exemptions,'' or 10 CFR part 37 Subpart B, ''Background Investigations and Access Authorization Program,'' Subpart C, ''Physical Protection Requirements During Use,'' and Subpart D, ''Physical Protection in Transit,'' except for violations of 10 CFR 37.43(c), ''General security program requirements—Training''; 10 CFR 37.45, ''LLEA coordination''; 10 CFR 37.49(b), ''Monitoring, detection, and assessment''; 10 CFR 37.49(d), ''Response''; 10 CFR 37.57, ''Reporting of events''; and 10 CFR 37.81, ''Reporting of events,'' involving robust structures containing category 1 or category 2 quantities of radioactive material, or to large components containing category 1 or 2 quantities of radioactive material, if the licensee meets the following conditions:

- The licensee has identified in writing those large components and robust structures that contain category 1 or category 2 quantities of radioactive material for which it is not in compliance with 10 CFR part 37.
- The licensee has an approved 10 CFR part 73 security plan or a written 10 CFR part 37 security plan that provides security measures adequate to detect, assess, and respond to actual or attempted theft or diversion, as well as a written analysis that considers the time needed to accomplish these activities given the proximity and mobility of the equipment available for those large components and robust structures identified above.
- The licensee has a written analysis documenting that the measures above do not decrease the effectiveness of the 10 CFR part 73 security plan.

An enforcement panel is not required to disposition a noncompliance using this discretion; however, each time discretion is granted, an enforcement action number will be assigned to document the use of discretion under this IEP. This discretion is not limited to the initial inspection identifying a noncompliance and can be applied to subsequent inspections, provided that all the criteria continue to be met.

Licensees must comply with all other requirements, as applicable, unless explicitly replaced or amended through this interim policy.

Licensees can submit a request for a specific exemption, as described in 10 CFR 37.11(a), for material that may not be included in the definitions above. If a licensee submits such a request for a component weighing 2,000 kilograms or more that does not contain either discrete sources or ion-exchange resins, or for a structure sufficiently robust that it would take significant time to access the material inside, and the request is submitted before the NRC inspects the licensee's facility, the NRC will postpone an enforcement decision until the NRC staff completes its review of the exemption request. If the NRC grants the exemption request, it will also consider enforcement discretion for any prior violation remedied by the exemption. If the NRC denies, or the licensee withdraws, the exemption request, the NRC will disposition the violation through the enforcement process.

This interim policy will remain in place until the underlying technical issue is dispositioned through rulemaking or other regulatory action.

IV. Paperwork Reduction Act

This revision to the Policy does not contain any new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing collections of information were approved by the Office of Management and Budget, approval numbers 3150–0136 and 3150–0214.

V. Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

VI. Congressional Review Act

This policy is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

Dated: August 15, 2024.

For the Nuclear Regulatory Commission.

Carrie Safford,

Secretary of the Commission.

[FR Doc. 2024–18669 Filed 8–22–24; 8:45 am]

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CONSUMER FINANCIAL PROTECTION BUREAU

12 CFR Part 1026

Truth in Lending (Regulation Z); Consumer Protections for Home Sales Financed Under Contracts for Deed

AGENCY: Consumer Financial Protection Bureau.

ACTION: Advisory opinion.

SUMMARY: This advisory opinion affirms the current applicability of consumer protections and creditor obligations under the Truth in Lending Act (TILA) and its implementing Regulation Z to transactions in which a consumer purchases a home under a ''contract for deed.'' When a creditor sells a home to a buyer under a contract for deed, that transaction will generally meet TILA and Regulation Z's definition of credit. Where the transaction is secured by the buyer's dwelling, the buyer will also generally be entitled to the protections associated with residential mortgage loans under TILA.

DATES: This advisory opinion is applicable as of August 23, 2024.

FOR FURTHER INFORMATION CONTACT: George Karithanom, Regulatory Implementation & Guidance Program Analyst, Office of Regulations, at 202–435–7700 or at: *https://reginquiries.consumerfinance.gov/.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION: The Consumer Financial Protection Bureau (CFPB) is issuing this advisory opinion through the procedures for its Advisory Opinions Policy.[1] Refer to those procedures for more information.

I. Advisory Opinion

A. Background

The CFPB is issuing this advisory opinion to affirm the applicability of certain consumer protections under the Truth in Lending Act (TILA) and its implementing Regulation Z to transactions in which a consumer purchases a home under a ''contract for deed.'' Broadly speaking, TILA protects consumers engaged in credit transactions by requiring creditors to disclose information about the costs and terms of the credit, and, where the credit is secured by the consumer's dwelling, provides additional protections. The CFPB has previously identified certain contracts for deed as consumer credit under the Consumer Financial Protection Act (CFPA),[2] which uses a substantially similar definition of credit. Consistent with that earlier application of the CFPA, this advisory opinion clarifies how the CFPB understands the current application of TILA and Regulation Z to contracts for deed.

1. Contract for Deed Overview and History

A contract for deed is a type of home loan, alternatively called a ''land contract,'' ''land installment contract,'' ''land sales contract,'' ''bond for deed,''

[1] 85 FR 77987 (Dec. 3, 2020).

[2] Consent Order, *In re Harbour Portfolio Advisors et al.,* CFPB No. 2020–BCFP–0004 (June 23, 2020), ¶ 4.

''agreement for deed,'' or ''buying on contract.'' Home loans commonly referred to as contracts for deed, which this advisory opinion refers to as ''contracts for deed,'' tend to have a few key features. In a typical contract for deed, a homebuyer agrees to make periodic payments to the home seller, and the seller retains the deed to the property until the loan is fully repaid.[3] Loan terms vary but often range from 5 to 30 years and may include balloon payments. Properties are often purchased ''as is,'' without inspection or appraisal, and may have property condition issues that prevent them from being suitable for rental or qualifying for mainstream mortgage financing. Additionally, because the sales price of the home may not be tied to appraisal or other typical market measures, the sales price may be inflated. During the repayment period, the buyer has the exclusive right to occupy the home and often assumes many of the responsibilities of homeownership, including paying for taxes, insurance, home maintenance, and repairs.[4]

Another common feature is a forfeiture clause that can be triggered if the borrower fails to meet the terms of the contract. In these scenarios, the contract is canceled, the seller retakes possession of the property, and the buyer generally forfeits their entire investment—including their downpayment, principal payments, and any increase in home equity, including home equity that the buyer generated by making property improvements.[5] In some contracts, a single missed payment is enough to trigger these losses. Forfeiture clauses can also be triggered by breaches unrelated to payment status, such as when a borrower fails to pay taxes, is unable to obtain or maintain insurance, or does not make improvements to the property within a specified timeframe.[6] While some states restrict forfeiture and require foreclosure, others have allowed ''virtually unrestricted use of forfeiture clauses.'' [7]

2. TILA Legislative History

Congress first enacted TILA, 15 U.S.C. 1601 *et seq.,* in 1968 intending ''to assure a meaningful disclosure of credit terms'' and ''avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices.'' [8] As industry commenters noted at the time, TILA's disclosure regime could help ''a prospective mortgage borrower [ ] consider the relative costs of credit offered by . . . various purchase arrangements, for example, contract for deed or an FHA-insured mortgage'' when purchasing a home.[9]

In 1994, Congress amended TILA by enacting the Home Ownership and Equity Protection Act (HOEPA) to require special disclosures and restrictions for high-cost mortgage loans secured by the consumer's principal dwelling.[10] In the wake of the 2008 financial crisis, in which widespread mortgage loan defaults produced a wave of foreclosures and systemic economic instability, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) which added additional protections to TILA, as well as establishing the CFPB under the Consumer Financial Protection Act.[11]

New TILA sections added by the Dodd-Frank Act required creditors to make good-faith assessments of consumers' ability to repay loans secured by their dwellings, imposed new standards on mortgage disclosures, and prohibited certain practices, including mandatory arbitration clauses and waivers of Federal causes of action in consumer credit transactions secured by a dwelling.[12] The Dodd-Frank Act also expanded the scope of HOEPA coverage and protections. In the Senate Report accompanying the Dodd-Frank Act, Congress cited the ''proliferation of poorly underwritten mortgages with abusive terms,'' made ''with little or no regard for a borrower's understanding of the terms [ ], or their ability to repay,'' as precipitators of the financial crisis and motivation for the Act's financial reforms.[13] Congress explained that, because of failures in consumer protection, ''millions of Americans have lost their homes,'' [14] and quoted expert testimony that ''a plague of abusive and unaffordable mortgages and exploitative credit cards . . . cost millions of responsible consumers their homes, their savings, and their dignity.'' [15]

B. Legal Analysis

1. *Because contracts for deed allow buyers to acquire property and defer the payment, contracts for deed are generally ''credit'' under TILA and Regulation Z.*

a. Credit Under TILA

TILA's definition of ''credit'' includes the typical contract for deed. TILA and Regulation Z define credit as ''the right granted [by a creditor to a debtor] to defer payment of debt or to incur debt and defer its payment.'' [16] TILA and Regulation Z do not define debt. Used infrequently in the statute and the regulation, ''debt'' for the most part appears only in the definition of ''credit.'' As the CFPB has noted elsewhere,[17] in the ordinary usage, debt means simply ''something owed,'' without any obvious limitation.[18] Legal dictionaries, including those dating to the enactment of TILA, similarly describe debt as a ''sum of money due by certain and express agreement'' or ''a financial liability or obligation owed by one person, the debtor, to another, the creditor.'' [19] This understanding of ''debt,'' as any obligation by a consumer to pay another party, applies to contracts for deed in a straightforward manner.

[3] More complex arrangements exist, such as those where the buyer pays the seller's agent.

[4] *See* Joint Center for Housing Studies of Harvard University, *The American Dream or Just an Illusion? Understanding Land Contract Trends in the Midwest Pre- and Post-Crisis* (Aug. 2019), *https://www.jchsharvard.edu/sites/default/files/media/imp/harvard_jchs_housing_tenure_symposium_carpenter_george_nelson.pdf.*

[5] *Id.*

[6] *Id.*

[7] *See* The Pew Charitable Trusts, *Summary of State Land Contract Statutes* (Apr. 30, 2021), *https://www.pewtrusts.org/-/media/assets/2022/02/summary-of-state-land-contract-statutes.pdf.*

[8] 15 U.S.C. 1601.

[9] *Truth in Lending Act: Hearings Before the Subcomm. on Financial Institutions of the S. Comm. on Banking and Currency,* 90th Cong., 1st Sess. (Apr. 18, 1967) (testimony of Darrel M. Holt, Mortgage Bankers Association of America).

[10] 15 U.S.C. 1602(bb), 1639.

[11] Public Law 111–203, 124 Stat. 1376 (2010).

[12] Sections 1411, 1412, and 1414 of the Dodd-Frank Act, codified at 15 U.S.C. 1639c; sections 1418, 1420, 1463, and 1464 of the Dodd-Frank Act, codified at 12 U.S.C. 2605; 15 U.S.C. 1638, 1638a, 1639f, and 1639g. Other protections apply to servicing practices, such as prompt payment processing, no pyramiding of late fees, and loan originator qualification requirements. *See* 12 CFR 1026.36(c), (d), (f).

[13] S. Rept. No. 176, 111th Cong. (2010), at 11, 12.

[14] *Id.* at 9.

[15] *Id.,* n.19 (quoting Testimony of Michael Barr, Assistant Secretary of the Treasury for Financial Institutions, to the Senate Committee on Banking, Housing, and Urban Affairs, July 14, 2009).

[16] 15 U.S.C. 1602(f), 12 CFR 1026.2(a)(14). Whether a seller is a ''creditor'' under TILA and Regulation Z depends on several factors, discussed below, at section I.B.3.

[17] Proposed rule, *Truth in Lending (Regulation Z); Consumer Credit Offered to Borrowers in Advance of Expected Receipt of Compensation for Work,* 89 FR 61358 (July 31, 2024), *https://files.consumerfinance.gov/f/documents/cfpb_paycheck-advance-marketplace_proposed-interpretive-rule_2024-07.pdf.*

[18] *Debt,* Merriam-Webster, *https://www.merriam-webster.com/dictionary/debt* (last updated Jan. 30, 2024).

[19] *Debt,* Black's Law Dictionary (4th ed. 1968) (defining debt as ''[a] sum of money due by certain and express agreement; as by bond for a determinate sum, a bill or note, a special bargain, or a rent reserved on a lease, where the amount is fixed and specific, and does not depend upon any subsequent valuation to settle it''); *Debt,* Wex, *https://www.law.cornell.edu/wex/debt* (last updated Sept. 2021).

In a typical contract-for-deed transaction, as discussed above, a debt is created by the buyer receiving exclusive possession of the property, along with certain ownership obligations, at the outset of the contract in exchange for the obligation to repay the agreed-upon value of that property over time.[20] Courts applying common law doctrines have broadly recognized these property-related rights and obligations under the contract for deed as constituting a grant of equitable title to the buyer.[21] In exchange for these rights granted in the property, the purchaser agrees to complete payment on a deferred basis. The contractual obligation to repay the agreed-upon value of the property according to the terms of the contract, therefore, constitutes a debt under TILA. From the face of the typical contract for deed, it will be clear that the seller has granted to the purchaser ''the right . . . to defer'' payment of this debt.

b. Closed-End Credit

Where the property acquired under a contract for deed is purchased by a consumer primarily for personal, family, or household purposes, as it generally is when a purchaser buys a home using a contract for deed, the transaction is ''consumer credit'' under Regulation Z.[22] Any consumer credit that is not open-end credit under Regulation Z is considered ''closed-end credit.'' [23] Because the typical contract for deed is contemplated as a one-time transaction, it is not open-end credit.[24] Thus, when a buyer purchases a personal dwelling from a creditor under a contract for deed, that transaction typically meets the definition of closed-end credit under TILA and Regulation Z, and is subject to the applicable requirements of subpart C of Regulation Z.

c. Consistency With Other Laws

In 2020, the CFPB settled with an entity selling property under contracts for deed, requiring penalties for violations of the CFPA.[25] In doing so, the CFPB applied the CFPA's substantially similar definition of credit, which is ''the right granted by a person to a consumer to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment for such purchase.'' [26] This advisory opinion therefore affirms the consistency with which the CFPB views and applies these statutory definitions, when presented with similar contexts. Although this advisory opinion does not analyze the application of other laws, the CFPB expects that under other consumer financial laws with similar definitions of credit, the same considerations will apply.[27]

2. *Contracts for deed secured by a dwelling, generally will be ''residential mortgage loans'' under TILA and Regulation Z.*

Several provisions of TILA and Regulation Z apply specifically to credit transactions secured by the consumer's dwelling or by real property.[28] As discussed above, Congress amended TILA through the Dodd-Frank Act with the recognition that, when consumers commit to loans secured by possession of their homes, the stakes are particularly high.[29] It added to TILA specific protections that apply to ''residential mortgage loans.'' Many States define ''mortgages'' separately from their definitions for contracts for deed, with distinct requirements for each. However, in TILA Congress defined ''residential mortgage loan'' to include ''any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real property that includes a dwelling, other than a[n open-end] consumer credit transaction . . . .'' [30] Thus, the relevant consideration for determining whether contracts for deed are ''residential mortgage loans'' under TILA is not whether State law specifically regards contracts for deed as ''mortgages,'' but only whether the contract for deed is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real property that includes a dwelling. Additional protections under Regulation Z apply to ''any consumer credit transaction secured'' by ''a dwelling,'' [31] by ''the consumer's principal dwelling,'' [32] or by ''real property.'' [33]

Regulation Z defines a ''security interest'' as ''an interest in property that

[20] This is distinct from lease-based rental arrangements, even those involving an eventual right to purchase (often called ''lease-to-own''), because the lessee's legal interest, privileges, and obligations in the property are more limited in scope, while the lessor retains both ownership obligations and title. Many lease-to-own products also require a separate agreement to effectuate a purchase option, allowing for complete performance of the original contract without necessarily transferring property ownership. In a typical contract for deed, complete performance includes the transfer of full legal ownership. Regardless of how the arrangement is styled, courts have generally looked to the function of the transaction and intent of the parties to determine its nature. *See, e.g., Gilliland* v. *Port Auth. of City of St. Paul,* 270 NW2d 743, 747 (Minn. 1978) (''To break the transaction into two separate parts, a sale and a lease, would be to distort its real nature and to ignore the intent of the parties.''); *In re Montgomery Ward, L.L.C.,* 469 B.R. 522, 529 (Bankr. D. Del. 2012) (''Courts must analyze the 'economic reality' of the agreement at issue to determine its true nature.''). Depending on their terms, such leases, as well as contracts for deed, may be considered ''credit sales'' covered under TILA and Regulation Z. 15 U.S.C. 1602(h); 12 CFR 1026.2(a)(16).

[21] *In re Restivo Auto Body, Inc.,* 772 F.3d 168, 177 (4th Cir. 2014) (''upon contracting to buy land, 'in equity the vendee becomes the owner of the land, the vendor of the purchase money' '') (internal citation omitted); *Hauben* v. *Harmon,* 605 F.2d 920, 925 (5th Cir. 1979) (''Under the doctrine of equitable conversion a purchaser of realty becomes seized of beneficial title to the property upon execution of the contract of sale.''); *In re Blanchard,* 819 F.3d 981, 985 (7th Cir. 2016) (''Under Wisconsin's doctrine of equitable conversion, a land contract buyer obtains equitable title to the property, which includes 'all the incidents of a real ownership.' '') (internal citation omitted); *Redevelopment Agency of City of Stockton* v. *BNSF Ry. Co.,* 643 F.3d 668, 678 (9th Cir. 2011) (''The doctrine of equitable conversion generally provides that when a valid executory land sales contract is entered into, the purchaser becomes the equitable owner of the land.''); *In re Hodes,* 402 F.3d 1005, 1011 (10th Cir. 2005); *SMS Assocs.* v. *Clay,* 868 F. Supp. 337, 340 (D.D.C. 1994), *aff'd,* 70 F.3d 638 (D.C. Cir. 1995). Even where some courts have declined to view a contract for deed as transferring equitable title, they nonetheless acknowledge that the purchaser has received possession in exchange for the promise of payment. *See, e.g., In re Wall Tire Distributors, Inc.,* 110 B.R. 614, 618 (Bankr. M.D. Ga. 1990).

[22] 12 CFR 1026.2(a)(12).

[23] 12 CFR 1026.2(a)(10).

[24] 12 CFR 1026.2(a)(20).

[25] Consent Order, *In re Harbour Portfolio Advisors et al.,* CFPB No. 2020–BCFP–0004 (June 23, 2020), ¶ 4.

[26] 12 U.S.C. 5481(7). A court validated the CFPB's authority to investigate the entity's contracts for deed as possible credit under the CFPA, noting that the transactions may be credit because they ''obligate the purchaser to pay a principal sum plus interest through deferred monthly payments.'' *CFPB* v. *Harbour Portfolio Advisors,* No. 16–014183, 2017 WL 631914, at *3 (E.D. Mich. Feb. 16, 2017). The court further characterized an acceleration clause that ''gives the seller the option to demand the full purchase price once the purchaser misses a payment'' as ''strongly suggest[ing] that Respondents are supplying 'credit' . . . .'' *Id.*

[27] *See, e.g.,* 15 U.S.C. 1691a(d) (defining ''credit'' under the Equal Credit Opportunity Act); 12 CFR pt. 1002 supp. I para. 2(j)–1 (''Regulation B covers a wider range of credit transactions than Regulation Z.'').

[28] The CFPA similarly has provisions specifically addressing loans secured by real estate. *See, e.g.,* 12 U.S.C. 5514(a)(1)(A) (providing supervisory authority over any covered person who originates consumer loans ''secured by real estate''). This advisory opinion does not assess the applicability of such provisions beyond TILA, but the CFPB expects to apply such definitions consistently across Federal consumer financial laws to the extent appropriate.

[29] *See supra,* text accompanying notes 13–15.

[30] 15 U.S.C. 1602(dd)(5).

[31] *E.g.,* 12 CFR 1026.43(a). Regulation Z defines a ''dwelling'' as ''a residential structure that contains one to four units, whether or not that structure is attached to real property.'' 12 CFR 1026.2(a)(19).

[32] *E.g.,* 12 CFR 1026.32(a)(1).

[33] *E.g.,* 12 CFR 1026.19(e). Under Regulation Z, a ''dwelling'' does not need to be attached to real property. 12 CFR 1026.2(a)(19). Thus, there may be instances where, depending on the transaction, a contract for deed is secured by a dwelling, but not real property, or by real property without a dwelling.

secures performance of a consumer credit obligation and that is recognized by State or Federal law.'' [34] While State and Federal law regarding secured transactions and contracts for deed will vary, the CFPB expects that this definition would be satisfied in many or most cases. As a matter of general usage, security is the ''[c]ollateral given or pledged to guarantee the fulfillment of an obligation.'' [35] As described earlier, in a typical contract for deed, the seller retains legal title to the subject property, which generally allows the seller to retake possession of the property should the purchaser default on the payment agreement. In function, this retention of title serves to ensure that the purchaser, who already has exclusive possession of the property, fulfills the payment obligations.[36] The CFPB notes that this structure is functionally equivalent to common definitions of ''mortgage,'' [37] and is aware of State laws that expressly consider such transactions to be mortgages.[38]

The CFPB is additionally aware of many instances nationwide in which a seller's retention of legal title to the property has been characterized as securing payment of the contract for deed, either by State statute [39] or by courts applying State law and equitable principles.[40] While this advisory opinion does not provide any specific interpretation or application of State law, the prevalence of similar language across State law and related jurisprudence informs the CFPB's expectation that contracts for deed will generally trigger Regulation Z's thresholds for mortgage transaction protections based on the security interest in the buyer's home. As noted above, this is the case whether or not the relevant State or Federal law regards a contract for deed generally as a ''mortgage,'' or its equivalent, including for the purpose of forfeiture. Similarly, this advisory opinion's recognition that contracts for deed are often ''residential mortgage loans'' under TILA and Regulation Z does not constitute a determination that they are mortgages under State or other Federal laws.

3. *Creditors selling homes using contracts for deed must comply with applicable requirements under TILA and Regulation Z.*

a. TILA Creditors

Contract for deed sellers have important obligations under TILA and Regulation Z depending on the nature of the contract for deed and whether they are ''creditors.'' [41] For a transaction to be credit covered under TILA, the seller must be a creditor, and whether a seller of a contract for deed is a creditor under TILA turns not only on whether the seller extends credit, but on the characteristics of the credit and frequency with which the seller engages in such transactions. First, the credit extended must be either subject to a finance charge (such as interest or implied interest) or be payable by a written agreement in more than four installments, not including a downpayment.[42] Second, the obligation must be initially payable to the person, either on the face of the note or contract, or by agreement when there is no note or contract, in order for that person to be considered a creditor.[43] These first two prongs will typically be satisfied in a contract-for-deed transaction. Contracts for deed are generally set up to require periodic payments during the term of the contract—often monthly over the span of years—and thus, require repayment of more than four installments.[44] Contracts for deed also generally are established by a written agreement that lists the title holder as the payee.

Third, a creditor is a person that regularly extends credit.[45] For purposes of this requirement, a ''person'' is a natural person or an organization, including a corporation, partnership, proprietorship, association, cooperative, estate, trust, or government unit.[46] It may include, for example, business arrangements where multiple related subsidiaries of a single organization each conduct contract-for-deed sales.[47] Whether a person *regularly* extends credit will depend on the frequency with which the person extends credit, as well as the specific nature of those credit transactions. As described below, Regulation Z may require as many as 25 transactions or as few as one to be deemed a person who regularly extends credit, depending on the type of credit.[48] This will, in turn, determine the seller's legal obligations under TILA and Regulation Z.

b. TILA Obligations With Contracts for Deed

In general, when a person extends consumer credit more than 25 times, or more than 5 times for transactions secured by a dwelling, in the preceding calendar year, that person is a creditor under TILA.[49] Thus, in contract-for-deed sales that are not considered secured by a dwelling in the relevant jurisdiction, a seller that extends credit more than 25 times in the preceding or current calendar year will qualify as a TILA creditor, assuming all other elements of the ''creditor'' definition are met.[50] In such a case, the contract-for-deed sale is closed-end credit, subject to TILA and Regulation Z's general disclosure requirements regarding the key terms of the loan, including the

[34] 12 CFR 1026.2(a)(25).

[35] *Security,* Black's Law Dictionary (11th ed. 2019).

[36] *See* Restatement (Third) of Property (Mortgages) sec. 3.4 (1997) (''A contract for deed is a contract for the purchase and sale of real estate under which the purchaser acquires the immediate right to possession of the real estate and the vendor defer delivery of a deed until a later time to secure all or part of the purchase price. A contract for deed creates a mortgage.'').

[37] *Id. See also Mortgage,* Black's Law Dictionary (11th ed. 2019) (''A conveyance of title to property that is given as security for the payment of a debt or the performance of a duty and that will become void upon payment or performance according to the stipulated terms.''); Restatement (Third) of Property (Mortgages) sec. 1.1 (1997) (''The function of a mortgage is to employ an interest in real estate as security for the performance of some obligation.'').

[38] *See, e.g.,* Florida (Fla. Stat. Ann. sec. 697.01); Indiana (Ind. Code Ann. sec. 24–4.4–1–301(14)); Oklahoma (Okla. Stat. Ann. tit. 16 sec. 11A).

[39] *See, e.g.,* Maine (33 M.R.S. sec. 481); Maryland (Md. Real Property Code sec. 10–101); Ohio (Ohio Rev. Code Ann. sec. 5313.01).

[40] *See, e.g.,* California (*Petersen* v. *Hartell,* 40 Cal. 3d 102, 112, 707 P.2d 232, 239 (1985)); Indiana (*Vic's Antiques & Uniques, Inc.* v. *J. Elra Holdingz, LLC,* 143 NE3d 300, 305 (Ind. Ct. App. 2020)); Kentucky (*Sebastian* v. *Floyd,* 585 SW2d 381 (Ky. 1979)); Michigan (*Barker* v. *Klingler,* 302 Mich. 282, 288, 4 NW2d 596, 599 (1942)); Minnesota (*Gagne* v. *Hoban,* 280 Minn. 475, 479, 159 NW2d 896, 899 (1968)); Nebraska (*Mackiewicz* v. *J.J. & Assocs.,* 245 Neb. 568, 573, 514 NW2d 613, 618 (1994)); Oregon (*Bedortha* v. *Sunridge Land Co.,* 312 Or. 307, 311, 822 P.2d 694, 696 (1991)); Pennsylvania (*Anderson Contracting Co.* v. *Daugherty,* 274 Pa. Super. 13, 21, 417 A.2d 1227, 1231 (1979)); Washington (*Lanzce G. Douglass, Inc.* v. *Dep't of Revenue,* 25 Wash. App. 2d 893, 908, 525 P.3d 999, 1007 (2023)); Wisconsin *(Larchmont Holdings, LLC* v. *N. Shore Servs.,* LLC, 292 F. Supp. 3d 833, 848–49 (W.D. Wis. 2017)).

[41] 12 CFR 1026.2(a)(17).

[42] 12 CFR 1026.2(a)(17)(i), 1026.4(b).

[43] 12 CFR 1026.2(a)(17)(i).

[44] Further, even if the contract for deed required less than four installments, often the sales price is inflated such that the additional profits earned by the seller meet the requirement for finance charge under Regulation Z.

[45] 12 CFR 1026.2(a)(17).

[46] 12 CFR 1026.2(a)(22).

[47] *See Ward* v. *Shad,* No. 18–CV–01933 (NEB/ECW), 2019 WL 1084219, at *3 (D. Minn. Mar. 7, 2019).

[48] 12 CFR 1026.2(a)(17)(v). The CFPB is aware that some contract-for-deed transactions may involve one-time sellers. Where such transactions are conducted without a broker and/or do not qualify as ''high-cost'' mortgages, such one-time sellers will not be creditors under Regulation Z.

[49] *Id.*

[50] *Id.* (''A person regularly extends consumer credit only if it extended credit . . . more than 25 times . . . in the preceding calendar year. If a person did not meet these numerical standards in the preceding calendar year, the numerical standards shall be applied to the current calendar year.'').

amount financed, any finance charge, and the annual percentage rate.[51]

If the contract for deed is considered to be secured by a dwelling by the applicable law in the relevant jurisdiction but is not a high-cost mortgage loan, the seller will qualify as a creditor if the seller has extended credit secured by a dwelling more than five times in the preceding or current calendar year and all other elements of the ''creditor'' definition are met.[52] In such a case, the seller is subject to TILA and Regulation Z's general disclosure requirements, as well as additional mortgage disclosure requirements.[53] The transaction would generally also qualify as a residential mortgage loan.[54] These transactions are subject to important additional requirements, including the requirement that a creditor make a reasonable, good faith determination of the consumer's ability to repay the loan as well as the prohibition on mandatory arbitration clauses.[55] These transactions may also be subject to rules regarding servicing, origination, and fees under TILA.[56]

If the contract for deed is secured by a dwelling and qualifies as a high-cost mortgage,[57] a seller who extends credit more than once in any 12-month period can qualify as a creditor.[58] A seller who originates one or more such credit extensions through a mortgage broker can also qualify as a creditor.[59]

High-cost mortgage transactions will also trigger HOEPA requirements and protections, including required disclosures.[60] Specific prohibitions also apply to high-cost mortgages, including a prohibition on extending high-cost mortgages without written certification that a consumer has obtained counseling, a prohibition on opening a plan without regarding a consumer's ability to repay, and prohibitions on certain fees, among others.[61]

Regulatory Matters

This advisory opinion is an interpretive rule issued under the CFPB's authority to interpret TILA and Regulation Z, including under section 1022(b)(1) of the Consumer Financial Protection Act of 2010, which authorizes guidance as may be necessary or appropriate to enable the CFPB to administer and carry out the purposes and objectives of Federal consumer financial laws.[62]

By operation of TILA section 130(f), no provision of TILA sections 130, 108(b), 108(c), 108(e), or section 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 occurred, the interpretive rule is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.[63]

Pursuant to the Congressional Review Act,[64] the CFPB will submit a report containing this advisory opinion 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 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).

The CFPB has determined that this advisory opinion 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.[65]

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

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[51] What specific protections and requirement apply will depend on the particular loan. *See* 15 U.S.C. 1631, 1632; *see also* 12 CFR 1026.17–.18.

[52] 12 CFR 1026.2(a)(17)(v) (the person must regularly extend credit ''more than 5 times for transactions secured by a dwelling'').

[53] 15 U.S.C. 1631, 1632; 12 CFR 1026.17–.18; *see also* 15 U.S.C. 1638; 12 CFR 1026.19(e), 1026.37, 1026.38. Specific disclosure requirements will depend on whether the dwelling-secured credit is also secured by real property.

[54] 15 U.S.C. 1602(dd)(5).

[55] 12 CFR 1026.43(c); 12 CFR 1026.36(h)(1).

[56] *See generally* 12 CFR 1026.36; 15 U.S.C. 1639a, 1639b, 1639e, 1639c(a)–(h). Some provisions only apply if the loan is secured by the consumers' principal dwelling. *See, e.g.,* 12 CFR 1026.23.

[57] A high-cost mortgage is any consumer credit transaction secured by a principal dwelling and which meets certain conditions as described in 12 CFR 1026.32. 15 U.S.C. 1602(bb), 1639; *see also* 12 CFR 1026.31, 1026.32, 1026.34.

[58] 12 CFR 1026.2(a)(17)(v).

[59] *Id.*

[60] 12 CFR 1026.32, 1026.34.

[61] 12 CFR 1026.34(a)(4) (open-end, high-cost mortgage repayment prohibitions), 1026.34(a)(5) (pre-loan counseling requirements), 1026.34(a)(7)–(8), 1026.34(a)(10) (requirements and prohibitions related to fees).

[62] 12 U.S.C. 5512(b)(1).

[63] 15 U.S.C. 1640(f).

[64] 5 U.S.C. 801 *et seq.*

[65] 44 U.S.C. 3501 through 3521.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

[Docket Number SBA–2024–0006]

RIN 3245–AI17

Business Loan Program Temporary Changes; Paycheck Protection Program—Extension of Lender Records Retention Requirements

AGENCY: U.S. Small Business Administration.

ACTION: Interim final rule.

SUMMARY: This interim final rule lengthens the required records retention for lenders that made loans under the Paycheck Protection Program (PPP) to ten years. PPP was established under the Coronavirus Aid, Relief, and Economic Security Act as a temporary emergency guaranteed loan program to provide economic relief to small businesses nationwide adversely impacted by the Coronavirus Disease 2019 (COVID–19), as amended. SBA has issued a number of final rules implementing the PPP Program. This interim final rule harmonizes the PPP lender records retention requirements with subsequent legislation extending the statute of limitations for criminal charges and civil enforcement actions for alleged PPP borrower fraud to ten years after the offense.

DATES:

Effective date: The provisions of this interim final rule are effective August 22, 2024.

Applicability date: This interim final rule applies to all PPP lender loan records. This includes PPP loan applications that were withdrawn, approved, denied or cancelled, and all other PPP lender loan records for PPP loans with an outstanding balance, PPP loans that have been forgiven, and PPP loans that are in repayment or have been paid in full by the borrower as of the effective date of this rule.[1]

Comment date: Comments must be received on or before September 23, 2024.

ADDRESSES: You may submit comments, identified by docket number SBA–2024–0006 through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

[1] To the extent that a federally regulated PPP lender destroyed any PPP loan records before the effective date of this rule in accordance with a general internal records retention policy that was acceptable to the PPP lender's federal regulator, SBA will not enforce compliance by that federally regulated PPP lender with respect to the PPP loan records that were destroyed before the effective date of this rule.