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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

Truth in Lending (Regulation Z); Screening and Training Requirements for Mortgage Loan Originators with Temporary Authority

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Interpretive rule.

SUMMARY: This interpretive rule construes the Bureau's Regulation Z, which implements the Truth in Lending Act (TILA). Generally, if a mortgage loan originator organization employs an individual loan originator who is not licensed and is not required to be licensed, Regulation Z requires the loan originator organization to perform specific screening of that individual before permitting the individual to act as a loan originator and to provide certain ongoing training. Regulation Z is ambiguous as to whether these requirements apply to loan originator organizations employing individual loan originators who have temporary authority to originate loans pursuant to the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 (EGRRCPA) amendments to the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act). These amendments take effect on November 24, 2019. This interpretive rule concludes that a loan originator organization is not required to comply with certain screening and training requirements under Regulation Z if the individual loan originator employee is authorized to act as a loan originator pursuant to the temporary authority described in the SAFE Act.

DATES: This interpretive rule is effective on November 24, 2019.

FOR FURTHER INFORMATION CONTACT: Terry J. Randall, Senior Counsel, Office of Regulations, at 202-435-7700 or <https://reginquiries.consumerfinance.gov/>. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION:

I. Discussion

In 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) added TILA section 129B(b)(1), and imposed new requirements for loan originators, including the requirement for them to be qualified.¹ In 2013, the Bureau adopted amendments to Regulation Z, implementing the mortgage loan originator qualification requirements under TILA. These Regulation Z changes including adding § 1026.36(f)(3), which generally requires a loan originator organization that employs an individual loan originator who is not licensed and is not required to be licensed pursuant to the SAFE Act to: (1) complete certain screenings of that individual prior to permitting the individual to act as a loan originator on a consumer credit transaction secured by a dwelling, and (2) to provide periodic training.² In adding these requirements, the Bureau took into account the SAFE Act's preexisting screening and training requirements for loan originators.³

The EGRRCPA amendments to the SAFE Act take effect on November 24, 2019.⁴ These amendments permit certain individuals who were previously registered or State-licensed for a

¹ Pub. L. 111-203, sec. 1402(a)(2), 124 Stat. 1376, 2139 (2010) (codified at 15 U.S.C. 1639b).

² Loan Originator Compensation Requirements under the Truth in Lending Act (Regulation Z), 78 FR 11279, 11374-84, 11412-13 (Feb. 15, 2013) (promulgating 12 CFR 1026.36(f)(3)), amended 78 FR 60382, 60441-42 (Oct. 1, 2013). These requirements do not apply to loan originator organizations that are government agencies or State housing finance agencies. 12 CFR 1026.36(f).

³ 78 FR at 11375.

⁴ Pub. L. 115-174, title I, sec. 106(a), 132 Stat. 1296, 1302 (2018) (to be codified at 12 U.S.C. 5117).

certain period of time pursuant to the SAFE Act to act as a loan originator in a State, if they have applied for a loan originator license in the State (“loan originators with temporary authority”).⁵

Section 1026.36(f)(3) of Regulation Z is ambiguous as to whether its screening and training requirements for loan originator organizations employing individual loan originators who “are not licensed and are not required to be licensed” apply to a loan originator organization employing a loan originator with temporary authority. As discussed below, the Bureau believes that interpreting these requirements not to apply is consistent with Congress’s objectives in amending the SAFE Act. The Bureau also believes that interpreting these requirements not to apply is consistent with the agency’s objectives in imposing the screening and training requirements in § 1026.36(f)(3). Accordingly, the Bureau concludes that if an individual loan originator has temporary authority in a particular State, the loan originator organization does not need to satisfy the screening and training requirements in § 1026.36(f)(3) with regard to that individual’s loan origination activities in that State.

The Bureau is issuing this interpretive rule based on its authority to interpret Regulation Z, including under section 1022(b)(1) of the Dodd-Frank Act, which authorizes guidance 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.⁶

By operation of TILA section 130(f), no provision of TILA sections 130, 108(b), 108(c), 108(e), or 112 imposing any liability applies to any act done or omitted in good faith in conformity with this interpretive rule, notwithstanding that after such act or omission has

⁵ 12 U.S.C. 5117.

⁶ 12 U.S.C. 5512(b)(1). The relevant provisions of Regulation Z form part of Federal consumer financial law. 12 U.S.C. 5481(12)(O), (14).

occurred, the interpretive rule is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.⁷ The Bureau plans to incorporate the content of this interpretive rule into the Official Interpretations to Regulation Z at a later date.⁸

Screening and Training for Licensed Loan Originators under the SAFE Act

The SAFE Act prohibits individuals from engaging in the business of a loan originator unless they are registered loan originators under Federal law or they obtain a State loan originator license and registration.⁹ The SAFE Act requires loan originators who are employees of a depository institution, employees of a subsidiary that is owned and controlled by a depository institution and regulated by a Federal banking agency, or employees of an institution regulated by the Farm Credit Administration (FCA) (“registered loan originators”) to register with the Nationwide Mortgage Licensing System and Registry (NMLSR).¹⁰ (The NMLSR is a system for registering, licensing, supervising, and tracking loan originators).

The SAFE Act also generally requires loan originators who are not registered loan originators to obtain a State license and to register with the NMLSR (“licensed loan originators”).¹¹ SAFE Act licensing is implemented by States. To grant an individual a SAFE Act-compliant loan originator license, section 1505 of the SAFE Act, 12 U.S.C. 5104, requires the State to conduct certain screening and to ensure that the loan originator has completed certain education and testing requirements. Generally speaking, section 1505 provides that the State

⁷ 15 U.S.C. 1640(f).

⁸ 12 CFR part 1026, supp. I.

⁹ 12 U.S.C. 5103(a)(1).

¹⁰ *See* 12 U.S.C. 5106.

¹¹ 12 U.S.C. 5102(8) and (12). Regulation H, 12 CFR part 1008, which implements SAFE Act standards applicable to State licensing, provides that a State is not required to impose licensing and registration requirements on certain individuals. 12 CFR 1008.103(e).

must determine that the individual has never had a loan originator license revoked; has not been convicted of enumerated felonies within specified timeframes; has demonstrated financial responsibility, character, and fitness; has completed 20 hours of pre-licensing education that the NMLSR has approved; has passed a written test the NMLSR has approved; and has met net worth or surety bond requirements. Licensed loan originators also must take eight hours of continuing education classes the NMLSR has approved and must renew their licenses annually.¹² States may impose additional or higher minimum standards for licensing of individual loan originators under their SAFE Act-compliant licensing regimes.¹³

In contrast, the SAFE Act does not impose these specific screening or education requirements on registered loan originators. Section 1507 of the SAFE Act, 12 U.S.C. 5106, generally requires the Bureau to develop and maintain a system for registering individual loan originators who are subject to registration. In connection with loan originator registration, the SAFE Act specifies that the following information must be furnished to the NMLSR: (1) fingerprints to the NMLSR for a criminal history background check and (2) personal history and experience, including authorization for the NMLSR to obtain information related to any administrative, civil or criminal findings by any governmental jurisdiction.¹⁴

¹² 12 U.S.C. 5105. In addition to other requirements, the SAFE Act requires individuals who are subject to SAFE Act registration or State licensing to obtain a unique identification number from the NMLSR. 12 U.S.C. 5103(a)(2).

¹³ 12 U.S.C. 5104 and 5105 (*e.g.*, describing “minimum standards”).

¹⁴ 12 U.S.C. 5106. In addition, Regulation G, 12 CFR part 1007, which implements SAFE Act registration requirements, imposes an obligation on the employing covered financial institution, among other things, to adopt and follow written policies and procedures that establish a process for reviewing employee criminal history background reports, taking appropriate action consistent with applicable Federal law, including section 19 of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. 1829, section 206 of the Federal Credit Union Act, 12 U.S.C. 1786(i), and section 5.65(d) of the Farm Credit Act of 1971, as amended, 12 U.S.C. 2277a-14(d), and complying with certain recordkeeping requirements. 12 CFR 1007.104(h). Regulation G defines “covered financial institution” to mean any national bank, member bank, insured State nonmember bank, savings association, Farm Credit System institution, or federally insured credit union as any such term is defined in 12 CFR 1007.101(c)(1). Regulation G

Screening and Training for Unlicensed Loan Originators under Regulation Z

In 2010, the Dodd-Frank Act added TILA section 129B(b)(1), and imposed new requirements for loan originators, including the requirement for them to be qualified.¹⁵ In 2013, the Bureau amended Regulation Z to implement the requirement that they be qualified by, among other things,¹⁶ establishing certain screening and training requirements for unlicensed loan originators.¹⁷ If an individual loan originator is not required to be licensed and is not licensed, § 1026.36(f)(3) requires a loan originator organization to complete certain screening before permitting the individual to act as a loan originator in a consumer credit transaction secured by a dwelling and to provide periodic training. Generally, the loan originator organization must obtain: (1) a criminal background check about the individual; (2) a credit report, and (3) certain information from the NMLSR (or from the individual if the individual is not a registered loan originator) about any administrative, civil, or criminal findings by any government jurisdiction relating to the individual, and make substantially the same findings regarding the individual's criminal history, financial responsibility, character, and general fitness that the SAFE Act requires for State loan originator licenses.¹⁸ Loan originator organizations

also specifies that “covered financial institution” also includes a non-federally insured credit union that registers subject to the conditions of 12 CFR 1007.101(c)(3). 12 CFR 1007.102.

¹⁵ Pub. L. 111-203, sec. 1402(a)(2), 124 Stat. 1376, 2139 (2010) (codified at 15 U.S.C. 1639b).

¹⁶ In addition to the requirements described above, § 1026.36(f)(1) requires a loan originator organization to comply with all applicable State law requirements for legal existence and foreign qualification and § 1026.36(f)(2) requires a loan originator organization to ensure that each individual loan originator who works for the loan originator organization is licensed or registered to the extent the individual is required to be licensed or registered under the SAFE Act, its implementing regulations, and State SAFE Act implementing law. The requirements in § 1026.36(f)(1)-(3) do not apply to loan originator organizations that are government agencies or State housing finance agencies. 12 CFR 1026.36(f).

¹⁷ 12 CFR 1026.36(f)(3). *See also* 78 FR at 11374-84.

¹⁸ 12 CFR 1026.36(f)(3)(i) and (ii). Regulation Z excludes individual loan originators hired prior to January 1, 2014, from these requirements unless there were no applicable statutory or regulatory background standards in effect at the time of hire used to screen the individual or unless, based on reliable information known to the loan originator

employing such individual loan originators must also provide periodic training for the loan originators about Federal and State legal requirements that apply to their loan origination activities.¹⁹

When the Bureau issued § 1026.36(f)(3), it generally applied only to registered loan originators and employees of bona fide nonprofit organizations that a State exempted from licensing under the criteria in Regulation H.²⁰ It did not apply to loan originators that were also subject to individual screening by a State as part of the State's consideration of an application for a loan originator license. The Bureau intended to define certain minimum qualification standards for loan originators to allow consumers to be confident that loan originators meet core standards of integrity and competence, regardless of the type of institution for which they work.²¹

Thus, by adopting § 1026.36(f)(3), the Bureau established a scheme under which States perform screening of licensed loan originators and loan originator organizations generally perform the same screening of their unlicensed loan originator employees. Similarly, States ensure that licensed loan originators complete specific training and testing and loan originator organizations generally provide training for unlicensed loan originator employees.

organization, the individual likely does not meet the standards in §1026.36(f)(3)(ii). 12 CFR 1026.36(f)(3); comment 36(f)(3)(ii).

¹⁹ 12 CFR 1026.36(f)(3)(iii).

²⁰ Comment 36(f)(3)-1 (“Individual loan originators who are not subject to SAFE Act licensing generally include employees of depository institutions and their Federally regulated subsidiaries and employees of bona fide nonprofit organizations that a State has exempted from licensing under the criteria in 12 CFR 1008.103(e)(7).”).

²¹ 78 FR at 11378.

Loan Originators with Temporary Authority under EGRRCPA

The EGRRCPA amendments to the SAFE Act add a new category of loan originators, those with temporary authority, effective November 24, 2019.²² The amendments, which are in a section of the EGRRCPA titled “Eliminating Barriers to Jobs for Loan Originators,” among other things, permit certain loan originators to act as a loan originator in a State for a temporary period of time while applying for a license in the State. Eligible loan originators include those who are employed by a State-licensed mortgage company, have applied for a license in a new State, were previously registered or licensed in a different State for a certain period of time prior to applying for the new license, and satisfy certain criminal and adverse professional history criteria.²³

The SAFE Act amendments grant loan originators who meet these criteria “temporary authority to act as a loan originator in the application State” for a specified period of time, beginning when an eligible individual submits certain application information and ending upon the occurrence of one of four specified events (*e.g.*, the State grants the license).²⁴ Thus, Congress chose to allow individuals who meet these criteria to engage in the business of a loan originator before the State had completed all of its processes for granting or denying an application for a loan originator license.

²² *Supra* note 4.

²³ 12 U.S.C. 5117(b) and (c). Criminal history and adverse professional history criteria include that the individual has not had an application for a loan originator license denied, or a loan originator license revoked or suspended in any governmental jurisdiction; has not been subject to, or served with, a cease and desist order in any governmental jurisdiction or under section 1514(c) of the SAFE Act, and has not been convicted of a misdemeanor or felony that would preclude licensure under the law of the application State. 12 U.S.C. 5117(b)(1) and (c)(1)(A).

²⁴ 12 U.S.C. 5117(b)(2) and (c)(2).

*Screening and Training Requirements under Regulation Z for Loan Originator Organizations
Employing Loan Originators with Temporary Authority*

As discussed above, § 1026.36(f)(3) imposes certain screening and training obligations on loan originator organizations for “each of its individual loan originator employees who [1] is not required to be licensed and [2] is not licensed as a loan originator pursuant to § 1008.103 of this chapter or State SAFE Act implementing law.”²⁵ This language is ambiguous regarding whether the individual loan originators that it references include loan originators with temporary authority.

Although it is ambiguous, the Bureau believes that the most appropriate interpretation of § 1026.36(f)(3) is that it does not refer to a loan originator with temporary authority. A loan originator with temporary authority does not satisfy the first condition in § 1026.36(f)(3), because he or she is *not* an “individual loan originator employee[] who is not required to be licensed” He or she *is* an employee who is required to be licensed, although the employee can act as a loan originator while seeking the required license.

The Bureau’s interpretation of the ambiguous text of § 1026.36(f)(3) is based on the Bureau’s expertise in understanding and carrying out the objectives of the SAFE Act and Regulation Z. First, interpreting § 1026.36(f)(3) not to refer to loan originators with temporary authority would further Congress’s objectives in amending the SAFE Act. The Bureau believes

²⁵ 12 CFR 1026.36(f)(3). Generally, the loan originator organization must obtain the individual’s criminal background check, a credit report, and certain information from the NMLSR (or from the individual if the individual is not a registered loan originator) about any administrative, civil, or criminal findings by any government jurisdiction, and make substantially the same findings regarding the individual loan originator’s criminal history, financial responsibility, character, and general fitness that the SAFE Act requires for compliant State-issued loan originator licenses. 12 CFR 1026.36(f)(3)(i) and (ii). Loan originator organizations employing such individual loan originators must also provide periodic training on Federal and State legal requirements that apply to the individual loan originator’s loan origination activities. 12 CFR 1026.36(f)(3)(iii).

that Congress aimed to permit a loan originator that satisfies certain enumerated criteria and who is transitioning to a new State to be able to begin acting as a loan originator in the application State with minimal burden and delay and before the State has completed all of its processes relating to determining whether to grant a State license. This purpose is evident in the amendment's authorizing eligible loan originators to commence acting as a loan originator upon submitting certain application information and in the title of the relevant section of the EGRRCPA, "Eliminating Barriers to Jobs for Loan Originators."²⁶ Requiring loan originator organizations to complete the § 1026.36(f)(3) screening before permitting a loan originator with temporary authority to begin acting as a loan originator would impose an impediment on a loan originator from beginning to act as a loan originator, which would frustrate Congress's objective.

Likewise, Congress established different and less onerous qualification criteria for loan originators with temporary authority than those required by the SAFE Act for licensed loan originators. For example, the SAFE Act and § 1026.36(f)(3) require a finding of financial responsibility before granting a State license or permitting an individual loan originator to act as a loan originator. The EGRRCPA amendments to the SAFE Act do not condition temporary authority on a finding concerning the individual's financial fitness. Applying through Regulation Z the same SAFE Act standards to loan originators with temporary authority would be in tension with Congress's decision to apply less onerous qualification criteria to these loan originators. The Bureau believes that it is most appropriate to instead read Regulation Z in a manner that aligns with Congress's objectives in the SAFE Act, by not imposing the relevant Regulation Z requirements on loan originators with temporary authority.

²⁶ *Supra* note 4.

A second and independently sufficient reason for interpreting § 1026.36(f)(3) to not include loan originators with temporary authority is that this reading is more consistent with the scheme for loan originator screening and training established by the Bureau. As the Bureau explained when adopting § 1026.36(f)(3), the Bureau sought to implement TILA section 129B(b)(1)'s requirement that, subject to regulations prescribed the Bureau, each loan originator be "qualified," by defining certain minimum qualification standards for loan originators.²⁷ The Bureau believed that those standards provided important consumer protections without imposing significant burdens on loan originator organizations.²⁸ When the Bureau adopted § 1026.36(f)(3), the category of loan originators with temporary authority under the SAFE Act did not exist. Instead, the Bureau's main focus was on addressing the qualifications of employees of depository institutions, who are not subject to loan originator licensing under the SAFE Act at any point during their employment at those institutions.²⁹ Under the scheme the Bureau adopted in Regulation Z, an individual loan originator's screening and training was either completed by the State (as part of reviewing an application for a license) or by the loan originator organization employing the individual loan originator (to comply with § 1026.36(f)(3)). Under that scheme, both the State and the loan originator organization did not have to complete screening and training. If § 1026.36(f)(3) were interpreted to apply to a loan originator organization that employs a loan originator with temporary authority, both the State (as part of reviewing the loan originator's application for a license) and the loan originator organization (to comply with § 1026.36(f)(3)) would have to obtain the required criminal

²⁷ 78 FR at 11378; 15 U.S.C. 1639b(b)(1).

²⁸ 78 FR at 11378.

²⁹ 78 FR at 11378.

background and credit history reports and make the required criminal, financial responsibility, and character and fitness findings at the same time on the same individual. Similarly, both the State and the loan originator organization would have responsibilities related to the loan originator's training. This duplication of efforts would be inconsistent with the Bureau's purpose in issuing § 1026.36(f)(3), because such duplication would not result in additional consumer protections that could justify these new burdens on loan originator organizations.

For these reasons, the Bureau concludes that the individual loan originators described in § 1026.36(f)(3) do not include the loan originators with temporary authority described in section 1518 of the SAFE Act, 12 U.S.C. 5117. Thus, if an individual loan originator employee has temporary authority to act as a loan originator in a State, the loan originator organization is not required to comply with the screening and training requirements in § 1026.36(f)(3) to permit that employee to act as a loan originator in that State.

Finally, the Bureau underscores that loan originator organizations continue to be subject to the obligation in § 1026.36(f)(2) to ensure that any individual loan originator who works for them is licensed or registered to the extent required by the SAFE Act, its implementing regulations, or State SAFE Act implementing laws before permitting the individual to act as a loan originator on a consumer credit transaction secured by a dwelling. Thus, when satisfying the loan originator organization's obligations under § 1026.36(f)(2), the loan originator organization must ensure that any individual loan originator that works for it is either registered

or licensed as required by the SAFE Act or excluded from those requirements because the individual may act as a loan originator with temporary authority.³⁰

II. Effective Date

Because this rule is solely interpretive, it is not subject to the 30-day delayed effective date for substantive rules under section 553(d) of the Administrative Procedure Act.³¹ Therefore, this rule is effective on November 24, 2019, the same date that the EGRRCPA amendments to the SAFE Act take effect.

III. Regulatory Requirements

This rule articulates the Bureau's interpretation of Regulation Z. As an interpretive rule, it is exempt from the notice-and-comment rulemaking requirements of the Administrative Procedure Act.³² Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.³³

The Bureau has determined that this interpretive rule does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act.³⁴

IV. Congressional Review Act

³⁰ The Bureau also reminds loan originator organizations that they continue to be subject to § 1026.36(f)(1)'s obligation to comply with all applicable State law requirements for legal existence and foreign qualification.

³¹ 5 U.S.C. 553(d).

³² 5 U.S.C. 553(b).

³³ 5 U.S.C. 603(a), 604(a).

³⁴ 44 U.S.C. 3501-3521.

Pursuant to the Congressional Review Act,³⁵ the Bureau will submit a report containing this interpretive rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the rule’s published effective date. The Office of Information and Regulatory Affairs has designated this interpretive rule as not a “major rule” as defined by 5 U.S.C. 804(2).

Dated: November 12, 2019.

Kathleen L. Kraninger,

Director, Bureau of Consumer Financial Protection.

³⁵ 59 U.S.C. 801-808.

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