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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1081

[Docket No.: CFPB-2013-0030]

RIN 3170-AA29

Rules of Practice for Issuance of Temporary Cease-and-Desist Orders

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule.

SUMMARY: On September 26, 2013, 78 FR 59163, the Consumer Financial Protection Bureau (Bureau) published in the *Federal Register* an interim final rule establishing procedures for the issuance of a temporary cease-and-desist order (TCDO) pursuant to section 1053(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which requires the Bureau to prescribe rules establishing procedures for the conduct of adjudication proceedings. After reviewing and considering the single public comment offered on its interim final rule, the Bureau adopts the interim final rule without change.

DATES: This final rule takes effect on **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: John R. Coleman, Senior Counsel, Legal Division, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552; at (202) 435-7254.

SUPPLEMENTARY INFORMATION:

I. Background

On June 29, 2012, the Bureau published in the *Federal Register* the final Rules of Practice for Adjudication Proceedings pursuant to sections 1022(b)(1) and 1053(e) of the Dodd-

Frank Act, 12 U.S.C. 5512(b)(1) & 5563(e).¹ That final rule, however, does not apply to the issuance of a TCDO pursuant to section 1053(c) of the Dodd-Frank Act.² The Bureau previously invited comments as to whether special rules governing such proceedings are necessary and, if so, what the rules should provide.³ One commenter recommended that the Bureau promulgate rules governing temporary cease-and-desist proceedings initiated pursuant to section 1053(c) of the Dodd-Frank Act and pointed to the Federal Deposit Insurance Corporation's (FDIC) rules governing temporary cease-and-desist proceedings, 12 CFR 308.131, as an example of such rules.⁴

On September 26, 2013, 78 FR 59163, the Bureau published its interim final rule establishing procedures for the issuance of a temporary cease-and-desist order (TCDO) pursuant to section 1053(c) of the Dodd-Frank Act. In developing the interim final rule, the Bureau considered the procedures related to temporary cease-and-desist orders that are followed by other regulatory agencies, including the FDIC, the Securities and Exchange Commission, and the Office of the Comptroller of the Currency. The interim final rule most closely follows the FDIC's approach as codified in 12 CFR 308.131. The Bureau issued the interim final rule to clarify (1) the basis for the issuance of a TCDO; (2) the content, scope, and form of a TCDO; (3) the procedures governing the issuance of a TCDO and the remedies available to the Bureau in issuing a TCDO; and (4) the rights of persons subject to a TCDO.

The interim final rule described each section of the rule and explained the basis of the rule with reference to rules of other agencies as appropriate. After reviewing and considering the single public comment offered, the Bureau adopts the interim final rule without change.

¹ See 77 FR 39058 (June 29, 2012) (codified at 12 CFR Part 1081).

² *Id.* at 39058.

³ See 76 FR 45338, 45338 (July 28, 2011).

⁴ See 77 FR 39058, 39060 (June 29, 2012).

II. Legal Authority

The Bureau promulgates this final rule pursuant to its authority to implement section 1053 of the Dodd-Frank Act, 12 U.S.C. 5563(e), as well as its general rulemaking authority to promulgate rules necessary or appropriate to carry out the Federal consumer financial laws, 12 U.S.C. 5512(b)(1).

III. Public Comment on the Interim Final Rule

In response to the interim final rule, the Bureau received one comment letter that did not contain any specific comments or suggestions pertaining to the interim final rule. Accordingly, the Bureau is adopting the interim final rule without change.

IV. Section 1022(b) Provisions

In developing the interim final and final rules, the Bureau has considered the potential benefits, costs, and impacts and has consulted or offered to consult with the prudential regulators, the Department of Housing and Urban Development, and the Federal Trade Commission, including with regard to consistency with any prudential, market, or systemic objectives administered by such agencies.⁵

The Dodd-Frank Act requires the Bureau to prescribe rules establishing such procedures as may be necessary to carry out section 1053 of the Act, which provides for temporary cease-and-orders in subsection (c). The final rule itself does not impose significant costs upon covered

⁵ 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.

persons, but, consistent with section 1053, provides a straightforward and efficient process for the issuance of a temporary cease-and-desist order, and a direct route to judicial review.

The final rule has no unique impact on insured depository institutions or insured credit unions with \$10 billion or less in assets described in section 1026(a) of the Dodd-Frank Act, nor does it have a unique impact on rural consumers.

V. Regulatory Requirements

As the Bureau noted in publishing the interim final rule, this 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, these regulations are not a “rule” as defined by the Regulatory Flexibility Act, 5 U.S.C. 601(2), and no initial or final regulatory flexibility analysis is required.

VI. Paperwork Reduction Act

The Bureau has determined that the regulations in this subpart do not impose any new recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would constitute collections of information requiring approval under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

List of Subjects in 12 CFR Part 1081

Administrative practice and procedure, Banking, Banks, Consumer protection, Credit, Credit unions, Law enforcement, National banks, Savings associations, Trade practices.

Authority and Issuance

For the reasons set forth above, the interim final rule amending 12 CFR part 1081 published at 78 FR 59163, September 26, 2013, is adopted as a final rule without change.

Dated: June_10, 2014.

Richard Cordray,
Director, Bureau of Consumer Financial Protection.

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