BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

[Docket No. CFPB-2013-0013]

RIN 3170-AA37

Loan Originator Compensation Requirements under the Truth In Lending Act (Regulation Z); Prohibition on Financing Credit Insurance Premiums; Delay of Effective Date

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; delay of effective date.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is issuing a final rule delaying the June 1, 2013, effective date of a prohibition on creditors financing credit insurance premiums in connection with certain consumer credit transactions secured by a dwelling. The prohibition was adopted in the Loan Originator Compensation Requirements under the Truth in Lending Act (Regulation Z) Final Rule, issued on January 20, 2013. The Bureau is delaying the effective date until January 10, 2014, to permit the Bureau to clarify, before the provision takes effect, its applicability to transactions other than those in which a lump-sum premium is added to the loan amount at closing. The new effective date will be January 10, 2014, but the Bureau will solicit comment on the appropriate effective date at the same time that it seeks comment on clarifications. (The Bureau is not contemplating extending the effective date beyond January 10, 2014.)

DATES: This rule is effective on June 1, 2013. The effective date of 12 CFR 1026.36(i), was scheduled to be June 1, 2013, and is now delayed until January 10, 2014.

FOR FURTHER INFORMATION CONTACT: Richard Arculin or Daniel Brown, Counsels, Office of Regulations, at (202) 435-7700.

SUPPLEMENTARY INFORMATION:

I. Background

In January 2013, the Bureau issued several final rules concerning mortgage markets in the United States, pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).[1] One of these final rules was the Loan Originator Compensation Requirements Under the Truth in Lending Act (Regulation Z) (Final Rule).[2] The Final Rule implemented Dodd-Frank Act amendments to the Truth in Lending Act (TILA) addressing loan originator compensation; qualifications of, and registration or licensing of loan originators; compliance procedures for depository institutions; mandatory arbitration; and the financing of single-premium credit insurance. With regard to the financing of single-premium credit insurance, the Final Rule included a provision implementing the Dodd-Frank Act section 1414 amendment that added new TILA section 129C(d), 15 U.S.C. 1639c(d). That provision prohibits creditors from financing premiums or fees for certain credit insurance products in connection with certain consumer credit transactions secured by a dwelling. The Bureau implemented this provision by adopting § 1026.36(i).

A. Title XIV Rulemaking Effective Dates

In enacting the Dodd-Frank Act, Congress significantly amended the statutory requirements governing a number of mortgage practices, including loan originator compensation. Under the statute, most of these new requirements would have taken effect automatically on

[1] Public Law No. 111-203, 124 Stat. 1376 (2010).
[2] 78 FR 11279 (Feb. 15, 2013).

January 21, 2013, if the Bureau had not issued implementing regulations by that date.[3] To avoid uncertainty and potential disruption in the national mortgage market at a time of economic vulnerability, the Bureau issued several final rules (Title XIV Rulemakings) in January 2013, including the Final Rule issued on January 20, 2013, to implement these new statutory provisions and provide for an orderly transition. To allow the mortgage industry sufficient time to comply with the new rules, the Bureau established January 10, 2014—one year after issuance of the earliest of the Title XIV Rulemakings—as the effective date for most of the Title XIV Rulemakings, including most provisions of the Final Rule. However, the Bureau identified certain provisions that it believed did not present significant implementation burdens for industry, including § 1026.36(h) on mandatory arbitration clauses and waivers of certain consumer rights and § 1026.36(i) on financing single-premium credit insurance, as adopted by the Final Rule. For these provisions, the Bureau set an earlier effective date of June 1, 2013.

B. Implementation Initiative for New Mortgage Rules

On February 13, 2013, the Bureau announced an initiative to support implementation of its new mortgage rules (Implementation Plan),[4] under which the Bureau would work with the mortgage industry to ensure that the Title XIV Rulemakings can be implemented accurately and expeditiously. The Implementation Plan included (1) coordination with other agencies; (2) publication of plain-language guides to the new rules; (3) publication of updates, such as additional corrections, adjustments, and clarifications of the new rules, as needed; (4) publication of readiness guides for the new rules; and (5) education of consumers on the new rules.

This final rule, which delays the effective date of the provision on financing single-premium credit insurance, is one of several updates to the Title XIV Rulemakings. The purpose

[3] Dodd-Frank Act section 1400(c), 15 U.S.C. 1601 note.
[4] Consumer Financial Protection Bureau Lays Out Implementation Plan for New Mortgage Rules. Press Release. Feb. 13, 2013.

of these updates is to address important questions raised by industry, consumer groups, or other agencies. The update addressed by this final rule was given priority because the effective date for § 1026.36(i) was June 1, 2013, and certainty regarding compliance is a matter of some urgency. The Bureau intends to publish a proposal shortly to seek further comment on clarifications to the provision as discussed further below.

II. Legal Authority

On July 21, 2011, section 1061 of the Dodd-Frank Act transferred to the Bureau the "consumer financial protection functions" previously vested in certain other Federal agencies, including the Board of Governors of the Federal Reserve System. The term "consumer financial protection function" is defined to include "all authority to prescribe rules or issue orders or guidelines pursuant to any Federal consumer financial law, including performing appropriate functions to promulgate and review such rules, orders, and guidelines." 12 U.S.C. 5581(a)(1). TILA is a Federal consumer financial law. Dodd-Frank Act section 1002(14), 12 U.S.C. 5481(14) (defining "Federal consumer financial law" to include the "enumerated consumer laws" and the provisions of title X of the Dodd-Frank Act); Dodd-Frank Act section 1002(12), 12 U.S.C. 5481(12) (defining "enumerated consumer laws'' to include TILA). Accordingly, the Bureau has authority to issue regulations pursuant to TILA.

As amended by the Dodd-Frank Act, TILA section 105(a), 15 U.S.C. 1604(a), directs the Bureau to prescribe regulations to carry out the purposes of TILA and provides that such regulations may contain additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions, that the Bureau judges are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance. Further, under Dodd-

Frank Act section 1022(b)(1), 15 U.S.C. 5512(b)(1), the Bureau has general authority to prescribe rules as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof. The Bureau is delaying the effective date until January 10, 2014, pursuant to its TILA section 105(a) and Dodd-Frank Act section 1022(b)(1) authority. The Bureau believes such a delay will facilitate compliance and help ensure that the Final Rule does not have adverse unintended consequences. In particular, the delay will permit the Bureau to clarify, before § 1026.36(i) takes effect, its applicability to transactions other than those in which a lump-sum premium is added to the loan amount at closing.

III. Effective Date

As discussed above, Dodd-Frank Act section 1414 added TILA section 129C(d), which generally prohibits a creditor from financing any premiums or fees for credit insurance in connection with any residential mortgage loan or with any extension of credit under an open-end consumer credit plan secured by the consumer's principal dwelling.[5] The prohibition applies to credit life, credit disability, credit unemployment, credit property insurance, and other similar products. The same provision states, however, that the prohibition does not apply to credit insurance for which premiums or fees are calculated and paid in full on a monthly basis or to credit unemployment insurance for which the premiums are reasonable, the creditor receives no compensation, and the premiums are paid pursuant to a separate insurance contract and are not paid to the creditor's affiliate.

In a proposed rule published on September 7, 2012,[6] the Bureau proposed to implement this provision through § 1026.36(i), which generally tracks the statutory language. In the

[5] 15 U.S.C. 1639C(d).
[6] 77 FR 55272 (Sept. 7, 2012).

proposal, the Bureau stated its belief that the provision was generally straightforward but sought comment on whether any issues raised by the provision required clarification. Anticipating that few, if any, clarifications would be necessary and that accordingly industry would not require significant time to accommodate any clarifications of the final rule, the Bureau also sought comment on whether the provision should become effective sooner than January 2014.[7]

The Bureau received very few public comments on the substance of the proposed prohibition or the earlier effective date. Consumer groups sought clarification on the provision's applicability to certain factual scenarios where credit insurance premiums are charged periodically, rather than as a lump-sum added to the loan amount at closing. They also urged the Bureau to provide an early effective date for the provision. The Bureau did not receive any public comments from the credit insurance industry. The Bureau received some limited comments from creditors concerning the general prohibition, but these comments did not address the applicability of the provision to transactions in which premiums are charged periodically. In the preamble to the Final Rule, the Bureau provided some explanation concerning the provision's applicability to credit insurance premiums charged periodically, rather than as a lump-sum added to the loan amount at closing.

A. Post-Final Rule Concerns

Since publication of the Final Rule, industry stakeholders have expressed concern that the regulation text and preamble left substantial uncertainty about whether, and under what circumstances, premiums for certain credit insurance products can be charged on a periodic basis in connection with a covered consumer credit transaction secured by a dwelling. Specifically, representatives of credit unions and credit insurers have raised a concern that the Final Rule could be interpreted to prohibit any level or levelized credit insurance premiums, which they

[7] Id.

believe are not financed by the creditor and/or should be permissible as calculated and paid in full on a monthly basis.[8] These stakeholders pointed out that the preamble to the Final Rule states that "charging a fixed monthly charge for the credit insurance that does not decline as the loan balance declines would fail to meet the requirement for the premium to be 'calculated…on a monthly basis' [and] … [a]s a result, this practice would fail to satisfy the conditions for the exclusion from what constitutes 'financ[ing], directly or indirectly' credit insurance premiums." Thus, absent clarification by the Bureau, the Final Rule could be interpreted to assume that any level or levelized premiums are both financed by the creditor and not calculated and paid on a monthly basis—and therefore they are prohibited.

Credit insurance company representatives raised several interpretive questions relating to this concern, which they have urged the Bureau to address. They stated that levelized premiums are, in fact, "calculated…on a monthly basis," because an actuarially derived rate is multiplied by a fixed monthly principal and interest payment to derive the monthly insurance premium. They also stated that level premiums are "calculated…on a monthly basis" because an actuarially derived rate is multiplied by the consumer's original loan amount to derive the monthly insurance premium. Accordingly, they believe that level and levelized credit insurance premiums should be excluded from the prohibition on creditors financing credit insurance premiums so long as they are also paid in full on a monthly basis. In addition they stated that, even if the Bureau concludes that level or levelized credit insurance premiums are not "calculated" on a monthly basis within the meaning of the exclusion from the prohibition, they are not "financed" by a creditor and thus are not prohibited by the statutory provision.

Accordingly, they have requested clarification on § 1026.36(i)'s applicability to these

[8] The term "levelized" premiums refers to a flat monthly payment that is derived from a decreasing monthly premium alternative arrangement, and the term "level" premium refers to premiums for which there is no decreasing monthly premium alternative arrangement available, such as for level mortgage life insurance.

credit insurance products and also have expressed concern regarding their ability to comply timely, given that the Final Rule provided an effective date for § 1026.36(i) of June 1, 2013.

In light of the interpretive questions that have arisen since publication of the Final Rule, the Bureau intends to publish a proposal to seek further comment on the provision shortly. In that proposal, the Bureau intends, among other things to seek public comment, including from industry stakeholders and consumers, on (1) the applicability of the prohibition to transactions in which credit insurance premiums are charged periodically; and (2) given these proposed clarifications to § 1026.36(i), what effective date would be appropriate.

B. May 10, 2013 Proposal to Delay Effective Date

On May 10, 2013, the Bureau issued a proposed rule seeking comment on a temporary delay of the June 1, 2013 effective date of § 1026.36(i).[9] The Bureau made clear in the proposal that it contemplated delaying the effective date only as long as necessary for any clarifications to be proposed, finalized, and implemented, and sought public comment on two issues: (1) whether the effective date should be delayed; and (2) if so, what the new effective date should be. The Bureau also stated it was concerned that, if the effective date were not delayed, creditors could face uncertainty about whether and under what circumstances credit insurance premiums may be charged periodically in connection with covered consumer credit transactions secured by a dwelling, which could result in a substantial compliance burden to industry. Finally, the Bureau noted that it intends to propose and again seek comment on the effective date for any clarifications to § 1026.36(i) as part of the forthcoming proposal.

C. Public Comments

The Bureau received approximately 70 comments from credit unions and other industry members supporting the proposal to delay the effective date. These commenters agreed that

[9] 78 FR 27308 (May 10, 2013).

interpretive questions exist regarding the application of the provision to credit insurance premiums charged periodically, in particular to level or levelized premiums. These commenters strongly supported the proposal to delay the effective date while those questions are addressed in the upcoming proposal, and they generally suggested a delay of the effective date until January 10, 2014, or alternatively 6 to 12 months after the upcoming proposal is finalized. The Bureau also received a joint comment from consumer groups opposing the proposal. The consumer groups stated that they did not believe any real interpretive questions exist that require a delay of the effective date or an additional proposal.

D. Final Rule

Upon consideration of these public comments, the Bureau is finalizing the proposal to delay the effective date for § 1026.36(i). The Bureau is persuaded that significant interpretive questions exist regarding the application of the provision to credit insurance charged periodically, which it intends to address in a forthcoming proposal. The Bureau also agrees with industry commenters that, if the effective date were not delayed, creditors would face uncertainty about whether and under what circumstances credit insurance premiums may be charged periodically in connection with covered consumer credit transactions secured by a dwelling, which could result in a substantial compliance burden to industry.

Rather than suspend the effective date indefinitely pending the clarification, the Bureau believes it is appropriate to adopt a new effective date for § 1026.36(i) of January 10, 2014, which is consistent with the effective date for most of the Title XIV Rulemakings. Thus, § 1026.36(i) will be effective for any transactions where applications were received by the creditor on or after January 10, 2014.

However, with respect to the January 10, 2014 effective date, the Bureau emphasizes that

it intends to issue a new proposal shortly that will, among other things, specifically seek comment on the appropriate effective date in light of the proposal to provide additional clarifying amendments. The Bureau is mindful of the public comments it received in connection with this notice that suggest creditors will need time to adjust certain credit insurance premium billing practices once the clarifications are finalized. However, any such amendments will not be finalized until the Bureau has proposed amendments to § 1026.36(i), appropriately considered public comment, and issued a final rule in connection with the upcoming proposal. The Bureau is also mindful of the fact that the protections provided by Congress would have applied effective January 21, 2013, had the Bureau not promulgated implementing regulations. The Bureau expects that industry will use the intervening time to review systems and begin making appropriate modifications to facilitate the implementation process as quickly as practicable once the additional clarifications are finalized.

Accordingly, the Bureau is delaying the June 1, 2013 effective date for the provision to January 10, 2014, while the Bureau considers addressing interpretive questions concerning the provision's applicability to transactions other than those in which a lump-sum premium is added to the loan amount at consummation.

This final rule will be effective on June 1, 2013. Under section 553(d) of the Administrative Procedure Act (APA), the required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except for (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) as otherwise provided for good cause found and published with the rule. 5 U.S.C. 553(d). This final rule does not establish any requirements, but rather delays the effective date of § 1026.36(i) until January 10, 2014. Therefore, under 553(d)(1) of the APA, the

Bureau is publishing this final rule less than 30 days before its effective date because it is a substantive rule which grants or recognizes an exemption or relives a restriction. 5 U.S.C. 553(d)(1). Further, making the delay effective on June 1, 2013, will ensure that § 1026.36(i) does not take effect until the Bureau has an opportunity to clarify the provision's applicability to transactions other than those in which a lump-sum premium is added to the loan amount at closing, facilitating compliance with the statute and helping to ensure that the Final Rule does not have adverse unintended consequences. Therefore, The Bureau further finds it has good cause pursuant to section 553(d)(3) of the APA to dispense with the 30 day delayed effective date requirement because, on balance, the need to implement immediately the delay of the June 1, 2013 effective date of § 1026.36(i) outweighs the need for affected parties to prepare for this delay.

IV. Section 1022(b)(2) of the Dodd-Frank Act

In developing the final rule, the Bureau has considered the potential benefits, costs, and impacts.[10] The Bureau requested comment on its preliminary analysis as well as submissions of additional data that could inform the Bureau's analysis of the benefits, costs, and impacts of the final rule. The Bureau has consulted, or offered to consult with, the prudential regulators, HUD, USDA, FHFA, the Federal Trade Commission, and the Department of the Treasury, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies.

In part VII of the Final Rule, the Bureau previously considered the costs, benefits, and

[10] Section 1022(b)(2)(A) of the Dodd-Frank Act, 12 U.S.C. 5521(b)(2), directs the Bureau, when prescribing a rule under the Federal consumer financial laws, to consider the potential benefits and costs of regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on insured depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas. Section 1022(b)(2)(B) of the Dodd-Frank Act directs the Bureau to consult with appropriate prudential regulators or other Federal agencies regarding consistency with prudential, market, or systemic objectives that those agencies administer.

impact of § 1026.36(i) as adopted by the Final Rule. The Bureau believes that, compared to the baseline established by the Final Rule, [11] the delay of the effective date for § 1026.36(i) will generally benefit creditors and the credit insurance industry by delaying the start of ongoing compliance costs, and allowing time for a process to clarify the scope and compliance requirements of the regulation. Creditors and the credit insurance industry will benefit to the extent that the changes eliminate any disruptions in the provision of credit insurance products to consumers while interpretive questions concerning § 1026.36(i) are addressed. The Bureau believes that delaying the effective date of § 1026.36(i) will also delay the consumer benefit that would result from allowing the rule to take effect. Specifically, delaying the effective date would delay the prohibition on lump-sum credit insurance premiums added to the loan amount at closing, which Congress prohibited through TILA section 129C(d).

In addition, the final rule is not expected to have a differential impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act or on consumers in rural areas. The Bureau does not believe that the final rule will meaningfully reduce consumers' access to consumer products and services.

V. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements.[12] These analyses must "describe the impact of the final rule on small entities."[13] An IRFA or FRFA is not required if the agency

[11] The Bureau has discretion in any rulemaking to choose an appropriate scope of analysis with respect to potential benefits and costs and an appropriate baseline.
[12] 5 U.S.C. 601 *et seq.*
[13] 5 U.S.C. 603(a). For purposes of assessing the impacts of the final rule on small entities, "small entities" is defined in the RFA to include small businesses, small not-for-profit organizations, and small government jurisdictions. 5 U.S.C. 601(6). A "small business" is determined by application of Small Business Administration

certifies that the rule will not have a significant economic impact on a substantial number of small entities,[14] or if the agency considers a series of closely related rules as one rule for purposes of complying with the IRFA or FRFA requirements.[15] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[16]

The Bureau did not perform an IFRA for the proposed rule because it determined and certified that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The Bureau did not receive any comments regarding its certification of no significant economic impact. The Bureau concludes that a FRFA is not required for this final rule because it will not have a significant impact on a substantial number of small entities. As discussed above, the final rule will delay the June 1, 2013 effective date of § 1026.36(i), as adopted by the Final Rule, until January 10, 2014. The delay in effective date will benefit small creditors by delaying the start of any ongoing compliance costs.

Accordingly, the undersigned hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

VI. Paperwork Reduction Act Analysis

The Bureau may not conduct or sponsor, and, notwithstanding any other provision of law, a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. Regulation Z currently contains collections of information approved by OMB. The Bureau's OMB control number for Regulation Z is 3170–0015. However, the

---

regulations and reference to the North American Industry Classification System (NAICS) classifications and size standards. 5 U.S.C. 601(3). A "small organization" is any "not-for-profit enterprise which is independently owned and operated and is not dominant in its field." 5 U.S.C. 601(4). A "small governmental jurisdiction" is the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000. 5 U.S.C. 601(5).

[14] 5 U.S.C. 605(b).

[15] 5 U.S.C. 605(c).

[16] 5 U.S.C. 609.

Bureau has determined that this final rule will not materially alter these collections of information or impose any new recordkeeping, reporting, or disclosure requirements on the public that would constitute collections of information requiring approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

[THIS SIGNATURE PAGE PERTAINS TO THE FINAL RULE TITLED "LOAN ORIGINATOR COMPENSATION REQUIREMENTS UNDER THE TRUTH IN LENDING ACT (REGULATION Z); PROHIBITION ON FINANCING CREDIT INSURANCE PREMIUMS; DELAY OF EFFECTIVE DATE)"]

Dated: May 29, 2013.

Richard Cordray,
Director, Bureau of Consumer Financial Protection.