



**Billing Code: 4810-AM-P**

**BUREAU OF CONSUMER FINANCIAL PROTECTION**

**12 CFR Part 1074**

**[Docket No. CFPB-2012-0051]**

**Procedure Relating to Rulemaking**

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Final rule.

**SUMMARY:** The Bureau of Consumer Financial Protection (Bureau) is adopting a procedural rule (Final Rule) that specifies how the Bureau issues rules and when rules are considered issued.

**DATE:** The Final Rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

**I. Background and Summary**

The Final Rule specifies how the Bureau issues rules and when rules are considered issued. In the future, the Bureau may issue further rules on procedures for rulemaking.

Part 1074.1 establishes that the Bureau's rules are deemed issued upon the earlier of: (1) when the final rule is posted on the Bureau's website, or (2) when the final rule is published in the Federal Register. The Bureau's website is [www.consumerfinance.gov](http://www.consumerfinance.gov).

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)<sup>1</sup> and other statutes authorize the Bureau to issue rules. Ordinarily, a rule may be considered issued at least when the rulemaking document containing the final rule has been placed on public inspection by the Office of the Federal Register or published in the Federal Register. However, an agency may treat other events as constituting the issuance of a rule.<sup>2</sup> The key prerequisite for issuing a rule appears to be providing public notice of the rule's content.

It is beneficial for regulated entities to know what constitutes issuance of an agency's rules.<sup>3</sup> Pursuant to a commitment to using modern technology to facilitate the Bureau's performance of its functions, the Bureau regularly posts final rules on its website. Typically on the same day, the Bureau will submit the document to the Office of the Federal Register. After a period of time that depends on the length of the document and other factors, the Office of the Federal Register will then make the document available for public inspection and then publish it in the Federal Register. The Bureau does not believe that delaying issuance until the rule is published in the Federal Register is necessary or in the public interest. Accordingly, today's rule provides that when a final rule<sup>4</sup> is posted on the Bureau's website before it is published in the Federal Register, the posting on the website shall constitute the official issuance of the rule.

Clarifying what constitutes issuance of a rule is beneficial because in some cases the date of issuance of a rule has legal consequences.<sup>5</sup> For example, under section 1400(c)(3) of the Dodd-Frank Act, certain provisions of title XIV will go into effect on the date that is 18 months

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<sup>1</sup> Public Law No. 111-203.

<sup>2</sup> See *Nat'l Grain & Feed Ass'n v. OSHA*, 845 F.2d 345, 346 (D.C. Cir. 1988); *United Techs. Corp. v. OSHA*, 836 F.2d 52, 53 (2d Cir. 1987); *Indus. Union Dep't, AFL-CIO v. Bingham*, 570 F.2d 965, 970 (D.C. Cir. 1977) (Leventhal, J., concurring).

<sup>3</sup> It is important to note that the date of issuance of a rule and the effective date of a rule are distinct.

<sup>4</sup> For the purposes of this rule, the Bureau intends "final rule" to encompass an interim final rule.

<sup>5</sup> Clarity about what constitutes issuance may be of practical moment for regulated entities, potentially assisting in planning for implementation of a rule.

after the designated transfer date,<sup>6</sup> unless relevant regulations are “issued” by that date. Given the Bureau’s practice of posting rules on its website before the Office of the Federal Register makes the rules available for public inspection or publishes the rules in the Federal Register, uncertainty could arise regarding the date on which such rules were issued. The Final Rule eliminates uncertainty by clarifying when the Bureau’s rules are deemed issued.

The Bureau generally intends to issue rules by posting them on its website, but, as a precaution, the Final Rule provides that a rule will be considered issued upon publication in the Federal Register if by inadvertence or for some other reason the rule is not posted on the website or is published in the Federal Register before it is posted on the website.

## **II. Legal Authority and Effective Date**

Section 1022(b) of the Dodd-Frank Act authorizes the Bureau to prescribe rules as may be necessary and appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions of those laws. In addition, section 1012(a) of the Dodd-Frank Act authorizes the Bureau “to establish the general policies of the Bureau with respect to all executive and administrative functions, including — (1) the establishment of rules for conducting the general business of the Bureau, in a manner not inconsistent with this title . . . .”

The Final Rule is procedural and not substantive and, thus, is not subject to the 30-day delay in effective date required by 5 U.S.C. 553(d). The Bureau is making the Final Rule effective immediately upon publication in the Federal Register.

## **III. Section 1022(b)(2) of the Dodd-Frank Act**

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<sup>6</sup> Pursuant to section 1062 of the Dodd-Frank Act, 12 U.S.C. 5582, the Secretary of the Treasury designated July 21, 2011 as the transfer date. 75 F.R. 57252.

In developing the Final Rule, the Bureau has considered the potential benefits, costs, and impacts, and the Bureau has consulted or offered to consult with the prudential regulators and the Federal Trade Commission, including with regard to consistency with any prudential, market, or systemic objectives administered by such agencies.<sup>7</sup>

Certainty about the timing of issuance of the Bureau's rules will likely benefit consumers and covered persons. The Bureau is not aware of costs to consumers or covered persons, including the potential reduction of access by consumers to consumer financial products or services, that can be predicted to result from treating rules as issued when the Bureau has posted them on its website.

Further, the Bureau is not aware of any unique impact the Final Rule might have on insured depository institutions or insured credit unions with total assets of \$10 billion or less as described in section 1026(a) of the Dodd-Frank Act, or on rural consumers.

#### **IV. Regulatory Requirements**

The Final Rule relates solely to agency procedure and practice and, thus, is not subject to the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553(b). Because no notice of proposed rulemaking is required, this rule does not require an initial or a final regulatory flexibility analysis pursuant to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*

#### **List of Subjects in 12 CFR Part 1074**

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<sup>7</sup> Section 1022(b)(2)(A) of the Dodd-Frank Act calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with \$10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas. Section 1022(b)(2)(B) directs the Bureau to consult with the appropriate prudential regulators or other Federal agencies regarding consistency with objectives those agencies administer. The manner and extent to which these provisions apply to a rulemaking of this kind, which establishes Bureau procedures and imposes no standards of conduct, is unclear. Nevertheless, to inform this rulemaking more fully, the Bureau performed the analyses and consultations described in those provisions of the Dodd-Frank Act.

Administrative practice and procedure.

### **Authority and Issuance**

For the reasons set forth in the preamble, the Bureau adds part 1074 to Chapter X in Title 12 of the Code of Federal Regulations to read as follows:

### **PART 1074 – PROCEDURE RELATING TO RULEMAKING**

Sec.

1074.1            Date of issuance of Bureau rules.

**Authority:** 12 U.S.C. 5492(a)(1), 5512(b).

#### **§ 1074.1 Date of issuance of Bureau rules.**

A final Bureau of Consumer Financial Protection (Bureau) rule is deemed issued upon the earlier of the following:

- (a) When the final rule is posted on the Bureau's website; or
- (b) When the final rule is published in the Federal Register.

Dated: December 21, 2012.

**Richard Cordray,**

*Director, Bureau of Consumer Financial Protection.*

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