

**CONSUMER FINANCIAL PROTECTION BUREAU**

**12 CFR Part 1074**

**Procedure Relating to Rulemaking; Rescission**

**AGENCY:** Consumer Financial Protection Bureau.

**ACTION:** Final rule.

**SUMMARY:** The Consumer Financial Protection Bureau (Bureau or CFPB) is adopting a procedural rule (Final Rule) that rescinds its rule specifying how the Bureau issues rules and when rules are considered issued.

**DATES:** The Final Rule is effective on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**FOR FURTHER INFORMATION CONTACT:** Dave Gettler, Paralegal Specialist, Office of Regulations, at 202-435-7700 or at: <https://reginquiries.consumerfinance.gov>. If you require this document in an alternative electronic format, please contact [CFPB\\_Accessibility@cfpb.gov](mailto:CFPB_Accessibility@cfpb.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background and Summary**

Pursuant to its authority under sections 1012(a)(1) and 1022(b) of the Consumer Financial Protection Act of 2010, 12 U.S.C. 5492(a)(1) and 5512(b), the Bureau is rescinding the rule and regulations adopted on December 28, 2012, via 77 FR 76353, “Procedure Relating to Rulemaking,” and codified in 12 CFR part 1074.1 (the “2012 Rule”). That rule established that a Bureau rule is deemed issued upon the earlier of (1) when the final rule is posted on the Bureau’s website or (2) when the final rule is published in the *Federal Register*.

The Bureau is exercising its discretion to rescind the 2012 Rule because the Bureau has reconsidered the necessity of deeming a rule to have been issued as of the date the final rule is posted on the Bureau’s website, which typically occurs at the time the final rule is transmitted to the Office of the Federal Register but before that office makes the document available for public

inspection and publishes it in the *Federal Register*. The concern that gave rise to the need to define issuance in this way, namely, the impendency of certain deadlines for rulemaking following the transfer of authorities to the Bureau that were imposed by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),<sup>1</sup> is no longer relevant. The Bureau recognizes the vital role that the *Federal Register* plays in providing transparency, public notice, and public participation in rulemaking, and therefore is deciding to revert to the traditional mechanism for determining when a rule has been validly promulgated absent specific congressional or regulatory imposition of an alternative date.<sup>2</sup>

Accordingly, the Bureau is rescinding the 2012 Rule providing that a Bureau rule be considered issued upon posting of the final rule to the Bureau's website when the Office of the Federal Register has not yet made the document available for public inspection or published it in the *Federal Register*.

## **II. Legal Authority and Effective Date**

Section 1022(b) of the Dodd-Frank Act authorizes the Bureau to prescribe rules as may be necessary and appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions of those laws.<sup>3</sup> In addition, section 1012(a) of the Dodd-Frank Act authorizes the Bureau "to establish the general policies of the Bureau with respect to all executive and administrative functions, including—(1) the establishment of rules for conducting the general business of the Bureau, in a manner not inconsistent with this title . . . ."<sup>4</sup>

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<sup>1</sup> Pub. L. 111-203; see 77 FR 76353, 76354 (Dec. 28, 2012) (discussing example of Dodd-Frank Act requirement that certain provisions of title XIV go into effect 18 months after the designated transfer date unless relevant regulations were "issued" by that date).

<sup>2</sup> See *Nat'l Grain & Feed Ass'n, Inc. v. Occupational Safety & Health Admin.*, 845 F.2d 345, 346 (D.C. Cir. 1988); see also *Humane Soc'y of the U.S. v. U.S. Dep't of Agric.*, 41 F.4th 564, 570 (D.C. Cir. 2022) (noting the significance of the Office of the Federal Register's making a document available for public inspection in providing constructive notice to regulated parties).

<sup>3</sup> 12 U.S.C. 5512(b)(1).

<sup>4</sup> 12 U.S.C. 5492(a)(1).

The Final Rule is procedural and not substantive and, thus, is not subject to the 30-day delay in effective date required by 5 U.S.C. 553(d). The Bureau is making the Final Rule effective immediately upon publication in the *Federal Register*.

### **III. Consumer Financial Protection Act Section 1022(b)(2) Analysis**

In developing this Final Rule, the Bureau has considered its potential benefits, costs, and impacts.

Certainty about the timing of issuance of the Bureau's rules will likely benefit consumers and covered persons. Rescinding the 2012 Rule implies that the public would need to only consult the Federal Register to determine the issuance date of a rule, and not the Bureau's website and the Federal Register, as under the 2012 Rule. The Bureau is not aware of costs to consumers or covered persons, including the potential reduction of access by consumers to consumer financial products or services, that can be predicted to result from treating rules as issued when the rules are published in the Federal Register.

Further, the Bureau is not aware of any unique impact this Final Rule might have on insured depository institutions or insured credit unions with total assets of \$10 billion or less as described in section 1026(a) of the Dodd-Frank Act, or on rural consumers.

### **IV. 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, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.<sup>5</sup> The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives before proposing a rule for which an IRFA is required.<sup>6</sup>

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<sup>5</sup> 5 U.S.C. 601 *et seq.*

<sup>6</sup> 5 U.S.C. 609.

The Final Rule relates solely to agency procedure and practice and, thus, is not subject to the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553(b). Because no notice of proposed rulemaking is required, this rule does not require an IRFA or a FRFA pursuant to the RFA, 5 U.S.C. 601 *et seq.*

## **V. Executive Order 12866**

The Office of Information and Regulatory Affairs has determined that this action is not a “significant regulatory action” under Executive Order 12866, as amended by Executive Order 14215.

E.O. 12866 states that “Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets. . . .” The Bureau is not aware of the existence of a market failure or other compelling public need that would justify the retention of the “Procedure Relating to Rulemaking,” adopted via 77 FR 76353 on December 28, 2012.

### **List of Subjects in 12 CFR part 1074**

Administrative practice and procedure.

### **Authority and Issuance**

For the reasons set forth in the preamble, the Bureau amends 12 CFR Part 1074 as follows:

#### **PART 1074—RULEMAKING AND GUIDANCE**

1. The authority citation for part 1074 continues to read as follows:

Authority: 12 U.S.C. 5492(a)(1), 5512(b).

#### **Subpart A—[Removed and Reserved]**

2. Remove and reserve subpart A, consisting of § 1074.1.

**Russell Vought,**

*Acting Director, Consumer Financial Protection Bureau.*