



BILLING CODE: 4810-AM-P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Chapter X

Policy Statement on Compliance Aids

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Policy statement.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is publishing this policy statement in order to announce a new designation for certain Bureau guidance, known as “Compliance Aids,” and to explain the legal status and role of guidance with that designation.

DATES: This policy statement becomes applicable on February 1, 2020.

FOR FURTHER INFORMATION CONTACT: Christopher Shelton, Counsel, or Lea Mosena, Senior Counsel, Legal Division, 202-435-7700. Regulatory inquiries can be submitted at <https://reginquiries.consumerfinance.gov/>. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Bureau’s “primary functions” under the Dodd-Frank Wall Street Reform and Consumer Protection Act¹ include issuing guidance implementing Federal consumer financial law.² The Bureau believes that providing clear and useful guidance to regulated entities is an important aspect of facilitating markets that serve consumers.

¹ Public Law 111-203, 124 Stat. 2081 (2010).

² 12 U.S.C. 5511(c)(5). Moreover, the Dodd-Frank Act authorizes the Director of the Bureau to issue guidance as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the

Since its inception, the Bureau has provided guidance through a variety of means, and its guidance functions have evolved and are continuing to evolve in response to feedback from industry and other stakeholders. Some examples of compliance resources that the Bureau has released include small entity compliance guides, instructional guides for disclosure forms, executive summaries, summaries of regulation changes, factsheets, flow charts, compliance checklists, frequently asked questions, and summary tables.

II. Policy Statement on Compliance Aids

Going forward, the Bureau intends to establish a new category of materials that are similar to previous compliance resources but will now be designated as “Compliance Aids.” This designation will provide the public with greater clarity regarding the legal status and role of these materials, as discussed below.³

The Bureau does not intend to use Compliance Aids to make decisions that bind regulated entities. Unlike the Bureau’s regulations and official interpretations, Compliance Aids are not “rules” under the Administrative Procedure Act.⁴ Rather, Compliance Aids present the requirements of existing rules and statutes in a manner that is useful for compliance

Federal consumer financial laws and to prevent evasions thereof. 12 U.S.C. 5512(b)(1). Additionally, the Bureau is authorized to establish general policies, including with respect to implementing the Federal consumer financial laws through guidance. 12 U.S.C. 5492(a)(10).

³ This policy statement does not apply to materials that do not bear the label “Compliance Aid,” or to the use of outdated materials that have been withdrawn or superseded. It also does not alter the status of materials that were issued before this policy statement, although the Bureau may re-issue certain existing materials as Compliance Aids if it is in the public interest and as Bureau resources permit. Moreover, this policy statement does not determine the policies of regulators other than the Bureau.

⁴ Under the Administrative Procedure Act, generally a “rule” is an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy. 5 U.S.C. 551(4). The three main categories of rules are substantive rules, interpretive rules, and general statements of policy. Some examples of rules are regulations like Regulation Z, 12 CFR part 1026, and official interpretations like the Official Interpretations to Regulation Z, 12 CFR part 1026, supp. I.

professionals, other industry stakeholders, and the public.⁵ Compliance Aids may also include practical suggestions for how entities might choose to go about complying with those rules and statutes.⁶ But they may not address all situations. Where there are multiple methods of compliance that are permitted by the applicable rules and statutes, an entity can make its own business decision regarding which method to use, and this may include a method that is not specifically addressed in a Compliance Aid. In sum, regulated entities are not required to comply with the Compliance Aids themselves. Regulated entities are only required to comply with the underlying rules and statutes.

Compliance Aids are designed to accurately summarize and illustrate the underlying rules and statutes. Accordingly, when exercising its enforcement and supervisory discretion, the Bureau does not intend to sanction, or ask a court to sanction, entities that reasonably rely on Compliance Aids.

II. Regulatory Requirements

This policy statement constitutes a general statement of policy that is exempt from the notice and comment rulemaking requirements of the Administrative Procedure Act.⁷ It is intended to provide information regarding the Bureau's general plans to exercise its discretion and does not confer any rights. Because no notice of proposed rulemaking is required, the

⁵ See, e.g., *Golden & Zimmerman, LLC v. Domenech*, 599 F.3d 426, 432 (4th Cir. 2010) (agency documents like FAQs that “restate or report what already exists in the relevant body of statutes, regulations, and rulings” are not themselves rules under the Administrative Procedure Act).

⁶ See, e.g., *Indus. Safety Equip. Ass'n, Inc. v. EPA*, 837 F.2d 1115, 1120-21 (D.C. Cir. 1988) (an agency's “hortatory advice” regarding potential methods for complying with a rule is not itself a rule under the Administrative Procedure Act).

⁷ 5 U.S.C. 553(b). However, this is not a “statement of policy” as that term is specifically used in Regulation X, 12 CFR 1024.4(a)(1)(ii).

Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.⁸ The Bureau has also determined that this policy statement 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.⁹

Pursuant to the Congressional Review Act,¹⁰ the Bureau will submit a report containing this policy statement and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to its applicability date. The Office of Information and Regulatory Affairs has designated this policy statement as not a “major rule” as defined by 5 U.S.C. 804(2).

⁸ 5 U.S.C. 603(a), 604(a).

⁹ 44 U.S.C. 3501-3521.

¹⁰ 5 U.S.C. 801-808.

Dated: January 10, 2020.

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