behalf of the consumer and to obtain the consumer’s

authorization to release information to any such person before the "reasonable time" period begins to run.

2. *Payment requirements.* The creditor, assignee or servicer may specify reasonable requirements for making payoff requests, such as requiring requests to be directed to a mailing address, email address, or fax number specified by the creditor, assignee or servicer or any other reasonable requirement or method. If the consumer does not follow these requirements, a longer timeframe for responding to the request would be reasonable.

3. *Accuracy of payoff statements.* Payoff statements must be accurate when issued.

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Section 1026.41—Periodic Statements for Residential Mortgage Loans

41(a) In general.

1. *Recipient of periodic statement*. When two consumers are joint obligors with primary liability on a closed-end consumer credit transaction secured by a dwelling, subject to § 1026.41, the periodic statement may be sent to either one of them. For example, if a husband and wife jointly own a home, the servicer need not send statements to both the husband and the wife; a single statement may be sent.

2. *Billing cycles shorter than a 31-day period*. If a loan has a billing cycle shorter than a period of 31 days (for example, a bi-weekly billing cycle), a periodic statement covering an entire month may be used. Such statement would separately list the upcoming payment due dates and amounts due, as required by § 1026.20(d)(1), and list all transaction activity that occurred during the related time period, as required by paragraph (d)(4). Such statement may aggregate the information for the explanation of amount due, as required by paragraph (d)(2), and past payment breakdown, as required by paragraph (d)(3).

3. *One statement per billing cycle*. The periodic statement requirement in § 1026.41 applies to the "creditor, assignee, or servicer as applicable." The creditor, assignee, and servicer are all subject to this requirement (*but see* comment 41(a)-4), but only one statement must be sent to the consumer each billing cycle. When two or more parties are subject to this requirement, they may decide among themselves which of them will send the statement.

4. *Opting out*. A consumer may not opt out of receiving periodic statements altogether. However, consumers who have demonstrated the ability to access statements online may opt out of receiving notifications that statements are available. Such an ability may be demonstrated, for example, by the consumer receiving notification that the statements is available, going to the website where the information is available, viewing the information about their account and selecting a link or option there to indicate they no longer would like to receive notifications when new statements are available.

41(b) Timing of the periodic statement.

1. *Reasonably prompt time.* Section 1026.41(b) requires that the periodic statement be delivered or placed in the mail no later than a reasonably prompt time after the payment due date or the end of any courtesy period. Delivering, emailing or placing the periodic statement in the mail within four days of close of the courtesy period of the previous billing cycle generally would be considered reasonably prompt.

2. *Courtesy period*. The meaning of "courtesy period" is explained in comment 7(b)(11)-1.

41(c) Form of the periodic statement.

1. *Clear and conspicuous standard*. The "clear and conspicuous" standard generally requires that disclosures be in a reasonably understandable form. Except where otherwise

provided, the standard does not prohibit adding to the required disclosures, as long as the additional information does not overwhelm or obscure the required disclosures. For example, while certain information about the escrow account (such as the account balance) is not required on the periodic statement, this information may be included.

2. *Additional information; disclosures required by other laws.* Nothing in § 1026.41 prohibits a servicer from including additional information or combining disclosures required by other laws with the disclosures required by this subpart, unless such prohibition is expressly set forth in this subpart, or other applicable law.

3. *Electronic distribution.* The periodic statement may be provided electronically if the consumer agrees. The consumer must give affirmative consent to receive statements electronically. If statements are provided electronically, the creditor, assignee, or servicer may send a notification that a consumer's statement is available, with a link to where the statement can be accessed, in place of the statement itself.

4. *Presumed consent*. Any consumer who is currently receiving disclosures for any account (for example, a mortgage or checking account) electronically from their servicer shall be deemed to have consented to receiving e-statements in place of paper statements.

41(d) Content and layout of the periodic statement.

1. *Close proximity*. Paragraph (d) requires several disclosures to be provided in close proximity to one another. To meet this requirement, the items to be provided in close proximity must be grouped together, and set off from the other groupings of items. This could be accomplished in a variety of ways, for example, by presenting the information in boxes, or by arranging the items on the document and including spacing between the groupings. Items in close proximity may not have any intervening text between them.

2. *Not applicable*. If an item required by paragraph (d) or (e) of this section is not applicable to the loan, it may be omitted from the periodic statement or coupon book. For example, if there is no prepayment penalty associated with a loan, the prepayment penalty disclosures need not be provided on the periodic statement.

3. *Terminology*. A servicer may use terminology other than that found on the sample periodic statement in appendix H-30, so long as the new terminology is commonly understood. For example, servicers may take into consideration regional differences in terminology and refer to the account for the collection of taxes and insurance, referred to in § 1026.41(d) as the "escrow account," as an "impound account."

41(d)(3) Past payment breakdown.

1. *Partial payments.* The disclosure of any partial payments received since the previous statement that were sent to a suspense or unapplied funds account as required by § 1026.41(d)(3)(i) should reflect any funds that were received in the time period covered by the current statement and that were placed in such account. The disclosure of any portion of payments since the beginning of the calendar year that was sent to a partial payment or suspense account as required by § 1026.41(d)(3)(ii) should reflect all funds that are currently held in a suspense or unapplied funds account. For example:

i. Suppose a payment of $1,000 is due, but the consumer sends in only $600 on January 1, which is held in a suspense account. Further assume there are no fees charged on this account. Assuming there are no other funds in the suspense account, the January statement should reflect: Unapplied funds since last statement - $600. Unapplied funds YTD - $600.

ii. Assume the same facts as in the preceding paragraph, except that during February the consumer sends in $300 and this too is held in the suspense account. The statement should reflect: Unapplied funds since last statement - $300. Unapplied funds YTD - $900.

iii. Assume the same facts as in the preceding paragraph, except that during March the consumer sends in $400. Of this payment, $100 completes a full periodic payment when added to the $900 in funds already held in the suspense account. This $1,000 is applied to the January payment, and the remaining $300 remains in the suspense account. The statement should reflect: Unapplied funds since last statement - $300. Unapplied Funds YTD - $300.

41(d)(4) Transaction Activity.

1. *Meaning.* Transaction activity includes any transaction that credits or debits the amount currently due. This is the same amount that is required to be disclosure under § 1026.41(d)(1)(iii). Examples of such transactions include, without limitation:

i. Payments received and applied;

ii. Payments received and held in a suspense account;

iii. The imposition of any fees (for example late fees); and

iv. The imposition of any charges (for example, private mortgage insurance).

2. *Description of late fees.* The description of any late fee charges includes the date of the late fee, the amount of the late fee, and the fact that a late fee was imposed.

3. *Partial payments.* If a partial payment is sent to a suspense or unapplied funds account, this fact must be in the transaction description along with the date and amount of the payment.

41(e)(3) Coupon book exemption.

1. *Fixed rate.* For guidance on the meaning of 'fixed rate' for purpose of § 1026.41(e)(3), see § 1026.18(s)(7)(iii) and its commentary.

2. *Coupon book.* A coupon book is a booklet provided to the consumer with a page for each billing cycle during a set period of time (often covering one year). These pages are designed to be torn off and returned to the servicer with a payment for each billing cycle. Additional information about the loan is often included on or inside the front or back cover, or on filler pages in the coupon book.

3. *Information location.* The information required by paragraph (e)(3)(ii) need not be provided on each coupon, but should be provided somewhere in the coupon book. Such information could be located, *e.g.*, on or inside the front or back cover, or on filler pages in the coupon book.

4. *Outstanding principal balance*. Paragraph (e)(3)(ii)(A) requires the information listed in paragraph (d)(7) to be included in the coupon book. Paragraph (d)(7)(i) requires the disclosure of the outstanding principal balance. If the servicer makes use of a coupon book and the exemption in § 1026.41(e)(3), the servicer need only disclose the principal balance at the beginning of the time period covered by the coupon book.

41(e)(4) Small servicers.

41(e)(4)(ii) Small servicer defined.

1. *Small servicers that do not qualify for the exemption.* A servicer that services any mortgage loans for which a servicer or an affiliate is not the creditor or assignee is not a small servicer. For example, a servicer that owns mortgage servicing rights for mortgage loans that are not owned by the servicer or an affiliate, or for which the servicer or an affiliate was not the entity to whom the obligation was initially payable, is not a small servicer.

2. *Master servicing and subservicing.* Both a master servicer and a subservicer, as those terms are defined in 12 CFR 1024.31, must meet the requirements of a small servicer. For example, if a master servicer meets the definition of a small servicer, but retains a subservicer that does not meet the definition of a small servicer, the subservicer is not a small servicer for the purposes of determining any exemption, and must comply with the requirements of a servicer.

41(e)(4)(iii) Small servicer determination.

1. *Loans obtained by merger or acquisition.* Any mortgage loans obtained by a servicer or an affiliate 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 lender, should be considered mortgage loans for which the servicer or an affiliate is the creditor to which the mortgage loan is initially payable. A branch office means either an office of a depository institution that is approved as a branch by a Federal or State supervisory agency or an office of a for-profit mortgage lending institution (other than a depository institution) that takes applications from the public for mortgage loans.

2. Application of evaluation threshold. The following examples demonstrate when a servicer either is considered or is no longer considered a small servicer:

i. A servicer that begins servicing more than 5,000 mortgage loans on October 1, and services more than 5,000 mortgage loans as of January 1 of the following year, would no longer be considered a small servicer on April 1 of that following year.

ii. A servicer that begins servicing more than 5,000 mortgage loans on February 1, and services more than 5,000 mortgage loans as of January 1 of the following year, would no longer be considered a small servicer on January 1 of that following year.

iii. A servicer that begins servicing more than 5,000 mortgage loans on February 1, but services less than 5,000 mortgage loans as of January 1 of the following year, is considered a small servicer for that following year.

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Appendix H—Closed-End Model Forms and Clauses

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7. *Models H—4(D) through H—4(J).* These model clauses and sample and model forms illustrate certain notices, statements, and other disclosures required as follows:

i. Model H-4(D)(1) illustrates the interest rate adjustment notice required under § 1026.20(c) and Model H-4(D)(2) provides an example of a notice of interest rate adjustment with corresponding payment change. Model H-4(D)(3) illustrates the interest rate adjustment notice required under § 1026.20(d) and Model H-4(D)(4) provides an example of a notice of initial interest rate adjustment**.**

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