May 26, 2016

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street NW.
Washington, DC 20552

RE: Response to the Amendments to the 2013 Mortgage Servicing Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z): Docket No.CFPB-2016-0016

Dear Ms. Jackson:

Thank you for the opportunity to comment on the testing of proposed periodic mortgage statements for consumers in bankruptcy. I appreciate the fact that the Bureau is concerned about the information provided to consumers who are already suffering financial difficulties due to bankruptcy; however, I do have some concerns about use of these forms.

Chapter 7 Forms

As I'm sure you are aware, section 362 of the Bankruptcy code requires creditors to halt all collection efforts against a customer who has filed for bankruptcy. A creditor that willfully violates the automatic stay may be ordered to pay actual damages, costs, attorneys' fees, and/or even punitive damages. I believe certain sections on the Chapter 7 statements are confusing and in direct contradiction with this requirement, as any time you give a consumer a notice with a payment date and payment amount, you are, at a minimum, implying that the recipient must pay you something.

The sections specifically that concern me on the Chapter 7 statements in this regard include:

- A payment amount stated in conjunction with a payment due date
- Statements like, "Although your legal duty to repay the loan may be discharged, we still have a lien on the property and the right to foreclose on the property if the loan is in default," and "The mortgage loan contract may allow foreclosure if the contract's requirements are not met."
- This listing of the current payment due and the total of unpaid amounts in the Account History section of the forms
- The fact that a payment coupon is included on all forms

I believe that comments expressed by consumers who participated in Round 1 testing support this:

- *"This is organized but still feels like there's a lot of confusing information on there. Starting with 'This is for your informational purposes only,' and 'This is a debt,' so I don't understand that part. Language is kind of confusing; to me there's a lot of conflicting information." — Chapter 7*
- *"[The purpose of the notice] is to tell me if I am in bankruptcy, but they're still sending me a bill. You shouldn't get a bill when you're in bankruptcy. So why am I still getting a bill?" — Chapter 13*
- *"[It] seems like there is a double message here: 'information only,' but they're also showing you a payment amount and a choice to pay it. It's confusing. . . this is very deceptive, I don't get it." — Chapter 7*

- *"'Not trying to collect a debt?' I thought they were. Maybe they're saying we're not associating you with the debt yet. Obviously the unpaid payments are a debt." — Chapter 7*
- *"The voluntary payment thing, I don't understand." — Chapter 7*
- *"There is a debt; I owe the debt; so when they say we're not trying to collect against you 'personally,' that sounds squirmy to me." — Chapter 7*
- *"I'm thrown that they're not 'collecting a debt against you personally.'" — Chapter 7*

The Round 2 forms improved on the Round 1 forms in their use of the Bankruptcy Message on the Current Pay Form and the Bankruptcy Notice on the other two forms. The Bankruptcy Notice appeared to do a better job of conveying the reason for the statement when it stated, "By law, we must send [this statement] to you. You can choose to stop receiving statements by writing to us at our address below." That being said, I still think it's confusing when we say this and then list a payment due amount. Results from Round 2 seem to support this:

> *Participants had difficulty reconciling the Chapter 7 Current Pay and Chapter 13 P&I Forms' language, indicating that the form was for "informational purposes only" and was "not an attempt to impose personal liability" with the fact that the form otherwise looked like a standard mortgage statement (which would typically request a payment). The majority of participants said that they had a choice whether to make a payment, but that there would be consequences (i.e., potential foreclosure) if they did not pay.*

Even the addition of the statement "Any payments you choose to make are voluntary" resulted in consumer confusion:

> *In Round 3, three of seven Chapter 7 Participants reviewing the Current Pay Form interpreted the "voluntary" language as meaning that they could negotiate with the servicer for how much they could pay, or that they could make partial payments without penalty. Other participants interpreted the "voluntary" language to mean that the servicer was telling them they could pay extra funds if they would like to pay off their mortgage faster. Those who did understand the intended meaning of the "voluntary" language—i.e., that the servicer could not compel a payment from the participant—were still confused as to how payments could be "voluntary" if they needed to make the payments to keep the home; these participants said that it seemed like a legal requirement to include this language on the notice.*

Despite these improvements, comments by some consumers in Round 3 indicated that they still thought that this was an attempt to collect by the bank:

- *"Not sure. They wouldn't send it to you if they didn't want a check in return. Maybe they don't want you thinking that they're sending you a 'settle up' amount in order to avoid going to jail. It is an attempt to collect a debt, but they're not turning it over to a debt collector. This is not the final attempt to get the money from you. Just informational advisory." — Chapter 7*
- *"It's a monthly payment, but they're not asking for the total amount. . . This one would almost be a second notice if I missed that payment." — Chapter 7*

In addition, the Chapter 7 Delinquency Disclosure form used in Round 3 seems to violate the automatic stay with statements like, "If payment is received after [this date], a late fee will be charged," and "You must pay this amount to bring your loan current."

I also feel that the blank payment coupon with a payment date but no payment amount (used on forms in Rounds 2 and 3) seems confusing. This is also supported by the study:

> *Chapter 7 Participants largely looked to the Explanation of Payment Amount box to figure out how much they owed in a particular month, although at least a few participants began by looking at the payment stub and then had to look elsewhere when they saw that the stub was blank.*
>
> *The blank payment coupon confused a number of Chapter 7 Participants, as some looked to the coupon to determine how much they owed. The missing information, in conjunction with confusion surrounding the voluntary nature of payments, led some to believe that they were not required to pay anything at this time and others to be confused about what their amount due was.*

I also think the statement "If You Are Experiencing Financial Difficulty: See back for information about mortgage counseling or assistance" is not appropriate for these customers. Obviously the customer is experiencing financial difficulty if he or she has filed for bankruptcy. I recommend instead the statement simply say, "The back of this form contains information about mortgage counseling or assistance if you are interested."

Chapter 13 Forms

Since consumers who have filed for bankruptcy under Chapter 13 generally will continue to make mortgage payments as part of their bankruptcy plan, I think that it may be appropriate to continue sending them modified periodic statements that include payment amounts. My concern with these statements is the confusion that may result from the format of the statements.

First, I agree with the study participants who expressed distrust of Chapter 13 forms used in Round 1 because of the statement, "You should know that the information on this statement may not be up to date." A statement like that would lead me to believe I shouldn't make a payment until I get an accurate amount.

Next, I feel that it would be more difficult for a consumer to determine the actual payment amounts owed directly to the bank because the statement includes both pre-petition and post-petition amounts. This was compounded by the fact that multiple payment amounts were listed on the forms, and some forms contained a blank payment coupon. From the study:

> *Chapter 13 Participants had lower comprehension for the Explanation of Payment Amounts, with some stating that Springside was asking them to pay the full $4,069.88, and one believing that the form was asking for a payment of $336.43 (the amount of the partial payment Springside received during the previous month).*
>
> *Consistent with the findings regarding the Chapter 7 Current Pay Form, some Chapter 13 Participants expressed confusion regarding how much the Alternate Arrearage Form was asking them to pay: half the participants cited the $1,939.94 amount listed in the Payment Amount box, while the other half said that they owed a total of $3,469.88.*

I would recommend that the Explanation of Payment Amount clearly and consistently indicate which payment amounts are due for pre-petition balance and which are due for the post-petition balance.

In addition, I think it should be very clear in the Transaction Activity and Past Payments Breakdown sections which balances (pre- or post-petition) the payments were applied to. When all payments are lumped together (as they were in the Transaction Activity section,) it can be difficult for the consumer to understand what has been applied to the different balances owed. The study spoke about this confusion:

> *Comprehension for all pre-petition arrearage information was low across versions of the Chapter 13 forms, largely stemming from the arrearage language on all forms. Many participants were unsure what the term "arrearage" meant, or did not understand that pre- and post-petition meant before and after they filed for bankruptcy. Some participants incorrectly read arrearage as an arrangement and inferred that these payments reflected a negotiated, arranged payment plan with the servicer under their bankruptcy plan. As such, comprehension of the content provided in the pre-petition arrearage box was low—only a few participants were able to articulate what this information was and that it did not relate to the payment amount included in the Explanation of Payment Amount box at the top of the form.*
>
> *In addition, some Chapter 13 Participants wrongly concluded that their post-petition payments included amounts that were past due when they filed for bankruptcy. This seemed to be because they saw "unpaid amount" in the post-petition payments and forgot that those amounts in that box were only for post-petition payments.*

I think it would be very beneficial to either identify in the Transaction Activity which payments were received for pre-petition arrearage and which were received for post-petition payments. Alternatively, I recommend that pre-petition arrearage payments be listed in a separate Transaction Activity Section or Breakdown of Past Payments.

Finally, I am concerned about the limited number of participants used consistently in this study. The study indicated that 51 individuals were included altogether; however, no more than 17 consumers were used in each round, the consumers all had varying levels of experience with bankruptcy, each round used different forms, and each round was held in a different area of the country. I feel that this provides a very limited amount of data from which we can draw accurate conclusions.

Thank you again for the opportunity to comment on this proposed rule; I hope you take these comments into consideration when issuing the final rule.

Sincerely,

Jennifer E. Johnson, CRCM

Compliance Officer/Internal Audit
First National Bank of Harford

MAC X2401-064
One Home Campus
Des Moines, IA 50328-0001

May 26, 2016

By electronic delivery to: regulations.gov

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Docket No. CFPB-2016-0016
Testing of Bankruptcy Periodic Statement Forms for Mortgage Servicing

Dear Ms. Jackson,

Wells Fargo appreciates this opportunity to offer comments to the Consumer Financial Protection Bureau (CFPB) regarding the report summarizing consumer testing of the sample periodic statement forms for consumers in bankruptcy. This letter is being submitted on behalf of Wells Fargo & Company and its affiliates (Wells Fargo) in response to the April 26, 2016, request for comment.

Wells Fargo is ready to work with the CFPB and other stakeholders to improve periodic statement forms for consumers in bankruptcy. To that end, we offer the following comments to highlight and supplement issues raised.

Consumer Testing of Sample Periodic Statement

Wells Fargo previously commented that testing of the periodic statement for consumers in bankruptcy prior to the issuance of the final rule was of critical importance. Wells Fargo believes final drafts of the Chapter 7 and Chapter 13 periodic statement forms would have benefited from comment, review and collaboration from a wider testing audience, such as Judges and counsel for consumers who play significant roles in the bankruptcy community in an attempt to solidify the elements for inclusion in those statement forms.

Periodic Statements for Chapter 7 Consumers

Wells Fargo strongly believes that the content included in the Chapter 7 samples does not differ substantially from the current periodic statement form required per the CFPB rules in effect today for non-bankruptcy consumers. Specifically, there is neither a bankruptcy arrearage amount nor pre-petition or post-petition distinction. Therefore, Wells Fargo strongly encourages the CFPB to consider not requiring a unique Chapter 7 template, but would rather suggest a slight modification to the previously implemented periodic statements to include appropriate bankruptcy disclaimers. For reference, a sample copy of Wells Fargo's Chapter 7 periodic statement beginning on page 7 in Appendix A.

Content of Periodic Statement

The CFPB requests comment on the report summarizing the methods and results of the testing, including, the content and form of the sample periodic statements. While Wells Fargo appreciates the value of a model periodic statement form, we equally appreciate the need for servicers to maintain autonomy to communicate to consumers.

Wells Fargo agrees that the periodic statement should contain the following elements for bankruptcy consumers:

1. Bankruptcy disclosure explaining that the consumer's bankruptcy status and statement is being sent for "informational purposes";
2. General account information which includes key account information such as outstanding principal balance and interest rate;
3. Amount and due date of next payment[1];
4. Breakdown of year to date contractual payments;
5. Transaction activity;
6. Important messages;
7. Payment coupon;
8. Contractual delinquency history or information;
9. Reference to mortgage counseling assistance; and
10. Pre-petition arrearage claim and payments to show reduction of arrearage claim balance (Chapter 13 cases only)[2].

However, Wells Fargo believes that the following portions of the periodic statement for consumers who have filed a Chapter 13 bankruptcy case warrant further comment:

1. Breakdown of Principal and Interest;
2. Breakdown of Past Payments; and
3. Repayment of the Arrearage Claim.

1. <u>Breakdown of Principal and Interest for Chapter 13 Consumers</u>

Wells Fargo generally agrees with the approach the CFPB proposed in the "Explanation of Payment Amount" or "Explanation of Payment Amount (called Post-Petition Payments)" indicated on Round 3 Chapter 13 Arrearage Box Form and Alternate Arrearage Form (C.5 – C.6).

Wells Fargo believes the proposed approach showing the breakdown of principal, interest and escrow due in the upcoming payment will cause customer confusion. The confusion will occur when a customer compares the previous month's statement, detailing the breakdown of the amount due, to the subsequent statement that details the breakdown of contractually applying

[1] For Chapter 7, this represents the next contractual payment due. For Chapter 13, this represents the next post-petition payment due.

[2] For Chapter 13 consumers, a specific section to summarize confirmed plan amount or arrearage, any payments to reduce the arrearage balance and the current arrearage.

the funds to the principal, interest and escrow of the oldest outstanding monthly payment. Since the oldest contractually due payment could be many months prior to the upcoming payment described in the previous month's statement, typically, the allocation to principal, interest and escrow will be different.

Wells Fargo recommends that servicers be permitted to disclose the principal and interest components of a post-petition payment as a lump sum amount rather than as individual components.

2. Breakdown of Past Payments

While Wells Fargo generally believes that most of the elements included in the "Breakdown of Past Payments" table as indicated on Round 3 Chapter 13 Arrearage Box Form and Alternate Arrearage Form (C.5 – C.6) are beneficial to the consumer, we recommend that servicers be allowed autonomy in how the information is displayed.

Wells Fargo agrees with the concept of showing the consumer the contractual Paid Year to Date summary for principal, interest, escrow and fees. Wells Fargo agrees that the consumer will benefit from seeing a breakdown of the application of unapplied funds (post-petition). However, the unapplied funds (post-petition) should not be reflected in the Breakdown of Past Payments section. Wells Fargo believes that the optimal way to reflect the unapplied funds (post-petition) is to provide this information in the Account Information section of the proposed periodic statement as the information would be as of the statement date.

Excerpts from Round 3 Alternate Arrearage Forms (C.6), page 76 of the CFPB's report:

Breakdown of Past Payments		
	Paid Last Month	**Paid Year to Date**
Principal	$0.00	$3,926.91
Interest	$0.00	$8,592.62
Escrow (Taxes and Insurance)	$0.00	$3,000.00
Fees	$0.00	$0.00
Unapplied Funds (Pre-Petition)*	$336.43	$751.53
Unapplied Funds (Post-Petition)*	$600.00	$600.00
Total	**$936.43**	**$16,871.06**

Status of Amounts Due Before Bankruptcy (called Pre-Petition Arrearage)		
Total Claim Amount	$12,111.60	This box shows amounts that were past due when you filed for bankruptcy. It may also include other allowed amounts on your mortgage loan. The Trustee is sending us the payments shown here. These are separate from your regular monthly mortgage payment.
Paid Last Month	$336.43	
Total Paid During Bankruptcy	$1,682.17	
Current Balance	$10,429.43	

With respect to the Paid Year to Date for unapplied funds, it is more relevant to show the consumer what is sitting in unapplied funds contractually when the statement is generated. The concept of a Paid Year to Date unapplied funds (pre- and post-petition) balance is illogical because any amount in excess of the current unapplied funds balance (shown as "Unapplied funds balance" on the Wells Fargo periodic statement) has already been applied to the

consumers' payment and is reflected in the Paid Year to Date breakdown amounts. Therefore, it is misleading to show funds are still available as unapplied funds. Furthermore, displaying the total amount Paid Year to Date ($16,871.06), including unapplied funds (pre- and post-petition), is misleading because it gives the impression that the consumer has paid more than they actually have. For reference, a sample copy of Wells Fargo's Chapter 13 periodic statement is attached beginning on page 9 in Appendix A.

Finally, Wells Fargo recommends that unapplied funds (pre-petition) be removed from the Breakdown of Past Payments section as the information is already reflected in the Status of Amounts Due Before Bankruptcy. By allowing the unapplied funds pre-petition paid last month to only be shown in the Status of Amounts Due Before Bankruptcy section we reduce the likelihood that the consumer will assume there are more funds available to be applied to post-petition payments but still provide the necessary information.

3. Repayment of the Arrearage Claim

Wells Fargo believes that the inclusion of the "Arrearage Information Box" indicated on Round 3 Chapter 13 Arrearage Box Form and Alternate Arrearage Form (C.5 – C.6) showcases critical information from which Chapter 13 consumers would greatly benefit. Providing this information allows a consumer to stay informed of the confirmed plan amount, the payments received that reduce the arrearage balance, and the current arrearage balance. Each of these elements works together to create a holistic picture of the progress the consumer is making in repaying the arrearage claim in full.

Messaging

Wells Fargo appreciates the need for model language upon which servicers can base the messaging of the periodic statement. However, we strongly believe that servicers should maintain autonomy to communicate in the manner they see fit so long as the content substantially complies with the model language provided by the CFPB.

Wells Fargo strongly believes that an informational purposes only disclaimer should be mandatory and included on at least the first page of a periodic statement. However, servicers must have the ability to balance the need for language consumers can easily understand, bankruptcy laws and regulatory guidance.

The CFPB has previously emphasized the need for an informational purposes only disclaimer on all bankruptcy periodic statements. Servicers should be allowed to manage the legal risk associated with these disclaimers as bankruptcy courts frequently look to the inclusion or exclusion of such disclaimers to determine whether a servicer has violated the automatic stay. Some bankruptcy courts have even adopted local rules requiring periodic statements so long as the statements identify that they are for informational purposes only and are not attempting to collect a debt.

For example, one participant is quoted as saying "[The purpose of the notice] is to tell me if I am in bankruptcy, but they're still sending me a bill. You shouldn't get a bill when you're in bankruptcy. So why am I still getting a bill?"[3] The CFPB's proposed bankruptcy message falls

[3] Page 14 of the CFPB's Testing of Bankruptcy Periodic Statement Forms for Mortgage Servicing, February 2016.

short of answering why the consumer is still receiving a "bill". Wells Fargo's current bankruptcy message provides that "[the statement] is provided to you as a courtesy should you voluntarily decide to make payments on your account."[4] By giving servicers the autonomy to craft the bankruptcy message as they see fit, we were better able to address the question "why am I still getting a bill"; reducing consumer confusion.

The sample forms used in the testing contain other recommended disclaimer language as well as specific field names. Wells Fargo recommends that servicers be allowed the same autonomy to design the messaging throughout the periodic statement so long as it substantially aligns with the spirit and intent of the CFPB's language.

Opt Out

Wells Fargo generally supports the CFPB's inclusion of the consumer's option to opt out of receiving periodic statements. However, servicers should be allowed the ability to accept direction from a consumer, verbally or in writing, to discontinue receiving periodic statements. Bankruptcy consumers may consider the statements an impermissible attempt to collect a debt in violation of the automatic stay or discharge injunction. Some consumers, whether debtors in open cases or debtors who have already received a discharge, have already opted out of receiving statements. Some of these consumers may have expressly opted out of receiving statements. Other debtors may not have responded to a servicer's request to opt in to receiving statements. Wells Fargo believes that when the Bureau issues a revised final regulation, these consumers should not have to go through the process of opting out again, for what will appear to them to be no reason. Wells Fargo recommends that opt-outs should be permissible based on the "most recent request", even if the most recent request was received before the new regulation is final and effective.

Additionally, Wells Fargo requests the final rule include a provision that if a bankruptcy court issues or has issued an order, prior to the effective date of the rule, requiring servicers to stop sending periodic statements, that servicers may comply with the order without violating the CFPB rule.

Conclusion

Wells Fargo thanks the Bureau for providing the opportunity to comment on the report summarizing consumer testing of the sample periodic statement forms for consumers in bankruptcy and welcomes future opportunities to discuss these comments in greater detail as appropriate.

Sincerely,

Perry Hilzendeger
Wells Fargo Home Mortgage

[4] A copy of Wells Fargo's period statement is attached as Appendix A and contains numerous bankruptcy disclaimers which have been highlighted for your reference.

APPENDIX A

Sample Chapter 7 and Chapter 13

Periodic Billing Statements

Sample Chapter 7 – Periodic Billing Statement

-*- Demonstration Powered by HP Exstream 05/09/2016, Version 8.0.334 32-bit -*-

Page 1 of 1

WELLS FARGO HOME MORTGAGE

Return Mail Operations
PO Box 14411
Des Moines IA 50306-3411

Statement date 05/03/16
Loan number [redacted]
Property address [redacted]

PLEASE NOTE: If you are presently seeking relief (or have previously been granted relief) under the United States Bankruptcy Code, this statement is being sent to you for informational purposes only.

[redacted]

Customer Service

Online
wellsfargo.com

Telephone
1-866-234-8271

Correspondence
PO Box 10335
Des Moines IA 50306

Fax
1-866-278-1179

Payments
PO Box 11701
Newark NJ 07101

Hours of operation
Mon - Fri 7a.m. - 8p.m. CT

We accept telecommunications relay service calls.

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Payment summary

Principal	$116.31
Interest	$505.13
Escrow	$480.22
Current payment 06/01/16	**$1,101.66**
Total payment	**$1,101.66**

Balance summary

Unpaid principal balance	**$142,624.52**
Escrow balance	$1,782.23
(Contact Customer Service for your payoff balance)	
Interest rate	4.250%
Maturity date	11/55

Year-to-date summary

Total received*	$5,500.90
Principal	$575.42
Interest**	$2,531.78
Escrow	$2,393.70
Taxes disbursed	$1,084.29

*This total may include the Unapplied funds balance from the Balance summary section.
**This information should not be used for tax purposes. If you have tax related questions, please consult your tax advisor.

Activity since your last statement

Date	Description	Total	Principal	Interest	Escrow	Other
05/03	Payment	$1,101.66	$116.90	$505.54	$480.22	

Important messages

This statement is for informational purposes only. Our records indicate, as directed by you, your payments are scheduled to withdraw automatically. All funds are applied when sufficient funds have accumulated to make a full monthly payment as outlined in your mortgage note. A payment remitted via another source will not stop the drafting process. If you are paying off your loan, please contact us at least five (5) days prior to your next withdrawal date.

[redacted]

Check here and see reverse for address correction.

Loan number [redacted]
Payment date 06/01/16

If you are currently a party in a bankruptcy case and you choose to make a voluntary payment, detach and return the remittance coupon with your payment.

Please specify additional funds

Payment x pmt amt	A	$
Additional principal	B	$
Late charges	C	$
Other charges	D	$
Additional escrow (if applicable)	E	$
Total amount enclosed (Please do not send cash)	F	$

WELLS FARGO HOME MORTGAGE
PO Box 11701
Newark, NJ 07101-4701

This is not a bill, but for your information only.

708 [redacted] 6 1000011101660113273011016600000000 0000000000000000000 4

Important information
Payments received after normal business hours will be credited the following business day.

If you send your payment to any other location, it may cause a processing delay. When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. When we use information from your check to make an electronic fund transfer, funds may be withdrawn from your account as soon as the same day we receive your payment, and you will not receive your check back from your financial institution. If your mortgage check does not clear upon initial presentment, your bank may charge a fee and we may attempt to withdraw funds from your account electronically up to a maximum of three times. If we are not able to successfully collect these funds, the check amount will be reversed from your loan.

Disputing account information reported to credit bureaus
We may furnish information about your account to consumer reporting agencies. You have the right to dispute the accuracy of information that we have reported by writing to us at the Correspondence Address noted on the front of this statement and describing the specific information that is inaccurate or in dispute and the basis for any dispute with supporting documentation. In the case of information that you believe relates to an identity theft, you will need to provide us with an identity theft report.

Fee schedule
Fees for assumptions, partial releases, and other services will be quoted upon request. Allowable fees for checks and drafts that are not honored by your bank vary by state and will be assessed automatically. States with fixed fees are as follows: ME, NM, RI, VT - $0; FL, LA, MI, OK - $25; AR, GA, HI, KS, MN, MT, WY - $30; PA - $50. Fees are subject to change without notice.

Access your account online any time
View details of your mortgage account, including official tax information, payment activity and more. Please visit the website listed on the front of this statement.

Need to make payments fast? You can schedule free payments online. Simply sign onto the website listed on the front of this statement and schedule your payment securely at your convenience. Payments can also be scheduled by calling Customer Service; a fee may apply.

Need to wire payment funds? For assistance in finding the nearest location, call 1-800-926-9400 for MoneyGram® Express Payments or 1-800-325-6000 for Western Union® "Quick Collect" payments.

For those customers who reside in the state of Texas, we will not recognize **3rd Party Property Tax Lien Transfers or Property Tax Deferrals** These programs create a lien on your property which takes priority over your mortgage. A change in lien position violates your mortgage agreement and we will take the necessary steps needed to ensure the mortgage lien is not at risk.

Servicemembers Civil Relief Act - The Servicemembers Civil Relief Act (SCRA) may offer protection or relief to members of the military who have been called to active duty. If either you have been called to active duty, or you are the spouse, registered domestic partner, partner in a civil union, or financial dependant of a person who has been called to active duty, and you haven't yet made us aware of your status, please contact our Military Customer Service Center at 1-866-936-7272 or fax your Active Duty Orders to 1-877-658-4585, attention SCRA.

Housing Counselor Information - If you would like counseling or assistance, for a list of homeownership counselors or counseling organizations in your area, you can contact the following: U.S. Department of Housing and Urban Development (HUD), go to http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm or call 800-569-4287.

Contact us
If you'd like to request information, notify us of an error, or share any concerns you may have about the servicing of your loan, please contact us at P.O. Box 10335, Des Moines, IA 50306. Please include your account number with all correspondence.

For those customers who reside in the state of New York, the debtor may file complaints about the servicer and obtain further information from the New York Banking Department by calling the Department's Consumer Help Unit at 1-800-342-3736 or by visiting the Department's website at www.dfs.ny.gov

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Important bankruptcy notice - If you are presently seeking relief (or have previously been granted relief) under the United States Bankruptcy Code, this statement is being sent to you for informational purposes only. It is provided to you as a courtesy should you voluntarily decide to make payments on your account. Notwithstanding any language contained in this statement, we want to assure you that we:

- Are not providing this information to you in an attempt to collect a debt from you or in any way violate any provision of the United States Bankruptcy Code;
- Will not seek collection of any amount owing on your account that will be (or has been) discharged in connection with your bankruptcy case, except any amount that may be payable to us as a result of filing a proof of claim in your bankruptcy case; and
- Will only file a proof of claim for any amount owing on your account in your bankruptcy case if and when it is appropriate to do so.

In addition, if you filed a Chapter 7 bankruptcy case and received a discharge, but you did not reaffirm this debt, then please be advised that we are not sending this statement to you in an attempt to collect this debt from you personally and we can only exercise our rights against the property securing this debt.

NMLSR ID 399801 non-adv-April 2016

EQUAL HOUSING LENDER

Sample Chapter 13 – Periodic Billing Statement

WELLS FARGO HOME MORTGAGE

Return Mail Operations
PO Box 14411
Des Moines IA 50306-3411

Statement date 04/27/16
Loan number
Property address

PLEASE NOTE: If you are presently seeking relief (or have previously been granted relief) under the United States Bankruptcy Code, this statement is being sent to you for informational purposes only.

Customer Service

Online
wellsfargo.com

Correspondence
PO Box 10335
Des Moines IA 50306

Payments
PO Box 14507
Des Moines IA 50306

Telephone
1-800-274-7025

Fax
1-866-278-1179

Hours of operation
Mon - Fri 7 a.m. - 8 p.m. CT

We accept telecommunications relay service calls.

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The summaries below are based on the terms of the loan and are provided for informational purposes only.

Payment summary

Principal	$319.19
Interest	$696.69
Escrow	$159.79
Current payment 05/01/16	**$1,175.67**
Unpaid payment 07/01/15-04/01/16	$11,729.37
Unpaid late charge(s)	$101.58
Total payment	**$13,006.62**

Balance summary

Unpaid principal balance[2]	**$166,245.38**
Unapplied funds balance[3]	**$1,077.07**
Escrow balance	$-914.14
(Contact Customer Service for your payoff balance)	
Interest rate[4]	5.125%
Maturity date	01/39

Year-to-date summary[5]

Total received*	$1,148.34
Principal	$304.57
Interest**	$711.31
Escrow	$132.46

*This total may include the Unapplied funds balance from the Balance summary section.
**This information should not be used for tax purposes. If you have tax related questions, please consult your tax advisor.

Informational messages

[2]This is a principal balance only (and does not include interest and/or fees). Your principal balance(s) is governed by the terms of your loan unless otherwise reduced by an order of the bankruptcy court.

[3]This balance represents the total amount of all unapplied funds on your account. We refer to any payment that is less than the payment established by the terms of your loan as a "partial payment". If we receive a partial payment, we will hold the partial payment until we receive additional funds that can be combined to make a full payment.

[4]This interest rate is governed by the terms of your loan unless otherwise reduced by an order of the bankruptcy court.

[5]Each component of this Summary is calculated and disclosed according to the terms of your loan.

Activity since your last statement

Date	Description	Total	Principal	Interest	Escrow	Other
04/26	Payment		$304.57	$711.31	$132.46	Unapplied -$1,148.34
04/26	Funds Received	$73.25				Unapplied $73.25
04/26	Funds Received	$1,081.64				Unapplied $1,081.64

Important messages

Connect with the information you need - whenever you want
At the **Your Home Matters**[SM] Customer Resource Center, you'll find content on key mortgage and homeownership topics -- from answers to frequently asked questions, to videos, to articles, to quizzes, and more. Visit **wellsfargo.com/yourhomematters** today.

Please specify additional funds

Loan number

Payment date 05/01/16

If your Chapter 13 plan requires you to make your on-going post-petition mortgage payments directly to a Chapter 13 trustee, then do not send your payment to us. Rather, send your payment to the trustee as directed in your Chapter 13 plan.

Payment x pmt amt	A	$
Additional principal	B	$
Late charges	C	$
Other charges	D	$
Additional escrow (if applicable)	E	$
Total amount enclosed (Please do not send cash)	F	$

Check here and see reverse for address correction

WELLS FARGO HOME MORTGAGE
PO BOX 14507
DES MOINES IA 50306-3507

□□□ □□□□□□□□□□ 8 1000011756701226461300662129050 4 □□□□□□□□□□□□□□□□□□ □

Important information
If you send your payment to any other location, it may cause a processing delay. When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. When we use information from your check to make an electronic fund transfer, funds may be withdrawn from your account as soon as the same day we receive your payment, and you will not receive your check back from your financial institution. If your mortgage check does not clear upon initial presentment, your bank may charge a fee and we may attempt to withdraw funds from your account electronically up to a maximum of three times. If we are not able to successfully collect these funds, the check amount will be reversed from your loan.

Disputing account information reported to credit bureaus
We may furnish information about your account to consumer reporting agencies. You have the right to dispute the accuracy of information that we have reported by writing to us at the Correspondence Address noted on the front of this statement and describing the specific information that is inaccurate or in dispute and the basis for any dispute with supporting documentation. In the case of information that you believe relates to an identity theft, you will need to provide us with an identity theft report.

Fee schedule
Fees for assumptions, partial releases, and other services will be quoted upon request. Allowable fees for checks and drafts that are not honored by your bank vary by state and will be assessed automatically. States with fixed fees are as follows: ME, NM, RI, VT - $0; FL, LA, MI, OK - $25; AR, GA, HI, KS, MN, MT, WY - $30; PA - $50. Fees are subject to change without notice.

Contact us
If you'd like to request information, notify us of an error, or share any concerns you may have about the servicing of your loan, please contact us at P.O. Box 10335, Des Moines, IA 50306. Please include your account number with all correspondence.

For those customers who reside in the state of New York, the debtor may file complaints about the servicer and obtain further information from the New York Banking Department by calling the Department's Consumer Help Unit at 1-800-342-3736 or by visiting the Department's website at www.dfs.ny.gov

Preferred Payment Plan℠ Terms and Conditions

Match your payment schedule to your payday cycle
Wells Fargo Home Mortgage offers electronic withdrawals: weekly, biweekly (every other week), semi-monthly (twice a month) and monthly. Review the following terms and conditions then call the Customer Service number on the front of this statement to enroll in the schedule that best meets your needs.

The following terms and conditions apply to weekly, biweekly, semi-monthly and monthly payment plans:
- I authorize Wells Fargo, its authorized representatives and service providers to initiate electronic withdrawals from my designated account to make payments on my mortgage.
- I understand that I will receive confirmation specifying the date the electronic withdrawals will begin. I understand that I will continue to make my payments until I receive this confirmation and electronic withdrawals begin.
- I understand that this authorization and the program services in no way alter or lessen my obligations under my existing mortgage contract regarding the amount of payments, when payments are due, the application of payments, the assessment of late charges or the determination of delinquencies and I must maintain sufficient funds in my account for withdrawal of my payment.
- I understand that withdrawn funds may not be applied to my mortgage until sufficient funds have accumulated for a full payment to be made.
- I understand the electronic withdrawal amount will vary with changes in escrow or principal and interest components, if applicable.
- I understand that I must provide Wells Fargo notice of at least five days for any request to modify, change, or terminate participation in this program. I understand that if I modify, change, or terminate participation in the program, I may not realize the benefits.
- I agree to be bound by the program's Terms and Conditions which are stated here and online.

Access your account online any time
View details of your mortgage account, including official tax information, payment activity and more. Please visit the website listed on the front of this statement.

Need to make payments fast? You can schedule free payments online. Simply sign onto the website listed on the front of this statement and schedule your payment securely at your convenience. Payments can also be scheduled by calling Customer Service; a fee may apply.

Need to wire payment funds? For assistance in finding the nearest location, call 1-800-926-9400 for MoneyGram® Express Payments or 1-800-325-6000 for Western Union® "Quick Collect" payments.

For those customers who reside in the state of Texas, we will not recognize **3rd Party Property Tax Lien Transfers or Property Tax Deferrals** These programs create a lien on your property which takes priority over your mortgage. A change in lien position violates your mortgage agreement and we will take the necessary steps needed to ensure the mortgage lien is not at risk.

Servicemembers Civil Relief Act - The Servicemembers Civil Relief Act (SCRA) may offer protection or relief to members of the military who have been called to active duty. If either you have been called to active duty, or you are the spouse, registered domestic partner, partner in a civil union, or financial dependant of a person who has been called to active duty, and you haven't yet made us aware of your status, please contact our Military Customer Service Center at 1-866-936-7272 or fax your Active Duty Orders to 1-877-658-4585, attention SCRA.

Housing Counselor Information - If you would like counseling or assistance, for a list of homeownership counselors or counseling organizations in your area, you can contact the following: U.S. Department of Housing and Urban Development (HUD), go to http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm or call 800-569-4287.

Important bankruptcy notice - If you are presently seeking relief (or have previously been granted relief) under the United States Bankruptcy Code, this statement is being sent to you for informational purposes only. It is provided to you as a courtesy should you voluntarily decide to make payments on your account. Notwithstanding any language contained in this statement, we want to assure you that we:

- Are not providing this information to you in an attempt to collect a debt from you or in any way violate any provision of the United States Bankruptcy Code;
- Will not seek collection of any amount owing on your account that will be (or has been) discharged in connection with your bankruptcy case, except any amount that may be payable to us as a result of filing a proof of claim in your bankruptcy case; and
- Will only file a proof of claim for any amount owing on your account in your bankruptcy case if and when it is appropriate to do so.

In addition, if you filed a Chapter 7 bankruptcy case and received a discharge, but you did not reaffirm this debt, then please be advised that we are not sending this statement to you in an attempt to collect this debt from you personally and we can only exercise our rights against the property securing this debt.

NMLSR ID 399801 non-adv-March 2016

EQUAL HOUSING LENDER

To: Bureau of Consumer Financial Protection

From: Debra Miller, Trustee

Date: May 26, 2016

Re: Comments on report for testing of sample periodic statement of forms

I appreciate that the Bureau is re-opening the comment period to allow comments on the forms of the periodic statement for consumers that are in bankruptcy. I believe that providing the mortgage statement to the Debtors while they are in a consumer bankruptcy is crucial so they are aware of the ongoing status of their mortgage.

Furthermore, I appreciate the time and effort that the CFPB spent developing the statement forms, testing, and modifying the form and testing two more times. The resulting forms are clearer and provide needed information and explanations to the Debtors that will assist them during their bankruptcy.

Having the monthly statements brings a transparency to the bankruptcy and mortgage process that is now sadly lacking. From the addition of fees and costs added to a bankruptcy that the consumer isn't aware of, to the failure to conduct the required RESPA/escrow analysis each year while a debtor is in bankruptcy, problems that are not handled quickly can have catastrophic consequences for the debtor who is seeking to keep their house.

As part of the NACTT mortgage liaison committee, I have been working with the banks, servicers, and their attorneys to continue to discuss issues that we see arising for consumers in their mortgages during a bankruptcy. After two years of discussion, the servicers provided six key types of payments that they needed identified by the Trustees. These six types of payments have separate coding which will allow the banks and servicers to readily identify an ongoing mortgage payment, a pre-petition arrearage payment, a "gap" period payment (the ongoing mortgage payments between the date of filing and confirmation), the fees and costs being paid, amounts being paid on an order by the bankruptcy court and payments on a mortgage that is being paid in full during a bankruptcy.

I, and other trustees, worked with the trustee computer vendors and the National Data Center to provide this data. We traveled and trained other trustees and their offices to provide this information in the way they setup their claims in our system.

In our office, though the information was contained in a text form on a check voucher to identify the above types of payments, the servicers requested the information be available as a "data" point allowing the servicer to automate the application of payments. Our new check voucher contains the information as well as the month and year that the ongoing mortgage payment should be applied to as well as the address of the real estate to help the servicer verify that they are properly applying the payments. Additionally, the information, in a data format, will be on the NDC website to allow the servicer to download and automate the application of payments from our office.

As the trustees have no independent way to verify the status of the mortgage, it will be incumbent on the servicer to verify the application and advise the Trustee if their records show a different date of application or balance on a pre-petition arrearage claim from the data we provide.

In our district, the majority of Chapter 13 filers seek to cure and maintain their mortgage thru their Chapter 13 plan with almost all cases choosing to pay their ongoing mortgage and pre-petition arrearage thru the Trustee conduit. Of those cases confirmed, our completion rate for the bankruptcies was over 55% in the last few years.

Our office provides computer access to our system allowing the Debtors to see that their payments were posted, the status of their case and the payments made to each creditor. Unfortunately, those debtors report they have no way to verify how those payments are being applied by their mortgage servicer as they do not have computer access to their mortgage after the filing of their bankruptcy. These statements will allow them to see the payment application and allow them a full picture of their mortgage status each month.

As the participants commented on page 13, Debtors would be able to keep up with the status of their mortgage and see things that would help them avoid foreclosure in those court where the Debtors are making their payments outside of the trustee conduit.

The report also points out that Debtors, some with good reason, do not trust their mortgage companies. Unfortunately, mortgage servicing in bankruptcy is not transparent and the servicers have issues properly applying payments on a mortgage that is in a bankruptcy. From failing to properly apply payments, to adding hidden fees and costs, to failing to run required escrow analyses, the Debtor in a bankruptcy has cause to be concerned. In the past two months, our office has instances that the mortgage servicer has had two separate law firms file conflicting documents with the bankruptcy court, causing me to draft and send Rule 11 letters. In both cases, the Debtors were at the end of the bankruptcy, the servicer filed a response to a 3002.1 Notice of Final Cure advising that there were no fees, costs or negative escrow amounts in the mortgage and the mortgage was contractually current. In both cases, two separate servicers also filed a Notice of Payment Change claiming a large escrow deficiency seeking the Debtors to pay- in one case- an additional $300 a month for an escrow shortage.

On the statement that the Debtors receive during bankruptcy, I believe it is critical that it show the pre-petition arrearage amount remaining due and the status of the ongoing post petition mortgage payments. While in our district our office pays the mortgage payments, for those Debtors who are paying their ongoing mortgages direct, this information is critical to their success in the bankruptcy. The Debtors need to be aware that they have missed a payment, that the payment amount changed or that they are behind on their monthly mortgage payment. As the monthly statement as proposed is the same whether the Debtor or the Trustee makes the ongoing payment, this information is critical for the Debtors paying their mortgages direct success and to avoid delinquency that could lead to a Motion for Relief from Stay being filed and possibly losing their home.

Another commenter in the study commented that the words the banks were using were too confusing, they were not user friendly and were harassing. I think it is critical that the statements use the same "language" as used in the bankruptcy and on the other periodic statements. I think that the language- this is not a bill but for information only to provide the status of your mortgage as you are in bankruptcy- is critical. The third round statement language of "this statement is being sent to you for informational and compliance purposes only" resolves that issue. The additional language of "it is not an attempt to impose personal liability on you" or "It is not an attempt to collect a debt against you" is unnecessary and confusing to the Debtor. I also this that the statement "any payments you chose to make are voluntary"

is again unnecessary and confusing. I believe that the liability and voluntary payment language should be removed.

I also think that the statement language that "the mortgage company still has a lien on the property" or "have the right to foreclose if the loan is in default" should not be included (page 15). In some cases, the lien might be stripped in the bankruptcy process and the mortgage holder can only foreclose if the stay is lifted and those types of language on every statement is just incorrect and can rightly be perceived as threatening. While that type of wording may be appropriate for a home owner who is not in the bankruptcy system and that servicer is not subject to the automatic stay, I agree with the chapter 13 participants and do not believe such language is appropriate in a statement for Chapter 13 bankruptcy Debtor. I think that the later versions of the statement remove this language appropriately.

The phrase "up to date" is problematic (page 15) with the distrust of the servicers, that language does not inspire confidence in the statement information. The clarifying language that this statement shows payments received as of the date of the statement and may not reflect payments received by the Trustee explains the difference without the indicia of not being "correct" that the "up to date" language may be perceived as. I agree with the change to the statement in the "Important Message" which sets out that "the statement may not show recent payments you sent to the Trustee that the Trustee has not yet forwarded to us" gives the information in a clearer manner.

I also agree with the participants that the original language as to "who" was making the ongoing mortgage payment in the original Chapter 13 statement was problematic (page 18). The Chapter 13 Revised form clarifies that language and is simpler to understand for the Debtors.

As the study showed in Round 1, most Chapter 13 Debtors understand the term of "pre-petition arrearage" as being the amount they were behind on their mortgage as of the date of filing (Section 2.12, page 19). This is a term that is used by the Trustee, Debtor's attorney and in the proof of claim filed by the mortgage servicer that should be understood by the majority of Debtor. Using this term on the monthly statement is consistent and provides the Debtor the balance on the amount they were behind on the date they filed the bankruptcy. I believe that the "language" that defines "pre-petition arrearage" will help explain the term to those who might be a new bankruptcy filer or who were unaware of that terminology. I also support the additional language in the Alternate Arrearage Form that reminds the Debtor that the arrearage payments are separate and apart from the ongoing monthly mortgage payment.

I do think that the principal and interest breakout of the payment is critical information to the Debtor (and to the Trustee) during the life of the bankruptcy (Section 2.13, page 20). I agree with the study participants that the principal and interest amounts need to be broken down on the statement. Our office consistently finds that the mortgage servicer's principal balance is incorrect at discharge- usually substantially higher than our records or calculations. By requiring this breakdown each month on the statement, fixed accrual mortgage payment breakdowns can be verified, the payment application will be transparent and the discharge process of verifying the mortgage balances, including principal balance, will be easier.

I also support that Account Information, including the principal balance and interest rate being provided on the monthly statement. The providing of the outstanding principal amount is critical for the reasons outlined amount. Bravo!

A review of the Round 2 Chapter 13 statement shows a change in the Base Form that concerns me. On the statement, item #4, a "Post Petition Payment amount" was included in the payment box which included "Total Fees and Costs." The actual post petition mortgage payment is the principal, interest and escrow amount and does not include fees and charges. The servicer is required to file for fees and costs under Fed. R. of Bankr. Pro 3002.1 and the inclusion of these in the "post-petition" payment line item is incorrect. I was glad to see that this was changed in the Round 3 forms.

I do like the bottom language of the "base" form for that box that states "Total Amount Due Post Petition" instead of the "alternate" form language of "Total Payment Amount." I also think that using the "Total Amount owed post petition" is problematic as "owed" could be confused to include the principal balance. Lastly, the pre-petition arrearage amounts regularly includes the monthly mortgage payment that was due when they filed for bankruptcy, but that amount was not past due. Example would be Debtor files on May 10, 2016, the mortgage payment was due May 1st, but not past due until May 16th.

To resolve these issues, I would suggest that the "Explanation of Payment Amounts" box be changed to the following

Explanation of Post-Petition Amount Due
Principal
Interest
Escrow (Taxes and Insurance)
Regular Monthly Payment
Total Fees and Charge
Unpaid amount due since filing bankruptcy
Total Amount Due Post-Petition
This amount due does not include any amount that was due before you filed for bankruptcy.

In conclusion, I thank the CFPB for their work on this matter. I think that the process used and the study showed that Debtors going thru bankruptcy need a monthly mortgage statement. By requiring the servicers to provide this information, Debtors will be better informed and the bankruptcy mortgage payment process will become more transparent. While I still believe that the system would be better served with the Trustee having access to verify the mortgage payment application and status in a Chapter 13, providing this information monthly is a big step forward.

National Association
of Federal Credit Unions
3138 10th Street North
Arlington, VA 22201-2149
NAFCU | Your Direct Connection to Advocacy, Education & Compliance

May 26, 2016

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street NW
Washington, D.C. 20552

RE: Periodic Statements for Borrowers who have filed a Bankruptcy (RIN: 3170-AA49)

Dear Ms. Jackson:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only national trade association focusing exclusively on federal issues affecting the nation's federally insured credit unions, I am writing to you regarding the Consumer Financial Protection Bureau's (CFPB) request for comment on its report on consumer testing of periodic statements for borrowers who have filed a bankruptcy petition. *See* 81 FR 24519 (April 26, 2016). NAFCU and our members urge the Bureau to establish an implementation period of at least 24 months after finalization in order to provide credit unions with the requisite time to adequately prepare for changes to mortgage servicing.

Mortgage Servicing Implementation

NAFCU and our members remain concerned that the tidal wave of regulations in recent years is altering the financial services market in unintended ways. Every additional rulemaking affecting credit union operations adds to the regulatory burden felt by credit unions as they attempt to come into compliance. Financial institutions are already working diligently to overcome the inevitable growing pains of the complex framework created by rulemakings such as the *Truth in Lending Act* (TILA) and *Real Estate Settlement Procedures Act* (RESPA) Integrated Disclosure (TRID) Rule, the *Home Mortgage Disclosure Act* (HMDA) Final Rule, and the revised Uniform Residential Loan Application (URLA). The Bureau should recognize the substantial costs and resources credit unions are required to expend preparing systems to accurately and effectively come into compliance with these rules and more.

Therefore, NAFCU recommends the Bureau establish an implementation period of 24 months after finalization, at minimum, to avoid an effective date that is too close to the main implementation date of the HMDA Rule (i.e. January 1, 2018). This provision should provide credit unions with a barrier of at least six months between HMDA Rule implementation and the

mortgage servicing rule implementation. Such a buffer would provide credit unions with the opportunity to shift costs and staff time as needed to address these substantial regulatory requirements individually and mitigate the inevitable strain on compliance resources.

Sample Size

As the discussion section to the Bureau's *Federal Register* notice indicates, research on the bankruptcy form report consisted of "three rounds of one-on-one cognitive interviews regarding the forms with a total of 51 participants in Arlington, Virginia, Fort Lauderdale, Florida, and Chicago, Illinois." Unfortunately, a 51-person sample size is not sufficient for the Bureau to draw concrete conclusions on the efficacy and usability of the sample periodic statement forms. NAFCU believes the Bureau could have benefitted from surveying a larger sample size of consumers in the development of the report.

In addition, the three testing locations can be identified as large metropolitan areas located in the South, Midwest, and Mid-Atlantic regions. The smallest area included in the study is Fort Lauderdale, Florida, which has a metro population of 2.7 million persons. NAFCU believes the Bureau should have considered sampling consumers in smaller communities throughout the country and included more geographic regions, in order to more fully capture the diversity of consumers.

Form Flexibility

NAFCU also recommends that the CFPB develop model statements that are flexible and can be modified to reflect the appropriate bankruptcy chapter. Creating forms that are adaptable to local bankruptcy jurisdictions or future changes in law would afford credit unions the opportunity to work with individuals in a way that minimizes confusion. Such a simplification would also minimize the regulatory burden associated with using the model forms while still allowing the institution to take advantage of TILA's compliance safe harbor when using the appropriate model form.

"Successors-in-Interest" Comment Period

In addition to the bankruptcy provisions discussed above, NAFCU and our members believe there are other provisions in the full mortgage servicing proposal that require additional comment. Specifically, the "successors-in-interest" aspect of the proposed rule would also require servicers to identity individuals that are potential successors in interest, and provide such individuals with periodic statements, regardless of whether the loan obligation has been legally assumed under state law. NAFCU remains concerned that this provision of the proposal and others incorporate unnecessary regulatory requirements into an already complicated regulatory framework. Credit unions pride themselves on working closely with members to resolve any difficulties that might arise out of servicing members' mortgages. Complicating the mortgage servicing regulations will inevitably make compliance more burdensome and costly for all institutions. Accordingly, NAFCU believes that Bureau should consider reopening the "successors-in-interest" aspect of the proposal for additional public comment.

Conclusion

NAFCU appreciates the opportunity to share its thoughts on the model periodic statements for borrowers who have filed a bankruptcy petition. Should you have any questions or concerns, please feel free to contact me at amonterrubio@nafcu.org or (703) 842-2244.

Sincerely,

Alexander Monterrubio
Director of Regulatory Affairs

EASTMAN CREDIT UNION®

PO Box 1989
Kingsport, TN 37662

Phone: 423.229.8200
or 800.999.2328

May 25, 2016

Ms. Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G. Street, N.W.
Washington, D.C. 20552

Re: Docket No. CFPB- 2016-0016

Dear Ms. Jackson

Eastman Credit Union (ECU) is a federally insured Tennessee state chartered credit union. ECU is the largest credit union in Tennessee and serves over 155,000 members with branches in Tennessee, Texas, and Virginia. ECU is commenting on the Consumer Financial Protection Bureau's (the "Bureau's") 2014 proposed mortgage servicing amendments to Regulation Z, specifically on the requirement to provide modified periodic statements to borrowers in bankruptcy.

Modified Periodic Statements to Borrowers in Bankruptcy

Under the current provisions of Regulation Z, servicers are exempt from providing periodic statements when a borrower on a mortgage loan is in bankruptcy or has discharged personal liability from a mortgage loan through bankruptcy. In 2014, the Bureau proposed to remove this exemption, with certain exceptions, and proposed sample periodic statements specific to borrowers in Chapters 7 and 11 and Chapters 12 and 13 of the Bankruptcy Code. If one of the proposed exceptions is not met, servicers must provide mortgage periodic statements to a borrower in bankruptcy but with modifications and additional disclosures specific to the bankruptcy chapter within which the borrower's case is filed.

The Bureau reopened the comment period for the 2014 proposal to receive comments on its testing of the sample periodic statements. ECU is taking this opportunity to request that the Bureau reconsider its proposal to amend Regulation Z.

I. Conflict with Federal Bankruptcy Rules and Protections

The Bankruptcy Code's automatic stay prevents attempts by a servicer to collect a debt from a borrower in bankruptcy and from sending other communication. In 2014, the Bureau acknowledged servicers concerns that its proposal to require periodic statements to borrowers in bankruptcy may violate the automatic stay protections. Bankruptcy trustees additionally expressed concerns that providing even a modified periodic statement may violate the bankruptcy stay and fail to provide meaningful information. However, the Bureau dismissed these concerns by stating that it did not believe the Bankruptcy Code would prevent a servicer from sending a borrower a statement on the status of the mortgage loan. ECU feels that the Bureau has yet to resolve the conflicts between its proposal and the Bankruptcy Code in a satisfactory manner and failure to do so could place servicers at unnecessary risk of liability.

In addition to considering placing servicers in a position to possibly violate the U.S. Bankruptcy Code, the CFPB should consider that requiring servicers to provide borrowers in bankruptcy with periodic statements is a duplicative and redundant effort. The Bankruptcy Code charges the trustee with responsibility for managing the bankruptcy estate. These responsibilities include, but are not limited to, receiving and collecting payments from the debtor pursuant to the established repayment plan and distributing those payments to the creditors. As part of maintaining this payment schedule, the trustee will be able to provide the borrower with an accounting of all payments made and all payments due. This information does not also need to come from the servicer. Depending on when the periodic statement is generated, this information may be in conflict with the trustee's information as the servicer may not have received the latest payment. This will result in confusion to the borrower and place the servicer at risk of Regulation Z liability for failing to provide an accurate periodic statement.

II. CFPB Testing of Bankruptcy Periodic Statement Forms for Mortgage Servicing

The Bureau developed and tested sample bankruptcy-specific periodic statement forms to gather consumer feedback about their perceptions and comprehension of the disclosures. The Bureau's report detailed its findings and reached many conclusions. While the CFPB is likely to focus primarily on what it considers positive findings as justification for its proposal, ECU urges the Bureau to not dismiss the negative findings. Included in the potentially problematic and negative feedback were the following:

- Participants expressed concerns with understanding the disclosures and whether the servicer was attempting to collect a debt
- The disclosure that the statement may not be up to date caused participants to express less trust for the forms and the accuracy of the information provided within
- The disclosure listing unpaid amounts caused participant confusion as to what is due and when it must be paid
- Participants expressed concerns that the periodic statement information may be different from the trustee's information
- Participants stated that they would rather this information be sent directly to their attorney to avoid confusion or miscommunication indicating a desire not to receive information from the servicer but rather from their attorney or bankruptcy trustee

III. Compliance burden

ECU currently generates approximately 17,000 mortgage statements on a monthly basis. The Bureau proposes that servicers generate a mortgage periodic statement containing disclosures specific to an individual in a Chapter 7 bankruptcy, to an individual in a Chapter 11 bankruptcy, to an individual in a Chapter 12 bankruptcy, and to an individual in a Chapter 13 bankruptcy. To expect a system to generate a periodic statement containing different information specific to the bankruptcy type is unreasonable. No two bankruptcy plans are identical and the variables are far too many for a system to compute when generating periodic statements each billing cycle. These bankruptcy-specific periodic statements will be in addition to the periodic statements generated for all other mortgage loans not in bankruptcy.

Servicers have historically not maintained bankruptcy specific information to include in periodic statements because the responsibility to do so belongs to the bankruptcy trustee. If systems are unable to generate multiple versions of mortgage periodic statements, the burden of manually generating periodic statements will be tremendous. Manual generation will result in a

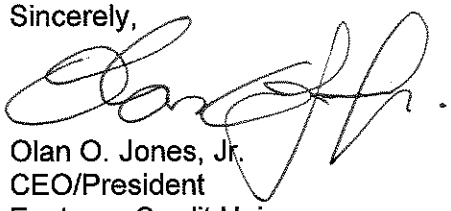
higher degree of errors and inaccuracies in addition to the burden placed on staff. Errors and inaccuracies will result in borrower confusion and potential servicer liability.

ECU appreciates the need for borrowers to have access to helpful information about their mortgage loans, especially when those mortgage loans are included in bankruptcy. However, ECU believes that the burden of compliance greatly exceeds the potential benefit a borrower in bankruptcy will gain by receiving these modified periodic statements from the servicer.

Conclusion

For the reasons stated above, ECU urges the Bureau to reconsider its proposal and to leave the current Regulation Z exemption from providing borrowers in bankruptcy with mortgage periodic statements in place. If finalized as proposed, a tremendous burden will be placed on servicers and their operating systems. There continue to be serious concerns throughout the industry about potential violations of bankruptcy debtor protections. This information may be obtained through the borrower's attorney or bankruptcy trustee. To place this responsibility on the mortgage loan servicer is unreasonable and duplicative considering this information is already available from other sources.

Sincerely,



Olan O. Jones, Jr.
CEO/President
Eastman Credit Union

CONSUMER MORTGAGE COALITION
CREDIT UNION NATIONAL ASSOCIATION
NATIONAL ASSOCIATION of FEDERAL CREDIT UNIONS

May 26, 2016

Ms. Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, DC 20552

Dear Ms. Jackson:

Re: Docket No. CFPB–2016–0016
RIN 3170–AA49

The Consumer Mortgage Coalition ("CMC"), Credit Union National Association ("CUNA"), and the National Association of Federal Credit Unions ("NAFCU"), with the Mortgage Servicers Working Group, appreciate this opportunity to submit comments on the Consumer Financial Protection Bureau's ("CFPB") report on consumer testing of periodic statements for borrowers who have filed a bankruptcy petition (the "Report").

I. Overview

We greatly appreciate that the CFPB reached out to a number of servicers to learn about their current practices and about the capabilities of their statement production systems. Through this approach, the CFPB has the opportunity to learn how operationally feasible certain changes would be and why. This will help prevent unforeseen outcomes, such as requirements that are disproportionately costly in relation to their benefits, or that make compliance more difficult than it needs to be. It is preferable to know the impact of amended regulations before the amendments are final.

While we appreciate the opportunity to comment on the testing, we note that the statements have only limited meaning without their accompanying regulation. In several areas, we are unable to understand what the statements reflect because we do not have an accompanying regulation that would implement the statements. The only way to obtain robust comment is to publish both the statements and their regulation for comment together. If there are multiple statements under consideration, there may need to be multiple versions of some aspects of the regulation as well.

We are disappointed with the sample sizes used in the testing. The sample sizes were far too small to be yield reliable results. Nevertheless, we provide comments where we can, followed by technical comments on the statements.

II. Testing Results

Unfortunately, the testing results are not reliable for a number of reasons.

- The sample was simply too small, with only 51 test participants altogether. The sample size was even smaller for the individual tests because each participant only joined one of the three rounds of testing. There were only 17 participants for each round of testing of two sets of statements. Further, the participants within each round only reviewed statements for one bankruptcy chapter, so that only seven to ten participants looked each of the statements.[1] A sample size of no more than ten per statement is very small. The results are inconclusive and unreliable because of the small sample sizes.
- The testing did not take into consideration trustee communication with consumers. Trustee communication varies, with some trustees sending specific letters or communications describing payment requirements and next steps, while others send less information. Regardless of the variation, trustee information can support or detract from consumer understanding of their bankruptcy cases.
- The testing did not consider statements for loans on which the consumer sends post-petition maintenance payments to the trustee.
- All test participants were consumers. We believe that testing should have included bankruptcy judges, bankruptcy attorneys, and mortgage servicers as well. That would have provided input based on experience with, in some instances, thousands of consumers a month.
- There was no control group of statements, and each successive round of testing introduced multiple changes. The results from the three testing rounds differed, but without a control, we cannot know what caused the differing results.
- The testers selected 42 of 51 participants who had reported "trouble making mortgage payments within the last two years." The "trouble" standard appears quite subjective. This criterion does not mean that the participants had trouble making payments during an active bankruptcy case or on a loan that had been discharged. As the Report states, "not all participants had a mortgage while in bankruptcy; [ ] not all participants were delinquent on their mortgages when they filed for bankruptcy; and [ ] not all participants had bankruptcy experience."[2] The "trouble" does not appear to related to testing the statements.
- The testing included eye-tracking for five or fewer participants with one of the Chapter 7 statements. The Report acknowledges that this sample is too small "to extrapolate that the general population will all interact with the forms in the same way that this set of participants did."[3] The Report instead states that the results

[1] Report at 4.

[2] Report at 4-5.

[3] Report at 82.

should "inform future form revisions,"[4] although the information is not reliable and does not indicate how consumers would review the statements.

- Only 29 participants had Chapter 7 or 11 experience, and only 18 participants had Chapter 13 experience.[5] Further, testing took place in only three locations, although there are 93 bankruptcy jurisdictions. Three is too few to be meaningful because bankruptcy case administration varies by jurisdiction. The small number of participants with bankruptcy experience and the small number of jurisdictions is surprising because of the number of consumer bankruptcy cases. In 2014, there were 909,812 cases, and in 2015 there were 819,760.[6]
- Some participants had no bankruptcy experience.
- The testing appears to lead to a conclusion that whatever testing shows is popular should be required. This is too narrow a focus, and the small sample sizes are not a sufficient basis for a rulemaking. The Bankruptcy Code, for one example, is also relevant. One participant stated, "I don't know why anybody would *not* want to receive these notices[,]"[7] referring to a Chapter 7 statement. Bankruptcy law restricts certain communications regardless of debtor preference. Or, as another participant said referring to a Chapter 13 statement, "You shouldn't get a bill when you're in bankruptcy. So why am I still getting a bill?"[8] The fact that someone may report liking the idea of a statement does not mean that the statements are providing useful and necessary information.

[4] Report at 82.

[5] Report at 3.

[6] These figures are from the Administrative Office of the United States Courts, in Reports F-2 for calendar 2014 and 2015.

[7] Report at 13.

[8] Report at 14.

III. Substantive Recommendations

A. Implementation Time

We do not know how much time the CFPB has in mind for servicers to implement the new bankruptcy statements. Unlike the mortgage regulations that the CFPB finalized in 2013, this rulemaking is not subject to the Dodd-Frank Act Title XIV requirement that regulations be final by January 2013 and be effective 12 months thereafter.[9] Indeed, the CFPB removed the bankruptcy statements rulemaking from the Dodd-Frank deadline by interim final regulation in 2013. That interim rule "clarif[ied] compliance requirements in relation to bankruptcy law[.]"[10] The CFPB "concluded that further analysis and study are required to resolve other issues that cannot be completed before the 2013 Mortgage Servicing Final Rules take effect. In those cases, the Bureau is creating narrow exemptions from the servicing rules to allow time to complete the additional analysis."[11] The interim regulation postponed a portion of the periodic statements requirement so the CFPB would have time to resolve the conflicts between the Bankruptcy Code and a broad requirement to send monthly billing statements to mortgage borrowers. That decision was the only feasible option for the CFPB. Writing a bankruptcy statement regulation, while also revising many other mortgage regulations, in 18 months was not workable.

A new requirement for bankruptcy statements will take time to implement. The mortgage industry is still implementing many revised regulations, including TILA-RESPA Integrated Disclosures ("TRID") and Home Mortgage Disclosure Act amendments. The HMDA amendments require very substantial systems changes, and become effective on January 1, 2018.[12] At the same time, Fannie Mae and Freddie Mac (the "GSEs") are about to release a revised Uniform Residential Loan Application ("URLA"), with an effective date of January 1, 2018, although the GSEs will allow lenders more time to begin using the new application.

The HMDA and URLA amendments, like the bankruptcy statements, will require an enormous amount of systems changes. Many financial institutions, especially credit unions, would benefit from having at least six months after the HMDA implementation period to focus on the mortgage servicing amendments.

We recommend that the CFPB provide the industry 24 months to implement the new bankruptcy statements, so that the HMDA amendments will not unnecessarily interfere with the new statements.

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[9] 12 U.S.C. § 1601 note.

[10] 78 Fed. Reg. 62993, 62994 (October 23, 2013).

[11] *Id*.

[12] 80 Fed. Reg. 66128 (Oct. 28, 2015).

B. A Single Statement Would Reduce Regulatory Burden

The testing used separate statements for Chapters 7 and 13. It does not follow that servicers should be required to implement two separate bankruptcy statements. Servicers should be able to implement one statement, and include or suppress information as appropriate for different bankruptcy chapters. This approach would greatly simplify the regulatory burden, both during implementation and in producing the monthly statements thereafter.

To support this sensible approach, we recommend that the CFPB limit the differences between Chapter 7 and Chapter 13 statement requirements as much as possible, consistent with bankruptcy law requirements. There is no reason under the Truth in Lending Act ("TILA") for the statements to differ, so all differences should derive from bankruptcy law.

For example, if the statements for both chapters will require the same or similar explanations about partial payments or the same or similar bankruptcy disclaimers, it should be permissible to place that information in the same location on all bankruptcy statements. Also, Chapter 7 statements will suppress the Chapter 13 Arrearage box, but there should be no requirement to fill that space on Chapter 7 statements with other information. Suppressing the box in Chapter 7 statements should be sufficient.

This approach is consistent with a TILA safe harbor.[13] This safe harbor applies even if a disclosure omits inapplicable information or rearranges the format or layout of the disclosure.

We recommend that the CFPB's final regulation permit servicers the flexibility to reduce regulatory burden by aligning the statements across chapters where possible.

[13] TILA § 105(b), 15 U.S.C. § 1604(b), provides:
"A creditor or lessor shall be deemed to be in compliance with the disclosure provisions of this title with respect to other than numerical disclosures if the creditor or lessor
(1) uses any appropriate model form or clause as published by the Bureau, or
(2) uses any such model form or clause and changes it by
(A) deleting any information which is not required by this subchapter, or
(B) rearranging the format, if in making such deletion or rearranging the format, the creditor or lessor does not affect the substance, clarity, or meaningful sequence of the disclosure."

C. Disclaimers and Explanations Need Flexibility While Servicers Need the Safe Harbors

The several tested statements contain a variety of disclaimers, usually in the Bankruptcy Notice, and several explanations of payments to trustees, partial payments, and Chapter 13 arrearages. We assume this variety is due to the difficulty of creating one set of disclaimers and explanations that will fit all purposes and satisfy all bankruptcy courts. Satisfying all bankruptcy courts simultaneously is not easy. For example, the Advisory Committee on Bankruptcy Rules spent significant effort over several years trying to create a consensus on a uniform Chapter 13 plan, but bankruptcy judges could not agree on one. It is not reasonable to believe that one version of disclaimers or explanatory text in bankruptcy statements can satisfy every bankruptcy judge. Additionally, as case law changes, servicers may need to change their communications with bankruptcy debtors. As consumers begin reacting to the new statements, servicers may find that additional or different explanations are appropriate, based on consumer understanding and feedback. We encourage the CFPB to permit servicers to draft and use their own bankruptcy disclaimers and explanations, and to modify them without the need for a CFPB rulemaking. As the CFPB is undoubtedly aware, dozens of different bankruptcy messages and disclaimers have passed bankruptcy court scrutiny, and these should be acceptable to the CFPB as well. *See, e.g., In Re Biery*, No. 10-23338, at n. 12 (E.D. Ky. Dec. 11, 2015), which contains a summary of case law on bankruptcy statements.

While servicers need flexibility to adapt their disclaimers and explanations, making those adaptations should not remove bankruptcy statements from either of two safe harbors for use of CFPB model disclosures. One of the safe harbors is in TILA § 105(b), discussed above. An additional safe harbor is in the Dodd-Frank Act.[14] Neither of the safe harbors relates to bankruptcy law.

While the safe harbors are important, they can lead to unfortunate results if they do not permit flexibility. After the CFPB's 2013 servicing regulation was final and before the CFPB released its interim final regulation, servicers began implementing the new periodic statement requirements with no bankruptcy exemption, including using the new model statements to come within the safe harbor. One servicer that began to put the new statement into effect before the interim final regulation softened its bankruptcy disclaimers to be closer to the new model form. For example, instead of disclosing that a debt had been discharged, this servicer's revised disclosure said the statement is for informational purposes *to the extent* the debt had been discharged. A bankruptcy court criticized these changes. The judge had a strong preference for the prior form of the

[14] Dodd-Frank Act § 1032(d), 12 U.S.C. § 5532(d), provides:
"Any covered person that uses a model form included with a rule issued under this section shall be deemed to be in compliance with the disclosure requirements of this section with respect to such model form."

servicer's statement, while the servicer needs the safe harbors. The safe harbors and bankruptcy law should not overlap.

There is no reason they should overlap. The bankruptcy disclaimers and other explanatory text on the statements are the result of bankruptcy law and relate to bankruptcy issues. There is no reason for TILA or Regulation Z to dictate or apply to their content – TILA is not a bankruptcy law. At the same time, the fact that bankruptcy law and TILA both affect bankruptcy statements is no reason to remove two statutory safe harbors from bankruptcy statements altogether.

We urge the CFPB, by explicit regulation rather than commentary, to provide that content of the bankruptcy disclaimers and the explanatory disclosures on bankruptcy statements are not governed by TILA or Regulation Z, while the remainder of the statements are subject to TILA and Regulation Z with the two safe harbors.

D. Chapter 13 Funds in Suspense

We are concerned that Chapter 13 funds in suspense may be unclear in two ways, if the amounts in suspense reflect either the Chapter 13 treatment or reflect a combination of the Chapter 13 and the contractual treatments.

The confusion arises from the following facts. For Chapter 13 tracking, servicers separate pre- and post-petition funds in suspense. For Chapter 13 purposes, servicers apply a payment out of each these two suspense accounts (or "buckets") when that bucket, alone, has enough for a full payment. Separately and in addition, servicers track funds in suspense according to the loan contract, throughout the life of the Chapter 13 plan. The suspense bucket for contractual purposes does not distinguish between pre- and post-petition payments. Further, the amount of a post-petition maintenance payment sometimes differs from the amount of a contractual payment.[15] The amount in suspense for Chapter 13 purposes is not always the same as the amount in suspense for contractual purposes. This leads to the following concerns.

1. Total in Two Suspense Buckets May Exceed a Full Payment

The first concern is with explanations in the Round 2 and Round 3 statements that when the servicer receives enough partial payments to equal a full monthly payment, the servicer will apply those funds to the loan. (Round 1 Chapter 13 statements did not involve funds in suspense.) In statements B4, B5, and B6,[16] the amount of the pre-petition arrearage payment last month (in the Arrearage box in B4 and B5, and in the

[15] A loan may have an adjustable rate (or step payment) that decreased after a payment became due and before the servicer receives funds to apply to that payment.

[16] This letter references the tested statements by the letter and number in their upper-left corners.

Transaction Activity box in all three) is the same as the amount of unapplied funds received last month. This appears to mean that unapplied funds reflected on the statement include arrearage payments that are less than one monthly payment, as well as, we presume, post-petition payments that are less than one payment.

First, it is not clear whether the explanation about partial payments, that the servicer will apply funds upon receiving a full monthly payment, means a full contractual payment or a full post-petition maintenance payment.

Even if the relevant payment were clear, the treatment is not. Funds in the pre- and post-petition suspense buckets combined will sometimes total more than one monthly payment, while neither bucket individually has enough for one full payment. In this case, the servicer cannot apply a payment, under the Chapter 13 treatment. This appears inconsistent with the explanation about when the servicer will apply a payment.

2. Two Suspense Buckets Adds Confusion

The second concern is with statement C6, which shows funds in suspense broken down into pre- and post-petition buckets. This pair of suspense buckets sometimes will not be able to represent the contractual treatment.

In statement C6, the amount reflected in Unapplied Funds (Pre-Petition) apparently reflects the Chapter 13 treatment because there is no contractual pre-petition arrearage amount. At the same time, it appears from Round 1 that the Breakdown of Past Payments reflects the contractual breakdown.[17]

An example will illustrate how combining the Chapter 13 and the contractual treatments may not work. On a loan with a post-petition maintenance payment of $1000, a pre-petition arrearage payment of $200, and a contractual payment of $1050, a servicer receives a post-petition payment of $900 and a pre-petition arrearage payment of $170. The aggregate amount in both Chapter 13 suspense buckets, $1070, is more than one post-petition maintenance payment, but for Chapter 13 purposes, the servicer would place $900 in post-petition suspense and $170 in pre-petition suspense. At the same time, for contractual purposes, the servicer would be able to apply one payment and would have $20 remaining in contractual suspense. If C6 represents the contractual application of principal and interest in the Breakdown of Past Payments, it does not appear to provide a place to represent the $20 contractual suspense, and the servicer will not be able to accurately represent the contractual status of the loan.

[17] Round 1 tested statements for the same loan for two consecutive months. These statements appear to reflect a contractual principal-interest breakdown.

Although the Chapter 13 and contractual treatments differ during the plan, if the plan fails before completion, as most do,[18] the contractual treatment would be the only treatment remaining. If a consumer had seen only the Chapter 13 treatment, upon plan failure the consumer could be surprised and confused to see the principal amount apparently increase, possibly by a significant amount.

3. Recommendations

Chapter 13 statements should reflect the contractual principal-interest breakdown. Funds reflected as in suspense should be based on the contractual application. A statement about when the servicer applies partial payments should be explicit that it is upon receipt of a full contractual monthly payment.

We recommend against disclosing pre-petition arrearage or post-petition maintenance payments held in suspense, or mentioning that there are multiple suspense accounts, as in C4, C5, and C6. This is too confusing even with an explanation.

E. Pre-Petition Arrearage Should Be Reflected as Plan-to-Date Rather Than Year-to-Date

Only the proposed Chapter 13 statement reflects pre-petition arrearage payments as Paid Last Month, Paid Year to Date, and Current Balance of Pre-Petition Arrearage. Others reflect Paid (or Received) Last Month, Total Paid During Bankruptcy, and Current Balance of Pre-Petition Arrearage. Three statements also include the original claim amount. The tested statements used several names for these items. Regardless of the names, we believe that the amount paid plan-to-date is much more helpful for consumers than the amount paid year-to-date.

Chapter 13 arrearages are paid down over the life of the plan. The amount paid year-to-date, for Chapter 13 purposes, seems irrelevant and arbitrary. Consumers would benefit from seeing the amount of arrearages paid plan-to-date because it helps keep the focus on plan progress, and because of the chance that the plan could fail. A statement showing the payments year-to-date and the current balance would provide a sense of how well the plan is progressing, even if the post-petition payments are delinquent.

As to the three statements that include the original arrearage claim amount, this information is unhelpful in a monthly disclosure for two reasons. First, the original arrearage amount is in the servicer's proof of claim. Second, arrearage amounts are no longer static. Many trustees add amounts disclosed in Notices of Post-Petition Fees, Expenses and Charges to the arrearage. Following loan modifications, arrearages are often reduced drastically or eliminated all together. Monthly statements are designed to

[18] This is according to the Notice of Proposed Rulemaking, 79 Fed. Reg. 74176, 74206 (Dec. 15, 2015).

keep consumers up to date on information regarding ongoing payments. Consequently, the current arrearage balance is what the consumer needs, not the original arrearage claim amount.

Recommendation
Chapter 13 statements should reflect pre-petition arrearages plan-to-date rather than year-to-date. There should be no requirement to disclose the original claim amount in monthly statements.

F. Language Should Be Familiar

The tested statements varied the language they used to describe some items, such as varying between pre-petition arrearage and pre-bankruptcy debt. We believe the statement terminology should be as consistent with bankruptcy terminology as possible.

Filing a bankruptcy petition requires consumers to learn new terminology to understand the bankruptcy process and requirements. This is due to the Bankruptcy Code, and CFPB regulations will not alter that fact. Consumers learn all or almost all of what they ever know about bankruptcy from sources other than their mortgage statements. These statements should not be a bankruptcy primer, and mortgage servicers should not be consumers' primary source of bankruptcy knowledge.

There should be one set of bankruptcy terms to learn, and only one. This approach would minimize the amount of necessary learning overall. It would also would prevent having two terms to describe the same thing. Having two two terms for the same thing would create a tendency to think the terms have different meanings when they do not. It would also create a delay after consumers begin receiving their bankruptcy statements before they realize that the terms actually mean the same thing.

Recommendation
The statements' terminology should be as consistent with bankruptcy terminology as possible. Pre-petition arrearage is more appropriate than pre-bankruptcy debt. Chapter 13 disclaimers should not refer to "your mortgage payments" or "your regular monthly mortgage payments" but to post-petition payments or contractual payments.

G. Servicers Must Apply All Payments Contractually

Servicers are required to apply payments according to their contracts, and consumers for the most part must abide by the contract terms if they want to retain their property. A CFPB regulation should be consistent with mortgage contracts. The CFPB bankruptcy statements should reflect contractual payment application.

IV. Technical Comments

The following are technical comments, more or less in the order the items appear in the tested statements. We offer these comments to be helpful to the regulation drafters, and not to imply support for exact language. Servicers should be allowed to draw on bankruptcy court opinions and their experience with their customers to draft messages and bankruptcy disclaimers, without losing safe harbor protections.

A. Untitled Box

"Any" Fees

A reference to any fees implies all fees, but means only some fees.

- Statement B1 (Chapter 7) states, "(This amount includes only your regular monthly payments and **any** fees and charges. It does not include past due amounts.)"
- Statement B4 (Chapter 13) states, "This amount includes only your regular post-petition payments and **any** fees and charges. It does not include any past unpaid amounts or Pre-Petition Arrearage".

The word "any" implies that this box includes all fees and charges, even though the amount shown does not include past due amounts, which may include fees and charges, pre-petition fees, or fees already paid. This is contradictory.

- For Chapter 7, the the first sentence could be replaced with "This amount includes only your regular monthly payments and fees and charges since your last statement."
- For Chapter 13, it may be preferable to say, "This amount includes only your regular, post-petition payments and your unpaid post-petition fees and charges." In the second sentence, "past" unpaid amounts is ambiguous because it could mean pre- and post-petition amounts, so the sentence could mean that only arrearages are excluded. If the intent is that fees are only included if they were assessed in the most recent month, it would be clearer for the first sentence to read, "This amount includes only your regular, post-petition payments, and your unpaid post-petition fees and charges since your last statement." The second sentence could then be deleted.

Somewhat Inconsistent Statements About Payment Questions

Some of these untitled boxes have statements about trustee payments. "If you have questions about where to send your payment, contact the Trustee or your attorney" and in the Bankruptcy Notice, "If you have any questions about your payments, contact the Trustee or your attorney." A4, A5. These statements are redundant yet somewhat inconsistent. If the message is to contact the Trustee or an attorney, the reasons for doing

so should be completely consistent, and we question the need for redundancy. The second of these statements is more appropriate.

B. Bankruptcy Notice

Opt-Outs

Most, but not all, of the Bankruptcy Notices indicate that consumers may opt out of receiving statements. B2, B3, C1, C2, C3 (Chapter 7) and B4, B5, B6, C4, C5, C6 (Chapter 13).

This is extremely helpful. There is no disadvantage to permitting consumers to opt out of receiving statements because any consumer who wants to receive them can do so. At the same time, monthly statements may be inappropriate in a bankruptcy context.

- In the disclaimer in B2 and B3, the third sentence says the mortgage statement is required by law, but the following sentence says you can stop receiving statements, implying you can do something illegal. It would be more consistent to say, "By law, we must send you these statements unless you opt out of receiving them."
- The statements refer to opting out by writing. It should be permissible to opt out online. If on-line access is available for bankruptcy consumers, it should be permissible to indicate that this option is available, so as not to imply that the writing must be by paper mail, and to be consistent with the E-Signatures In Global and National Commerce Act.[19]
- If the consumer has already opted out of statements before this new regulation takes effect, it should not be necessary for that consumer to opt out again.
- If the consumer has ceased all communications under the Federal Debt Collection Practices Act[20] ("FDCPA"), it should not be necessary to send statements unless the consumer revokes that direction. Note that when the FDCPA applies to

[19] 15 U.S.C. § 7001 provides:
"Notwithstanding any statute, regulation, or other rule of law (other than this subchapter and subchapter II), with respect to any transaction in or affecting interstate or foreign commerce–
(1) a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form[.]"

[20] FDCPA § 805(c), 15 U.S.C. § 1692c(c) provides:
If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt, except-
(1) to advise the consumer that the debt collector's further efforts are being terminated;
(2) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or
(3) where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy."

mortgage loans is often unclear, and in these cases servicers may apply it as a precaution.

Bankruptcy Disclaimers

There are several permutations for both Chapter 7 and 13. We strongly encourage the CFPB to allow servicers to continuing drafting bankruptcy disclaimers based on their experience with their customers and without losing safe harbor protections. However, we offer the following comments. The tested disclaimers are set out here for ease of reference.

Chapter 7:

- "Our records reflect that you are presently a debtor in an active bankruptcy case or you previously received a discharge in bankruptcy. This statement is being sent to you for informational and compliance purposes only. It should not be construed as an attempt to collect a debt against you personally." A1.
- "**This statement is for information only. We are not trying to collect a debt against you personally.** Our records show that you recently filed for bankruptcy or you already have a discharge. Although your legal duty to repay the loan may be discharged, we still have a lien on the property and the right to foreclose on the property if the loan is in default." A2.
- "**This statement is for informational purposes only. It is not an attempt to impose personal liability on you.** Our records show that either you are a debtor in bankruptcy or you discharged your mortgage loan in bankruptcy. As such, any payments you choose to make are voluntary. However, the mortgage loan contract may allow foreclosure if the contract's requirements are not met. Please write to us if you do not want to receive these statements anymore." B1.
- "**Our records show that either you are a debtor in bankruptcy or you discharged your mortgage loan in bankruptcy. This statement is for informational and compliance purposes only. By law, we must send it to you. You can choose to stop receiving statements by writing to us at our address below.**" B2, B3.
- "**Our records show that either you are a debtor in bankruptcy or you discharged your mortgage loan in bankruptcy.** We are sending this statement to you for informational and compliance purposes only. It is not an attempt to impose personal liability on you. If you want to stop receiving statements, write to us." C1, C3.
- "**Our records show that either you are a debtor in bankruptcy or you discharged your mortgage loan in bankruptcy.** We are sending this statement to you for informational and compliance purposes only. It is not an attempt to collect a debt against you. Any payments you choose to make are voluntary. If you want to stop receiving statements, write to us." C2.

Chapter 13:

- "Our records reflect that you are presently a debtor in an active bankruptcy case or you previously received a discharge in bankruptcy. This statement is being sent to

you for informational and compliance purposes only. It should not be construed as an attempt to collect a debt against you personally. The information disclosed on the periodic statement may not reflect payments you have made to the Trustee and may not be consistent with the Trustee's records. Please contact the Trustee or your attorney if you have any questions regarding this matter." A3.

- "**This statement is for information only. We are not trying to collect a debt against you personally.** Our records show that you recently filed for bankruptcy or you already have a discharge. Although your legal duty to repay the loan may be discharged, we still have a lien on the property and the right to foreclose on the property if the loan is in default. You should know that the information on this statement may not be up to date. For instance, it may not show payments you already made to the Trustee. If you have any questions about your payments, contact the Trustee or your attorney." A4, A5.
- "**Our records show that either you are a debtor in bankruptcy or you discharged your mortgage loan in bankruptcy. This statement is being sent to you for informational and compliance purposes only. By law, we must send it to you. You can choose to stop receiving statements by writing to us at our address below.** If your bankruptcy plan requires you to send your mortgage payments to the Trustee, you should pay the Trustee directly. Please contact the Trustee or your attorney if you have questions." B4, B5.
- "**Our records show that either you are a debtor in bankruptcy or you discharged your mortgage loan in bankruptcy. This statement is being sent to you for informational and compliance purposes only. It is not an attempt to impose personal liability on you.** However, the mortgage loan contract may allow foreclosure if the contract's requirements are not met. If your bankruptcy plan requires you to send your mortgage payments to a Trustee, you should pay the Trustee directly. Please contact the Trustee or your attorney if you have questions. Please write to us if you do not want to receive these statements anymore." B6.
- "**Our records show that you are a debtor in bankruptcy. This statement is being sent to you for informational and compliance purposes only. It is not an attempt to impose personal liability on you.** If your bankruptcy plan requires you to send your regular monthly mortgage payments to the Trustee, you should pay the Trustee instead of us. Please contact your attorney or the Trustee if you have questions. **If you want to stop receiving statements, write to us.**" C4, C5.
- "**Our records show that you are a debtor in bankruptcy. This statement is being sent to you for informational and compliance purposes only. It is not an attempt to collect a debt against you. Any payments you choose to make are voluntary.** If your bankruptcy plan requires you to send your regular monthly mortgage payments to the Trustee, you should pay the Trustee instead of us. Please contact your attorney or the Trustee if you have questions. **If you want to stop receiving statements, write to us.**" C6.

Comments

- The disclaimer in A3 refers to a statement and to a periodic statement, while the piece of paper is titled Mortgage Statement. In the disclaimer, "the periodic statement" could be "this statement" because it is clear and is more consistent with the other references.
- In A3, in the second sentence, the phrase "being sent to you" adds nothing. This is also included in disclaimers in B4, B5, B6, C4, C5, and C6.
- In A2, A4, and A5, the mention of "recently" filing for bankruptcy may not be accurate, and adds no meaningful information. That word should be deleted.
- In A4 and A5, the statement that the information may not be up to date implies that the servicer's information may not be up to date. This is inaccurate and should be deleted. Perhaps, "This statement does not reflect payments you made to the Trustee that we have not received."
- The disclaimers in B1, C2, and C6 state that any payments you choose to make are voluntary, which is a truism. It might be more meaningful to state that any payments you make are voluntary.
- In C6, the fourth sentence says payments are voluntary, but the next sentence talks of a requirement to send payments. This seems inconsistent. We suggest that it read, "If your bankruptcy plan directs you to send your post-petition payments . . . ."

C. Explanation of Payment Amount

If the final regulation will require a principal-interest breakdown for Chapter 13 statements, the regulation will need to be extremely clear about how servicers must or may calculate that breakdown.

D. Account Information

- We request confirmation that the outstanding principal is the contractual amount.
- We recommend that the rate adjustment and prepayment penalty information can be omitted, at the servicer's discretion, when it does not apply.

E. Transaction Activity

We request confirmation that the descriptions of charges are not established by the regulation, and that abbreviations are permissible if they are clear.

F. Chapter 7 Account History

- Would the statement in C3 that you are late on your payments be omitted if the loan is current?
- C3 includes the number of days delinquent. We do not know what use this information could be, and it could be construed as inappropriate debt collection. In testing, participants were mixed on whether this was useful, and they were not clear why it was included or what they would use it for.[21] We recommend omitting it.
- Each of the tested statements has a reference in this box to the back of the statement. If the statements are electronic, this should be replaced with "below" or perhaps with a hyperlink.

G. Important Messages

Some statements have no Important Messages box. If no box is required, would a box be optional?

The Chapter 7 Important Messages boxes are all the same, but the Chapter 13 boxes differ. The Chapter 13 Important Messages box covers up to three topics, set out below for ease of reference, and separated by topic.

Payments to Trustee

- "This statement shows payments we've received from you and the Trustee. It may not show payments you recently sent to the Trustee, and it may not be consistent with the Trustee's records. Please contact the Trustee or your attorney if you have questions." B4, B5, B6.
- "This statement may not show recent payments you sent to the Trustee that the Trustee has not yet forwarded to us. Please contact your attorney or the Trustee if you have questions." C4, C5, C6.

Partial Payments

- "***Partial Payments:** Any partial payments listed here are not applied to your mortgage, but instead are held in a separate suspense account. Once we receive enough funds to equal a full monthly payment, we will apply those funds your mortgage." B4.
- "**"Past Payments Breakdown"** shows how we applied all funds we've received from you or the Trustee to your mortgage. Any partial payments listed here are not applied to your mortgage, but instead are held in a separate suspense account. Once we receive enough funds to equal a full monthly payment, we will apply those funds to your mortgage." B5, B6.

[21] Report at 56.

- "***Partial Payments:** Any partial payments listed here are not applied to your mortgage, but instead are held in one or more separate suspense accounts. Once we receive funds equal to a full monthly payment, we will apply those funds to your mortgage." C4, C5. C6 is the same but in the second sentence, replaces "those" with "the".

Pre-Bankruptcy Debt (Arrearage)

- "**"Pre-Bankruptcy Debt (Arrearage)"** shows the payments we've received from the Trustee that are reducing the amount of your pre-petition or pre-bankruptcy debt (arrearage), and the current outstanding balance of that debt." B5, B6.
- C5 and C6 have a related statement in the Pre-Petition Arrearage box:
  - "This box shows amounts that were past due when you filed for bankruptcy. It may also include other allowed amounts. The Trustee is sending us the payments shown here." C5.
  - "This box shows amounts that were past due when you filed for bankruptcy. It may also include other allowed amounts on your mortgage loan. The Trustee is sending us the payments shown here. These are separate from your regular monthly mortgage payment." C6.

Comments

Payments to Trustee

- The statement that this does not show payments you "recently" sent the Trustee, B4, B5, B6, may be inconsistent with what the borrower considers recent. The relevant fact is not how long ago the debtor paid the trustee, but whether the servicer received the payment from the trustee. The word "recently" should be deleted.
- The statement that this "may" not show payments to the trustee that the servicer has not received from the trustee, B4, B5, B6, C4, C5, and C6, is not fully accurate. It does not show them. "May not" should be replaced with "does not".
- A concern with these two statements is that they could give the impression that servicers have some knowledge about payments to the trustee that the trustee has not yet forwarded to the servicer. If the servicer tells a consumer a payment to a trustee was recent, that implies the servicer may know of the payment. If a statement "may" not include some payments to the trustee that the servicer has not received, that implies that it may include others that the servicer has not received. Bankruptcy statements should not give this inaccurate impression.

Partial Payments

- The statement that "we applied all funds" received to your mortgage, B5, B6, contradicts the following sentence, stating that some payments listed here are not applied. The word "all" should be deleted.
- The statements contain the following similar statements that could be clearer. The emphasis is added to show the differences:

  - "Once we receive **enough** funds to equal a full monthly payment, we will apply **those** funds to your mortgage." B4, B5, B6.
  - "Once we receive funds equal to a full monthly payment, we will apply **those** funds your mortgage." C4, C5.
  - "Once we receive funds to equal a full monthly payment, we will apply **the** funds to your mortgage." C6.

  Perhaps, "Once we receive enough ~~funds~~ **partial payments** to equal a full **contractual** monthly payment, we will apply those ~~funds~~ **partial payments** to your mortgage." Or, in the Chapter 7 statements, "***Partial Payments:** Any partial payments that you make ~~are~~ **may** not **be immediately** applied to your mortgage, but instead ~~are~~ **may be** held in a separate suspense account. If you pay the balance of a ~~partial~~ **contractual** payment, the funds will then be applied to your mortgage."
- The mention of possible multiple suspense accounts, as in C4, C5, and C6, is too much detail.

Pre-Bankruptcy Debt (Arrearage)
The statement that arrearage payments received "are reducing" (in the present tense) the arrearage, B5 and B6, should be in the past tense. The present tense may imply that the past payments are continuing to reduce the arrearage, even if there have been no more recent arrearage payments. The word "reduced" would be clearer.

H. Coupon Directions

- Some coupons have no directions and some have payment directions. Directions should be optional.
- Coupons should be optional.
- The statement in A1 to detach the coupon does not accommodate electronic payments. The statement should be optional.
- The statement in A1 (Chapter 7) says "If you are currently a party in a bankruptcy case and you choose to make a voluntary payment, detach and return bottom remittance portion with your payment. . . ."
  - This may imply that after a discharge, this statement does not apply because the case is not currently pending.
  - Choosing to make a voluntary payment is a truism.

  Perhaps this could say, "If you choose to make a payment . . . ."

I. Late Fees

Most of the statements do not indicate the amount or date of a late fee for the next payment due date. Many servicers simply do not assess late charges to bankruptcy debtors. It should therefore be permissible not to indicate that there could be a late charge, its future assessment date, or its amount. However, if a CFPB regulation makes it impermissible to indicate a future late fee assessment date, that would create a conflict

with a longstanding OCC regulation (originally a Federal Home Loan Bank Board regulation).[22]

Recommendation
We recommend that information about future late fees may be omitted from statements if the servicer will not assess them on late payments.

V. Conclusion

We appreciate the CFPB's outreach to servicers to learn about the feasibility of bankruptcy statement requirements. If we can provide any further information, or if you would like to discuss our comments in further detail, please let us know. We would be very pleased to provide any further information you may need. We urge the CFPB to provide servicers at least 24 months to implement a new bankruptcy statement requirement.

Sincerely,

Consumer Mortgage Coalition
Credit Union National Association
National Association of Federal Credit Unions

[22] 12 C.F.R. § 160.33 provides:

> "A Federal savings association may include in a home loan contract a provision authorizing the imposition of a late charge with respect to the payment of any delinquent periodic payment. With respect to any loan made after July 31, 1976, on the security of a home occupied or to be occupied by the borrower, no late charge, regardless of form, shall be assessed or collected by a Federal savings association, unless any billing, coupon, or notice the Federal savings association may provide regarding installment payments due on the loan discloses the date after which the charge may be assessed. A Federal savings association may not impose a late charge more than one time for late payment of the same installment, and any installment payment made by the borrower shall be applied to the longest outstanding installment due. A Federal savings association shall not assess a late charge as to any payment received by it within fifteen days after the due date of such payment. No form of such late charge permitted by this paragraph shall be considered as interest to the Federal savings association and the Federal savings association shall not deduct late charges from the regular periodic installment payments on the loan, but must collect them as such from the borrower.

May 26, 2016

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, D.C. 20552

RE: Amendments to the 2013 Mortgage Rules under the Equal Credit Opportunity Act (Regulation B), Real Estate Settlement Procedures Act (Regulation X), and the Truth in Lending Act (Regulation Z)
Docket Number CFPB-2016-0016
RIN 3170-AA49

Dear Ms. Jackson:

The HOPE NOW Alliance appreciates this opportunity to submit comments on the Consumer Testing of Bankruptcy Periodic Statement Forms for Mortgage Servicing (Report). Providing accurate and clear periodic statements for borrowers in bankruptcy presents unique challenges and we greatly appreciate the time and attention that CFPB has given to this issue and the outreach that it has conducted. Two years ago, the HOPE NOW Alliance started a Letter Committee with the goal to produce clear and actionable letters with customers who were delinquent on their mortgage. The Alliance has produced a set of Letter Standards (attached) and we hope our suggestions are helpful.

HOPE NOW appreciates that the CFPB has worked directly with consumers to capture the common communication problems when communicating with customers in bankruptcy. Something we feel is necessary and missing from your study is any mention of working with minority groups, especially representatives from the Hispanic Community. We feel they would add a very important perspective to your work and help to define issues that represent a larger portion of Americans. We would appreciate that the CFPB consider all users, including non-native English speakers, with their periodic statement forms and other means of communication. We would suggest working directly with NCLR as a trusted organization that brings a lot of value to these efforts.

2. Response to Receiving Statements

Something we learned from the crisis is that some customers simply do not want to talk to their servicer or involve them in the process. This bleeds out into various forms of communication, especially the forms you are working on. We feel that there needs to be consideration for clear opt our messaging for customers who do not wish to receive information. By asking a customer to send a letter, you actually discourage customers

from using preferred platforms, like web portals. By encouraging electronic communications, it not only helps the customer with convenience, but helps the servicer understand that they (the customer) read the letter. There is no way to track whether a customer has opened a letter and by the time they are in the bankruptcy process, this letter will fall among many other letters they are receiving from other debt collectors. We need to provide options and clear paths for customers that are convenient and reflective of preferred platforms.

> *"[It] seems like there is a double message here: 'information only,' but they're also showing you a payment amount and a choice to pay it. It's confusing … this is very deceptive, I don't get it."*

To the above comment, some customers in the study recognized that the information was not actionable. If no action is needed, that should always be stated clearly and upfront. By the time consumers get to this place in their personal finance, they have many requests and burdens that need to be managed. Unfortunately, a typical consumer reaction is to simply stop opening letters and answering the phone.

3. Chapter 7 Forms

The proposed draft forms are a big improvement for the industry. It should be noted that the boxes are an industry best practice and provide good consumer understanding on complicated communications. Something the Alliance learned by working with various plain language experts was that customers respond well to bullet points as opposed to block paragraphs and lengthy sentences. We would encourage the use of bullet points on the forms as another tool to help clear communication. A general rule of thumb we were taught was keeping sentences to 22 words or less. The promulgated forms mostly follow this informal rule, but in some cases the information could be shared with some bullet points and a simple narrative.

Under Partial Payments there is a specific mortgage term "suspense payments". This is a unique feature to mortgages and is rather confusing. The immediate consumer reaction is that money is not being used to pay for a debt. The money is being withheld and it is unfair. Some consumers consider this fraud and deceptive. We would suggest you adjust the language on "suspense payments" to something easier to understand. "Why are you not applying my money to my debt?" is a reasonable consumer question. This form could accurately capture a common concern and help alleviate emotional responses.

We feel that the addition of the box identifying Additional Information is helpful and offers the servicers a clear place to put additional information, second liens, etc. We support this box and its purpose.

4. Chapter 13 Forms

In accordance with your findings we would ask that more consumer testing be done around Pre-Petition Arrearage. Even with a simplified form, there is still a fair amount of customer confusion. Arrearage language still needs more research and focus to help customers understand the breadth of information.

Conclusion

The HOPE NOW Alliance is supportive of the Bureau's work to design clear documents for customers in bankruptcy. We hope our suggestions will add to your important work. We would encourage the Bureau to consider publishing the forms also in Spanish. It will be an important step in providing helpful information to all customers, especially a quickly rising demographic.

Please feel free to reach out to Eric Selk, Executive Director of the HOPE NOW Alliance at 202 589 2449 or Eric.Selk@hopenow.com

Best,

Eric Selk
Executive Director
HOPE NOW Alliance
600 13th Street NW Suite 400
Washington DC 20005

State Employees' Credit Union

Loan Administration

May 25, 2016

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1275 First Street NE.,
Washington, DC 20002

RE: Response to the Amendments to the 2013 Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z): Docket # CFPB-2016-0016

Dear Ms. Jackson:

After reviewing the report outlining the Consumer Financial Protection Bureau's (Bureau) procedures and findings for consumer testing of specialized mortgage statements for borrowers under bankruptcy, issued on April 26, 2016, SECU has the following comments.

We applaud the Bureau's desire to provide additional assistance to mortgage borrowers under bankruptcy protection. Specifically, the Bureau's desire to give borrowers under bankruptcy additional tools aimed at achieving this goal is commendable. We also appreciate the Bureau's efforts to gather information from industry participants that may have to implement changes to make this information available to borrowers.

We understand the Bureau's objective to ensure that consumers remain informed about outstanding debts for which they are legally obligated. However, lenders and servicers are required to take certain actions and not take certain actions under various laws and regulations. Some of the requirements conflict with one another, putting lenders in a position that can be avoided with regulatory guidance. We appreciate the Bureau's attempt to address one of the conflicts within this proposal.

One concern with providing mortgage statements organized in different ways for various situations is that many debtors find themselves in and out of bankruptcy multiple times due to failure to comply with the bankruptcy requirements during the servicing of a loan. Receiving mortgage statements that appear different when they are under bankruptcy protection as compared to when they are not may result in more confusion to borrowers. We feel that servicers providing consistent information about the debts will ensure that accurate and timely information is provided to all borrowers.

Also, lenders/servicers are at a disadvantage for providing accurate account information for borrowers under bankruptcy because periodic payments are often not remitted directly by the

debtor to the servicer. For borrowers under bankruptcy protection, payments are typically submitted to the bankruptcy court which are processed and forwarded to lenders/servicers. There may be a difference in the borrower's records and the servicer's records simply due to that delay.

In the conclusion of the report, it is noted that "clear information about the consequences of non-payment" would be included as a notice on the mortgage statement. Our concern is that this verbiage will set a powerful and dangerous precedent. Current bankruptcy laws clearly restrict a creditor's ability to collect debts while a debtor is under bankruptcy protection. Mandating a statement that utilizes similar language, as used in other collection attempts, could subject financial institutions to penalties and scrutiny from the bankruptcy court, and the courts have to mitigate contradictions between federal consumer protection regulations and bankruptcy laws.

Lastly, all of the statement options presented in the report will require significant and costly system changes for many servicers. Some information required by the statement examples may not be maintained in the servicer's system that is used to create current statements. Since the Bureau has established the required format for mortgage statements, borrowers should be familiar with the existing format due to receiving the statements prior to filing bankruptcy. We recommend that the existing format continue to be utilized for all consumers (those not under bankruptcy protection as well as those under bankruptcy protection). For those under bankruptcy protection, we agree that the addition of a "Bankruptcy Message" statement would be appropriate in order to alert the borrower that the statement is for informational purposes only and that it is not an attempt to collect a debt. Additional language should be added to the message to alert the borrower that all payments made through the bankruptcy court may not yet be reflected and that any past due status may not be indicative of the borrower's actual post-petition status. We believe these changes will provide clear and sufficient information to the borrowers while not resulting in costly and burdensome changes for industry stakeholders.

We hope that our comments will be taken into consideration. We will gladly provide any additional information that will assist your efforts to evaluate the impact of this proposed rule and the consideration of appropriate changes to the rule.

Respectfully submitted,

Spencer Scarboro
SVP – Lending Integrity
State Employees' Credit Union

OHIO CREDIT
UNION LEAGUE

May 26, 2013

Monica Jackson
Office of the Executive Secretary
Bureau of Consumer Financial Protection
1700 G Street, N.W.
Washington, DC 20552

Re: Amendments to the 2013 Mortgage Servicing Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z): Bankruptcy Forms Study
Docket No.: CFPB-2016-0016

Dear Ms. Jackson:

On behalf of Ohio's nearly 300 credit unions, the following comments are presented for the limited purpose of evaluating the study of alternative statements to be provided to mortgage borrowers who have filed bankruptcy to advise them of the balances owed for their outstanding loans. The Consumer Financial Protection Bureau requested feedback regarding a study commissioned from Fors Marsh Group (FMG) on the comparative efficacy of proposed forms for this purpose.

The Ohio Credit Union League (OCUL) again advises against requiring creditors to directly contact debtors who have filed bankruptcy. Commonly, this requirement would be in direct contradiction of the creditor instructions from the bankruptcy courts, as was noted by numerous commenters during previous requests for comments on the issue.

Additionally, debtors in bankruptcy are advised that they will not be contacted by creditors attempting to collect outstanding debts during the pendency of their case. Requiring *any* communication from a mortgage creditor would be confusing to the debtor, who would most typically see the information as an attempt to collect on the loan.

However, should the CFPB determine that direct communications between a mortgage creditor and a debtor in bankruptcy will be required, OCUL notes that the study performed by FMG was performed on a very miniscule sampling of individuals who had gone through the experience of filing bankruptcy – merely 51 persons, further divided by the type of bankruptcy (Chapter 7 vs. Chapter 13) and the geographic location (Arlington, Fort Lauderdale, and Chicago). Given the volume of bankruptcy cases filed in the United States (over 195,000 non-business cases filed in the first quarter of 2016 alone, according to the U.S. Courts website) the sample size of only 51 does not appear to be statistically valid as a fair test of consumer understanding of the information contained in the forms.

AMERICA'S CREDIT UNIONS™

10 W. Broad St., Suite 1100, Columbus, Ohio 43215
614-336-2894 ■ 800-486-2917 ■ fax 614-336-2895 ■ www.OhioCreditUnions.org

Monica Jackson
Office of the Executive Secretary
Bureau of Consumer Financial Protection

Therefore, we urge the CFPB to expand its study of what information (if, indeed, any at all) must be communicated directly to a debtor in bankruptcy by a mortgage creditor. Any study should involve a much larger sampling of consumers and should not be limited to only those who have been through a bankruptcy, since potential debtors in bankruptcy necessarily will include individuals who are not familiar with what to expect. The geographic area of the sample should also be expanded, as well as assuring that individuals of differing educational and/or financial expertise levels are included.

The Ohio Credit Union League appreciates the opportunity to provide comments on CFPB's study of possible disclosures of outstanding loan balances that might be provided to debtors in bankruptcy. If you have any questions, please do not hesitate to contact me at (800) 486-2917, ext. 262 or cmccallister@ohiocul.org.

Sincerely,

Carole McCallister
Manager, Research & Analysis

cc: Stan Barnes, OCUL Chair
Barry Shaner, OCUL Government Affairs Chair
Credit Union National Association

May 26, 2016

Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552
www.regulations.gov

Re: Docket No. CFPB-2016-0016 / RIN 3170-AA49
Re-opened comment period for the proposed amendments to the 2013 Mortgage Rules
Sample periodic statement forms for consumers in bankruptcy

Ladies and Gentlemen:

Jack Henry & Associates, Inc.® (JHA™) appreciates the opportunity to submit comments regarding the CFPB's proposal to amend periodic statements for consumer in bankruptcy. JHA is a leading provider of computer systems and electronic payment solutions primarily for financial services organizations.

Our comments focus on the implementation period of the revisions to periodic statement requirements for residential mortgage loans under Reg. Z's servicing provisions (12 CFR Part 1026, §1026.41). Due to the extensive nature of these changes and the introduction of new formats (which will require new fields, tracking mechanisms, and logic in the software), we urge the CFPB to provide a minimum of 24 months for its implementation period. This longer period is needed in order that software systems can be updated with extensive coding changes and so that financial institutions can create and implement process changes for these complex periodic statement requirements.

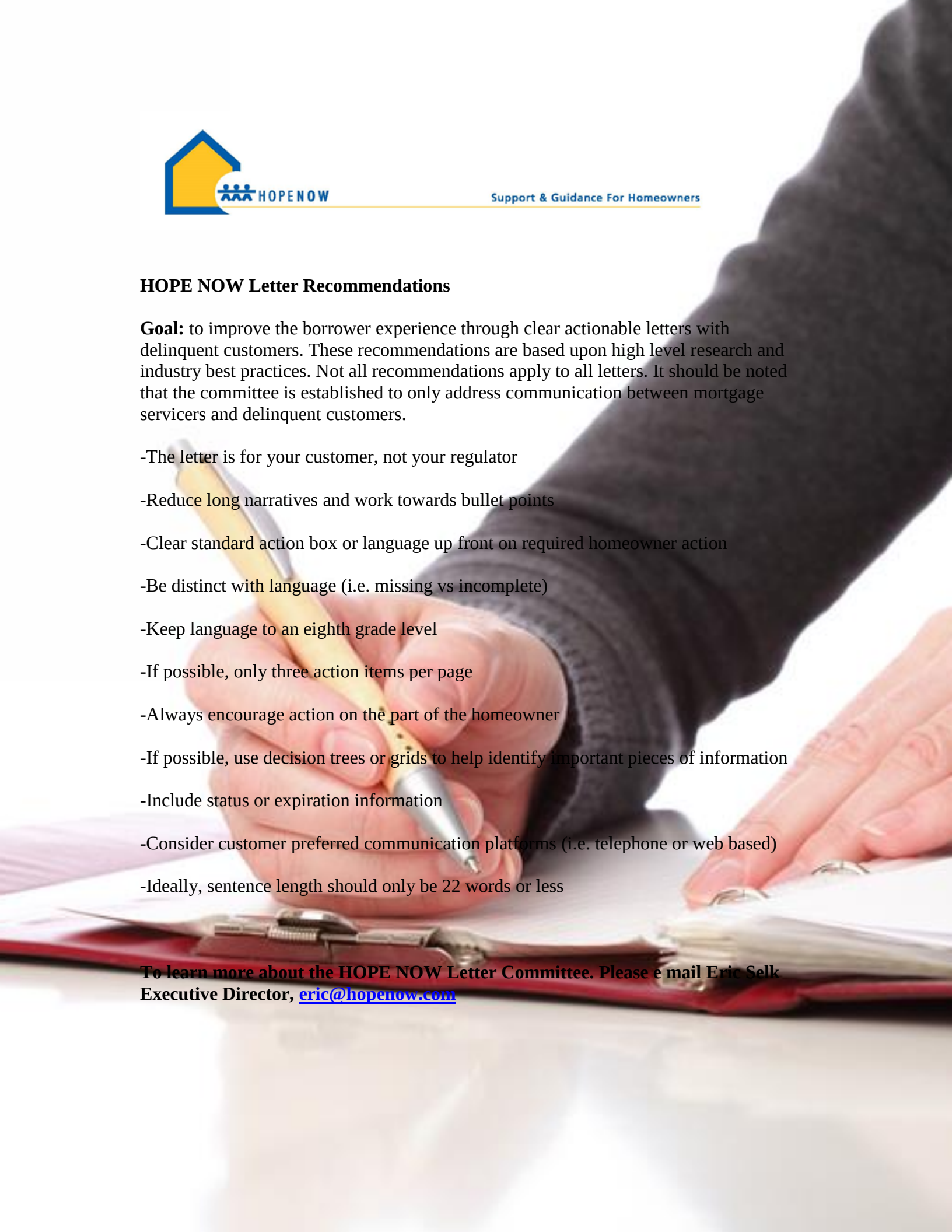
Software providers such as Jack Henry & Associates need lead time to analyze, plan, design, develop, test, document and distribute new software to our financial institution clients prior to the implementation date. Our clients must then test the new code, implement procedural changes, and train their employees on the system updates prior to the effective date. To further complicate the process, our financial institution clients may operate on different releases of software so multiple versions will have to be supported. This results in the need to retro-fit software changes into multiple versions, which further stretches the resources involved in implementation. Therefore, it is vital that we as software providers, as well as financial institutions, have adequate time to thoroughly address each requirement in order to facilitate an orderly transition for these new requirements.

With these factors in mind, we urge the CFPB to provide an appropriate implementation period to allow financial institutions and their respective software providers sufficient time to enhance their systems and prepare for these additional periodic statement requirements and new formats. Should you have any questions regarding JHA's comments, please contact Dennis Gorges (GM, Director of Enterprise Risk Management) at dgorges@jackhenry.com or Jennifer Kilgore (Compliance Manager) at jkilgore@jackhenry.com or at (417) 235-6652.

Sincerely,

JACK HENRY & ASSOCIATES, INC.

Jennifer Kilgore
Compliance Manager



HOPENOW

Support & Guidance For Homeowners

HOPE NOW Letter Recommendations

Goal: to improve the borrower experience through clear actionable letters with delinquent customers. These recommendations are based upon high level research and industry best practices. Not all recommendations apply to all letters. It should be noted that the committee is established to only address communication between mortgage servicers and delinquent customers.

-The letter is for your customer, not your regulator

-Reduce long narratives and work towards bullet points

-Clear standard action box or language up front on required homeowner action

-Be distinct with language (i.e. missing vs incomplete)

-Keep language to an eighth grade level

-If possible, only three action items per page

-Always encourage action on the part of the homeowner

-If possible, use decision trees or grids to help identify important pieces of information

-Include status or expiration information

-Consider customer preferred communication platforms (i.e. telephone or web based)

-Ideally, sentence length should only be 22 words or less

To learn more about the HOPE NOW Letter Committee. Please e mail Eric Selk Executive Director, eric@hopenow.com

May 26, 2016

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

RE: Docket No. CFPB-2016-0016 / RIN 3170-AA49

Dear Ms. Jackson:

JPMorgan Chase Bank, N.A. appreciates the investment that the Consumer Financial Protection Bureau (the "Bureau") has made in helping consumers who have filed for bankruptcy understand important account and payment information. We likewise appreciate the opportunity to comment on the "Testing of Bankruptcy Periodic Statement Forms for Mortgage Servicing" report (the "Report") issued by the Bureau. Below, we provide our feedback on the forms featured in the Report and note a few items that we believe the Bureau should consider when finalizing the forms and accompanying rules.

Bankruptcy Message & Opting Out of Bankruptcy Statements

It is critical that customers understand each statement in this box. As a result, we encourage the Bureau to adopt the short, concise approaches used in Form C.2 (for Chapter 7) and Form C.6 (for Chapter 13).

The Bureau's December 15, 2014 Notice of Proposed Rulemaking ("NPRM") contemplated that a customer could opt out of bankruptcy statements in writing. For the convenience of customers, we suggest that the Bureau also permit customers to opt out by telephone, by electronic communication, or by other channels.

Explanation of Payment Amount

This comment refers to the "Explanation" section, as well as to the unlabeled box that appears directly above it on each of the forms provided in the Report.

Chapter 7. We believe that customers will be best served by the approach of Form C.1, which lists the principal, interest, and escrow separately. The Bureau should consider revising the wording from "Payment Date" to "Payment Due Date" to facilitate customer understanding.

Chapter 13. Customers will likely find Form B.4's approach and explanatory note easiest to understand. Because Form B.4 provides the customer with all of the unpaid post-petition fees and monthly payment amounts as opposed to just the current monthly payment amount, the Bureau should consider revising "Total Amount Owed Post-Petition" to "Total Amount Due Post-Petition" to more accurately reflect the information provided. In addition, the use of the word "owe" may be construed as an attempt to collect on the debt. The Bureau's final model form should make very clear what figures represent the amount of the next payment and the total amount due post-petition.

Past Payments Breakdown

Chapter 7. We suggest that the Bureau adopt the approach of Form C.1. Customer understanding will probably be enhanced by principal interest, escrow, and fees being broken out to separate line-items.

Chapter 13. This section should clearly indicate whether it reflects only post-petition information or whether it also includes pre-petition information.

Pre-Petition Arrearage – *Chapter 13*

We agree that the bankruptcy statement form should include this information, and we prefer the approach taken by Form C.6. However, the form refers to a "Total Claim Amount." This should be rephrased when the Trustee is paying the amount stated in the debtor's plan. Also, servicers will require guidance for how this section should be filled out where a claim is filed with a pre-petition arrearage, but the debtor chooses to pay the entire pre-petition arrearage and post-petition amounts directly to the creditor and no amounts are being paid by the trustee. Finally, it is very important that this section emphasize to the customer that this status will not reflect payments that a customer has remitted to the Trustee if the Trustee has not yet issued those payments to the servicer.

Account History / Delinquency Information – *Chapter 7*

For non-bankruptcy statements, the Bureau permits servicers to provide the Delinquency Information on a separate page. The Bureau should permit servicers to do the same with this information in bankruptcy contexts for the sake of consistency and to help servicers implement the Bureau's bankruptcy statement requirements more smoothly. We suggest adopting the language used in Form C.1 because customers may prefer the heading "Account Information" rather than "Delinquency Information."

Payment Coupon

Chapter 7. Customers will be best served by the format of Form C.3. This version provides the customer with the total amount needed to bring the loan current.

Chapter 13. We suggest that the Bureau utilize the format of Form A.3. However, we believe customers would find it more helpful if the Bureau adopted a format that itemized all post-petition amounts due in addition to the next payment due.

Bankruptcy Rule 3002.1.

For Chapter 13 cases, Federal Rule of Bankruptcy Procedure 3002.1 requires a Notice of Post-Petition Fees to be filed within 180 days of the date the fee was incurred. A debtor or trustee has one year to object before the amount can be deemed recoverable from the customer. We encourage the Bureau to consider how Chapter 13 bankruptcy statement forms will reflect this.

Modifications to Forms.

A bankruptcy statement form document may need to be substantively altered in certain circumstances to reflect information that is not common to other customers. This is especially true in Chapter 13 cases, where post-petition amounts may be added to a bankruptcy plan by agreed orders, where a court may order a cram-down, where a post-petition loan modification could occur, and where a lien strip will occur but the lien will remain in place until a bankruptcy discharge is entered. We believe that any rule the Bureau enacts that provides a "safe harbor" for the use of model bankruptcy statement forms should accommodate the occasional need for such substantive modifications in order to accommodate an individual customer's circumstances.

With regard to non-substantive modifications, we suggest that the Bureau take the same approach that it has taken with model forms in the Regulation X context and allow servicers to make changes to format and content that do not affect the substance or clarity of the forms without losing any "safe harbor" provided for use of the forms. *See* Supp. I to 12 C.F.R. Part 1024, Official Bureau Interpretation of App'x MS, ¶ 1. This will enable servicers to be responsive to customer feedback by making non-substantive adjustments to the format and content of the statements.

Again, we support the Bureau's efforts to make account information easily accessible to bankruptcy customers. We appreciate the opportunity to help the Bureau determine the best way to meet that goal.

Respectfully,

Peter Muriungi
Managing Director
Head of Servicing
Mortgage Banking

May 26, 2016

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

RE: Docket No. CFPB-2016-0016 / RIN 3170-AA49

Dear Ms. Jackson:

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Explanation of Payment Amount

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Payment Coupon

Chapter 7. Customers will be best served by the format of Form C.3. This version provides the customer with the total amount needed to bring the loan current.

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Bankruptcy Rule 3002.1.

For Chapter 13 cases, Federal Rule of Bankruptcy Procedure 3002.1 requires a Notice of Post-Petition Fees to be filed within 180 days of the date the fee was incurred. A debtor or trustee has one year to object before the amount can be deemed recoverable from the customer. We encourage the Bureau to consider how Chapter 13 bankruptcy statement forms will reflect this.

Modifications to Forms.

A bankruptcy statement form document may need to be substantively altered in certain circumstances to reflect information that is not common to other customers. This is especially true in Chapter 13 cases, where post-petition amounts may be added to a bankruptcy plan by agreed orders, where a court may order a cram-down, where a post-petition loan modification could occur, and where a lien strip will occur but the lien will remain in place until a bankruptcy discharge is entered. We believe that any rule the Bureau enacts that provides a "safe harbor" for the use of model bankruptcy statement forms should accommodate the occasional need for such substantive modifications in order to accommodate an individual customer's circumstances.

With regard to non-substantive modifications, we suggest that the Bureau take the same approach that it has taken with model forms in the Regulation X context and allow servicers to make changes to format and content that do not affect the substance or clarity of the forms without losing any "safe harbor" provided for use of the forms. *See* Supp. I to 12 C.F.R. Part 1024, Official Bureau Interpretation of App'x MS, ¶ 1. This will enable servicers to be responsive to customer feedback by making non-substantive adjustments to the format and content of the statements.

Again, we support the Bureau's efforts to make account information easily accessible to bankruptcy customers. We appreciate the opportunity to help the Bureau determine the best way to meet that goal.

Respectfully,

Peter Muriungi
Managing Director
Head of Servicing
Mortgage Banking

May 26, 2016

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, D.C. 20552

RE: Amendments to the 2013 Mortgage Rules under the Equal Credit Opportunity Act (Regulation B), Real Estate Settlement Procedures Act (Regulation X), and the Truth in Lending Act (Regulation Z)
Docket Number CFPB-2016-0016
RIN 3170-AA49

Dear Ms. Jackson:

The Mortgage Bankers Association[1] (MBA) and the Housing Policy Council[2] (HPC) appreciate this opportunity to submit comments on the Consumer Testing of Bankruptcy Periodic Statement Forms for Mortgage Servicing (Report). Providing accurate and clear periodic statements for borrowers in bankruptcy presents unique challenges and we appreciate the time and attention that CFPB has given to this issue and the outreach that it has conducted.

1. Testing Methodology

MBA and HPC are concerned with the overall testing methodology and do not believe that the results of the testing should be used as the basis for rule-making or adoption of

[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of more than 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org

[2] The HPC was established in April 2003 by FSR's Board. HPC's mission is to promote the mortgage and housing marketplace interests of our members in legislative, regulatory, and judicial forums as well as to communicate the benefits of a fully competitive and integrated housing market to the American public. HPC advocates on behalf of its members on mortgage finance and housing issues to Congress, the Administration, regulators and the public. HPC companies originate, service and insure mortgages.

a final form, especially a sample Chapter 13 form.[3] We urge the CFPB to publish for comment any proposed sample forms prior to finalizing and to give servicers and other stakeholders sufficient implementation time.

One of the major flaws of the study is that it focused exclusively on one subset of end-users of periodic statements—individual debtors—but failed to seek input and feedback from other parties in a bankruptcy case who use and review such statements, including Bankruptcy Judges, debtors' attorneys, and bankruptcy industry associations and groups such as the National Association of Chapter Thirteen Trustees, The National Association of Bankruptcy Trustees, The National Association of Consumer Bankruptcy Attorneys, The National Conference of Bankruptcy Judges, The American Bankruptcy Institute and The American College of Bankruptcy.

Additionally, the sample size was extremely small with a total of only 51 participants. Twenty eight of the participants had Chapter 7 experience, one had Chapter 11 experience, and 17 had Chapter 13 experience. Four participants had no bankruptcy experience. The testing was conducted in only three locations.

Twenty six participants reviewed the sample Chapter 7 forms and 25 reviewed the Chapter 13 sample forms; however, because the forms were revised between rounds, the Round 3 versions of the sample Chapter 7 forms were only reviewed by 7 participants; the Chapter 13 forms by only 10. In Round 3, eye tracking analysis was conducted on the Chapter 7 Total Pay Form with only five participants.

The report notes other major limitations of the research were that 1) participants were inferring information from the form about *both* the mortgage *and* their bankruptcy case; 2) not all participants had a mortgage while in bankruptcy; 3) not all participants were delinquent on their mortgages when they filed for bankruptcy; and 4) not all participants had bankruptcy experience.

While the purpose of this testing was to assess consumer comprehension, perceived utility, and attitudinal reactions to the sample forms, it is important to note that the sample forms used in the testing were not representative of those actually used in the industry. For example, the Explanation of Payment Amount box listed just principal, interest, escrow, late fees, and unpaid amounts. In reality, for some accounts, that box will need to also reflect elements such as voluntary insurance (which is not escrowed) and other items. The existence of these other elements might affect the borrower's comprehension of the box. Additionally, the participants were not presented with multiple consecutive statements limiting inferences that can be drawn about participants' understanding of past payment allocation and suspense accounts.[4]

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[3] The "final" Chapter 7 forms C.1 and C.3 are substantially similar to the existing sample periodic form H-30(B). Servicers could add a bankruptcy disclaimer to H-30(B) with relatively few system changes.

[4] Additional concerns revolve around loans that are bifurcated between secured and unsecured treatment, in whole or in part, through the plan confirmation process. These situations will involve very complex accounting that will inevitably create large confusion among borrowers in bankruptcy. As these treatments are largely dependent upon the completion of the plan and entry of an order of discharge, the

2. Response to Receiving Statements

While the report concludes that participants generally preferred to receive these statements, it also noted that some participants had a very negative reaction to the forms and found the forms not to be consumer friendly.[5] While a majority of participants in Round 1 said that the form was for "informational purposes rather than attempting to collect a debt," several participants were confused and felt the form presented conflicting information:

> *"If this is for information only, then why are they sending you a bill that is terrifying? … If it's informational, what is the intent? I don't get it at all."*
>
> *"This is organized but still feels like there's a lot of confusing information on there. Starting with 'This is for your informational purposes only,' and "This is a debt,' so I don't understand that part. Language is kind of confusing; to me there's a lot of conflicting information."*
>
> *"[The purpose of the notice] is to tell me if I am in bankruptcy, but they're still sending me a bill. You shouldn't get a bill when you're in bankruptcy. So why am I still getting a bill?"*
>
> *"[It] seems like there is a double message here: 'information only,' but they're also showing you a payment amount and a choice to pay it. It's confusing … this is very deceptive, I don't get it."*

In Round 2, the Bankruptcy Message was revised to include a notice that if the borrower did not wish to continue to receive the statement, they should write to the servicer. Despite this notice, only one of the Chapter 13 participants indicated she would write to the servicer. Two participants indicated they would call their attorney, one said there was "nothing that they could do;" one responded that the notice did not say what could be done; and one did not know what they would do.[6] It does not appear that participants were asked this question in Round 3, however the report notes that a few indicated that they would either prefer not to receive the statements at all or would not want to receive them frequently.[7]

Due to the potential conflicts between bankruptcy law and the periodic statement requirements, and given the very negative reaction by some participants to the statements and the confusion over how to opt-out of receiving statements, we strongly urge the CFPB to require consumers to opt-in to receive statements and that opt-in be

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accounting during the pendency of the bankruptcy case will almost always be different from the borrower's perceived debt status.

[5] Section 2.4, page 13

[6] Section 4.5, page 35.

[7] Section 6.4, page 51.

made in writing, separate from the bankruptcy filings.[8] Obtaining a written request to receive statements from the consumer or their counsel will ensure that statements are only sent to consumers who wish to receive them and will provide more protection to defend against claims of a violation of stay.

These concerns about automatic stay violations are well founded based upon the borrower reactions in the survey – "You shouldn't get a bill when you're in bankruptcy" and "It's confusing . . . this is deceptive." Some jurisdictions have local rules or general orders that specifically provide stay violation protection for billing statements. We urge the CFPB to also obtain input from the Bankruptcy Judges on any proposed sample form(s) to ensure that it comports with their understanding of automatic stay provisions and provide some type of universal protections for billing statements as well as other normal loan servicing correspondence.

3. Bankruptcy Law/Rulings Drive Content

Overall, participants in all three rounds expressed an understanding of the information presented on the Chapter 7 forms[9] and preferred use of the terms "amount due" and "due date" over "payment amount" and "payment date." The testing included eye tracking analysis for the Chapter 7 Total Pay form as it was "sufficiently close to a final version." We note that with the exception of the Bankruptcy Message, the Round 3 "Total Pay Form" (C.1) and the Delinquency Disclosure Form (C.3) are substantially similar to the existing Sample Periodic Statement H-30(B).

Despite the participant's preference for Chapter 7 statements that say "amount due" and "due date" rather than "payment amount" and "payment date," servicers often specifically try to avoid using the word "due" for discharged debt to avoid violating the discharge injunction. This is an illustration of the importance of getting input from debtors' attorneys.

4. Chapter 13 Forms

Although the Chapter 13 forms were revised between rounds to address usability or comprehension issues, participants continued to struggle with understanding the difference between post-petition payments and pre-petition payments. The Report notes that in Round 3 some participants wrongly concluded that their post-petition payments included amounts that were past due when they filed for bankruptcy and one participant did not understand that boxes were referring to separate payments (though the Report does not indicate which form was used).[10]

[8] See MBA's comment letter of March 16, 2015 re: Amendments to the 2013 Mortgage Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z); Docket Number CFPB-2014-0033; RIN 3170-AA49.
[9] A few participants expressed confusion about partial payments/suspense accounts.
[10] Section 6.8, page 55.

In Round 2, the Report notes that 13 participants had a lower comprehension of Explanation of Payment Amounts which "may stem from overall confusion regarding the difference between pre-petition and post-petition payments."

In Round 3, most participants were able to state the correct payment amount on the No Arrearage Form (C.4); however, some participants were confused about how much the Alternate Arrearage Form (C.6) was asking them to pay.

The Alternate Arrearage Form separated partial payments into separate suspense accounts (pre-petition and post-petition). The Report notes that some participants did not grasp that these were separate accounts and some seemed confused "as to whether the money was paid before or after bankruptcy, or if it was going into pre- and post-bankruptcy debt suspense accounts."[11]

With respect to Pre-Petition Arrearage, the Report notes that in Round 1, participants "generally understood" that pre-petition arrearage reflected payments they were making to the amount past due when the filed for bankruptcy. In Round 2, "comprehension for all pre-petition arrearage information was low across versions of the Chapter 13 forms, largely stemming from the arrearage language on all forms."[12] The Report states that this may be due to the fact that Round 2 presented more complex payment history than Round 1 (delinquent post-petition payment but timely pre-petition payment).

While in Round 3, 9 out of 10 participants noticed the distinction between pre- and post-petition arrearage payments, the Report indicated it might be because participants were told that second form might differ from first form which did not have that information. Three participants out of 10 did not understand what "pre-petition arrearage" meant.

Also of note is the failure of the form or the study to contemplate the many different streams of Chapter 13 Trustee payments on a given bankruptcy loan. Each separate "claim" maintained within a Chapter 13 Trustee's accounting system will create huge burdens on the mortgage servicer in relaying this information to the borrower. For instance, pre-petition arrearage stemming from a proof of claim is only one form of Trustee disbursement in a Chapter 13 context. Supplemental claims under Bankruptcy Rule 3002.1 also create new streams of Trustee payments that would require separate reporting areas within the statement. Also the cure of post-petition arrearages in an amended Chapter 13 Plan creates a separate stream of payments from a Chapter 13 Trustee which would require a separate space on the proposed form.

Conclusion

The testing methodology used in this Report is insufficient to support any conclusions about the perceived utility of the forms or consumer comprehension of the information presented in the sample forms. Additionally, the Chapter 13 participants had clear

[11] Section 6.8, page 55.
[12] Section 4.11, page 38.

difficulty understanding the difference between pre- and post-petition arrearages in all three rounds of testing.

We do not believe reliable conclusions can be drawn from flawed testing methodology, especially regarding the sample Chapter 13 forms. We respectfully request that the CFPB publish its proposed forms for notice and comment prior to finalizing them.

Finally, we respectfully request the CFPB provide an 18-month implementation period after finalization of the Proposed Rule and forms as these forms are likely to require complex systems change and comprehensive training in order to implement them effectively.

Please feel free to reach out to Justin Wiseman, Director of Loan Administration Policy, MBA, at (202) 557-2854 or JWiseman@mba.org, Sara Singhas, Assistant Director, Public Policy, MBA, at (202) 557-2826 or SSinghas@mba.org, or Paul Leonard, Senior Vice President of Government Affairs, HPC, at (202) 589-1921 or Paul.Leonard@FSRoundtable.org with any questions you might have regarding these comments.

Best,

Housing Policy Council of the Financial Services Roundtable
Mortgage Bankers Association

NAVY FEDERAL Credit Union

Office of the President

May 26, 2016

Ms. Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street N.W.
Washington, D.C. 20552

Re: Docket No. CFPB-2016-0016;
RIN 3170-AA49
Amendments to the 2013 Mortgage Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)

Dear Ms. Jackson:

Navy Federal Credit Union ("Navy Federal") appreciates the opportunity to provide our comments regarding the testing of proposed bankruptcy periodic statements in response to the Consumer Financial Protection Bureau's (Bureau) reopening of the comment period on the Amendments to the 2013 Mortgage Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z).

By way of background, Navy Federal is the nation's largest natural person credit union with more than $75 billion in assets, over 6 million members, 282 branches, and a workforce of over 15,000 employees worldwide. We are committed to serving the needs and improving the financial condition of our members.

Navy Federal supports the Bureau's proposed requirement to send periodic statements to debtors in bankruptcy, and for taking significant steps towards making sure consumers will understand the information contained therein. Traditionally, our members have expressed the desire to receive such statements, and like the Bureau we strive to help our members understand their financial information.

We generally support the scope and testing methodology used in the Fors Marsh Group Report on the Testing of Bankruptcy Periodic Statement Forms for Mortgage Servicing (Report), including the use of multiple revised statements to determine which of them are best understood by consumers. However, we are concerned that the sample size of the test group and lack of representation across

multiple regions may yield Report conclusions that could inaccurately represent the perspectives of the majority.

The Report provides multiple scenarios representing Chapter 7 and 13 Bankruptcies. Some Chapter 7 versions provide an example depicting past due payments with a delinquency box. However, the Chapter 13 versions did not provide a similar example; instead, there was only a pre-petition arrearage section. In the event a consumer becomes delinquent post-petition while in an active Chapter 13 Bankruptcy, we request guidance on whether this should be disclosed through a delinquency box or some other means.

The Bureau states that the purpose of the Report was to gauge the level of consumer understanding of the information presented. We support that goal and believe some of the proposed iterations of the sample forms may facilitate consumer comprehension:

1. Chapter 7: We believe the overall look and feel of Appendix A.1 Chapter 7 Proposed Form will provide the greatest clarity for consumers. However, we believe the Bankruptcy Message from Appendix C.1 Total Pay Form is more clearly presented and as such, recommend replacing the existing message on A.1 with the C.1 message.
2. Chapter 13: We support the overall structure of the proposed form from Appendix A.3. However, we believe the use of the "Pre-Bankruptcy Debt (Arrearage)" and "Important Messages" boxes from the Appendix B.6 Chapter 13 Combined P&I Form are easier to comprehend, and as such, recommend inserting said boxes into form A.3.

Finally, we request the Bureau provide additional information and clarification regarding an Asset Chapter 7 Bankruptcy. We specifically request clarification as to how the payout would be represented on a statement upon liquidation of the assets. Clarification of this issue should reduce uncertainty among consumers.

In closing, we thank the Bureau for a second opportunity to share our observations and provide comments on this proposal. Should you or a member of your staff have additional questions about our responses, please contact Lillian Galloway, Sr. Policy and Compliance Officer at (703) 206-2236.

Sincerely,

Cutler Dawson

Cutler Dawson
President/CEO

CD/lg

COMMENTS

to the

Consumer Financial Protection Bureau

12 CFR Part 1026

[Docket No. CFPB-2016-0016]

RIN 3170-AA49

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

Consumer Testing of the Proposed Sample Forms

by the

National Consumer Law Center
(on behalf of its low income clients)

and the

National Association of Consumer Bankruptcy Attorneys

May 26, 2016

The **National Consumer Law Center,**[1] on behalf of its low-income clients, and the **National Association of Consumer Bankruptcy Attorneys**,[2] submit the following comments in response to the Bureau's reopening of the docket to seek public comment specifically on the report summarizing the methods and results of the consumer testing of sample periodic statement forms for consumers in bankruptcy. In our earlier comments, we applauded the Bureau for proposing in this docket a much improved set of bankruptcy exemptions to the mortgage servicing rules. We hope the Bureau will retain in the final rule the many consumer protections contained in the proposal. We also urge the CFPB to make further changes before the rules take effect in accordance with these comments and those we submitted earlier.

As noted in our initial comments, we concur with the Bureau's statement that "a consumer's status in bankruptcy" should not "act as a bar to receiving fundamental information about the mortgage loan account."[3] The Bureau should be applauded for proposing in this docket a limited exemption to the periodic statement rule that preserves the ability of bankruptcy borrowers to receive essential account information.

The testing confirms that bankruptcy debtors gain significant benefits from receiving periodic statements. Despite the limitation that the testing was done with some individuals who lacked experience in bankruptcy, based on hypothetical scenarios, the participants generally appreciated the value of receiving statements.

As one chapter 7 participant in Round 1 stated, "I don't know why anybody would not want to receive these notices." Report, p. 13. A chapter 13 Round 1 participant noted that the statement information would help avoid calls to the trustee: "I would rather get this. It would help. I would be able to keep up with it a lot more. . . It would alleviate me calling my trustee a lot." Report, p.13.

A chapter 7 participant in Round 2 stated: "I wish I would have received something like that when I was going through this process, that's for sure." Report, p. 33. A chapter 13 Round 1 participant observed: "I don't find the notice to be threatening. Going through bankruptcy is a traumatic experience. To get a notice that is not threatening or demanding helps a lot. It's pertinent information that is presented not in a threatening way." Report, p. 33.

[1] Since 1969, the nonprofit **National Consumer Law Center®** (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness. NCLC publishes a series of consumer law treatises including Consumer Bankruptcy Law and Practice, Mortgage Lending, Truth in Lending, and Foreclosures and Mortgage Servicing. These comments are written by NCLC attorney John Rao.

[2] The **National Association of Consumer Bankruptcy Attorneys** (http://www.nacba.org) is the only national organization dedicated to serving the needs of consumer bankruptcy attorneys and protecting the rights of consumer debtors in bankruptcy. Formed in 1992, NACBA now has 3,000 members located in all 50 states and Puerto Rico.

[3] *See* Section-by-Section Analysis, 79 Fed. Reg. 74249 (Dec. 15, 2014).

In evaluating the testing results, the Bureau should consider that the value of the disclosures for borrowers in bankruptcy is not limited to consumers. Most consumer debtors are represented by attorneys in Chapter 13 cases, and the disclosures will greatly assist these attorneys, and Chapter 13 trustees, in advising consumer debtors, if payment problems arise during the case.

As discussed below, the testing also supports our position that several of the exclusions in proposed rule will deprive consumers of critical account information.

1. Use of "due" in payment amount disclosures

The Round 1 Forms, which include the proposed Chapter 7 and Chapter 13 forms, did not use the word "due" when referring to the current payment amount that was due. The Report notes that "Five of 17 participants (three of nine Chapter 7 Participants; two of eight Chapter 13 Participants) expressed some confusion or hesitation about the due date, explaining that the phrase 'Payment Date' did not explicitly indicate that the payment was 'due' on that date." Report, p. 16. We believe that the final forms should be revised to include "due" in the appropriate places, particularly in the coupon location. Use of the word "due" in connection with the payment amount does not somehow transform the statements into a threatening communication that would violate the automatic stay or discharge injunction. There is no sound reason for eliminating this common terminology when a borrower is in bankruptcy or has received a discharge.

The Round 3 results were even more conclusive on this point. The Chapter 7 Delinquency Disclosure Form in Round 3 used the phrases "Amount Due" and "Due Date" instead of "Payment Amount" and "Payment Date." All Round 3 Chapter 7 participants "expressed a preference for the language used in the Delinquency Disclosure Form … because of the inclusion of the word 'due.'" Report, p. 53. Participants noted that the word due" made it easier for them to distinguish these payment amounts from others on the forms and that they often scan statements quickly looking for the word "due." Again, this is no different than how borrowers read periodic statements outside the bankruptcy setting.

The Round 1 participants generally preferred having the full amount owed listed in the Payment Amount box, and we concur that this is helpful. The Round 2 forms left the payment amount off of the payment coupon. The Report noted that "The blank payment coupon confused a number of Chapter 7 Participants, as some looked to the coupon to determine how much they owed." Report, p. 36. Even though the Round 2 Chapter 13 participants did not seem concerned about this omission from the payment coupon, we believe that the payment amount should be reflected on the payment coupon for both Chapter 7 and Chapter 13 forms.

2. Prepetition arrearage disclosure in Chapter 12 and Chapter 13 cases

Most consumers who file a Chapter 13 case are proposing in their plans to cure a pre-petition mortgage default. We believe that disclosure of the pre-petition arrearage amount on

periodic statements will help consumers understand how their Chapter 13 plans are progressing. It will encourage them to complete their plans as they see the arrearage amount being reduced over time.

Our position at the June 16, 2014 bankruptcy roundtable was that disclosure of the pre-petition arrearage is essential, including disclosure of a running balance as payments are made. However, we did not believe that it would be necessary for servicers to disclose how payments on the arrearage are allocated as between principal, interest, escrow and other charges.

Consistent with our earlier comments, we support proposed § 1026.41(f)(3)(vi). It requires a servicer to disclose, if applicable, the total of all pre-petition payments received by the servicer since the last periodic statement, the total of all pre-petition payments received by the servicer since the beginning of the current calendar year, and the current balance of the consumer's pre-petition arrearage. We also support proposed § 1026.41(f)(5) dealing with consumers who receive coupon books rather than periodic statements, which requires servicers to make available upon request by the consumer the pre-petition arrearage information listed in proposed § 1026.41(f)(3)(vi).

Several of the sample Chapter 13 form statements used in the testing included disclosure of the debtor's pre-petition arrearage. The Report describes the results for Chapter 13 participants in Round 1 as follows: "Chapter 13 Participants generally understood that the information presented in the Pre-Petition Arrearage box reflected payments that they were making to the amount that was past due when they filed for bankruptcy. Chapter 13 participants in Round 1 were generally more comfortable with the Proposed Form's technical language (e.g., "pre-petition arrearage" and "post-petition payment") than the Revised Form's plain language (e.g., "pre-bankruptcy debt" and "payment amount") and expressed a preference for this technical language." Report. p. 19.

The Round 2 participants' experience was different. Participants seemed confused by the term "arrearage" and did not understand the distinction between pre- and post-petition. Report, p. 38. This may be because the hypothetical for the Round 2 forms showed a more challenging payment history. Unlike the Round 1 forms that showed the hypothetical borrower made both a full pre-petition and a full post-petition payment the prior month, the Round 2 forms showed the borrower as delinquent on the post-petition payment obligation but having made a timely payment on the pre-petition arrearage.

The results were far more positive for the Pre-Petition Arrearage forms used in Round 3: "Participants immediately noticed the addition of the pre-petition arrearage box on the Arrearage Form and generally (and correctly) interpreted its purpose and contents." Report, p. 56. Nine of the 10 participants correctly indicated that they understood that this disclosed the amount they were behind before filing bankruptcy. They also understood that these payments were being made by the trustee to the servicer.

We have stated in our comments and at the roundtable that this useful information should be provided to consumers. It helps consumers monitor the progress they are making in paying off the arrearage, providing an incentive to remain current. It also avoids unnecessary inquiries

directed to the trustee, consumer's attorney, and the servicer. The participants confirmed the value of this information, stating:

> "It shows the amounts that were past due when I filed. And then says that trustee is sending the payments shown here. The trustee doesn't let you know. They just take the money and disperse it."
>
> "You want to see that your payments are being paid. I think you only get a six-month or once-a-year statement from the trustee. I'm sure they're paying it, but you're always hoping."
>
> Report, p. 57.

Based on the high level of comprehension of the Pre-Petition Arrearage forms used in Round 3, we recommend that the language used in those forms be incorporated in the final forms. We have a preference for the pre-petition arrearage disclosure in the Round 3, C.3 Chapter 13 Alternate Arrearage Form.

3. Fee disclosures in the Amount Due, Transaction Activity and Past Payments Breakdown sections

For nonbankruptcy consumers, current § 1026.41(d)(1)(ii) requires a periodic statement to include in the "amount due" section the amount of any late fee and the date on which the fee will be imposed if payment has not been received. Proposed § 1026.41(f)(1) provides that servicers may exclude these late fee disclosures from statements provided to certain consumers.

We stated in our initial comments that while it may be appropriate to permit the omission of this information for statements to consumers who are debtors in a Chapter 13 case, because some servicers do not charge late fees for monthly payments disbursed by Chapter 13 trustees, the exclusion should not apply when a bankruptcy case is no longer pending. If consumers who have discharged their mortgage debts in bankruptcy will be charged a fee for late payments, they should be notified of the amount of the fee and the information they need to avoid the late fee (the date on which the fee will be imposed if no payment is made). Providing this basic information in itself, combined with the required general disclosure that the statement is for informational purposes only, does not violate the discharge injunction. It is fundamentally no different than a servicer providing information about other contractual terms related to payments, such as payment adjustment notices on a variable rate mortgage.

Testing confirms that borrowers find the information about fees being charged to their accounts to be useful and understandable. The third Chapter 7 form (the Delinquency Disclosures Form) used in Round 3 included a disclosure under the Amount Due that a late fee would be charged if the payment was not received by the specified date. The Report notes the Round 3 participants "immediately noticed and comprehended that the $160 late fee would be assessed after 9/15/2015," and that they "preferred having this late fee information on the form and did not find it threatening." Report, p. 56.

Both Chapter 7 and Chapter 13 participants in Round 1 were able to use the Transaction Activity and Past Payments Breakdown sections on the forms to locate information on fees and past payments. Report, p. 18. All Round 2 participants "were able to use the Transaction Activity and Past Payments Breakdown sections of the forms to locate information on fees and past payments." Report, p. 37. All Round 2 chapter 7 participants "were able to correctly identify fees they had been charged and the reason for the charge." Report, p. 37. All of the Chapter 7 Participants in Round 3 were able to correctly answer questions about whether and for what they had been charged fees. Report, p. 54.

As we stated in our initial comments, consumers who are in bankruptcy or have received a discharge should not be deprived of this important information about fees. The testing has also caused us to reconsider our earlier position about providing this information to Chapter 13 debtors. We now believe that the Bureau should require for borrowers in a confirmed Chapter 13 plan the disclosure under the Amount Due that a late fee will be charged if the payment is not received by the specified date.

4. Exclusion of certain delinquency information in Chapter 7 cases

As stated in our initial comments, we support the Bureau's decision to generally include delinquency disclosures. The delinquency information included in the proposed rule is valuable to all consumers, even those who have discharged their mortgage debts in a bankruptcy case. Testing confirms that the Bureau should retain this information in the final modified statements and should reconsider the proposed deletion of certain delinquency information.

With respect to the specific delinquency information, such as how many days the borrower is delinquent, some participants found the information threatening. However, most found the information helpful and thought it should be provided. The Report found that most participants "expressed a preference for receiving the delinquency-specific disclosures if these disclosures applied to them." Report, p. 56.

Proposed § 1026.41(f)(1) provides that servicers may exclude the disclosures set forth in § 1026.41(d)(8)(i), (ii), and (v) from the modified statements. These disclosures include: the date on which the consumer became delinquent; a notification of possible risks, such as foreclosure and expenses, that may be incurred if the delinquency is not cured; and a notice of whether the servicer has made the first notice or filing for any judicial or non-judicial foreclosure process. Although the tested forms did not include disclosures of the first notice or filing based on the facts of the hypothetical, it is clear that the participants favor receiving the other excluded information. All seven of the Round 3 Chapter 7 participants preferred to "see how many days delinquent they were," and five of seven preferred to "receive the potential fees and foreclosure information." Report, p.56.

As we stated in our initial comments, exclusion of the disclosures set forth in § 1026.41(d)(8)(i), (ii), and (v) may be appropriate for consumers who are in a pending Chapter 7 bankruptcy case. But there is no sound reason to exclude this helpful information about the potential loss of the consumer's home at foreclosure from statements provided to consumers who

are no longer in bankruptcy and have discharged their mortgage debts in bankruptcy. Our position is supported by the testing.

5. Exclusion of delinquency information in Chapter 12 and Chapter 13 cases

Proposed § 1026.41(f)(3)(i) provides that servicers may exclude all of the remaining delinquency information disclosures (in addition to § 1026.41(d)(8)(i), (ii), and (v)) set forth in § 1026.41(d)(8) from the modified statements sent to a consumer who is a debtor in a Chapter 12 or Chapter 13 case. We opposed this broad exemption and continue to believe that there should be some limited delinquency information provided to consumers in a Chapter 12 or Chapter 13 case. We are disappointed that the Bureau did not conduct testing of the Chapter 13 forms for delinquency information. The value that consumers place on this information, as confirmed by the testing, strongly suggests that the Bureau should reconsider the broad exemption in the proposed rule. If the consumer's confirmed plan provides for maintenance of payments on the mortgage, and the servicer contends that the consumer has failed to maintain these post-petition payments, the servicer should be required to disclose on the modified statement the date on which the consumer became delinquent, which is currently required by § 1026.41(d)(8)(i). We also believe that the servicer should provide in this situation an account history in the manner required by § 1026.41(d)(8)(iii). We do not oppose exclusion of the other required delinquency information disclosures in § 1026.41(d)(8) from modified statements sent to a consumer who is a debtor in a Chapter 12 or Chapter 13 case.

6. Disclosures for explanation of amount due and past payment breakdown for Chapter 12 and Chapter 13 debtors

Our initial comments strongly supported the Bureau's decision to require the explanation of the post-petition payment amount due, which would include a breakdown of how much of the post-petition payment is applied to principal, interest, and escrow. This information is currently required under § 1026.41(d)(2)(i). Similarly, we supported proposed § 1026.41(f)(3)(iv) requirement to disclose 1) the total of all post-petition payments received since the last statement and a breakdown of the amounts applied to principal, interest, and escrow, 2) the amount, if any, currently held in any suspense or unapplied funds account, and 3) a total of all payments applied to post-petition fees or charges since the last statement. Proposed § 1026.41(f)(3)(iv) also requires the periodic statement to include the total of all post-petition payments received since the beginning of the calendar year and a similar breakdown of the amounts applied to principal, interest, and escrow, currently held in any suspense or unapplied funds account, and applied to post-petitions fees or charges since the beginning of the calendar year.

We noted that these disclosures will enable debtors, their attorneys and Chapter 13 trustees to detect when servicers fail to properly apply payments in accordance with bankruptcy law and the terms of a confirmed Chapter 13 plan. Testing has confirmed that Chapter 13 debtors find this information extremely useful. The Round 2 participants were given forms that combined principal and interest into a single, lump sum figure in the Payment Amount and Past Payment Breakdown sections. The majority of participants disliked these statements and

"preferred to see principal and interest as separate figures." Report, p. 39. Bankruptcy debtors are no different than other consumer borrowers as they clearly pay attention to this information. In noting the importance of this information, the Report stated that some participants "directly said that they currently look to see how much they're paying in interest and toward their principal when they look at their actual monthly statements." Report, p. 39.

The mortgage industry has suggested that the disclosure of payment breakdown information should be in accordance with the servicer's system of records that reflects the application of payments under the original terms of the mortgage loan, as if the borrower's confirmed Chapter 13 plan does not exist. The testing confirms that Chapter 13 debtors understand the purpose of a Chapter 13 cure plan and that they want to be able to verify on their periodic statements that the confirmed plan is being implemented by the servicer in accordance with bankruptcy law and the terms of their confirmed Chapter 13 plan. The disclosure of payment breakdown information based on the application of payments under the original mortgage terms will be confusing to consumers and will deprive them of information concerning the status of their account under the terms of their reorganization plan. Even more confusing would be separate disclosures of the application of payments under both the confirmed plan and the original mortgage terms. The Bureau should reject industry proposals on this point and should retain in the final rule the disclosure of payment breakdown information as proposed.

7. Disclosure of the source of payments in transaction activity in Chapter 12 and Chapter 13 cases

We stated in our initial comments that disclosure of the transaction activity helps consumers to understand and track transactions on their account, and provides them with information that can help them avoid delinquency. We believe that consumers in a Chapter 13 bankruptcy receive the same benefits from having this information as consumers outside bankruptcy. During the bankruptcy roundtable, we commented that the transaction activity should include both payments for pre-petition arrears and payments for post-petition amounts due that are received by the servicer, irrespective of whether they are disbursed to the servicer by the consumer directly or by the trustee. We stated that disclosure of all payments received by the servicer is essential, so that consumers (and their attorneys and the trustee) may have a complete record of the transaction activity. However, we also noted that it is not as important for the transaction activity disclosure to identify the source of payments - that is, whether the payments have come from the trustee or the consumer.

Based on the testing, we now believe that the proposed rule should require that the pre-petition payments shown on the transaction activity include a disclosure that the payments have been received from the trustee. One of the chapter 13 Round 2 participants thought that the statement was asking for a payment of $336.43, the amount of the partial payment Springside received during the previous month from the trustee. The Report noted that "This might ultimately stem from overall confusion regarding the difference between pre-petition and post-petition payments." Report, p. 36. To avoid this confusion, payments reflected in the Transaction Activity box for pre-petition arrearage should be designated as "Payment Received

from Trustee." This will also make the form consistent with the Pre-Petition Arrearage Payments box, which includes the caption "Received from Trustee last month."

A more significant concern is the designation of trustee payments as partial payments. The original Chapter 13 Proposed Form correctly refers to a payment received from the trustee as a "Payment Received" (though as mentioned it should indicate "from Trustee"). However, the other tested forms refer to a trustee payment as a "Partial Payment Received." We strongly oppose this change. It is confusing and inconsistent with bankruptcy law. A payment that is to be applied to the pre-petition arrearage in a confirmed Chapter 13 cure plan is not a scheduled payment, and therefore it can never be deemed "partial." Not only will this be confusing to consumers, it improperly suggests that consumers' arrearage payments to the trustee are short when in fact they may be paying the precise amount required under the terms of their Chapter 13 plan and confirmation order.

8. Bankruptcy Notice disclosures

Participants generally preferred seeing the Bankruptcy Notice in a box as opposed to unboxed, with eight of 11 participants mentioning a preference for the box (six of nine Chapter 7 Participants; two of two Chapter 13 Participants [only two of eight Chapter 13 Participants were asked about the box specifically]). Report, p. 15. We agree with the participants that this information should be segregated by placing it a box.

Comment

SHOULD HOMEOWNERS' ASSOCIATIONS "FINANCED" ASSESSMENTS AFFECTING MORTGAGES COMPLY WITH TILA?

Should condo riders (included in many mortgages), comply with TILA requirements - particularly, since they may adversely affect mortgages (e.g. Nevada super-priority lien foreclosures)?

Many homeowners associations (HOAs) are taking full advantage of no oversight over assessments (many of them involve overbilling). HOA overbilling practices have resulted in countless wrongful foreclosures by HOAs. It is like the fox watching over the hen house.

Since many HOA assessments are "financed" with monthly installment payments, charge late fees, attorneys' fees and collection fees - should HOA "financed" assessments comply with TILA - as they may adversely affect mortgages?

Thank you very much.

Comment

To:Bureau of Consumer Financial Protection
From:Debra Miller, Trustee
Date:May 26, 2016
Re:Comments on report for testing of sample periodic statement of forms

I appreciate that the Bureau is re-opening the comment period to allow comments on the forms of the periodic statement for consumers that are in bankruptcy. I believe that providing the mortgage statement to the Debtors while they are in a consumer bankruptcy is crucial so they are aware of the ongoing status of their mortgage.

Furthermore, I appreciate the time and effort that the CFPB spent developing the statement forms, testing, and modifying the form and testing two more times. The resulting forms are clearer and provide needed information and explanations to the Debtors that will assist them during their bankruptcy.

Having the monthly statements brings a transparency to the bankruptcy and mortgage process that is now sadly lacking. From the addition of fees and costs added to a mortgage that the debtor isn't aware of, to the failure to conduct the required RESPA/escrow analysis each year while a debtor is in bankruptcy, problems that are not handled quickly can have catastrophic consequences for the debtor who is seeking to keep their house.

I thank the CFPB for their work on this matter. I think that the process used and the study showed that Debtors going thru bankruptcy need a monthly mortgage statement. By requiring the servicers to provide this information, Debtors will be better informed and the bankruptcy mortgage payment process will become more transparent. While I still believe that the system would be better served with the Trustee having access to verify the mortgage payment application and status in a Chapter 13, providing this information monthly is a big step forward.

A full copy of my comments are attached hereto.

Comments on CFPB-2016-0016.

Thank you for allowing us to comment on the proposed amendments to the Servicing Rules section

41.

Kohler Credit Union is a $326 million asset community chartered credit union, headquartered in Kohler, Wisconsin.
Kohler Credit Union maintains seven (7) full service branches and four (4) in-school branches serving approximately
40,000 members in Sheboygan, Calumet, Manitowoc, Ozaukee, Washington, Fond du Lac, Milwaukee and Waukesha
Counties of Wisconsin.

A major concern is one of separation of powers. Bankruptcy has always been in the province of the judicial system.
It is a legal proceeding in a court of law. It is of great concern for an executive branch agency to promulgate rules affecting
a judicial branch function, particularly when the proceedings in such a suit can vary greatly from case to case.
In fact, the constitutionality of this proposed rulemaking is in serious question. As such, we urge the CFPB to work with
the Bankruptcy Courts as much as possible and defer to their expertise and judgment as to what should be included on
the periodic statement. In the conclusion of the report, it is noted that "clear information about the consequences of non
payment" would be included as a notice on the mortgage statement. Our concern is that this verbiage will set a powerful
and dangerous precedent. Current bankruptcy laws clearly restrict a creditor's ability to collect debts while a debtor is under
bankruptcy protection. Mandating a statement that utilizes similar language, as used in other collection attempts, could
subject financial institutions to penalties and scrutiny from the bankruptcy court, and the courts have to
mitigate contradictions between federal consumer protection regulations and bankruptcy laws.

We understand the Bureau's objective to ensure that consumers remain informed about outstanding debts for which
they are legally obligated. However, lenders and servicers are required to take certain actions and not take certain actions
under various laws and regulations. Some of the requirements conflict with one another, putting lenders in a position
that can be avoided with regulatory guidance. We appreciate the Bureau's attempt to address one of the
conflicts within this proposal.

The concern with providing mortgage statements organized in different ways for various situations is that many debtors
find themselves in and out of bankruptcy multiple times due to failure to comply with the bankruptcy requirements during

the servicing of a loan. Receiving mortgage statements that appear different when they are under bankruptcy protection as
compared to when they are not may result in more confusion to borrowers. We feel that servicers providing consistent
information about the debts will ensure that accurate and timely information is provided to all borrowers.

Lastly, all of the statement options presented in the report will require significant and costly system changes for many
servicers. Some information required by the statement examples may not be maintained in the servicer's system that is
used to create current statements. Since the Bureau has established the required format for mortgage statements,
borrowers should be familiar with the existing format due to receiving the statements prior to filing bankruptcy. We
recommend that the existing format continue to be utilized for all consumers (those not under bankruptcy protection as
well as those under bankruptcy protection).

I am commenting on the Monthly Mortgage Statement sent to consumers who are in active Chapter 13 Bankruptcy.

IMO, the statement is not clear at all. There are basically 3 items that need to be improved upon.

1. Indicate the current monthly Payment Due

   2. Indicate the Outstanding Balance of Monthly Payments (no arrears amounts which will be collected through payments sent to the Trustee)

   3. Indicate the Total Balance which should include payments to Mortgage Holder and Trustee and state "this is the total balance of all amounts outstanding/owed"

   This comment is based on the primary concerns of consumers whose main concerns are: How much do I owe to the mortgage holder and how much do I owe to the Trustee for my mortgage arrears. This clarification would greatly aid consumers as they try of pay down their mortgage.

Comment

There are a multitude of reasons not to go forth with periodic bankruptcy statements.
1. Periodic statements of bankruptcy accounts that were past due would be seen as a form of collection, thus violating the no contact rule of the bankruptcy court.
You cannot have direct communication with bankrupt mortgagor unless they contact you first. All of our communications are sent thru debtor attorney. Making it likely the mortgagor will never see the statements.

2. Periodic bankruptcy statements to inform a mortgagor of multiple status of pre and post petition payments would be confusing to the majority of clients that file bankruptcy. Also, it is likely that it

would not be current to what the mortgagor would expect.

3. The majority of bankruptcy chapter 13 cases for mortgages do not make it to the end of bankruptcy, confusing the mortgagor even more as to the "post petition due date" disappearing on lift of stay or dismissal.

4. We have already made many concessions benefiting a bankrupt mortgagor that a mortgagor that pays delinquent on a regular basis does not benefit from.

5. The amortization will never be correct for a person coming in and out of bankruptcy multiple times which is the usual case.

6. It is unaffordable to small mortgage companies.

7. We have given all rights to a bankruptcy mortgagor to track the same as a non-delinquent mortgagor. Bankruptcy was not invented to suffer no penalties from an interest standpoint.

8. Mortgage Lenders are already having to hire additional personnel to meet CFPB requirements.

9. CFPB needs to focus on the real crisis of credit card debt and sub prime car loans.

10. CFPB needs to take a step back and compare what they have required from mortgage lenders in regards to fees, late fees, adjustments, credits and the impact they have had on credit cards that are ridiculously priced over the prime. Have exorbitant late fees. Sub prime lending on cars is out of control. People expect you to let them stay in a home over a year without paying, but they know a car is going to get towed in 90 days.

Quicken Loans
Engineered to Amaze℠

May 27, 2016

Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G Street
Washington, DC 20552

Re: Docket No. CFPB-2016-0016-0001

Dear Director Cordray:

Quicken Loans Inc. ("Quicken Loans") is pleased to submit its comments on the Consumer Financial Protection Bureau's ("Bureau") proposed rule on amendments to the 2013 mortgage servicing rules under the Real Estate Settlement Procedures Act (Regulation Z) and the Truth in Lending Act (Regulation Z). As background, Detroit-based Quicken Loans Inc. is the nation's second largest retail home mortgage lender and the largest and consistently highest-quality FHA mortgage lender. The company closed more than $220 billion of mortgage volume across all 50 states since 2013. Quicken Loans generates loan production from web centers located in Detroit, Cleveland and Scottsdale, Arizona. The company also operates a centralized loan processing facility in Detroit, as well as its San Diego-based One Reverse Mortgage unit. Quicken Loans ranked "Highest in Customer Satisfaction for Primary Mortgage Origination" in the United States by J.D. Power for the past six consecutive years, 2010 – 2015, and highest in customer satisfaction among all mortgage servicers in 2014 and 2015.

Quicken Loans was ranked No. 5 on FORTUNE magazine's annual "100 Best Companies to Work For" list in 2016, and has been among the top-30 companies for the last 13 years. It has been recognized as one of Computerworld magazine's '100 Best Places to Work in IT' the past 11 years, ranking No. 1 in 2015, 2014, 2013, 2007, 2006 and 2005. The company moved its headquarters to downtown Detroit in 2010, and now more than 10,000 of its 15,000 team members work in the city's urban core.

Comments

We thank the Bureau for this opportunity to comment on the reopened proposal related to the 2013 mortgage servicing rules. We applaud the Bureau for conducting consumer testing to see how consumers actually reacted to the forms. Oftentimes, forms are developed with the best intentions but once deployed, actually add little value since they are difficult to read and understand, confusing, or do not contain relevant information. Even though the sample size was extremely small and may not be representative of all consumers, it provided valuable consumer insight and it should be factored into the Bureau's rulemaking process.

While we disagree with the requirement to provide consumers in active bankruptcy cases—especially Chapter 13 cases—with periodic statements (also referred to below as billing statements), we wish to make it clear which statement versions appear to cause the least amount of confusion and worry among our consumers. We also encourage the Bureau to consider requiring consumers to opt into receiving billing statements. An opt-in process will clearly distinguish between those consumers

that wish to receive billing statements and those that do not. We have experience with many bankruptcy consumers that have no interest in receiving any debt related information and claim that any such communication conflicts with bankruptcy law.

As we understand it, there were three rounds of testing with the forms evolving as testing progressed. The versions of the forms used in Round 3 were a large improvement on the forms used in the first two rounds. It is important to note that all of the forms, including those from the final round, caused some degree of confusion. However, it was clear that the forms used in Round 3 caused fewer issues with the testers' understanding of the intent and content of the forms.

As the testing progressed, even with disclaimers indicating that payments are voluntary and that consumers are not personally liable, most of the testers were still confused. This is not surprising since the bankruptcy process is complex and consumers are often confused about their mortgage payment obligations following bankruptcy. This is an important point since the very purpose of the bankruptcy process is to reduce or eliminate debt. Furthermore, the disclaimers tested are similar to disclaimers used by servicers today so we also have experience with the consumer's understanding of what it means to include a disclaimer such as "We are sending this statement to you for informational and compliance purposes only, it is not an attempt to collect a debt".

Chapter 7 cases present fewer difficulties for servicers since there is not an outside party making payments on the loan, nor is there a need to split what is owed between pre- and post-petition. The Chapter 7 Total Pay Form, found in Appendix C.1, is the clearest and most informational form of the various versions. This form clearly shows the consumer what is owed and how recent payments have been applied. It does not have language that is unduly harsh or aggressive, like the Chapter 7 Delinquency Disclosure Form (Appendix C.3), which demands payment in the delinquency information box.

If consumer testing found the disclaimers caused confusion, we are fairly certain that Chapter 13 billing statements where a trustee makes pre-petition payments (which may or may not show up on the billing statement) will cause even greater confusion for consumers. If this is the case, then we anticipate an increase in consumer inquiries or complaints connected directly to confusing forms.

Chapter 13 cases provide quite a number of difficulties and areas of confusion for consumers. There are two forms here that could be used. The first one found in Appendix C.4 is the Chapter 13 No Arrearage Box Form. This form would only be used for consumers who were current when they filed for bankruptcy and there were no other charges owed at the time of filing. This form gives enough disclosures to the consumer to help clear up any confusion they may have between the records of the trustee, if the trustee is paying the claim, and the statement issued by the servicer. The disclaimer on the payment coupon makes it clear that the consumer should only make the payment to the servicer if the trustee is not paying the mortgage.

The second form that could be used is found at Appendix C.6 Chapter 13 Alternate Arrearage Form. This should be used when the consumer was not current at the time the case was filed. It is similar to the form for current loans, but it adds a box for the arrearage. The box clearly explains the breakout of these payments and how they are being applied.

Lastly, we would like mention one other area pertaining to Chapter 13 cases. Pursuant to Rule 3002.1(c), we have 180 days from any fee or charge being incurred to file a post-petition fee notice (PPFN). The consumer and/or the trustee then have a year to object to that notice. If we fail to file the notice timely, do not file it timely, do not include a certain fee or charge on it, or the court holds the fees and charges cannot be charged to the consumer, then we would be required to remove those

charges from the account. This raises the question of whether we must or should disclose the fees and charges the month after they are incurred regardless of whether we have filed the required PPFN or not. In the event the Bureau's elects to remove the current exemption and require servicers to send billing statements to Chapter 13 consumers, there is a question as to whether a servicer should wait until after the PPFN has been filed or until the objection period has run to show the fees on the billing statement. Today, we disclose the fees the month after they have been billed regardless of whether or not we filed the PPFN. If for some reason, we miss the deadline or choose not to file a certain fee, we would remove it. However, the current guidelines are not clear when the fees should be disclosed on any statement sent to the consumer. Additional guidance on this point would be helpful.

Conclusion

We thank the Bureau for the opportunity to provide feedback on the reopened comment period. Should you have any further questions, please contact Amy Bishop at AmyBishop@quickenloans.com or at (313) 737-4547.

Amy Bishop
Deputy General Counsel
Quicken Loans, Inc.

CUNA
Credit Union National Association

601 Pennsylvania Ave., NW
South Building, Suite 600
Washington D.C 200004-2601

Phone: 202-638-5777
Fax: 202-638-7734

May 26, 2016

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: Amendments to the 2013 Mortgage Servicing Rules Under RESPA (Reg X) and TILA (Reg Z)
Docket No. CFPB-2016-0016 (RIN 3170-AA49)

Dear Ms. Jackson:

On behalf of America's credit unions, I am writing regarding the Consumer Financial Protection Bureau's (CFPB) Amendments to the 2013 Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (RESPA) (Regulation X) and the Truth in Lending Act (TILA) (Regulation Z). The Credit Union National Association represents America's credit unions and their more than 100 million members.

The CFPB is seeking comments specifically on the report summarizing consumer testing of sample periodic statement forms for consumers in bankruptcy. This report is issued ancillary to other proposed servicing rules issued on December 15, 2014 (79 FR 74176). The Bureau seeks only comments specifically on the report summarizing the methods and the results of the testing but is not seeking comment on other aspects of the proposed rule, including the merits of the proposal to require periodic statements for consumers in bankruptcy.

We appreciate the Bureau's efforts to conduct testing for purposes of developing disclosures and believe such testing can be part and parcel of a useful tool for developing standardized forms. It is also quite startling to see testing that involves the monitoring of eye movements and gaze plots for purposes of determining consumer behavior involved in reading a form. While we appreciate the use of this tool, what is not present in the report is perhaps the next step: How does this sophisticated testing correlate to a policy decision that results in a periodic statement that provides necessary information for a consumer? The nexus between the psychological analysis and the conclusions of what should be contained in an appropriate policy that will dictate what will be on a periodic statement is unclear. In fact, the report does not contain any reference to any medical support or medical journal articles and research for its conclusions. While the underlying firm conducting the research may have been qualified to do the study, it is not documented in the report.

Our concerns over the methodology stem from the fact that only 51 participants were used in the study, with 28 involved in a Chapter 7, eight (8) involved with a Chapter 13, and one (1) with a Chapter 11. Only 4 of the sample class had no prior bankruptcy experience. Further, only 3 circuits were utilized in the testing (Arlington, Ft. Lauderdale, and Chicago). In our opinion, this sample size and geographical distribution is way too small and not comprehensive enough to be relied on to establish policy. This is particularly concerning since bankruptcy is a legal process and the results or events that can occur during the tenure of a litigation case can be extremely varying. While there are similarities in many cases, we remain concerned that what a court may do in a particular bankruptcy proceeding may not be able to be reflected in a "one size fits all" statement. There appears to be no analysis of this in the study.

Turning to the conclusions of the study, we concur with the finding that clear information about consequences of non-payment are important to be included in the statement, even if the information appears somewhat threatening to the borrower. We hope the CFPB will acknowledge that there are consequences to non-payment of borrowed funds, not only in the bankruptcy context, but in other situations as well. We urge the CFPB to go further with this conclusion and amend the forms to include more information about the consequences of non-payment, including information about late fees and when they will be assessed.

We are also concerned about the conclusion that indicates consumers look mostly to the payment coupon, but tended not to focus on the outstanding principal balance as much. While this is typical of a borrower, it relates to our previous point that what a borrower might focus on might not be the most important piece of information that they need to make good decisions. We would prefer a form that focuses the consumer on pieces of information that provide them with appropriate information necessary to make an informed and good decision.

Finally, another concern is one of separation of powers. Bankruptcy has always been in the province of the judicial system. It is a legal proceeding in a court of law. It is of great concern for an executive branch agency to promulgate rules affecting a judicial branch function, particularly when the proceedings in such a suit can vary greatly from case to case. In fact, the constitutionality of this proposed rulemaking is in serious question. As such, we urge the CFPB to work with the Bankruptcy Courts as much as possible and defer to their expertise and judgment as to what should be included on the periodic statement.

We greatly appreciate the CFPB's attention to these matters. If you have further questions or would like to discuss this letter in more detail, please feel free to contact me at 202-508-3630.

Sincerely,

Andrew T. Price
Sr. Director of Advocacy & Counsel