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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Chapter X

[Docket No. CFPB-2019-0024]

Plan for the Review of Bureau Rules for Purposes of the Regulatory Flexibility Act

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Plan for periodic review of rules and request for comments.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is publishing a plan for the review of rules which have or will have a significant economic impact upon a substantial number of small entities, pursuant to section 610 of the Regulatory Flexibility Act.

DATES: Comments must be received by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit responsive information and other comments, identified by Docket No. CFPB-2019-0024, by any of the following methods:

- *Electronic:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* like 2019-Notice-RFARewPlan@cfpb.gov. Include Docket No. CFPB-2019-0024 in the subject line of the message.
- *Mail:* Comment Intake, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.
- *Hand Delivery/Courier:* Comment Intake, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.

Instructions: The Bureau encourages the early submission of comments. All submissions must include the document title and docket number. Please note the specific rule or topic on which you are commenting at the top of each response (you do not need to address all rules or topics). 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 submissions in response to this request for information, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Submissions will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Joseph Baressi and Gregory Evans, Senior Counsels, Office of Regulations, at 202-435-7700. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION:

The Regulatory Flexibility Act¹ (RFA) requires each agency to consider the effect on small entities for certain rules it promulgates.² Specifically, section 610(a) of the RFA³ provides

¹ Public Law 96-354, 94 Stat. 1164.

² The terms “small entity” and “rule” are defined in the RFA. See 5 U.S.C. 601.

³ 5 U.S.C. 610(a).

that each agency shall publish in the *Federal Register* a plan for the periodic review of the rules issued by the agency which have a significant economic impact upon a substantial number of small entities. An agency may amend a plan at any time by publishing the revision in the *Federal Register*. Congress specified that the purpose of the review shall be to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of such small entities. Congress further provided that the plan shall provide for review of the relevant rules within ten years of their publication as final rules.⁴

In 2010, Congress established the Bureau through the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).⁵ The Bureau is now publishing this plan because it anticipates performing reviews in the coming years to comply with section 610 of the RFA (herein “610 reviews”). Although the Bureau is not required to do so, it is also requesting comment on its 610 review plan.⁶

The Bureau’s 610 reviews will generally be separate from and in addition to other Bureau reviews of its regulations. In March 2018, the Bureau issued a request for information (RFI) to seek public input regarding the substance of inherited regulations (those transferred to the Bureau), and issued another RFI for adopted regulations (those issued by the Bureau), including

⁴ The statute also contains certain additional requirements for rules that existed on the effective date of the RFA, which was January 1, 1981. *Id.* Those requirements are not applicable to the Bureau’s reviews.

⁵ Public Law 111-203, 124 Stat. 2081 (2010).

⁶ Notice and comment is not required because the RFA provides that a plan may be amended by the agency at any time by publishing the revision in the *Federal Register*. 5 U.S.C. 610(a). Furthermore, the plan is a procedural rule under the Administrative Procedure Act, 5 U.S.C. 553, and therefore it is exempt from its notice and comment requirements.

whether the Bureau should issue additional rules.⁷ The Bureau also conducts an assessment, pursuant to section 1022(d) of the Dodd-Frank Act, of each significant rule or order adopted by the Bureau under Federal consumer financial law and publishes a report of each assessment not later than five years after the effective date of the subject rule or order.⁸ The Bureau has also announced as part of the semi-annual Unified Agenda of Federal Regulatory and Deregulatory Actions a long-term action to review inherited regulations for the purpose of ensuring that outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed and stated that it expects to focus its initial review on subparts B and G of Regulation Z, which implements the Truth in Lending Act.⁹

I. Review Plan

Each year, the Bureau plans to initiate 610 reviews of final rules. The Bureau intends to commence the review roughly nine years after each rule's publication.¹⁰ For each rule, the Bureau will first assess whether it is having a significant economic impact on a substantial number of small entities and so is subject to 610 review. The Bureau may also decide to exercise its discretion to review rules issued by the Bureau or by the Bureau's predecessor agencies that may not otherwise be subject to 610 review. The Bureau will then publish in the *Federal Register* a list of rules which the Bureau plans to review within the upcoming plan year. In addition to this list, the Bureau will publish, consistent with section 610(c) of the RFA,¹¹ a notice

⁷ 83 FR 12281 (March 21, 2018), 83 FR 12286 (March 21, 2018).

⁸ To date, the Bureau has published three such assessment reports concerning, respectively, the Bureau's rules for remittance transfers, mortgage servicing, and ability to repay and qualified mortgage standards. These reports are available at <https://www.consumerfinance.gov/data-research/research-reports/>.

⁹ See <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201810&RIN=3170-AA73>.

¹⁰ As permitted by section 605(c) of the RFA, the Bureau may consider a series of closely related rules as one rule for the purposes of section 610. 5 U.S.C. 605(c).

¹¹ 5 U.S.C. 610(c).

for each rule to be reviewed that will include a brief description of the rule, as well as the need for and legal basis of, the rule. Each of these notices will invite public comment on the rule, and the public may submit relevant data and other information to support any submitted positions.

For each rule, the Bureau intends to conduct a review based on information on hand, relevant literature, and information submitted by the public in response to the Bureau's request for comment. As circumstances warrant, the Bureau may exercise its discretion to request additional data from relevant parties on a voluntary basis or otherwise obtain data from other sources, for example, by purchasing data from a third-party vendor.

Consistent with section 610(a) of the RFA, the purpose of the review will be to determine whether the rule should be continued without change, or should be amended or rescinded, consistent with the stated objectives of any applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of small entities.¹²

As set forth in section 610(b) of the RFA, the Bureau will consider several factors:

1. The continued need for the rule;
2. The nature of public complaints or comments on the rule;
3. The complexity of the rule;
4. The extent to which the rule overlaps, duplicates, or conflicts with Federal, state, or other rules; and
5. The time since the rule was evaluated or the degree to which technology, market conditions, or other factors have changed the relevant market.¹³

¹² 5 U.S.C. 610(a).

¹³ 5 U.S.C. 610(b).

The Bureau will complete each review within ten years of the publication of the relevant rule as a final rule. The Bureau intends to subsequently announce the determinations made as to follow-on rulemaking activities in the Unified Agenda of Federal Regulatory and Deregulatory Actions or through other appropriate methods.

The Bureau may amend this review plan at any time by publishing the revision in the *Federal Register*.

Dated: May 6, 2019.

Kathleen L. Kraninger,

Director, Bureau of Consumer Financial Protection.

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