

PUBLICATION

Periodic Statements to Borrowers Required Even if Legal Status of Mortgage Loans Are in Transition

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A new Truth In Lending Act (TILA) regulation, 12 C.F.R. § 1026.41, enacted pursuant to the Dodd-Frank Wall Street Reform Act requires mortgage servicers to send periodic statements to residential loan consumers when loans are in litigation or have been accelerated. According to the regulators, complicated situations such as when loans "have been accelerated, sent to foreclosure, or that are in the bankruptcy process," are "often precisely when a consumer most needs the periodic statement." The only exemptions to this periodic statement requirement are (1) Reverse Mortgages, (2) Time Share Plans, (3) Coupon Books, (4) Small Servicers (generally those servicing 5,000 or fewer mortgage loans), and (5) Consumers in Bankruptcy.

The following information must be provided to the consumer, for each billing cycle (or monthly if the loan's billing cycle is shorter than 31 days):

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

If a loan has been accelerated and the servicer will accept less than the entire accelerated balance to reinstate the loan, the "Amount Due" section should include only the amount the servicer will accept to reinstate the loan. Sample forms are available [here](#).

If servicers fail to comply with TILA, they will be liable for statutory damages and attorney fees. 15 U.S.C.A. § 1640(a)(2)(a); Adiel v. Chase Federal Savings & Loan, 810 F.2d 1051, 1053 (11th Cir. 1987).

The effective date for this new regulation is currently in flux. While it was set to become effective August 1, 2015, it cannot become effective until August 15, 2015. Given the issues with mid-month implementation, the CFPB proposed an October 3, 2015 effective date. Comment for this proposal ended July 7, 2015 but a final ruling is still pending. However, an open-ended grace period was outlined by the CFPB director in a letter to congress. This letter stated that oversight would be sensitive to "good-faith efforts" of compliance. While there is no definite time period, many believe it will extend through the end of 2015.