

2017

1-Day Symposium

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America's Mortgage Banking Attorneys®

Periodic Statements and the Amended Rules

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Outline

Basics

- New Definition of Delinquency

Periodic Statements (other than Bankruptcy)

- Effective Date
- Loans that have been Accelerated
- Loans in Temporary Loss Mitigation
- Loans that have been Permanently Modified
- Loans that have been Charged Off
- Post exemption Statements

Outline continued

Periodic Statements - Borrower/Consumer in Bankruptcy

- Effective Date
- Exemptions
- Sample Form [Appendices H-30(E) and H-30(F)
pg 875-878 pub rules]
- Modifications for borrowers in Bankruptcy –
Discharged of personal liability
- Additional modifications for Chapter 12 or 13
Debtors

Definition of Delinquency

- The 2016 Amendments include a definition of delinquency for the purpose of counting the period of time applicable for certain loss mitigation requirements in Regulation X, such as early intervention and the 120-day prohibition on making a referral to foreclosure. The new definition also applies to calculating days of delinquency for certain disclosures on monthly periodic statements required in Regulation Z. Finally, because the delinquency definition only addresses monetary defaults, the new rule clarifies that a servicer may still accelerate the loan in accordance with the mortgage based on other contractual breaches.

Delinquency Defined

- Delinquency - begins on the date a periodic payment sufficient to cover principal, interest, and (if applicable) escrow becomes due and unpaid and continues until such time as no periodic payment is due and unpaid.
- Grace Period - A loan is considered delinquent under the rule on the date the payment is due but unpaid even if the servicer allows a grace period.

PERIODIC STATEMENTS **(other than bankruptcy)**

- The 2016 Amendment clarifies certain periodic statement disclosure requirements relating to mortgage loans that are in temporary or permanent loss mitigation programs, have been accelerated or have been charged off. The rule also clarifies how to show payments and expenses that may have accrued while a loan was temporarily exempt from the requirement to send periodic statements. In all cases where the periodic statement includes information based on length of delinquency, the period must be calculated based on the new delinquency definition.
- Effective Date: October 19, 2017

Loans that have been accelerated

- When a loan has been accelerated the periodic statement must:
- Generally, show the accelerated amount in the amount due section.
- If the servicer is willing to accept a reinstatement amount that is less than the accelerated amount, the lesser amount **MUST** be shown as the amount due, though the accelerated amount must also be shown on the periodic statement.
- Servicers may use a “good through” or “as of” date when disclosing the reinstatement amount.

Loans in Temporary Loss Mitigation **(short term repayment or trial modification)**

- A partial payment received under a temporary payment plan may be held in suspense until the servicer receives a full contractual payment, then it must be promptly credited to the account.
- The amount due section of the periodic statement may show either the temporary payment or the contractual payment.
- If the amount due section of the periodic statement shows the temporary payment, the contractual payment must also be included in the explanation of amount due on the statement.

Loans that have been Permanently Modified

- If the loan contract has been permanently modified, the periodic statement must show only the modified payment.

Loans that have been Charged Off

- Periodic statements are not required following charge off of a loan if the servicer will not charge any additional fees or interest on the account and, within 30 days of the charge off or the most recent statement, the servicer provides a notice clearly and conspicuously labeled “Suspension of Statements & Notice of Charge Off - Retain This Copy for Your Records” that states, among other things:

Charge-offs continued

- The mortgage loan has been charged off;
- The servicer will no longer provide a periodic statement for each billing cycle;
- The lien remains in place and the consumer remains liable for the loan and any obligations which may include property taxes;
- The balance is not being canceled or forgiven, and the consumer may be required to pay the balance on the account in the future; and
- The loan may be purchased, assigned, or transferred.

Post Exemption Statements

- Some loans are exempt from the requirement to provide periodic statements (i.e. certain loans in bankruptcy). If an exemption expires, the 2016 amendments clarify that servicers are only required to provide transaction activity since the final payment due date during the exemption period.

Example

- Assume that a consumer was in Chapter 13 bankruptcy for 2 years and during that time the account was exempt from the requirement to send periodic statements. If the exemption ends on July 10, the first periodic statement would include a summary of transaction activity through July 1, rather than a breakdown of monthly activity for the prior 2 years.

PERIODIC STATEMENTS

Current Rule

- Unless required by a local bankruptcy rule, servicers are exempt from the requirement to provide a periodic statement for a mortgage loan while the consumer is a debtor in bankruptcy
- However, 11 USC Sec. 524(j) allows a creditor to “seek or obtain periodic payments associated with a valid security interest in lieu of pursuit of in rem relief to enforce the lien”
- As a result, many creditors now choose to send statements to debtors in bankruptcy or who have been discharged, but there is no “safe harbor” for the format of the statements

PERIODIC STATEMENTS:

New Rule



- On August 4, 2016 the CFPB issued a final rule amending parts of Reg X and Reg Z of RESPA. Among other things, the rule contains provisions requiring periodic statements in bankruptcy (referred to as “modified periodic statements”), subject to certain exemptions
- The new rule becomes effective 18 months after the rule is published in the Federal Register (April 19, 2018)
- The rule contains “safe harbor” forms

PERIODIC STATEMENTS: New Rule – Exemptions from coverage

- The final rule applies exemptions at the loan level
- When the criteria for an exemption applies to one borrower on the loan, the servicer is exempt from having to provide a modified periodic statement with respect to any borrower on the loan
- Opt in/Opt Out may be in writing or done verbally provided it is documented
- An agent can also submit the request

PERIODIC STATEMENTS: New Rule – **Exemptions from coverage**

- Fixed rate mortgages if substantially similar information provided on coupon book
 - But if the borrower is more than 45 days delinquent, the servicer must provide delinquency information separately in writing, including an account history for the delinquency period
- Mortgage loans that are serviced by small servicers (servicers that service 5,000 or fewer mortgage loans of which servicer or affiliate is creditor or assignee) and state housing finance agencies
- Reverse mortgage and timeshare plans
- Open-end home loans such as HELOCs

PERIODIC STATEMENTS: New Rule – When can you stop sending statements?

- Two part test
 - A: Any consumer on the loan must be a debtor or must have been discharged in bankruptcy; AND
 - B: One of the following additional conditions must apply:
 - 1) The consumer requests in writing that the servicer cease providing statements; or
 - 2) The Filed Plan provides for Surrender, Avoidance, or otherwise does not provide for the payment of arrearage or maintenance of payments; or
 - 3) The Court enters an order Avoiding lien, lifting the stay, or requiring the servicer to cease providing the statements; or
 - 4) The consumer files a statement of intention to surrender (11 USC 521(a)) and has not made any partial or periodic payments after filing the case

PERIODIC STATEMENTS: New Rule – **Exemptions from coverage**

These exemptions no longer apply if:

- The debtor reaffirms the debt; unless there is an order terminating statements
- The borrower on the loan requests in writing that statements resume

PERIODIC STATEMENTS: New Rule – **Content of the Statements**

The Modified Periodic Statement may allow:

- Informational Disclosures
- Terminology that is commonly understood or used in the sample
- Terminology specific to the circumstances of the case
- Regional differences in terminology
- A statement identifying the consumer's status as a debtor in bankruptcy or the discharged status of the mortgage loan
- A statement that the periodic statement is for informational purposes only

PERIODIC STATEMENTS: New Rule – **Content of the Statements**

The Modified Periodic Statement may allow:

- **The Amount Due Section does not need to include the amount of any late payment fee and the date on which that fee will be imposed if the payment has not been received**
- **The Delinquency Information Section does not need to 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**
- **A notice of whether the servicer has made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process**
- **On unmodified statements, the “Amount Due” in the Amount Due Section must be shown more prominently than other disclosures on the page. This “more prominently” requirement does not apply, but the servicer is still required to disclose the “Amount Due”**

PERIODIC STATEMENTS: New Rule – **Content of the Statements**

Modified Periodic Statement in Chapter 12 & 13:

- The first modified statement should include activity since the last statement – since the last payment due
- Pre and post petition should be clearly defined and include both
- Servicers are not required to alter how they disclose their method of applying payments for purposes of providing a periodic statement to a consumer in bankruptcy
- Not all information must appear on the first page and some information may be omitted
- A servicer may choose to include additional information on a periodic statement, including bankruptcy-specific information, such as descriptions of agreed orders or additional details about post-petition payments
- MAY Omit: account history, loss mitigation, total payments due, and homeownership

PERIODIC STATEMENTS: New Rule – **Content of the Statements**

Modified Periodic Statement in Chapter 12
& 13:

Amount Due Must Include:

- The monthly payment amount, with a breakdown showing how much, if any, will be applied to principal, interest, and escrow
- The total sum of any fees or charges imposed since the last statement
- Any payment amount past due; however, information on agreed orders is discretionary and servicers may opt to list post petition fees, costs and charges after compliance with Rule 3002.1

PERIODIC STATEMENTS: New Rule – Content of the Statements

Modified Periodic Statement in Chapter 12
& 13:

The Transaction Activity Must Include

- All payments the servicer has received since the last statement
 - All post- petition and pre-petition payments
- All payments of post-petition fees and charges
- All post- petition fees and charges the servicer has imposed since the last statement

*The brief description of the activity need not identify the source of any payments

PERIODIC STATEMENTS: New Rule – **Content of the Statements**

Modified Periodic Statement in Chapter 12 & 13:

Pre-petition Arrearage Breakdown:

- If applicable, the total of all pre-petition payments received since the last statement
- The total of all pre-petition payments received since the beginning of the consumer's bankruptcy case
- The current balance of the consumer's pre-petition arrearage
- The pre- petition arrearage disclosures must be grouped in close proximity to each other and located on the first page of the statement or, alternatively, on a separate page enclosed with the periodic statement or in a separate letter
- The CFPB believes that the pre-petition arrearage disclosure does not need to include a breakdown of principal, interest, and escrow

PERIODIC STATEMENTS: New Rule – Content of the Statements

Disclosures to Consumers in Chapter 12 & 13:

When applicable use the following disclosures:

- Section 1026.41(f)(3)(vi)(A) requires a statement that the amount due includes only post-petition payments and does not include other payments that may be due under the terms of the consumer's bankruptcy plan
- Section 1026.41(f)(3)(vi)(B) provides that, if the consumer's bankruptcy plan requires the consumer to make the post-petition mortgage payments directly to a bankruptcy trustee, the periodic statement must include a statement that the consumer should send the payment to the trustee and not to the servicer

PERIODIC STATEMENTS: New Rule – Miscellaneous Provisions

- Multiple Obligor
 - In connection with a mortgage loan with more than one primary obligor, the servicer may provide the modified statement to any or all of the primary obligors, even if a primary obligor to whom the servicer provides the modified statement is not a debtor in bankruptcy
- Coupon book
 - Include disclosures set in the rule, on same page or separate page
 - Similar disclosures to modified periodic statements
- Exclusive Address:
 - Servicer can establish for opt in/opt out provided that the servicer notifies the consumer of the address in a manner that is reasonably designed to inform the consumer of the address and uses the same address both for opt-ins and opt-outs

PERIODIC STATEMENTS: New Rule – Billing Transaction Timeline

- A servicer is not required to transition to a modified or unmodified periodic statements if the payment due date for that billing cycle is no more than fourteen (14) days after the date on which the trigger event occurs
- **Single billing cycle exemption:** When a servicer transitions from a modified or unmodified statement the servicer must provide the next modified or unmodified period statement by delivering the statement within a ***reasonably prompt time*** after the first due date after the triggering event that is more than fourteen (14) days after the date on which the applicable event occurs
- **Reasonably Prompt:** delivering, emailing, or placing the periodic statement in the mail **within four days** after the payment due date or the end of the courtesy period generally would be considered reasonably prompt

PERIODIC STATEMENTS: New Rule – Billing Transaction Timeline

Best Practice:

- Create and test forms for periodic statements to use for loans in bankruptcy per the proposed Model Forms for Chapter 7, Chapter 11 cases and for Chapter 12, Chapter 13 cases as early as possible to meet the anticipated compliance date of January 1, 2018

H-30(E) Sample Form Ch 7 or 11:

Springside Mortgage

Customer Service: 1-800-555-1234
www.springsidemortgage.com

Jordan and Dana Smith
4700 Jones Drive
Memphis, TN 38109

Mortgage Statement

Statement Date: 8/20/2015

Bankruptcy Message

Our records show that either you are a debtor in bankruptcy or you discharged personal liability for 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.

If you want to stop receiving statements, write to us.

Account Number	1234567
Payment Date	9/1/2015
Payment Amount	\$3,839.13

Explanation of Payment Amount

Principal	\$386.46
Interest	\$1,648.07
Escrow (Taxes and Insurance)	\$235.18
Regular Monthly Payment	\$1,669.71
Total Fees and Charges	\$160.00
Past Unpaid Amount	\$2,009.42
Total Payment Amount	\$3,839.13

Account Information

Outstanding Principal	\$265,546.78
Interest Rate (Until October 2015)	4.75%
Prepayment Penalty	Yes

Transaction Activity (7/20 to 8/19)

Date	Description	Charges	Payments
8/13/15	Partial Payment Received*		\$1,000.00
8/16/15	Late Fee (charged because full payment not received by 8/15/2015)	\$360.00	

Past Payments Breakdown

	Paid Last Month	Paid Year to Date
Principal	\$0.00	\$2,268.95
Interest	\$0.00	\$6,338.23
Escrow (Taxes and Insurance)	\$0.00	\$1,411.08
Fees	\$0.00	\$160.00
Partial Payment (Unapplied)*	\$1,000.00	\$1,450.00
Total	\$1,000.00	\$11,668.26

** Account History **

Recent Account History:

- Payment due 5/1/15: Fully paid on time
- Payment due 6/1/15: Fully paid on 7/3/15
- Payment due 7/1/15: Unpaid balance of \$339.71
- Payment due 8/1/15: Unpaid balance of \$389.71
- Current payment date 9/1/15: \$3,669.71
- Total: \$3,839.13 unpaid amount that, if paid, would bring your loan current.

If You Are Experiencing Financial Difficulty: See back for information about mortgage counseling or assistance.

Important Messages

*Partial Payments: Any partial payments that you make are not applied to your mortgage, but instead are held in a separate suspense account. If you pay the balance of a partial payment, the funds will then be applied to your mortgage.

Springside Mortgage

Springside Mortgage
P.O. Box 13131
Los Angeles, CA 90010

Payment Amount	
Payment Date:	9/1/2015
Payment Amount:	\$3,839.13
Additional Principal	\$ -
Additional Escrow	\$ -
Total Amount Enclosed	\$ -

If you are making a payment, make your check payable to Springside Mortgage.

1234567 34571892

342359127 DN

H-30(F) Sample Form Ch 12 or 13:

Springside Mortgage

Customer Service: 1-800-555-1234
www.springsidemortgage.com

Jordan and Dana Smith
4700 Jones Drive
Memphis, TN 38109

Mortgage Statement

Statement Date: 8/20/2015

Bankruptcy Message

Our records show that you are a debtor 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.

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.

Account Number	1234567
Payment Date	9/1/2015
Payment Amount	\$3,569.88

Explanation of Payment Amount (Post-Petition Payment)

Principal	\$511.63
Interest	\$1,053.31
Escrow (Taxes and Insurance)	\$375.00
Regular Monthly Payment	\$1,939.94
Total Fees and Charges	\$190.00
Past Unpaid Amount	\$1,439.94
Total Payment Amount	\$3,569.88

The Payment Amount does not include any amount that was past due before you filed for bankruptcy.

Account Information

Outstanding Principal	\$2M,526.91
Interest Rate (Until October 2015)	4.75%
Prepayment Penalty	Yes

Transaction Activity (7/20 to 8/19)

Date	Description	Charges	Payments
8/10/15	Partial Payment Received*		\$336.43
8/13/15	Partial Payment Received*		\$500.00
8/16/15	Late Fee (charged because full payment not received by 8/15/15)	\$190.00	

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
Partial Payment (Unapplied)*	\$836.43	\$1,251.53
Total	\$836.43	\$16,271.06

Important Messages

We have not received all of your mortgage payments due since you filed for bankruptcy.

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.

*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.

Summary of Amounts Past Due Before Bankruptcy Filing (Pre-Petition Arrearage)

Paid Last Month	\$336.43	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 payments.
Total Paid During Bankruptcy	\$1,345.72	
Current Balance	\$10,765.88	

Springside Mortgage

Springside Mortgage
P.O. Box 13333
Los Angeles, CA 90010

If your bankruptcy plan requires you to send your regular monthly mortgage payments to the Trustee, do not send your payment to us. Instead, you should send your payment to the Trustee.

Payment Amount

Payment Date:	9/1/2015
Payment Amount:	\$3,569.88
Additional Principal	\$
Additional Escrow	\$
Total Amount Enclosed	\$

If you are sending us a payment, make your check payable to Springside Mortgage.

1234567 34571892

342359127 DN

Thank you for attending

Please complete
SESSION EVALUATIONS
when emailed out next week.

