

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

[Docket No. CFPB-2012-0044]

Truth in Lending (Regulation Z)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official interpretation.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is publishing a final rule amending the official interpretations for Regulation Z (Truth in Lending). The Bureau is required to adjust annually the dollar amount that triggers requirements for certain home mortgage loans bearing fees above a certain amount. The Home Ownership and Equity Protection Act of 1994 (HOEPA) sets forth rules for home-secured loans in which the total points and fees payable by the consumer at or before loan consummation exceed the greater of \$400 or 8 percent of the total loan amount. In keeping with the statute, the Bureau has adjusted the \$400 amount based on the annual percentage change reflected in the Consumer Price Index as reported on June 1, 2012. The adjusted dollar amount for 2013 is \$625.

DATES: This final rule is effective January 1, 2013.

FOR FURTHER INFORMATION CONTACT: David Friend, Counsel, Office of Regulations, at (202) 435-7700.

SUPPLEMENTARY INFORMATION:

I. Background

The Truth in Lending Act (TILA; 15 U.S.C. 1601 - 1666j) requires creditors to disclose credit terms and the cost of consumer credit as an annual percentage rate. 15 U.S.C. 1638(a)(4). TILA requires additional disclosures for loans secured by a consumer's home, and permits consumers to cancel certain transactions that involve their principal dwelling. TILA is implemented by the Bureau's Regulation Z (12 CFR part 1026). Supplement I to Regulation Z contains the Bureau's official interpretations of the regulation, and provides guidance to creditors in applying the regulation to specific transactions.

In 1995, the Board of Governors of the Federal Reserve System (Board) published amendments to Regulation Z implementing HOEPA, which amended TILA and was contained in the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103-325, 108 Stat. 2160. These amendments, reflected in §§ 1026.32 and 1026.34 of the regulation, impose substantive limitations and additional disclosure requirements on certain closed-end home mortgage loans bearing rates or fees above a certain percentage or amount. As enacted, the statute requires creditors to comply with the HOEPA requirements if the total points and fees payable by the consumer at or before loan closing exceed the greater of \$400 or 8 percent of the total loan amount. TILA and Regulation Z provide that the \$400 figure shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index (CPI) that was reported on the preceding June 1. 15 U.S.C. 1602(bb)(3); 12 CFR 1026.32(a)(1)(ii). The Board adjusted the \$400 amount to \$611 for the year 2012 on June 13, 2011. The responsibility for promulgating rules under TILA was transferred

from the Board to the Bureau effective July 21, 2011.¹ The Bureau restated Regulation Z on December 22, 2011, and the Bureau’s Regulation Z is located at 12 CFR part 1026. 76 FR 79768 (Dec. 22, 2011).

The Bureau of Labor Statistics (BLS) publishes consumer-based indices monthly, but does not report a CPI change on June 1; adjustments are reported in the middle of each month. The Bureau uses the Consumer Price Index for All Urban Consumers (CPI-U) index, which is based on all urban consumers and represents approximately 88 percent of the U.S. population, as the index for adjusting the \$400 figure. The adjustment to the CPI-U index reported by BLS on May 15, 2012, was the CPI-U index in effect on June 1, and reflects the percentage change from April 2011 to April 2012. The adjustment to the \$400 figure below reflects a 2.3 percent increase in the CPI-U index for this period and is rounded to whole dollars for ease of compliance.

The fee trigger being adjusted in this **Federal Register** notice pursuant to TILA section 103(bb) is used in determining whether a loan is covered by § 1026.32. Such loans have generally been known as “HOEPA loans.” In July 2008, the Board revised Regulation Z to adopt additional protections for “higher-priced mortgage loans,” using its authority under TILA section 129(l)(2), since redesignated as section 129(p)(2). Those revisions define a class of dwelling-secured transactions, described in § 1026.35, using a threshold based on average market rates. The adjustment published today does not affect the triggers adopted in July 2008 by the Board for higher-priced mortgage loans.

¹ See sections 1061 and 1100A of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Pub. L. 11-203, 124 Stat. 1376 (2010). Section 1029 of the Dodd-Frank Act excludes from this transfer of authority, subject to certain exceptions, any rulemaking authority over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.

On July 9, 2012, the Bureau issued a proposed rule pursuant to, *inter alia*, section 1431 of the Dodd-Frank Act, which revises the statutory fee trigger for HOEPA loans. The Bureau is mindful of the need to coordinate implementation of this final rule with the effective date of the final rule adopting revisions to the HOEPA fee trigger pursuant to the July 9, 2012 proposal. Accordingly, the adjustment to the fee trigger that is being published today will become effective on January 1, 2013 and will apply for one year, or until final rules the Bureau proposed on July 9, 2012 to implement section 1431 of the Dodd-Frank Act become effective, whichever is earlier.

II. Adjustment and Commentary Revision

Effective January 1, 2013, for purposes of determining whether a home mortgage transaction is covered by § 1026.32 (based on the total points and fees payable by the consumer at or before loan closing), a loan is covered if the points and fees exceed the greater of \$625 or 8 percent of the total loan amount. Comment 32(a)(1)(ii)-2, which lists the adjustments for each year, is amended to reflect the new dollar threshold amount for 2013.

Under the Administrative Procedure Act, notice and opportunity for public comment are not required if the Bureau finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). Because the timing and method of the adjustment are set by statute and are technical and non-discretionary, the Bureau finds that notice and public comment on the change are unnecessary. 5 U.S.C. 553(b)(B).

Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not apply. 5 U.S.C. 601(2). In any event, the Bureau certifies that this

amendment to Regulation Z will not have a significant economic impact on a substantial number of small entities. The only change is to increase the threshold for transactions requiring HOEPA disclosures and protections to reflect the annual percentage increase in the CPI-U. This change is required by statute. Furthermore, the Bureau believes that the number of small entities that will be required to comply with Regulation Z's HOEPA protections solely due to this adjustment because they offer "HOEPA" loans is not substantial. In addition, for entities that already offer "HOEPA" loans in which the total points and fees payable by the consumer at or before loan consummation exceed the greater of \$400 or 8 percent of the loan amount, whichever is less, the Bureau believes the economic impact to comply with Regulation Z for additional "HOEPA" loans in which the total points and fees payable by the consumer at or before loan consummation exceed the greater of \$625 or 8 percent of the loan amount, whichever is less, will not be significant.

List of Subjects in 12 CFR Part 1026

Advertising, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings association, Truth in lending.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau amends Regulation Z, 12 CFR part 1026, as set forth below:

Part 1026 — TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 1026 is revised to read as follows:

Authority: 12 U.S.C. 2601; 2603-2605, 2607, 2609, 2617, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 et seq.

2. In Supplement I to part 1026, under *Section 1026.32—Requirements for Certain Closed-End Home Mortgages, 32(a) Coverage, paragraph 32(a)(1)(ii)*, paragraph 2 is amended by adding new paragraph 2.xviii to read as follows:

SUPPLEMENT I TO PART 1026—OFFICIAL INTERPRETATIONS

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Section 1026.32—Requirements for Certain Closed-End Home Mortgages

32(a) Coverage.

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Paragraph 32(a)(1)(ii).

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*2. Annual adjustment of \$400 amount. * * **

xviii. For 2013, \$625, reflecting a 2.3 percent increase in the CPI-U from June 2011 to June 2012, rounded to the nearest whole dollar.

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Dated: November 6, 2012.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.