

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

**Rescission of Statement of Policy on Supervisory and Enforcement Practices Regarding
Electronic Credit Card Disclosures in Light of the COVID-19 Pandemic**

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Rescission of statement of policy.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is rescinding the Statement on Supervisory and Enforcement Practices Regarding Electronic Credit Card Disclosures in Light of the COVID-19 Pandemic.

DATES: This rescission is applicable on April 1, 2021.

FOR FURTHER INFORMATION CONTACT: Zixta Q. Martinez, Division of Supervision, Enforcement, and Fair Lending, at (202) 435-7204. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION: On June 3, 2020, the Bureau issued a statement entitled, “Statement on Supervisory and Enforcement Practices Regarding Electronic Credit Card Disclosures in Light of the COVID-19 Pandemic” (Statement), regarding the Bureau’s exercise of its supervisory and enforcement discretion under the Truth in Lending Act (TILA) (15 U.S.C. 1601 *et seq.*) as implemented by Regulation Z (12 CFR part 1026).¹ The Statement provided that under specified circumstances, the Bureau did not intend to cite a violation in an examination or bring an enforcement action against an issuer that during a phone call does not obtain a consumer’s E-Sign consent to electronic provision of certain

¹ https://files.consumerfinance.gov/f/documents/cfpb_e-sign-credit-card_statement_2020-06.pdf.

written disclosures required by Regulation Z (12 CFR part 1026), so long as the issuer during the phone call obtains both the consumer's oral consent to electronic delivery of the written disclosures and oral affirmation of his or her ability to access and review the electronic written disclosures. Specifically, the Statement pertained to oral telephone interactions where a card issuer may seek to open a new credit card account for a consumer, provide certain temporary reductions in APRs or fees applicable to an existing account, or offer a low-rate balance transfer.

The Bureau hereby rescinds, as of April 1, 2021, the Statement and announces its intent to exercise its supervisory and enforcement authority consistent with the Dodd-Frank Act and with the full authority afforded by Congress consistent with the statutory purpose and objectives of the Bureau.

The Statement expressed the Bureau's understanding that as a result of the COVID-19 pandemic some credit card issuers were receiving far more phone calls from consumers than usual while also operating with reduced staffing or servicing capability. In particular, consumers in many instances were reaching out to issuers seeking relief that issuers sometimes could not provide without first providing certain written disclosures required by Regulation Z. The Bureau has concluded that since release of the Statement such circumstances have changed. Since March 2020 and over the course of the pandemic, financial institutions, including credit card issuers, have adjusted operations by, for example, shifting to a remote mode of operation and enhancing remote operational capabilities. As States and jurisdictions have rescinded and modified stay-at-home orders over the course of the pandemic, the Bureau has learned that many financial services entities have resumed some level of in-person operations and, in many instances combined with enhanced remote capabilities, have demonstrated improved business

continuity. Specifically, once States and jurisdictions rescinded and modified stay-at-home orders, service representatives of credit card issuers regained access to certain operational systems that could not be accessed remotely and could resume responsiveness to consumer calls about (1) opening a new credit card account for a consumer, (2) providing certain temporary reductions in APRs or fees applicable to an existing account, or (3) offering a low-rate balance transfer. Based on the Bureau’s market monitoring, the Bureau also notes that consumers have accelerated their transition from traditional call communications to digital means as the pandemic has progressed. Therefore, due to the noted adjustments by credit card issuers and communication migration from traditional calls to digital means by consumers, the temporary and targeted flexibility provided by the Statement is no longer warranted.

Based on the Bureau’s market monitoring, the Bureau believes that credit card issuers have adapted and improved operations over the course of the pandemic and are now able to respond to the credit needs of consumers while still providing consumers with the full protections afforded by TILA and Regulation Z without the flexibility afforded under the Statement. The Bureau notes that many credit card issuers are now choosing not to take advantage of the flexibility provided by the Statement due to improved operational capabilities that enable the provision of written disclosures. In addition, because the Statement did not create binding legal obligations on the Bureau or create or confer any substantive rights on external parties, it did not create any reasonable reliance interests for industry participants. The Bureau never intended the Statement to be permanent, and the Statement expressly indicated that the relief was intended to be temporary and targeted.

The Bureau continues to encourage institutions to meet the financial services needs of their customers affected by the COVID-19 pandemic.

As the pandemic continues to unfold, consumers are struggling and compliance with consumer law has never been more important. The Bureau’s statutory purposes include “ensuring . . . that markets for consumer financial products and services are fair, transparent, and competitive.” 12 U.S.C. 5511(a). Declining to cite conduct that is a violation of TILA and Regulation Z based on the articulated principles in the Statement may skew the consumer financial marketplace, to the detriment of market participants who provide written disclosures in accordance with TILA and Regulation Z while demonstrating an ability to quickly assist consumers and respond to the credit needs of consumers during the pandemic. To fulfill its statutory mandate, the Bureau has made it a priority to direct its supervisory, enforcement, and other tools to ensure that consumers are afforded full protection under the law. It is therefore more important than ever that financial institutions will adhere to the consumer protection requirements of TILA and Regulation Z in their interactions with consumers and that the Bureau use its supervisory and enforcement tools to the full extent and with the full flexibility afforded by Congress.

The Bureau hereby rescinds, as of April 1, 2021, its Statement on Supervisory and Enforcement Practices Regarding Electronic Credit Card Disclosures in Light of the COVID-19 Pandemic and instructs all financial institutions, including credit card issuers, to comply with their obligations under TILA (15 U.S.C. 1601 *et seq.*) as implemented by Regulation Z (12 CFR part 1026). Instead, in its discretion, the Bureau intends to exercise its supervisory and enforcement authority consistent with the Dodd-Frank Act and with the full authority afforded by Congress consistent with the statutory purpose and objectives of the Bureau. The Bureau does not intend to cite in an examination or initiate an enforcement action against any entity that did not comply with the TILA and Regulation Z written disclosure requirements as described in

the Statement between June 3, 2020, and April 30, 2021.

Regulatory Requirements

The Statement constituted a general statement of policy exempt from the notice and comment rulemaking requirements of the Administrative Procedure Act (APA). It was intended to provide information regarding the Bureau's general plans to exercise its supervisory and enforcement discretion and did not impose any legal requirements on external parties, nor did it create or confer any substantive rights on external parties that could be enforceable in any administrative or civil proceeding. This rescission likewise is a general statement of policy exempt from the notice and comment rulemaking requirements of the APA. It is intended to provide information regarding the Bureau's general plans to exercise its supervision and enforcement discretion and does not impose any legal requirements on external parties or create or confer any substantive rights on external parties that could be enforceable in any administrative or civil proceedings. No notice of proposed rulemaking was originally required in issuing the Statement, and it is not required in issuing this rescission. The Regulatory Flexibility Act also does not require an initial or final regulatory flexibility analysis for this rescission. The Bureau has also determined that the rescission of the 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.

Dated: March 29, 2021.

/s/ David Uejio

David Uejio,

Acting Director, Bureau of Consumer Financial Protection.