



Mortgage Servicing FAQs

The questions and answers below pertain to compliance with Regulation X and Regulation Z, effective April 19, 2018. These questions and answers are not a substitute for Regulation X, Regulation Z, or their official interpretations (also known as the commentary). Regulation X, Regulation Z, and their official interpretations are the definitive sources of information regarding their requirements.

Bankruptcy Periodic Statements

NOTE: For certain borrowers in bankruptcy, servicers are exempt from sending periodic statements. For other borrowers in bankruptcy, servicers are not exempt from sending periodic statements, but instead are required to send modified periodic statements. Additionally, in certain circumstances, a servicer may be required to resume sending unmodified periodic statements after a borrower's bankruptcy case has completed. To determine if a servicer is required to send modified periodic statements to a borrower in bankruptcy, please review Regulation Z, § 1026.41(e) and (f).

QUESTION 1:

Are payments that came from a trustee included in the transaction activity on the modified periodic statement?

ANSWER (UPDATED 3/20/2018):

Yes. Regulation Z, § 1026.41(f)(3)(iv) requires servicers to disclose in the transaction activity on the modified periodic statement all payments the servicer has received since the last statement. These payments include all pre-petition payments, post-petition payments, and payments of post-petition fees and charges, as well as all post-petition fees and charges the servicer has imposed since the last statement.

There can be a delay between when a trustee receives a payment from a borrower and when the trustee remits that payment to a servicer. Because the transaction activity need include only those payments that a servicer has received, it would not need to include payments a borrower has sent to a trustee but that the servicer has not yet received from the trustee. Additionally, the trustee may allocate payments differently than the servicer, which also may cause the periodic statement to disclose transaction activity that is different than the trustee's records. For this reason, § 1026.41(f)(3)(vi)(C) and (D) require disclosures explaining that the periodic statement may not match the trustee's records when a borrower makes payments to a trustee.

For general information about the modifications to the periodic statement when a borrower is in bankruptcy, see section 5.10 of the [Mortgage Servicing Small Entity Compliance Guide](#) and Regulation Z, § 1026.41(f).

QUESTION 2:

Does a servicer receive a safe harbor under the Bankruptcy Code by sending periodic statements in compliance with the Bureau's rules?

ANSWER (UPDATED 3/20/2018):

A servicer does not receive a safe harbor under the Bankruptcy Code by sending periodic statements to a borrower in bankruptcy in compliance with Regulation Z, § 1026.41(e) and (f). The Bureau does not have authority to create safe harbors under the Bankruptcy Code. However, in crafting the final rule, the Bureau examined bankruptcy case law and engaged in significant outreach with servicers, bankruptcy attorneys, bankruptcy trustees, and consumer advocates regarding when sending a periodic statement would be permissible under the Bankruptcy Code.

Based on this research and outreach, the Bureau does not believe that a servicer is likely to violate the automatic stay by providing a periodic statement in circumstances required by § 1026.41(a) and (e) that contains the information required by § 1026.41(c) and (d) as modified for bankruptcy by § 1026.41(f). Nor does the Bureau believe that an automatic stay violation is likely when a servicer properly uses one of the sample forms in appendices H-30(E) or H-30(F). The Bureau has tailored § 1026.41(e)(5) to avoid requiring a servicer to send a periodic statement in circumstances when case law suggests that doing so would violate the automatic stay.

For general information about the modifications to the periodic statement when a borrower is in bankruptcy, see section 5.10 of the [Mortgage Servicing Small Entity Compliance Guide](#) and Regulation Z, § 1026.41(f).

QUESTION 3:

If a borrower in bankruptcy is represented by counsel, to whom should the periodic statement be sent?

ANSWER (UPDATED 3/20/2018):

In general, the periodic statement should be sent to the borrower. However, if bankruptcy law or other law prevents the servicer from communicating directly with the borrower, the periodic statement may be sent to borrower's counsel.

Bankruptcy Coupon Books

NOTE: For certain borrowers in bankruptcy, servicers are exempt from sending coupon books. For other borrowers in bankruptcy, servicers that send coupon books in accordance with Regulation Z, § 1026.41(e)(3) are required to send modified coupon books. Additionally, in certain circumstances, a servicer may be required to resume sending unmodified coupon books after a borrower's bankruptcy case has completed. To determine if a servicer is required to send modified coupon books to a borrower in bankruptcy, please review Regulation Z, § 1026.41(e) and (f).

QUESTION 1:

Does a servicer have to send a new coupon book immediately upon learning that a borrower enters bankruptcy, or can a servicer continue to send coupon books on its normal schedule (e.g., annually)?

ANSWER (UPDATED 3/20/2018):

A servicer is not required to change its schedule for sending coupon books due to a borrower's bankruptcy filing. For example, a servicer who ordinarily provides a borrower with a 12-month coupon book in January of each year may continue to send 12-month coupon books in January of each year for the duration of a borrower's bankruptcy case.

A servicer must provide a new coupon book after one of the events listed in § 1026.41(e)(5)(iv)(A) occurs only to the extent the servicer has not previously provided the consumer with a coupon book that covers the upcoming billing cycle.

For general information about the modifications to the coupon book when a borrower is in bankruptcy, see section 5.10 of the [Mortgage Servicing Small Entity Compliance Guide](#) and Regulation Z, § 1026.41(f).

QUESTION 2:

For borrowers in chapter 12 or chapter 13 bankruptcy that are more than 45 days delinquent, does the disclosure statement required due to the delinquency require sending a new coupon book?

ANSWER (UPDATED 3/20/2018):

A servicer is not required to change its schedule for sending coupon books due to a borrower in chapter 12 or chapter 13 bankruptcy becoming more than 45 days delinquent on post-petition payments. For example, a servicer who ordinarily provides a borrower with a 12-month coupon book in January of each year may continue to send 12-month coupon books in January of each year for the duration of a borrower's chapter 12 or chapter 13 bankruptcy case.

A servicer must provide a new coupon book after one of the events listed in § 1026.41(e)(5)(iv)(A) occurs only to the extent the servicer has not previously provided the consumer with a coupon book that covers the upcoming billing cycle.

For general information about the modifications to the coupon book when a borrower is in bankruptcy, see section 5.10 of the [Mortgage Servicing Small Entity Compliance Guide](#) and Regulation Z, § 1026.41(f).

QUESTION 3:

For borrowers in chapter 12 or chapter 13 bankruptcy, does the coupon book itself need to contain the disclosure statement that is required if the borrower is more than 45 days delinquent on post-petition payments?

ANSWER (UPDATED 3/20/2018):

Yes, but only if the borrower is 45 days delinquent on post-petition payments when the servicer is providing a new coupon book to the borrower. Regulation Z, § 1026.41(f)(5) requires that a coupon book provided under § 1026.41(e)(3) must include, among other things, the disclosure

described in § 1026.41(f)(3)(vi)(E). That provision requires that, if a borrower is more than 45 days delinquent on post-petition payments, the servicer must provide a statement that the servicer has not received all the payments that became due since the consumer filed for bankruptcy.

The servicer may include these disclosures anywhere in the coupon book provided to the borrower or on a separate page enclosed with the coupon book.

For general information about the modifications to the coupon book when a borrower is in bankruptcy, see section 5.10 of the [Mortgage Servicing Small Entity Compliance Guide](#) and Regulation Z, § 1026.41(f).

Bankruptcy Reaffirmation

QUESTION 1:

Can a borrower's reaffirmation of personal liability for the mortgage loan affect whether a servicer is exempt from the periodic statement requirements?

ANSWER (UPDATED 3/20/2018):

Yes. Regulation Z, § 1026.41(e)(5)(ii) provides that the bankruptcy exemption for providing periodic statements and coupon books ceases to apply if the borrower reaffirms personal liability for the loan. For purposes of the modified periodic statement requirements in § 1026.41(f), Comment 41(f)-6 explains that a consumer who has reaffirmed personal liability for the loan is not considered a debtor in bankruptcy.

Regulation Z, Comment 41(e)(5)(ii)-2 explains that, upon a consumer's reaffirmation, the servicer must provide a periodic statement or coupon book but without the bankruptcy-specific modifications described in § 1026.41(f).

For general information about the exemption and modifications to the periodic statement or coupon book when a borrower is in bankruptcy, see section 5.10 of the [Mortgage Servicing Small Entity Compliance Guide](#).

Bankruptcy Successors in Interest

QUESTION 1:

Do servicers have a responsibility to know if a confirmed successor in interest is in bankruptcy for purposes of complying with the early intervention and periodic statement requirements?

ANSWER (UPDATED 3/20/2018):

Yes. Under Regulation X, § 1024.30(d) and Regulation Z, § 1026.2(a)(11), confirmed successors in interest are considered “borrowers” for purposes of the early intervention requirements and “consumers” for purposes of the periodic statement provisions. Because confirmed successors in interest are considered to be “borrowers” and “consumers” for the relevant parts of Regulation X and Regulation Z, servicers need to know whether confirmed successors in interest are in bankruptcy and may want to include them in any normal checks they utilize to identify borrowers in bankruptcy.

QUESTION 2:

Do the modifications to the periodic statement required for borrowers in bankruptcy apply if the borrower is a confirmed successor in interest in bankruptcy?

ANSWER (UPDATED 3/20/2018):

Yes. Under Regulation Z, § 1026.2(a)(11), confirmed successors in interest are borrowers for purposes of the periodic statement provisions, and so the periodic statement modification requirements for borrowers in bankruptcy in § 1026.41(f) would apply to the periodic statements supplied to that confirmed successor in interest in bankruptcy.

For general information about the modifications to the periodic statement or coupon book when a borrower is in bankruptcy, see section 5.10 of the [Mortgage Servicing Small Entity Compliance Guide](#).

Bankruptcy Provisions Effective Date

QUESTION 1:

How does a servicer comply with the new bankruptcy periodic statement rules under Regulation Z, § 1026.41(e)(5) and (f) if a borrower became a debtor in bankruptcy prior to April 19, 2018, and a statement is required starting on or after April 19, 2018?

ANSWER (UPDATED 3/20/2018):

The servicer must send modified periodic statements as required under Regulation Z, § 1026.41(f) on or after April 19, 2018 unless, as of April 19, 2018, any exemption applies. Section 1026.41(e)(5) includes new provisions that exempt a servicer from providing a statement to a borrower in bankruptcy. These new requirements and exemption provisions apply to a mortgage loan as of April 19, 2018, irrespective of whether the borrower became a debtor in bankruptcy before or after April 19, 2018. Note that a servicer may begin providing periodic statements to borrowers in bankruptcy prior to April 19, 2018, but as of that date, the servicer must comply with all of the new requirements under the rule. For more information on early compliance, see the [Bureau's June 27, 2017 Policy Guidance](#).

For general information about the modifications to the periodic statement when a borrower is in bankruptcy, see section 5.10 of the [Mortgage Servicing Small Entity Compliance Guide](#) and Regulation Z, § 1026.41(f).