

# Consumer Financial Protection Bureau: Consumer Industry Watchdog

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## **An Overview of CFPB Authority**

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## I. OVERVIEW OF CFPB AUTHORITY<sup>1</sup>

### A. Statutory Authority

The CFPB has authority to regulate consumer finance under two categories of statutes.

First, the Dodd Frank Act (“the DFA”) empowered the CFPB to proscribe unfair, deceptive and abusive acts and practices (UDAAP), 12 U.S.C. § 5531(a). The DFA also gave the CFPB authority to act (and even mandated actions) in particular areas, especially mortgage lending. Of particular concern to bankruptcy attorneys considering representing consumers in adversary proceedings, the CFPB has the authority to prohibit the use of pre-dispute mandatory arbitration provisions in contracts, and it recently released an exhaustive report on the subject, which is available at: [http://files.consumerfinance.gov/f/201503\\_cfpb\\_factsheet\\_arbitration-study.pdf](http://files.consumerfinance.gov/f/201503_cfpb_factsheet_arbitration-study.pdf).

Second, the CFPB inherited authority from the Federal Reserve Board and other federal regulators to enforce an array of federal consumer protection laws. These “enumerated consumer laws” include the Truth in Lending Act (TILA), 15 U.S.C. § 1601, *et. seq.*, the Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681, *et. seq.*, the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et. seq.*, and 15 other statutes.

### B. Forms of Regulatory Authority

The CFPB exercises its authority in three forms: enforcement, rulemaking and supervision. Each of these forms of regulatory authority is described in more detail below. Prior to enactment of the DFA, rulemaking authority largely was separated from enforcement and supervision for most of the enumerated consumer laws.

### C. Consumer Services

The CFPB directly engages with consumers through its complaint system and also through its consumer education program. The CFPB operates an innovative online system for collecting and resolving consumer complaints. The CFPB consumer complaint portal includes a system for online engagement of regulated entities that allows for engagement between the consumer and the regulated entity to occur without direct involvement of CFPB staff in most cases. *See* <http://www.consumerfinance.gov/complaint>. Although highly contested, the agency recently made many consumer complaints publicly available.

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<sup>1</sup> The author was a member of the CFPB Consumer Advisory Board at the time these materials were prepared. These materials represent the views of the author solely and are not endorsed by the CFPB or its Consumer Advisory Board.

## II. ENFORCEMENT

### A. UDAAP Authority

The CFPB can bring judicial or administrative enforcement actions. It has authority to bring enforcement actions under broad UDAAP principles, and it has authority to enforce the panoply of the regulatory schemes in the enumerated consumer laws. The UDAAP standard in the CFA expands on the similar concept employed under the Federal Trade Commission Act and by many state attorneys general by adding “abusive” to the list of principles. This addition has caused consternation among potential defendants of such actions, but has been rarely used by the CFPB to date.

### B. Remedies

The CFPB can obtain range of remedies in an enforcement action. Like other consumer protection enforcers, the CFPB’s remedies generally can be categorized as follows: (1) statutory injunctive relief authority; (2) civil penalties; and (3) public compensation. The CFPB has the authority to allocate money obtained for civil penalties to a special fund that can be used in other enforcement activities, including as public compensation in actions against insolvent defendants. 12 C.F.R. 1075. The CFPB authority to obtain public compensation, which is relief provided to consumers, includes the following exhaustive list of options: (A) rescission or reformation of contracts; (B) refund of moneys or return of real property; (C) restitution; (D) disgorgement or compensation for unjust enrichment; (E) payment of damages or other monetary relief. 12 U.S.C. § 5565. CFPB enforcement actions resolved to date have been characterized by settlements or orders that include all three forms of relief in each case.

### C. Example Actions

The agency has brought a total of 86 actions and resolved 70 of those cases as of July 2015. Not surprisingly given its origin in the aftermath of the mortgage crisis, the CFPB enforcement has included a variety of cases in the areas of mortgage origination and mortgage servicing. Examples of other areas of substantial CFPB enforcement are as follows:

\* Credit Card Add-on. The CFPB’s first enforcement action in July 2012 alleged that Capital One Bank targeted subprime credit cardholders with deceptive solicitations for credit monitoring services that were added to cardholder’s accounts. These cases targeting credit card “add-on” charges by the nation’s largest banks have been a staple of CFPB enforcement actions. The CFPB has brought at least six such cases and obtained approximately \$1.5 billion in public compensation from Citibank, American Express, Bank of America and other large card issuers.

\* Student Loans. CFPB cases in the area of student loans have been characterized by a wide array of alleged unfair and deceptive practices by different types of defendants. Its most recent action in this area was against. The agency has sued a company for unlawful practices in financial aid counseling services, sued private colleges for misleading students about job opportunities and student loan costs, and sued a bank for its student loan servicing and debt collection practices.

### III. RULEMAKING

The CFPB inherited rulemaking authority over enumerated consumer laws from other federal regulators. It also was granted authority to promulgate regulations under the FDCPA and FCRA—authority that previously had not been given to any federal agency.

The CFPB’s rulemaking UDAAP rulemaking authority is a critical change in the regulatory structure for consumer financial services. No federal agency previously had this broad authority to promulgate regulations governing consumer financial transactions. The CFPB UDAAP rulemaking power is narrower than its broad enforcement powers. It extends to any “financial product or service” that is used “primarily for personal, family or household purposes.” 12 U.S.C. § 5481. The DFA contains a lengthy list of market activities that constitute a financial product or service, *id.* at § 5481(15)(A). The limit to personal, family or household purposes is a common restriction in both federal and state consumer protection laws.

### IV. SUPERVISION

The CFPB also is a banking supervisor. Its supervisory function extends to large depository institutions and non-depositaries.

#### A. Depositories

Federal and state bank supervisors use examiners to look at the records and operations of regulated entities. The CFPB has authority to examine large depository institutions, which is defined in the DFA as depositories whose net assets exceed \$10 billion. 12 U.S.C. § 5515. The CFPB shares examination authority over large depositories with other prudential banking regulators, usually the Office of Comptroller of the Currency (OCC). The CFPB’s supervision focuses solely on consumer protection concerns. Smaller depositories are examined by the OCC and other federal banking regulators-- the Federal Deposit Insurance Corporation (FDIC), the Federal Reserve Board, and the National Credit Union Administration (NCUA)— and state banking regulators.

#### B. Non-depositaries

An important DFA addition to the consumer financial regulatory system was its grant of authority to the CFPB to supervise non-depository institutions. Prior to the financial crisis, the FTC had authority to bring UDAP enforcement actions against these entities, but no federal regulator had a supervisory function with non-depositaries. In many areas, these entities were not even subject to state supervision.

The DFA granted the CFPB supervisory authority over several sectors of consumer finance long criticized by consumer advocates as rife with abusive practices, including payday lending, mortgage brokers and private student lenders. 12 U.S.C. § 5514(a). The DFA also gave the CFPB supervisory authority over “larger participants” in consumer finance markets, and the agency used this statutory authority to promulgate rules identifying entities subject to its

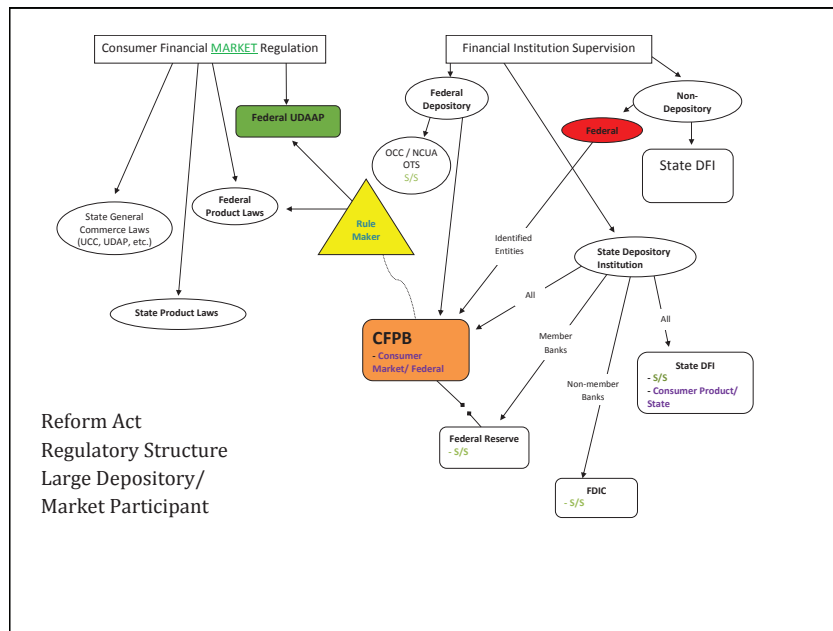
supervisory powers in the areas of debt collection (2013), private loan serving (2013) and nonbank motor vehicle finance (2015).

# CFPB 101: An Overview of CFPB Authority

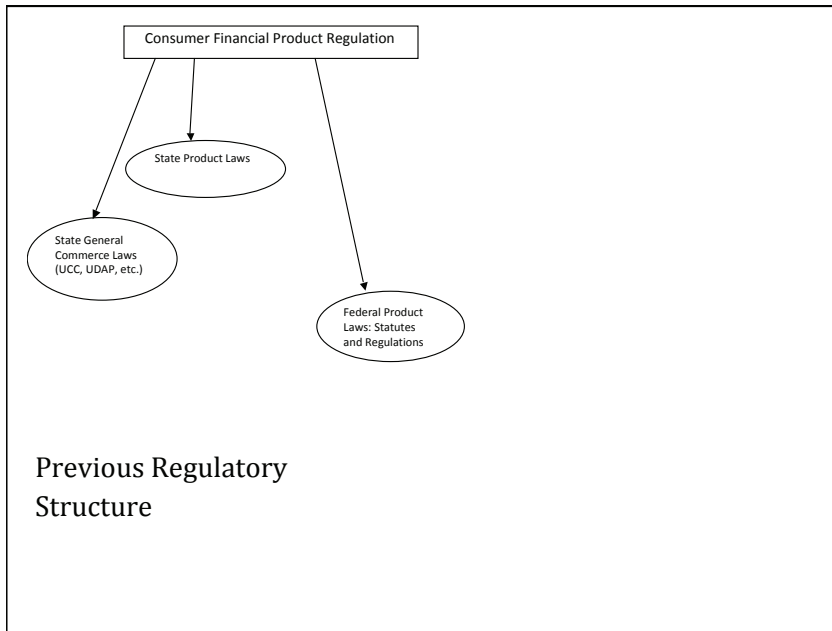
Midwest Bankruptcy Institute  
October 15, 2015

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The statements and views of the presenter do not represent the position or views of the CFPB or its Consumer Advisory Board

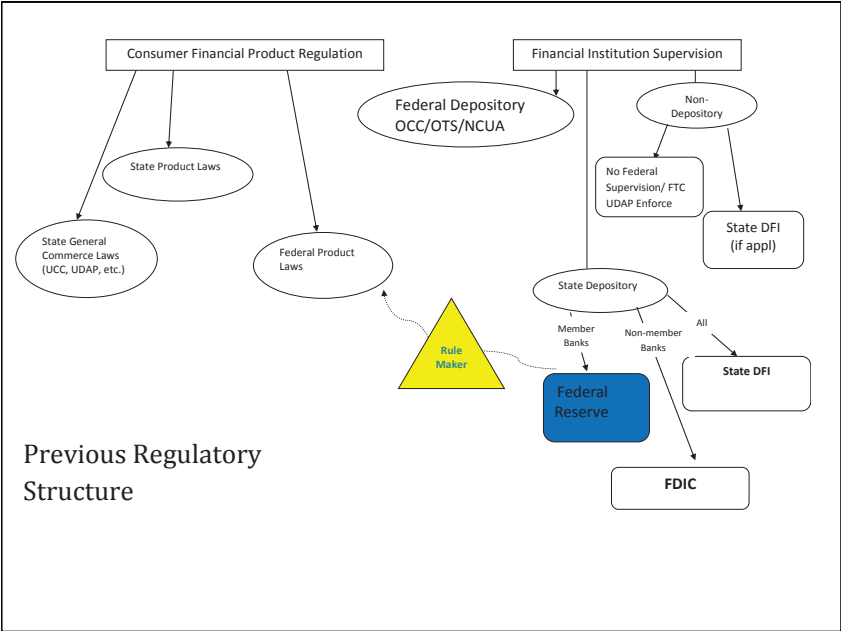
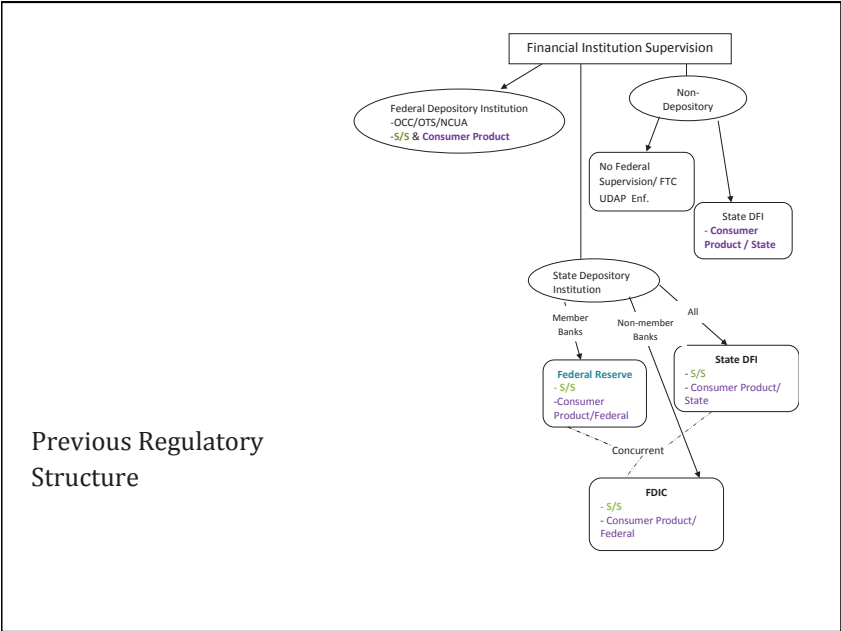




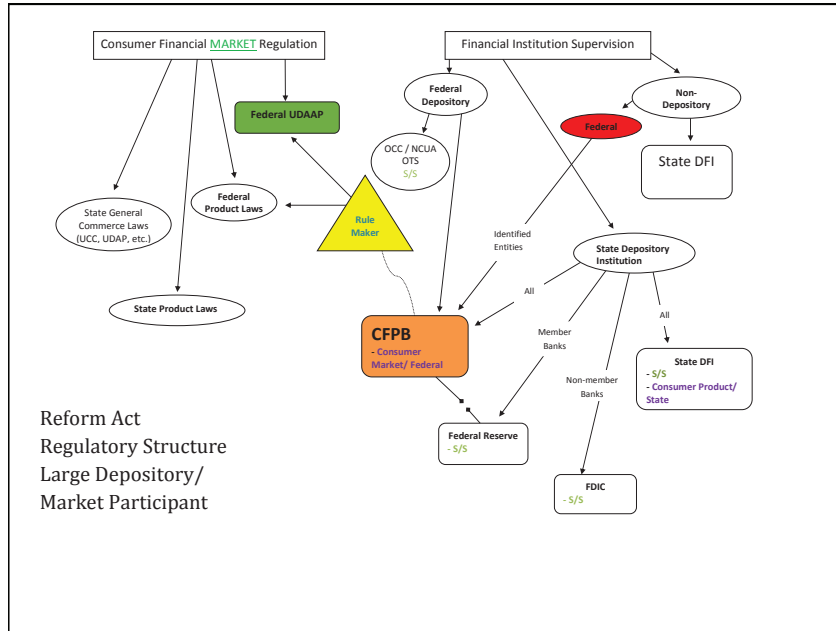


Select Federal Consumer Credit Regulation  
 “Enumerated Consumer Laws” in Dodd-Frank Act

Statute	Regulation
Truth-in-Lending Act (TILA), 15 U.S.C. §§1601-1666j (including Fair Credit Billing Act)	Federal Reserve Regulation Z, 12 C.F.R. pt. 226
Consumer Leasing Act, 15 U.S.C. §§1667-1667f	Federal Reserve Regulation M, 12 C.F.R. pt. 213
Fair Credit Reporting Act (FCRA), 15 U.S.C. §§1681-1681u	None
Equal Credit Opportunity Act (ECOA), 15 U.S.C. §§1691-1691f	Federal Reserve Regulation B, 12 C.F.R. pt. 202
Fair Debt Collections Practices Act, 15 U.S.C. §§1692-1692o	None
Electronic Fund Transfer Act (EFTA), 15 U.S.C. §§1693-1693r	Federal Reserve Regulation E, 12 C.F.R. pt. 205
Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. §§2601-2617	HUD Regulation X, 24 C.F.R. pt. 3500
Homeowner’s Protection Act of 1998 (HOEPA), 12 U.S.C. §4901	Implemented in Regulation Z, 12 C.F.R. pt. 226.31-34



9/10/15



## Consumer Financial Protection Bureau

David H. Hixson, Counsel, Office of Regulations



### Our Vision

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A consumer finance marketplace...

*where customers can see prices and risks up front and  
where they can easily make product comparisons;*

*in which no one can build a business model around  
unfair, deceptive, or abusive practices;*

*that works for American consumers, responsible  
providers, and the economy as a whole.*



## Diverse Toolbox

### Consumer Education and Engagement

Engage consumers via financial education, an innovative website, and offices addressing issues faced by these special populations: servicemembers, students, older Americans, and lower-income consumers

### Consumer Response

Hears directly from consumers about the challenges they face in the marketplace, answers consumers' questions, accepts and responds to consumer complaints, collects and shares data.

### Research and Rulewriting

Develop comprehensive expertise and insights into consumer financial markets and ensure rulewriting is informed by market knowledge

### Supervision

Assess adequacy of compliance systems, compliance with federal consumer protection laws, and risks to consumers in delivery of consumer financial products and services

### Enforcement

Initiate investigations and enforcement actions, where appropriate, to ensure that providers of consumer financial products and services comply with federal law, and that these providers are held accountable when they fail to do so



## Office of Consumer Response

- The Office of Consumer Response uses the latest technologies to answer consumers' questions and to accept and route consumers' complaints directly to financial companies.
- We share data to empower consumers, inform consumer advocates and companies, and improve the functioning of the marketplace.



Answer questions



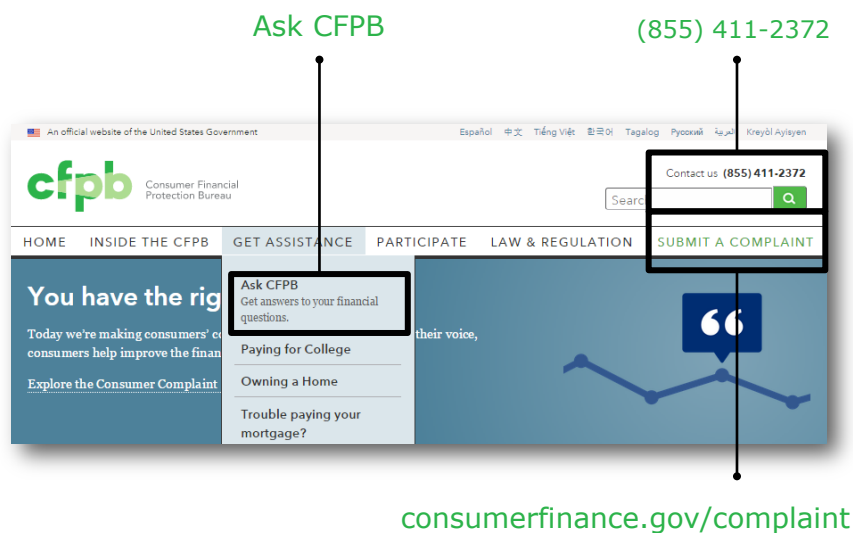
Handle complaints



Analyze and share data



## How we answer questions and handle complaints



## How we help



### Individual assistance

We turn complaints into action. We work to get a response to complaints – **generally within 15 days**



### Market-wide information

**Every complaint provides insight** into problems consumers are experiencing

## consumerfinance.gov/complaint

Choose a product or service to get started

If you don't want to submit a complaint, you can [tell your story](#).

**LOANS**

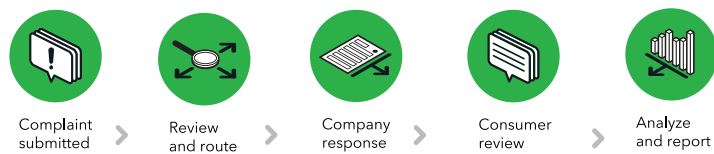
- [Mortgage](#)
- [Student loan](#)
- [Vehicle loan or lease](#)
- [Payday loan](#)
- [Other consumer loan](#)

**PRODUCTS AND SERVICES**

- [Bank account or service](#)
- [Credit card or prepaid card](#)
- [Credit reporting](#)
- [Debt collection](#)
- [Money transfer or virtual currency](#)
- [Other financial service](#)



## Complaint process



## consumerfinance.gov/complaintdatabase

The screenshot shows the CFPB's Consumer Complaint Database homepage. At the top, it identifies itself as an official website of the United States Government and provides language options (Español, 中文, Tiếng Việt, 日本語, Tagalog, ਪੰਜਾਬੀ, العربية, Kreyòl Ayisyen). The CFPB logo and contact information (855) 411-2372 are visible. A navigation bar includes links for HOME, INSIDE THE CFPB, GET ASSISTANCE, PARTICIPATE, LAW & REGULATION, and SUBMIT A COMPLAINT. The main heading is "Consumer Complaint Database". Below it, a paragraph explains that the database publishes thousands of consumer complaints weekly, after a 15-day response period from companies. To the right, a line graph with three data points, each marked with an exclamation mark, illustrates the process. Below this, three circular icons represent the database's features: a speech bubble with an exclamation mark for sharing complaints, a calendar icon for viewing and filtering data, and a laptop icon for the public availability of the data. Each icon is accompanied by a brief description of its function.

**Consumer Complaint Database**

Each week we send thousands of consumers' complaints about financial products and services to companies for response. Those complaints are published here after the company responds or after 15 days, whichever comes first. By adding their voice, consumers help improve the financial marketplace.

Consumers have let us know they want to share their complaint descriptions so others can learn from their experience.

View, sort, and filter data right in your browser.

All complaint data we publish is freely available for anyone to use, analyze, and build on.

## Proposed Amendments to Mortgage Servicing Regulations

An Overview of Certain Provisions





## Background – 2013 Mortgage Servicing Rules

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- In 2013, the Bureau issued Mortgage Servicing Rules to implement provisions under the Dodd Frank Wall Street Reform and Consumer Protection Act
- Effective date: January 10, 2014
- Requirements under Regulations X and Z relating to:
  - Error resolution and information requests
  - Force-placed insurance
  - General servicing policies and procedures
  - Early intervention and continuity of contact for delinquent borrowers
  - Loss mitigation procedures and dual tracking
  - Prompt crediting and payoff statements
  - ARM disclosure requirements
  - Periodic statements



## Background – 2014 Proposed Mortgage Servicing Rule

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- After the effective date, the Bureau continued to engage in outreach and monitoring with industry, consumer advocacy groups, and others
- As a result, the Bureau identified areas where the rules may need further modification or clarification
- The Bureau issued proposed amendments to the mortgage servicing rules in November 2014 (published at 79 FR 74175 on December 15, 2014)
- 90-day comment period ended March 16, 2015



## Early Intervention – Exemptions (1024.39)

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- By 36th day, make good faith efforts to establish live contact with borrowers
- By 45th day, provide written information to borrowers
- Currently, servicers are exempt from all early intervention requirements if the borrower or joint obligor is in bankruptcy
- Summary of proposal:
  - Live contact exemption no longer applies to joint obligors of borrowers in Chapter 7 or 11 bankruptcy
  - Written notice exemption applies only when no loss mitigation options are available, the borrower is surrendering the property, or the bankruptcy court renders the lien unenforceable. Otherwise, written notice required



## Periodic Statements (1026.41) – Bankruptcy

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- Currently:
  - Servicers are exempt from having to provide periodic statements (or coupon books) to consumers in bankruptcy
- Summary of proposal:
  - Servicers are required to send modified periodic statements (or coupon books) to consumers in bankruptcy, subject to certain exceptions
  - The exemption is retained for consumers in bankruptcy who:
    - Are surrendering the property or avoiding the lien; or
    - Have requested that the servicer cease providing periodic statements (or coupon books)
  - Servicers must resume providing periodic statements (or coupon books) in certain circumstances



## Periodic Statements (1026.41) – Bankruptcy

- Proposed Modifications to Required Content
  - May omit certain delinquency-related disclosures, mention of possible late fees, and consequences of non-payment.
  - Must include statement that it is for informational purposes only and identify consumer's status as a debtor in bankruptcy (or that loan was discharged)
- Additional Modifications when Consumer is in Chapter 13
  - May limit amount due to post-petition payments (date and amount) and post-petition fees and charges
  - Must include pre-petition arrearage information: payments received and current balance
  - Must include statements that consumer should send payment to Trustee if bankruptcy plan so requires, that the statement may not be consistent with Trustee's records, and encouraging consumer to contact attorney or Trustee with questions



## Resources

- Tell Your Story: <http://help.consumerfinance.gov/app/tellyourstory>
- Complaints: <http://www.consumerfinance.gov/complaint/>
- Complaint Database: [consumerfinance.gov/complaintdatabase/](http://consumerfinance.gov/complaintdatabase/)
- Ask CFPB: <http://www.consumerfinance.gov/askcfpb/>
- Rulemakings: <http://www.consumerfinance.gov/notice-and-comment/>
- CFPB Twitter: @CFPB
- CFPB Facebook: <http://www.facebook.com/CFPB>
- CFPB Blog: <http://www.consumerfinance.gov/blog/>
- Order Materials: <http://promotions.usa.gov/cfpbpubs.html>
- Request regulatory guidance: [CFPB\\_reginquiries@cfpb.gov](mailto:CFPB_reginquiries@cfpb.gov)
- Notify CFPB of a Servicing Problem: [CFPB\\_Servicingtips@cfpb.gov](mailto:CFPB_Servicingtips@cfpb.gov)
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