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: Proposed rule with request for public comment.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is proposing to temporarily delay 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. Temporary delay of the effective date would 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.

DATES: Comments must be received on or before [**INSERT DATE 15 DAYS AFTER FEDERAL REGISTER PUBLICATION**].

ADDRESSES: You may submit comments, identified by Docket No. CFPB-2013-0013 or RIN 3170-AA37, by any of the following methods:

- *Electronic*: http://www.regulations.gov. Follow the instructions for submitting comments.

- *Mail/Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street, NW, Washington, DC 20552.

Instructions: All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to http://www.regulations.gov. In addition, comments will be available for public inspection and copying at 1700 G Street, NW, Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435-7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

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). Public Law No. 111-203, 124 Stat. 1376 (2010). One of these final rules was the Loan Originator Compensation Requirements under the Truth in Lending Act (Regulation Z)

Final Rule ("Final Rule").[1] 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 January 21, 2013, if the Bureau had not issued implementing regulations by that date.[2] To avoid uncertainty and potential disruption in the national mortgage market at a time of economic vulnerability, the Bureau issued several final rules ("the 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 baseline 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

[1] 78 FR 11279 (Feb. 15, 2013)
[2] Dodd-Frank Act section 1400(c), 15 U.S.C. 1601 note.

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),[3] under which the Bureau would work with the mortgage industry to ensure that the new rules 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 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 proposal is a proposed adjustment to the new rules. The purpose of these updates is to address important questions raised by industry, consumer groups, or other agencies.

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

[3] Consumer Financial Protection Bureau Lays Out Implementation Plan for New Mortgage Rules. Press Release. Feb. 13, 2013.

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 proposing to temporarily delay the effective date 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.

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.[4] 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

[4] 15 U.S.C. 1639(d).

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.

The Bureau proposed to implement this provision through § 1026.36(i), which generally tracks the statutory language. In the proposal, the Bureau stated its belief that the provisions were 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.[5]

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. Since publication of the final rule, industry stakeholders have expressed concern that the regulation text and preamble left substantial uncertainty about

[5] 77 FR 55272 (Sept. 7, 2012).

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. These stakeholders have requested clarification on § 1026.36(i)'s applicability to these 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 new proposal to seek further notice and comment on the provision in June 2013. In that proposal, among other things, the Bureau plans to (1) seek public comment, including from industry stakeholders and consumers, regarding the applicability of the prohibition to transactions in which credit insurance premiums are charged periodically; and (2) propose a new effective date for § 1026.36(i), under which the provision would take effect some time after finalization of that proposal.

In the interim, the Bureau is proposing to temporarily delay the June 1, 2013, effective date of § 1026.36(i). The Bureau is concerned that, if the effective date is 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. The Bureau believes this could result in a substantial compliance burden to industry. The Bureau thus proposes that the effective date for § 1026.36(i) be temporarily delayed. The Bureau contemplates delaying the effective date only as long as necessary for any clarifications to be proposed, finalized, and implemented. The Bureau solicits comment on what that new date should be. Further, whatever new effective date the Bureau may announce as a result of this proposal, the Bureau also intends to propose and again seek comment on the effective date for any clarifications to § 1026.36(i) as part of the forthcoming June proposal. The Bureau believes

that the temporary delay would balance the need for consumers to receive the protections afforded by the rule as quickly as possible with industry's need to make adjustments to comply with the provisions of the rule.

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

The Bureau is considering the potential benefits, costs, and impacts of the proposed rule.[6] The Bureau requests comment on the preliminary analysis presented below as well as submissions of additional data that could inform the Bureau's analysis of the benefits, costs, and impacts of the proposed rule. The Bureau has consulted, or offered to consult with, the prudential regulators, SEC, HUD, VA, 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 impact of § 1026.36(i) as adopted by the Final Rule. The Bureau believes that, compared to the baseline established by the Final Rule, [7] the proposed delay of § 1026.36(i)'s effective date would 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 would 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

[6] 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.

[7] 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.

believes that delaying the effective date of § 1026.36(i) would 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 sought to prohibit through TILA section 129C.

In addition, the proposed 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 proposed rule would 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.[8] These analyses must "describe the impact of the proposed rule on small entities."[9] An IRFA or FRFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities,[10] or if the agency considers a series of closely related rules as one rule for purposes of complying with the IRFA or FRFA requirements.[11] The Bureau also is subject to

[8] 5 U.S.C. 601 *et seq*.
[9] 5 U.S.C. 603(a). For purposes of assessing the impacts of the proposed 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 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).
[10] 5 U.S.C. 605(b).
[11] 5 U.S.C. 605(c).

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.[12]

The Bureau concludes that an IRFA is not required for this proposed rule because the proposed rule, if adopted, would not have a significant impact on a substantial number of small entities. As discussed above, the proposal would temporarily delay the June 1, 2013 effective date of § 1026.36(i), as adopted by the Final Rule, pending the finalization of a forthcoming proposal that will address certain interpretive questions that have arisen regarding the application of the provision to non-lump sum credit insurance products. The Bureau will determine the new effective date when it finalizes that proposal. 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.

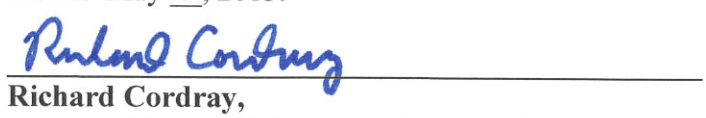
VI. Paperwork Reduction Act Analysis

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 Bureau has determined that this proposed rule would 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.* Comments on this determination may be submitted to the Bureau as instructed in the "ADDRESSES" section of this notice and to the attention of the Paperwork Reduction Act Officer.

[12] 5 U.S.C. 609.

[THIS SIGNATURE PAGE PERTAINS TO THE PROPOSED 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 7, 2013.



Richard Cordray,
Director, Bureau of Consumer Financial Protection.