

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

Rescission of Statement of Policy on Supervisory and Enforcement Practices Regarding Regulation Z Billing Error Resolution Timeframes 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 Regulation Z Billing Error Resolution Timeframes in Light of the COVID-19 Pandemic.

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

FOR FURTHER INFORMATION CONTACT:

Mehul Madia, Division of Supervision, Enforcement, and Fair Lending, at (202) 435-7104. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov*.

SUPPLEMENTARY INFORMATION: On May 13, 2020, the Bureau issued a statement entitled, “Statement on Supervisory and Enforcement Practices Regarding Regulation Z Billing Error Resolution Timeframes in Light of the COVID-19 Pandemic” (Statement), regarding the Bureau’s exercise of its supervisory and enforcement discretion under Regulation Z.¹ Specifically, the Statement provides that when evaluating a creditor’s compliance with the maximum timeframe for billing error resolution set forth in Regulation Z, the Bureau intends to consider the creditor’s circumstances and does not intend to cite a violation in an examination or bring an enforcement action against a creditor that takes longer than required by the regulation to resolve a billing error notice, so long as the creditor has made good faith efforts to obtain the necessary information and make a determination as quickly as possible, and complies with all other requirements pending resolution of the error.

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 recognition that some entities, including small businesses, that provide information to facilitate creditors’ investigation of consumers’ billing error notices might face significant operational disruptions as a result of the COVID-19 pandemic, including staff reductions, and thus might have difficulty in handling unusual volumes of error notices. The Bureau believed that these disruptions would render it more difficult for creditors to accurately and timely resolve consumers’ billing error notices based on information from merchants with potential damage to merchants and consumers from incorrect decisions. The Statement also expressed the Bureau’s recognition of the impact of the COVID-19 pandemic on the operations of many financial institutions, including staffing and related resource challenges confronting financial institutions and their counsel. The Bureau has concluded that since release of this Statement such circumstances have changed. Since March 2020 and over the course of the COVID-19 pandemic, many creditors have adjusted operations by, for example, shifting to a remote mode of operation. As States and other 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 more robust remote capabilities, have demonstrated improved business continuity and have taken extra steps to ensure disputes are resolved within the required timeframe.

Based on the Bureau’s market monitoring, it is believed creditors now have sufficient capacity to manage consumer dispute requests and are able to regularly meet their obligations under Bureau’s Regulation Z (12 CFR part 1026) without the flexibility afforded under the statement. Data from Bureau’s complaint system also shows that complaints relating to credit card billing disputes have been declining since June of 2020. 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. Indeed, the Bureau never intended the Statement to be permanent, and expressly stated it was tied to the unique circumstances faced at the start of the pandemic. 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). The Bureau believes that there is potential consumer harm when billing error disputes are not timely resolved, as required by law, and at this point in the pandemic, that credit card issuers can timely resolve disputes without compromising accuracy. To fulfill its statutory mandate, the Bureau has made it a priority to direct its supervisory, enforcement, and other tools to the prevention of harm to consumers from unlawful acts, policies, and practices. It is therefore more important than ever that institutions adhere to consumer protection requirements, 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 Regulation Z Billing Error Resolution Timeframes in Light of the COVID-19 Pandemic. 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 billing error timeframe as described in the Statement between May 13, 2020, and March 31, 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

¹ https://files.consumerfinance.gov/f/documents/cfpb_statement_regression-z-error-resolution-covid-19_2020-05.pdf.

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.

David Uejio,

Acting Director, Bureau of Consumer Financial Protection.

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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 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

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