

Oy Vey, More Rule Changes: The CFPB and Regulations X & Z

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Panelists:

Wendy Walter
Managing Attorney
RCO Legal, P.S.

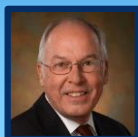


John Crane
Aldridge | Connors LLP

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Moderator: Thomas J. King
Chapter 13 Trustee
for the Eastern
District of Wisconsin



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➤ Five agencies

- Office of Comptroller of the Currency
- Board of Governors of the Federal Reserve System
- Federal Deposit Insurance Corporation
- National Credit Union Administration
- Office of Thrift Supervision



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- These five regulators were charged with a two-pronged mandate:
 - Regulating safety
 - Soundness
 - Consumer compliance



Thomas J. King
Chapter 13 Trustee

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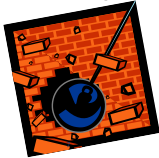
- Most consumer compliance functions were moved to the CFPB.
- Additional consumer protection functions were moved from the FTC and HUD.



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- Six of the seven agencies continue to hold some consumer protection powers
- The Office of Thrift Supervision was abolished



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The statutory goal of the CFPB is:

“... implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of insuring that all consumers have access to markets for consumer financial markets and services and that markets for consumer financial products and services are fair, transparent and competitive.”

12 U.S.C. § 5511

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The authorities of the CFPB fall into three broad categories:

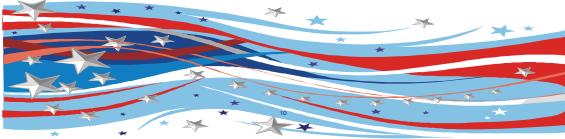
- Supervisory
 - Includes the power to examine and impose reporting requirements on financial institutions
- Enforcement of consumer protection laws and regulation
- Rulemaking

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The rulemaking function will affect

Chapter 13 on multiple fronts:

- Explicit jurisdiction over private student loans
- Providers of payday loans



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The rulemaking function will affect Chapter 13
on multiple fronts (cont'd):

- Entities engaging in mortgage-related activities
 - Mortgage origination
 - Brokerage
 - Mortgage servicing
 - Mortgage modification
 - Foreclosure relief activities



In January 2013 the CFPB issued “final rules”
concerning mortgage markets in the United States
pursuant to Dodd-Frank.



Tom King



We will focus on the following:

- The Mortgage Servicing Rules under the Real Estate Settlement Procedures Act (Regulation X)(2013 RESPA Servicing Final Rule).
- The Mortgage Servicing Rules under Truth in Lending Act(Regulation Z)(2013 TILA Servicing Final Rule).

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Tuesday, October 15, 2013, the CFPB issued an interim final rule with request for public comment.

Announced to “clarify” compliance requirements in relation to bankruptcy law and Fair Debt Collection Practices Act.

The final interim rule exempts servicers from the early intervention requirements of Section 1024.39 and periodic statement requirements under section 1026.41 for borrowers while they are in bankruptcy.

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Tuesday, October 15, 2013, the CFPB issued an interim final rule with request for public comment.

“The Bureau is proceeding by interim final rule to provide immediate certainty to the small sub-markets affected”

Good cause to publish the interim final rule without notice and comment.

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Periodic Statements to Borrowers – When Does it Apply?

- New Section added to Regulation Z (1026.41)
- Applies to a Closed-End Consumer Credit Transaction Secured By a Dwelling

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Periodic Statements to Borrowers – When Does it Apply?



- Exceptions:
 - Reverse Mortgages
 - Transactions secured by Timeshare Plans
 - Coupon Books
 - Small Servicer Exceptions

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Impacts of Periodic Statements In Bankruptcy (Before Oct 15)

- Servicers are allowed to make changes to the statement as they believe are necessary when a consumer is in bankruptcy.
- May include a message about the bankruptcy or “present the amount due to reflect the payment obligations determined by the individual bankruptcy proceeding”.

Official Commentary

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CFPB Issues Interim Final Rule on Oct 15:

Interim final rule exempts servicers from the requirements of § 1026.41 for a mortgage loan while the consumer is a debtor in bankruptcy.

And Commentary Added to Clarify this Exemption:

- ✓ The Exemption begins once the bankruptcy petition is filed.
- ✓ With respect to any portion of the mortgage debt that is not discharged, a servicer must resume sending periodic statements in compliance with § 1026.41 within a reasonably prompt time after the next due date that follows: 1) dismissal; 2) discharge or 3) case closing.
- ✓ Exemption applies if a prior case reinstates.
- ✓ Exemption applies when any consumer who is among the joint obligors with primary liability on the transaction is a debtor in bankruptcy.

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But Wait! Things Might Change!



"While the Bureau believes that some of these questions can be resolved by interpretations now, it has also 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."

"The Bureau believes that further study of these issues is warranted but cannot be concluded quickly enough to provide further calibration of the requirements before January 2014"

"The Bureau will continue to examine this issue and may reinstate a periodic statement requirement with respect to consumers in bankruptcy, but it will not reinstate any such requirement without notice and comment rulemaking and an appropriate implementation period."

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Coupon Book & Small Servicer Exceptions

Coupon Book Exception:

- ✓ Fixed Rate Loan
- ✓ Contain Amount Due Section (On Each Coupon)
- ✓ Contain Servicer Contact Information
- ✓ Contain Account Information
- ✓ Allow Consumer Ability to Request Explanation of Amount Due; Past Payment Breakdown, Transaction Activity and Partial Payment Information

Small Servicer:

- ✓ A servicer that services 5,000 loans or less over a calendar year.

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What must the statements say pursuant to 1026.41?

8 Main Sections:

1. Amount Due
2. Explanation of Amount Due
3. Past Payment Breakdown
4. Transaction Activity
5. Partial Payment Information
6. Contact Information
7. Account Information
8. Delinquency Information

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What must the statements say pursuant to 1026.41?

1. Amount Due – (Top of 1st Page)
 - Payment Due Date
 - Amount of Late Fee (Date to be Imposed)
 - Amount Due
2. Explanation of Amount Due
 - Monthly Payment Breakdown
 - Total Fees Charged Since Last Statement
 - Any Payment Amounts Past Due

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What must the statements say pursuant to 1026.41?

3. Past Payment Breakdown – (1st Page)
 - Payments Received Since Last Statement (including breakdown where it was applied, including any amount applied to suspense)
 - Payments Received Since Beginning of Current Calendar Year - (including breakdown where it was applied, including any amount applied to suspense)

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What must the statements say pursuant to 1026.41?

4. Transaction Activity

- A list of all transaction activity that occurred since last statement
- “Transaction Activity” = Any activity that causes a credit or debit to the amount currently due
- Must include an amount and description for each activity

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What must the statements say pursuant to 1026.41?

5. Partial Payment Information (front page of statement, separate page or separate letter).

- If statement reflects a partial payment applied to suspense, statement must explain what must be done for the funds to be applied.

6. Contact Information (front page) – Toll Free Number and email address for consumer to use to obtain information about the account.

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What must the statements say pursuant to 1026.41?

7. Account Information

- ✓ Outstanding Principal Balance
- ✓ Current Interest Rate
- ✓ Date Interest Rate May Next Change
- ✓ The Existence of any Prepayment Penalty
- ✓ Website to the CFPB or HUD list of homeownership counselors

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What must the statements say pursuant to 1026.41?

8. Delinquency Information (front page of statement, separate page or separate letter).

Required if more than 45 days delinquent:

- i. Date consumer became delinquent
- ii. Notification of possible risks and expenses that may be incurred if not cured.
- iii. Account history for previous 6 months or last time account was current, whichever is shorter, amount remaining past due.
- iv. Loss Mitigation program to which the consumer has agreed.

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What must the statements say pursuant to 1026.41?

8. Delinquency Information (cont).

- v. Notice of whether servicer has made the first notice or filing for foreclosure
- vi. Total payment amount need to bring account current
- vii. A reference to the homeownership counselor information

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How Often Must the Statement Be Sent?

- A period statement must be sent for each billing cycle.
- If billing cycle is shorter than 31 days, creditor may use a calendar month.
- Must be delivered or placed in the mail within a “reasonably prompt time after the payment due date”.

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H-30(D) Sample Clause for Homeownership Counselor Contact Information

Housing Counselor Information: If you would like counseling or assistance, you can

contact the following:

- U.S. Department of Housing and Urban Development (HUD): For a list of homeownership counselors or counseling organizations in your area, go to <http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm> or call 800-569-4287.

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Springdale Mortgage		Mortgage Statement	
Customer Services: 1-800-555-1234 www.springdalemortgage.com		Statement Date: 31/03/2012	
Jordan and Dana Smith 4300 Jones Drive Memphis, TN 38101		Account Number: 1234567 Payment Due Date: 4/3/2012 Amount Due: \$2,079.71 <i>(Payment is received after 4/3/12, \$100 loan fee will be charged)</i>	
Account Information		Explanation of Amount Due	
Outstanding Principal	\$244,126.81	Principal	\$1,016.00
Interest Rate (Fixed October 2010)	4.75%	Interest (for 30 days at 4.75%)	\$1,016.00
Prepayment Penalty	\$0	Regular Monthly Payment	\$1,016.00
		New Fees Charged	\$0.00
		Total Amount Due	\$2,079.71
Transaction Activity (1/2011 to 3/2012)		Charges	Payments
1/1/2011	1st Fee (Delayed because 1st payment not received by 1/15/2011)	\$100.00	\$1,000.00
3/1/2011	Payment Received - Month one		\$1,000.00
3/1/2011	Payment Due (Month one)		
Paid Payments Breakdown			
	Paid Last Month	Total	30 Days
Principal	\$104.00	\$1,016.00	
Interest	\$1,016.00	\$1,016.00	
Fees (Fees and Misc)	\$0.00	\$0.00	
Total	\$1,016.00	\$1,016.00	

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Fees (Fees and Misc)	\$0.00	\$0.00	
Total	\$1,016.00	\$1,016.00	

[illegible]

Amount Due	
Due by 6/15/2012	\$4,420.18
(\$400.00 late fee will be charged after 6/15/12)	
Additional Principal	\$ -
Additional Interest	\$ -
Total Amount Due	\$ -

Please check payable to Springside Mortgage.

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Opt – Out

- A consumer may not opt out of receiving periodic statements altogether. Official Commentary



Information Requests 12 CFR 1024.36

- The new qualified written request?
- Simple required elements of a IR
 - In writing
 - Borrower name
 - Info to ID the loan
 - Delivered to address provided by servicer



Wendy Walter
Managing Attorney
RCO Legal, P.S.



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Information Requests

- What can one ask for?
- What types of requests don't count?



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Information Requests

- **How does the servicer have to respond?**
 - Acknowledgment (5 days)
 - Substantive Response (30 days + 15 day extension)
 - If request for owner of the loan 10 days
 - Without charge
 - Response not necessary if request is withdrawn by borrower



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Error Resolution 12 CFR 1024.35

- **Simple required elements of a notice of error**
 - Assert an error
 - Name of borrower
 - Info to ID loan
 - Delivered to address provided by servicer



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Error Resolution

What is a servicing error?

1. Failure to accept a payment conforming to servicer instructions
2. Failure to accept a payment conforming to terms of mortgage and applicable law
3. Failure to credit payment as of date of receipt
4. Failure to pay third parties (escrow, taxes, insurance)
5. Fee charged without reasonable basis
6. Payoff balance issues
7. Failure to deliver accurate loss mitigation information
8. Failures in servicing transfers
9. Violation of the 120 day rule
10. Allowing a foreclosure sale while loss mitigation is pending



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Error Resolution Process

- Acknowledgment (5 days)
- Correction (prior to foreclosure sale or 30 days + 15 days, whichever is earlier)
- Investigation and notification (prior to foreclosure sale or 30 days + 15 days, whichever is earlier)
- Borrower's rights to request documentation (15 days)
- Servicer's right to request info from borrower
- Servicer's rejection of purported notice of error (5 days)
- Borrower's withdrawal of specific request

Exceptions to Error Resolution Process

- Error asserted seven or fewer days before a foreclosure sale
- Duplicative notice of error
- Overbroad notice of error
- Untimely notice of error (1 year after loan is *discharged*, but not in the bankruptcy sense)



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Pre-foreclosure Process 12 CFR 1024.39 Early Intervention

- Live contact - 36th DOD
- Written notice to borrower- 45th DOD
- Exemption for borrowers in bankruptcy
- Exemption for borrowers who have requested a cease communication request under FDCPA



John
Crane

Wendy
Walter



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Pre-foreclosure Process 12 CFR 1024.40 Continuity of Contact

- Sort of like a SPOC
- Must respond to borrower inquiries
- Assigned when the loan is more than 45 days delinquent
- Provide information on the loss mitigation process

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Pre-foreclosure Process 12 CFR 1024.41 Loss Mitigation Procedures

- Application processing Rules
 - Application acknowledgment
 - Deadlines
 - Appeal
 - Sliding scale of protection
- 12 CFR 1024.41(f) – 120 day rule

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120 Day Proposed Rule and Commentary

- A servicer shall not make the **first notice or filing** required by applicable law for any judicial or non-judicial foreclosure process unless a borrower's mortgage loan obligation is more than 120 days delinquent. 1024.41(f).
- **First Notice or Filing** defined as "any document required to be filed with a court, entered into a land record, or provided to a borrower as a requirement for proceeding with foreclosure."

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120 Day Proposed Rule and Commentary

Examples:

- foreclosure compliant
- notice of default
- any other notice required by law to pursue acceleration or a sale of a property.



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120 Day Pre-Foreclosure Review Final Rule (Sept 13, 2013)

In its Final Rule, the Bureau clarified that "first notice" of filing is:

- Where foreclosure procedure requires a court action or proceeding, a document is considered the first notice or filing if it is the earliest document required to be filed with a court or other judicial body to commence the action or proceeding (e.g., a complaint, petition, order to docket, or notice of hearing).
- Where foreclosure procedure does not require an action or court proceeding, such as under a power of sale, a document is considered the first notice or filing if it is the earliest document required to be recorded or published to initiate the foreclosure process.

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Official Commentary to Section 1024.41(f)

120 Day Pre-Foreclosure Review Final Rule (Sept 13, 2013)

In its Final Rule, the Bureau clarified that “first notice” of filing is:

- iii. Where foreclosure procedure does not require any court filing or proceeding, and also does not require any document to be recorded or published, a document is considered the first notice or filing if it is the earliest document that establishes, sets, or schedules a date for the foreclosure sale.
- iv. A document provided to the borrower but not initially required to be filed, recorded, or published is not considered the first notice or filing on the sole basis that the document must later be included as an attachment accompanying another document that is required to be filed, recorded, or published to carry out a foreclosure.

Official Commentary to Section 1024.41(f)

120 Day Pre-Foreclosure Review Final Rule (Sept 13, 2013)

In its Final Rule, the following exemptions are provided:

- Foreclosure is based on due-on-sale
- Servicer is joining the foreclosure action of a junior lienholder.



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