

payment practices in connection with covered loans. The items listed are non-exhaustive as to the records that may need to be retained as evidence of compliance with this part.

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12(b)(5) Electronic Records in Tabular Format Regarding Payment Practices for Covered Loans

1. *Electronic records in tabular format.* Section 1041.12(b)(5) requires a lender to retain records regarding payment practices in electronic, tabular format. Tabular format means a format in which the individual data elements comprising the record can be transmitted, analyzed, and processed by a computer program, such as a widely used spreadsheet or database program. Data formats for image reproductions, such as PDF, and document formats used by word processing programs are not tabular formats.

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Dated: February 6, 2019.

Kathleen L. Kraninger,
Director, Bureau of Consumer Financial Protection.

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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1041

[Docket No. CFPB-2019-0007]

RIN 3170-AA95

Payday, Vehicle Title, and Certain High-Cost Installment Loans; Delay of Compliance Date

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is proposing to delay the August 19, 2019 compliance date for the mandatory underwriting provisions of the regulation promulgated by the Bureau in November 2017 governing Payday, Vehicle Title, and Certain High-Cost Installment Loans (2017 Final Rule or Rule) by 15 months to November 19, 2020. This proposal is related to another proposal, published separately in this issue of the **Federal Register**, seeking comment on whether the Bureau should rescind the mandatory underwriting provisions of the 2017 Final Rule.

DATES: Comments must be received on or before March 18, 2019.

ADDRESSES: You may submit comments, identified by Docket No. CFPB-2019-0007 or RIN 3170-AA95, by any of the following methods:

- *Electronic:* <https://www.regulations.gov>. Follow the instructions for submitting comments.

- *Email:* 2019-NPRM-PaydayDelay@cfpb.gov. Include Docket No. CFPB-2019-0007 or RIN 3170-AA95 in the subject line of the message.

- *Mail/Hand Delivery/Courier:* Comment Intake, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

Instructions: The Bureau encourages the early submission of comments. All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to <https://www.regulations.gov>. In addition, comments will be available for public inspection and copying at 1700 G Street NW, Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning 202-435-7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers, Social Security numbers, or names of other individuals, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT:

Elliott C. Ponte, Attorney-Advisor; Amy Durant, Lawrence Lee, or Adam Mayle, Counsels; or Kristine M. Andreassen, Senior Counsel, Office of Regulations, at 202-435-7700. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION:

I. Summary of the Proposed Rule

On October 5, 2017, the Bureau issued the 2017 Final Rule establishing consumer protection regulations for payday loans, vehicle title loans, and certain high-cost installment loans, relying on authorities under Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).¹ The Rule was published in the **Federal Register** on November 17, 2017.² It became effective on January 16,

2018, although most provisions (12 CFR 1041.2 through 1041.10, 1041.12, and 1041.13) have a compliance date of August 19, 2019.³ On January 16, 2018, the Bureau issued a statement announcing its intention to engage in rulemaking to reconsider the 2017 Final Rule.⁴ A legal challenge to the Rule was filed on April 9, 2018 and is pending in the United States District Court for the Western District of Texas.⁵ On October 26, 2018, the Bureau issued a subsequent statement announcing it expected to issue notices of proposed rulemaking (NPRMs) to reconsider certain provisions of the 2017 Final Rule and to address the Rule's compliance date.⁶ This is the proposal that addresses the compliance date; the other proposal addressing reconsideration of certain provisions is published separately in this issue of the **Federal Register**.

The 2017 Final Rule addressed two discrete topics. First, the Rule contained a set of provisions with respect to the underwriting of covered short-term and longer-term balloon-payment loans, including payday and vehicle title loans, and related reporting and recordkeeping requirements.⁷ These provisions are referred to herein as the "Mandatory Underwriting Provisions" of the 2017 Final Rule. Second, the Rule contained a set of provisions, applicable to the same set of loans and also to certain high-cost installment loans, establishing certain requirements and limitations with respect to attempts to withdraw payments from consumers' checking or other accounts.⁸ These are referred to herein as the "Payment Provisions" of the 2017 Final Rule.

The Bureau is proposing in this NPRM to delay the August 19, 2019 compliance date for the 2017 Final Rule's Mandatory Underwriting Provisions—specifically, §§ 1041.4 through 1041.6, 1041.10, 1041.11, and

³ *Id.* at 54814.

⁴ Bureau of Consumer Fin. Prot., *Statement on Payday Rule* (Jan. 16, 2018), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-statement-payday-rule/>.

⁵ *Cnty. Fin. Serv. Ass'n of Am. v. Consumer Fin. Prot. Bureau*, No. 1:18-cv-295 (W.D. Tex.). On November 6, 2018, the Court issued an order staying the August 19, 2019 compliance date of the rule pending further order of the Court. *See id.*, ECF No. 53. The litigation is currently stayed. *See id.*, ECF No. 29.

⁶ Bureau of Consumer Fin. Prot., *Public Statement Regarding Payday Rule Reconsideration and Delay of Compliance Date* (Oct. 26, 2018), <https://www.consumerfinance.gov/about-us/newsroom/public-statement-regarding-payday-rule-reconsideration-and-delay-compliance-date/>.

⁷ 12 CFR 1041.4 through 1041.6, 1041.10, 1041.11, and portions of 1041.12.

⁸ 12 CFR 1041.7 through 1041.9, and portions of 1041.12.

¹ Public Law 111-203, 124 Stat. 1376 (2010).

² 82 FR 54472 (Nov. 17, 2017).

1041.12(b)(1)(i) through (iii) and (b)(2) and (3)—to November 19, 2020, for several reasons, each of which is discussed in more detail below. First, the Bureau is publishing separately in this issue of the **Federal Register** an NPRM that sets forth strong reasons for seeking comment on whether it should rescind the Mandatory Underwriting Provisions of the Rule (Reconsideration NPRM). The Bureau is concerned that if the August 19, 2019 compliance date for the Mandatory Underwriting Provisions is not delayed, industry participants will expend significant resources and incur significant costs in order to comply with the 2017 Final Rule, and industry participants could experience substantial revenue disruptions that could impact their ability to stay in business once the compliance date has passed. The Bureau is concerned about imposing such costs on industry participants by mandating compliance by August 19, 2019 with portions of the Rule that may ultimately be rescinded. Second, outreach to affected entities since the finalization of the 2017 Final Rule has brought to light certain potential obstacles to compliance that were not anticipated when the original compliance date was set. For example, several State laws applicable to payday or similar loans have been enacted subsequent to the 2017 Final Rule that have more immediate compliance dates. Some industry participants have indicated that, given time and resource constraints, their need to comply with these intervening State laws may impede their ability to comply with the 2017 Final Rule's Mandatory Underwriting Provisions by the August 19, 2019 compliance date. Similarly, industry participants have indicated that they need additional time to finish building out, or otherwise making investments in, technology and critical systems necessary to comply with the Mandatory Underwriting Provisions of the 2017 Final Rule.

The Bureau is thus proposing to delay the August 19, 2019 compliance date for the Mandatory Underwriting Provisions of the 2017 Final Rule by 15 months, to November 19, 2020, in order to permit an orderly conclusion to its separate rulemaking process to reconsider the Mandatory Underwriting Provisions of the 2017 Final Rule, and to account for potential implementation challenges that had not been anticipated at the time of the 2017 Final Rule.

II. Background

In the 2017 Final Rule, the Bureau established consumer protection regulations for payday loans, vehicle title loans, and certain high-cost

installment loans. The Rule was published in the **Federal Register** on November 17, 2017. It became effective on January 16, 2018, although most provisions (§§ 1041.2 through 1041.10, 1041.12, and 1041.13) have a compliance date of August 19, 2019.

As mentioned above, the 2017 Final Rule addressed two discrete topics: The Mandatory Underwriting Provisions and the Payment Provisions. The Mandatory Underwriting Provisions identified as an unfair and abusive practice the making of certain short-term and longer-term balloon-payment loans without reasonably determining that consumers will have the ability to repay the loans according to their terms. The Mandatory Underwriting Provisions include two methods for compliance. Under one method, lenders making covered short-term and longer-term balloon-payment loans are required to, among other things, make a reasonable determination that the consumer would be able to make the payments on the loan and be able to meet the consumer's basic living expenses and other major financial obligations without needing to re-borrow over the ensuing 30 days; the Rule sets forth a number of specific requirements that a lender must satisfy in this regard.⁹ Under the other method, lenders are allowed to make certain covered short-term loans without meeting all the specific underwriting criteria as long as the loan satisfies certain prescribed terms, the lender confirms that the consumer meets specified borrowing history conditions, and the lender provides required disclosures to the consumer.¹⁰

In general, under either approach, a lender must obtain and consider a consumer report from an information system registered with the Bureau before making a covered short-term or longer-term balloon-payment loan.¹¹ In addition, other portions of the Rule require lenders to furnish to provisionally registered and registered information systems¹² certain information concerning covered short-

term and longer-term balloon-payment loans at loan consummation, during the period that the loan is an outstanding loan, and when the loan ceases to be an outstanding loan.¹³

The Payment Provisions of the Rule apply to a broader group of covered loans, which include covered short-term and longer-term balloon-payment loans as well as certain high-cost installment loans, establishing certain requirements and limitations with respect to attempts to withdraw payments from consumers' checking or other accounts. The Rule identifies as an unfair and abusive practice lenders' attempts to withdraw payment on these loans from consumers' accounts after two consecutive payment attempts have failed, unless the consumer provides a new and specific authorization to do so. The Rule also prescribes notices lenders must provide to consumers before attempting to withdraw payments from their accounts.

In addition, the Rule includes other generally applicable provisions such as definitions, exemptions, and requirements for compliance programs and record retention (with portions specific to the Mandatory Underwriting Provisions and to the Payment Provisions).

As noted above, on January 16, 2018, the Bureau issued a statement announcing its intention to engage in rulemaking to reconsider the 2017 Final Rule. In addition, the statement notified entities seeking to become registered information systems that the Bureau would entertain requests to waive entities' preliminary approval application deadline.¹⁴ Since that time, the Bureau has issued several waivers and published copies of those waivers on its website.¹⁵ As of January 30, 2019, there are no information systems registered with the Bureau.¹⁶ On October 26, 2018, the Bureau issued a subsequent statement announcing that it expected to issue NPRMs to reconsider certain provisions of the 2017 Final Rule and to address the Rule's compliance date.

On April 9, 2018, a legal challenge to the 2017 Final Rule was filed in the

⁹ 12 CFR 1041.5.

¹⁰ 12 CFR 1041.6.

¹¹ 12 CFR 1041.5(c)(2)(ii)(B) and (d)(1), and 1041.6(a).

¹² The 2017 Final Rule bifurcated the process for registering information systems: the first phase for entities seeking preliminary registration prior to the August 19, 2019 compliance date; and the second phase for entities seeking provisional registration on or after the August 19, 2019 compliance date. An entity seeking preliminary registration under the first phase was required to submit to the Bureau an initial application for preliminary approval for registration by April 16, 2018. After receiving preliminary approval from the Bureau, the entity must submit its application for registration within 120 days from the date preliminary approval was granted. See 12 CFR 1041.11(c).

¹³ See 12 CFR 1041.10(c).

¹⁴ Bureau of Consumer Fin. Prot., *Statement on Payday Rule* (Jan. 16, 2018), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-statement-payday-rule/>.

¹⁵ See Bureau of Consumer Fin. Prot., *Payday, Vehicle Title, and Certain High-Cost Installment Loans Registered Information Systems registration program—Waiver requests and Bureau determinations*, <https://www.consumerfinance.gov/policy-compliance/guidance/payday-loans-registered-information-systems-registration-program/registered-information-systems/#waivers>.

¹⁶ See *id.*

United States District Court for the Western District of Texas. On June 12, 2018, the court issued an order staying the litigation. On November 6, 2018, the court stayed the August 19, 2019 compliance date of the 2017 Final Rule until further order of the court.

III. Proposed Delay of Compliance Date for the Mandatory Underwriting Provisions

The Bureau is proposing in this NPRM to delay the August 19, 2019 compliance date for the 2017 Final Rule's Mandatory Underwriting Provisions—specifically, §§ 1041.4 through 1041.6, 1041.10, 1041.11, and 1041.12(b)(1)(i) through (iii) and (b)(2) and (3)—to November 19, 2020. The Bureau is proposing this compliance date delay for several reasons, as discussed in turn below.

First, the Bureau is proposing this compliance date delay because, as noted above, the Bureau is publishing separately in this issue of the **Federal Register** an NPRM seeking comment on whether it should rescind the Mandatory Underwriting Provisions of the 2017 Final Rule. The Bureau preliminarily believes that a compliance date delay is needed because, as described in more detail in the Reconsideration NPRM, the Bureau preliminarily believes there are strong reasons for rescinding the Mandatory Underwriting Provisions of the Rule. Delaying the August 19, 2019 compliance date for the Mandatory Underwriting Provisions would give the Bureau the opportunity to review comments on the Reconsideration NPRM and to make any changes to those provisions before affected entities bear additional costs to comply with and implement the Mandatory Underwriting Provisions of the 2017 Final Rule. In addition, the Bureau is aware that some small lenders believe that the impacts of the Mandatory Underwriting Provisions of the 2017 Final Rule would significantly reduce the amount of revenue generated from their lending operations, and thereby cause some smaller industry participants to either temporarily or permanently exit the marketplace once compliance with the Mandatory Underwriting Provisions of the 2017 Final Rule is required. Other lenders have indicated that they will be forced to consolidate their operations or to make other fundamental changes to their business as a result of the Mandatory Underwriting Provisions. The Bureau preliminarily believes that delaying the August 19, 2019 compliance date would allow industry participants to avoid irreparable injury from the compliance and

implementation costs and the market effects associated with preparing for and complying with portions of the Rule that the Bureau is proposing to rescind. The Bureau also believes that temporary industry disruptions may have negative impacts on consumers, including restricting consumer access to credit, and therefore preliminarily believes that delaying the August 19, 2019 compliance date would allow consumers to avoid injury from any such disruption.

Second, the Bureau has discussed implementation efforts with a number of industry participants since publication of the 2017 Final Rule, and through these conversations the Bureau has become aware of various unanticipated potential obstacles to compliance with the Mandatory Underwriting Provisions by the August 19, 2019 compliance date. The Bureau is seeking to better understand these obstacles and how they might bear on whether the Bureau should delay the August 19, 2019 compliance date for the Mandatory Underwriting Provisions while it considers whether to rescind those portions of the 2017 Final Rule.

For example, the Bureau is aware that several States have recently enacted laws applicable to loans subject to the 2017 Final Rule's Mandatory Underwriting Provisions. Some industry participants have told the Bureau that they are prioritizing developing compliance management systems in response to these laws that have, or will, become effective¹⁷ before the August

¹⁷ In Ohio (a state that permits payday lending), a bill signed into law by the governor in 2018 will, among other things, prohibit certain lenders from making loans of \$5,000 or less secured by a vehicle title or any other collateral. Ohio lenders must comply with the law as of April 27, 2019. See Ohio Dep't of Commerce, *House Bill 123 Guidance* (2018), https://www.com.ohio.gov/documents/fiin_HB123_Guidance.pdf; see also Ohio House Bill 123, *An Act to Modify the Short-Term Loan Act*, <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-123>.

In Colorado, voters approved a ballot initiative on November 6, 2018 to cap annual percentage rates on payday loans at 36 percent. This initiative takes effect February 1, 2019. See Colo. Legislative Council Staff, *Initiative #126 Initial Fiscal Impact Statement*, <https://www.sos.state.co.us/pubs/elections/Initiatives/titleBoard/filings/2017-2018/126FiscalImpact.pdf>; see also Colo. Sec'y of State, *Official Certified Results—State Offices & Questions*, <https://results.enr.clarityelections.com/CO/91808/Web02-state.220747/#/c/c/2> (Proposition 111).

In Florida, on March 19, 2018, the governor signed the Deferred Presentment Transactions Law (SB 920). This legislation will allow deferred-presentment (payday) installment loans of up to \$1,000 paid back in installments of 60 to 90 days. Prior law allowed only amounts up to \$500 paid off in a lump sum of 31 days. The new law will go into effect July 1, 2019. See Ch. 2018–26, Laws of Fla. (2018), http://laws.flrules.org/files/Ch_2018_026.pdf.

19, 2019 compliance date. Some smaller industry participants have indicated to the Bureau that they do not have the resources to update or conform their compliance management systems to address both newly enacted State laws and the 2017 Final Rule at the same time. These recently enacted State laws were not anticipated in the 2017 Final Rule and therefore the effect these laws may have on affected entities' ability to comply with the Mandatory Underwriting Provisions of the 2017 Final Rule was not considered when the Bureau set the August 19, 2019 compliance date.

Similarly, industry participants have stated that the software vendors they use to produce technology and other critical systems necessary to comply with the Mandatory Underwriting Provisions requiring lenders to verify certain consumer obligations¹⁸ will not be fully operational or available to industry before the August 19, 2019 compliance date. The Bureau has heard more recently that there are additional systems that would facilitate lenders' access to required information that have not progressed to the point necessary to permit lenders to meet the upcoming compliance date. For example, a storefront lender operating in multiple jurisdictions informed the Bureau that the process of overhauling its point-of-sale software has been delayed due to third-party vendors not being able to produce critical software components on schedule. Furthermore, it indicated that these third-party vendors have not been able to commit to developing and deploying this necessary software by the August 19, 2019 compliance date due to the complexity of various components required to ensure compliance. Even if these third-party vendors were able to develop this necessary software by the August 19, 2019 compliance date, the storefront lender explained that it would need at least several weeks to ensure the software works with its point-of-sale software and that the third-party vendor's software is in compliance with the 2017 Final Rule.

In light of the foregoing, the Bureau is proposing to delay the August 19, 2019 compliance date for the Mandatory Underwriting Provisions of the 2017 Final Rule to November 19, 2020. Specifically, as discussed further in part

¹⁸ For example, to verify a consumer's required payments under debt obligations, the lender must obtain and review (1) a national consumer report; (2) its own records and its affiliates' records; and (3) a consumer report obtained from an entity that has been registered with the Bureau as an information system under the Rule for 180 days or more pursuant to § 1041.11(c)(2) or (d)(1), or that is registered pursuant to § 1041.11(d)(2), if available. See 12 CFR 1041.5(c)(2)(ii)(B).

V below, the Bureau is proposing to delay the compliance date for §§ 1041.4 through 1041.6, 1041.10, 1041.11, and 1041.12(b)(1)(i) through (iii) and (b)(2) and (3) of the 2017 Final Rule. The Bureau is concerned that if the August 19, 2019 compliance date for the Mandatory Underwriting Provisions is not delayed, industry participants will expend additional resources and incur additional costs in order to comply with the 2017 Final Rule, and industry participants could experience revenue disruptions that could impact their ability to stay in business once the compliance date has passed. The Bureau is concerned about imposing such costs on industry participants by mandating compliance by August 19, 2019 with portions of the Rule that may ultimately be rescinded. The Bureau preliminarily believes, based on its experience writing the 2017 Final Rule and with other similar rulemakings, that the proposed compliance date of November 19, 2020 will allow the Bureau adequate opportunity to review comments on its Reconsideration NPRM regarding the Mandatory Underwriting Provisions of the 2017 Final Rule and to make any changes to those provisions before affected entities bear additional costs associated with implementing and complying with the 2017 Final Rule, and related market effects.

The Bureau solicits comment on whether it should delay the August 19, 2019 compliance date for the Mandatory Underwriting Provisions of the 2017 Final Rule, and, if so, whether the proposed November 19, 2020 compliance date is an appropriate length of time. In particular, the Bureau asks commenters to provide specific detail and any available data regarding implementation of the Mandatory Underwriting Provisions of the 2017 Final Rule and the specific challenges they face in doing so by the current compliance date of August 19, 2019, as well as relevant knowledge and specific facts about any benefits, costs, or other impacts of this proposal on industry, consumers, and other stakeholders. The Bureau also requests comment on whether it has identified the appropriate provisions of the 2017 Final Rule as constituting the Mandatory Underwriting Provisions for purposes of the proposed delay, and whether delaying the August 19, 2019 compliance date for these provisions would have any crossover effects on implementation of the Payment Provisions. In addition, the Bureau solicits comment on the potential consequences of not delaying the August 19, 2019 compliance date for the

Mandatory Underwriting Provisions, as well as whether delaying the compliance date for the Mandatory Underwriting Provisions would better facilitate an orderly implementation period for the Rule. Finally, the Bureau solicits comment about the impact of the proposed delay on consumers who use payday loans, vehicle title loans, and high-cost installment loans covered by the 2017 Final Rule.

The purpose of this document is to seek comment on the Bureau's proposal to delay the August 19, 2019 compliance date for the Mandatory Underwriting Provisions. At this time, the Bureau is not proposing to delay the compliance date for the other provisions of the 2017 Final Rule, including the Payment Provisions. The Bureau notes that, through its efforts to monitor and support industry implementation of the 2017 Final Rule, it has heard concerns from some stakeholders regarding the Rule that are outside of the scope of this proposal. For example, the Bureau has received a rulemaking petition to exempt debit card payments from the Rule's Payment Provisions. The Bureau has also received informal requests related to various aspects of the Payment Provisions or the Rule as a whole, including requests to exempt certain types of lenders or loan products from the Rule's coverage and to delay the compliance date for the Payment Provisions. The Bureau intends to examine these issues and if the Bureau determines that further action is warranted, the Bureau will commence a separate rulemaking initiative (such as by issuing a request for information or an advance notice of proposed rulemaking).

IV. Legal Authority

The legal authority for the 2017 Final Rule is described in detail in part IV of the Supplementary Information accompanying the 2017 Final Rule.¹⁹ Commenters may refer to that discussion for more information about the legal authority for this NPRM.

The Bureau adopted the Mandatory Underwriting Provisions of the 2017 Final Rule in principal reliance on the Bureau's authority under section 1031(b) of the Dodd-Frank Act to identify and prohibit unfair and abusive practices.²⁰ Accordingly, in proposing this rule, the Bureau is exercising its authority under Dodd-Frank Act section 1031(b) to prescribe rules under Title X of the Dodd-Frank Act.

In addition to section 1031 of the Dodd-Frank Act, the Bureau relied on

other legal authorities for certain aspects of the Mandatory Underwriting Provisions in the 2017 Final Rule.²¹ Section 1022(b)(3)(A) of the Dodd-Frank Act authorizes the Bureau, by rule, to conditionally or unconditionally exempt any class of covered persons, service providers, or consumer financial products or services from any rule issued under Title X, which includes a rule issued under section 1031, as the Bureau determines is necessary or appropriate to carry out the purposes and objectives of Title X.²² The Bureau also relied, in adopting certain provisions, on its authority under section 1022(b)(1) of the Dodd-Frank Act to prescribe rules as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws.²³ The term Federal consumer financial law includes rules prescribed under Title X of the Dodd-Frank Act, including those prescribed under section 1031.²⁴ Additionally, in the 2017 Final Rule, the Bureau relied, for certain provisions, on other authorities, including those in sections 1021(c)(3), 1022(c)(7), 1024(b)(7), and 1032 of the Dodd-Frank Act.²⁵

Section 1031 of the Dodd-Frank Act and each of the other legal authorities that the Bureau relied upon in the 2017 Final Rule provide the Bureau with discretion to issue rules and therefore discretion in setting compliance dates for those rules. In the 2017 Final Rule, the Bureau stated that the Rule's compliance date was "structured to facilitate an orderly implementation process."²⁶ In particular, the Bureau sought "to balance giving enough time for an orderly implementation period against the interest of enacting protections for consumers as soon as possible."²⁷ As discussed above and in the Reconsideration NPRM, the Bureau preliminarily believes that there are strong reasons for rescinding the Mandatory Underwriting Provisions of the Rule on the grounds, *inter alia*, that a more robust and reliable evidentiary

²¹ See 82 FR 54472, 54522.

²² 12 U.S.C. 5512(b)(3)(A).

²³ 12 U.S.C. 5512(b)(1). The Bureau also interprets section 1022(b)(1) of the Dodd-Frank Act as authorizing it to rescind or amend a previously issued rule if it determines such rule is not necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, including a rule issued to identify and prevent unfair, deceptive, or abusive acts or practices.

²⁴ 12 U.S.C. 5481(14).

²⁵ 12 U.S.C. 5511(c)(3), 12 U.S.C. 5512(c)(7), 12 U.S.C. 5514(b)(7), and 12 U.S.C. 5532.

²⁶ 82 FR 54472, 54474.

²⁷ *Id.* at 54814.

¹⁹ 82 FR 54472, 54519–24.

²⁰ 12 U.S.C. 5531(b).

record is needed to support a rule that would have such dramatic impacts on the market, and that the findings of an unfair and abusive practice as set out in § 1041.4 of the 2017 Final Rule rested on applications of the relevant standards that the Bureau should no longer use. Accordingly, the Bureau preliminarily concludes that it should not assign the weight that it did in the 2017 Final Rule to “the interest of enacting protections for consumers as soon as possible.” As also discussed above, the Bureau has requested comment regarding whether delaying the August 19, 2019 compliance date would be consistent with an “orderly implementation period,” given that the Bureau may conclude that the Mandatory Underwriting Provisions should not be implemented and should instead be rescinded and because of the potential implementation issues discussed above. The Bureau is proposing to exercise its discretion to revise the August 19, 2019 compliance date in the manner described in this NPRM, in light of the considerations described above. The Bureau requests comment on those considerations and how they should be weighed in potentially delaying the August 19, 2019 compliance date for the Mandatory Underwriting Provisions of the Rule.

V. Provisions Affected by the Proposal

As discussed above, the 2017 Final Rule became effective on January 16, 2018, but has a compliance date of August 19, 2019 for §§ 1041.2 through 1041.10, 1041.12, and 1041.13. The Bureau is proposing to delay the August 19, 2019 compliance date to November 19, 2020 for §§ 1041.4 through 1041.6, 1041.10, 1041.11, and 1041.12(b)(1)(i) through (iii) and (b)(2) and (3). Sections 1041.4 through 1041.6 govern underwriting, with § 1041.4 identifying an unfair and abusive practice, § 1041.5 governing the ability-to-repay determination, and § 1041.6 providing a conditional exemption from §§ 1041.4 and 1041.5 for certain covered short-term loans. Section 1041.10 governs information furnishing requirements and § 1041.11 addresses registered information systems. Section 1041.12 sets forth compliance program and record retention requirements, with § 1041.12(b)(1)(i) through (iii) and (b)(2) and (3) detailing record retention requirements that are specific to the Rule’s Mandatory Underwriting Provisions.

To implement the proposed compliance date delay, the Bureau would revise the few instances in the regulatory text and commentary where the August 19, 2019 compliance date

appears. These portions of the regulatory text and commentary are generally related to the registered information system requirements in § 1041.11; namely, the Bureau would revise the regulatory text and headings in § 1041.11(c) introductory text, (c)(1) and (2), (d) introductory text, and (d)(1),²⁸ and related commentary, to replace August 19, 2019, where it appears, with the proposed compliance date of November 19, 2020. In addition, the Bureau requests comment on whether it should amend the Rule’s regulatory text or commentary to expressly state the delayed compliance date for the Mandatory Underwriting Provisions and/or the unchanged date for the Payment Provisions.

VI. Compliance and Effective Dates

The Bureau is proposing to delay the August 19, 2019 compliance date for the Mandatory Underwriting Provisions of the 2017 Final Rule—specifically, §§ 1041.4 through 1041.6, 1041.10, 1041.11, and 1041.12(b)(1)(i) through (iii) and (b)(2) and (3)—to November 19, 2020. After considering comments received on this proposal, the Bureau intends to publish a final rule with respect to the delayed compliance date for the Mandatory Underwriting Provisions of the 2017 Final Rule, if warranted. Any final rule to delay the Rule’s compliance date for the Mandatory Underwriting Provisions would be published and become effective prior to August 19, 2019. The Bureau seeks comment on this aspect of the proposal.

VII. Dodd-Frank Act Section 1022(b)(2) Analysis

A. Overview

As discussed above, this proposal would delay the August 19, 2019 compliance date for the Mandatory Underwriting Provisions of the 2017 Final Rule to November 19, 2020.

²⁸ Section 1041.11(c)(1) allows the Bureau to preliminarily approve an entity as an information system before the compliance date of August 19, 2019. Section 1041.11(c)(2) allows the Bureau to approve the application from a preliminarily approved entity to become a registered information system prior to the compliance date of August 19, 2019.

The Bureau is not, however, proposing to change the April 16, 2018 date in § 1041.11(c)(3), which was the deadline to submit an application for preliminary approval for registration. As noted above, § 1041.11(c)(3)(iii) permits the Bureau to waive the application deadline on a case-by-case basis, and therefore the Bureau does not need to modify the existing April 16, 2018 preliminary approval date.

Section 1041.11(d)(1) sets forth the Bureau’s process for approving and registering entities as information systems on or after the August 19, 2019 compliance date.

Published separately in this issue of the **Federal Register** is the Reconsideration NPRM, in which the Bureau considers the impacts of rescinding the Mandatory Underwriting Provisions of the 2017 Final Rule. The analysis of the benefits and costs to consumers and covered persons required by section 1022(b)(2)(A) of the Dodd-Frank Act (also referred to as the “section 1022(b)(2) analysis”) in part VIII of the Reconsideration NPRM outlines the one-time and ongoing benefits and costs of rescinding the 2017 Final Rule’s Mandatory Underwriting Provisions. As this proposal to delay the August 19, 2019 compliance date would constitute a 15-month delay of the 2017 Final Rule’s compliance date for the Mandatory Underwriting Provisions, its impacts if the Bureau were to issue a final rule with such a delay would be effectively 1.25 years of the annualized, ongoing impacts described in the Reconsideration NPRM. As described in the Reconsideration NPRM’s section 1022(b)(2) analysis, these impacts are based on the analysis and conclusions reached in the 2017 Final Rule, and include increased loan volumes and revenues for lenders, increased access to credit for consumers, and a negative average welfare effect on consumers from exposure to unanticipated long sequences, all relative to the baseline if compliance becomes mandatory on August 19, 2019. This proposal’s impacts on the one-time costs described in the 2017 Final Rule primarily include a delay before covered entities must bear these costs, until no later than the new compliance date. As some covered entities may have already started to incur some of these one-time costs and others may incur the costs in advance of the delayed compliance date, the Bureau believes the monetary impact of a delay of the Mandatory Underwriting Provisions would have minimal impacts on the eventual costs incurred by lenders if the Bureau decides to retain the Mandatory Underwriting Provisions.

In developing this proposal, the Bureau has considered the potential benefits, costs, and impacts as required by section 1022(b)(2)(A) of the Dodd-Frank Act.²⁹ Specifically, 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

²⁹ 12 U.S.C. 5512(b)(2)(A).

section 1026 of the Dodd-Frank Act, and the impact on consumers in rural areas.

In advance of issuing this proposal, the Bureau has consulted with the prudential regulators and the Federal Trade Commission, including consultation regarding consistency with any prudential, market, or systemic objectives administered by such agencies.

The Bureau requests comment on the section 1022(b)(2) analysis that follows as well as submission of additional information that could inform the Bureau's consideration of the potential benefits, costs, and impacts of this proposal to delay the August 19, 2019 compliance date of the Mandatory Underwriting Provisions of the Rule. Comments on the Bureau's section 1022(b)(2) analysis related to this NPRM's proposed compliance date delay should be filed on the docket associated with this NPRM, while comments on the Reconsideration NPRM's section 1022(b)(2) analysis should be filed on the Reconsideration NPRM docket.

1. Description of the Baseline

In considering the potential benefits, costs, and impacts of this proposed rule the Bureau takes the 2017 Final Rule as the baseline, and considers economic attributes of the relevant markets as they are projected to exist under the 2017 Final Rule with its current August 19, 2019 compliance date and the existing legal and regulatory structures (*i.e.*, those that have been adopted or enacted, even if compliance is not currently required) applicable to providers. This is the same baseline used in the Reconsideration NPRM. See part VIII.A.4 of the Reconsideration NPRM for a more complete description of the baseline.

2. Need for Federal Regulation

The need for regulation here—*i.e.*, for a delay of the compliance date—is discussed in more detail above. In summary, first, the Bureau's Reconsideration NPRM, published separately in this issue of the **Federal Register**, sets forth the Bureau's reasons for preliminarily concluding that the Mandatory Underwriting Provisions of the 2017 Final Rule should be rescinded. The Bureau is concerned that if the August 19, 2019 compliance date for the Mandatory Underwriting Provisions is not delayed, firms will expend significant resources and incur significant costs to comply with portions of the 2017 Final Rule that ultimately may be—and which the Bureau preliminarily believes should be—rescinded. The Bureau is likewise

concerned that once the August 19, 2019 compliance date has passed, firms could experience substantial revenue disruptions that could impact their ability to stay in business while the Bureau is deciding whether to issue a final rule rescinding the Mandatory Underwriting Provisions of the 2017 Final Rule. Second, as discussed above, outreach to firms since the finalization of the 2017 Final Rule has brought to light certain potential obstacles to compliance that were not anticipated when the original compliance date was set. For example, as discussed above, some firms have indicated that they need additional time to finish building out, or otherwise make investments in, technology and critical systems necessary to comply with the Mandatory Underwriting Provisions of the 2017 Final Rule.

B. Potential Benefits and Costs to Covered Persons and Consumers

The annualized quantifiable benefits and costs of rescinding the Mandatory Underwriting Provisions of the 2017 Final Rule are detailed in the section 1022(b)(2) analysis in part VIII.B through D of the Reconsideration NPRM. Under this proposal to delay the August 19, 2019 compliance date for the Mandatory Underwriting Provisions, these annualized benefits and costs would be realized for a period of 15 months (1.25 years). Additional, unquantified benefits and costs are also described in the Reconsideration NPRM's section 1022(b)(2) analysis. Under this proposal these costs and benefits would also be realized for 15 months (1.25 years).

1. Benefits to Covered Persons and Consumers

This proposal to delay the August 19, 2019 compliance date for the Mandatory Underwriting Provisions would delay by 15 months the restrictions on consumers' ability to choose to take out covered loans (including payday and vehicle title loans) that would be prohibited in the baseline. This proposal would also delay the decrease in the revenues of payday lenders anticipated in the 2017 Final Rule (62 to 68 percent) by 15 months, resulting in an estimated increase in revenues of between \$4.25 billion and \$4.5 billion (based on the annual rate of \$3.4 billion and \$3.6 billion) relative to the baseline. A similar delay in the reduction in the revenues of vehicle title lenders would result in an estimated increase in revenues relative to the baseline of between \$4.9 billion and \$5.1 billion (based on the annual rate of \$3.9 billion

to \$4.1 billion).³⁰ The proposal would also cause a small but potentially quantifiable delay in the additional transportation costs borrowers would incur to get to lenders after the storefront closures expected in response to the 2017 Final Rule.

2. Costs to Covered Persons and Consumers

The Reconsideration NPRM's section 1022(b)(2) analysis also discusses the ongoing costs facing consumers that result from extended payday loan sequences at part VIII.B through D. The available evidence suggests that the Reconsideration NPRM would impose potential costs on consumers by increasing the risks of: Experiencing costs associated with extended sequences of payday loans and single-payment vehicle title loans; experiencing the costs (pecuniary and non-pecuniary) of delinquency and default on these loans; defaulting on other major financial obligations; and/or being unable to cover basic living expenses in order to pay off covered short-term and longer-term balloon-payment loans.³¹ Relative to the baseline where the 2017 Final Rule's compliance date is unaltered, these costs would be maintained for 15 additional months under this proposal.

3. Other Benefits and Costs

Other benefits and costs that the Bureau did not quantify are discussed in the Reconsideration NPRM's section 1022(b)(2) analysis in part VIII.E. These include (but are not limited to): The consumer welfare impacts associated with increased access to vehicle title loans; intrinsic utility ("warm glow") from access to loans that are not used (and that would not be available under the 2017 Final Rule); innovative regulatory approaches by States that would have been discouraged by the 2017 Final Rule; public and private health costs that may (or may not) result from payday loan use; changes to the profitability and industry structure that would have occurred in response to the 2017 Final Rule (*e.g.*, industry consolidation that may create scale efficiencies, movement to installment product offerings); concerns about

³⁰ These values are not discounted, as they would begin being realized immediately, and annualized discounting over such a small horizon would have a minimal impact.

³¹ As mentioned in the Reconsideration NPRM's section 1022(b)(2) analysis, the effects associated with longer-term balloon-payment loans are likely to be small relative to the effects associated with short-term payday and vehicle title loans. This is because longer-term balloon-payment loans are uncommon in the baseline against which costs are measured.

regulatory uncertainty and/or inconsistent regulatory regimes across markets; benefits or costs to outside parties associated with the change in access to payday loans; indirect costs arising from increased repossessions of vehicles in response to non-payment of vehicle title loans; non-pecuniary costs associated with financial stress that may be alleviated or exacerbated by increased access to/use of payday loans; and any impacts of fraud perpetrated on lenders and opacity as to borrower behavior and history related to a lack of industry-wide registered information systems (e.g., borrowers circumventing lender policies against taking multiple concurrent payday loans, lenders having more difficulty identifying chronic defaulters, etc.). Each of these impacts, discussed in the section 1022(b)(2) analysis for the 2017 Final Rule and the section 1022(b)(2) analysis of the Reconsideration NPRM, are expected to result from this proposal for the 15-month delay of the compliance date for the 2017 Final Rule's Mandatory Underwriting Provisions.

The Bureau does not believe the one-time benefits and costs described in the Reconsideration NPRM will be substantially affected by this proposal to delay the August 19, 2019 compliance date for the Mandatory Underwriting Provisions. In effect, this proposal would provide institutions greater flexibility in when and how to deal with the burdens of the 2017 Final Rule's Mandatory Underwriting Provisions if the Bureau retains those provisions in the Reconsideration rulemaking. Some firms may have already undertaken some of the compliance costs, meaning this proposal would have minimal impact on their benefits or costs. If the Bureau ultimately decides to finalize this proposed compliance date delay for the Mandatory Underwriting Provisions, others may use the additional time to install the necessary systems and processes to comply with the 2017 Final Rule in a more efficient manner.

Quantifying the value of this more flexible timeline is impossible, as it depends on, among other things, each firm's idiosyncratic capacities and opportunity costs. However, it is likely that this flexibility will be of relatively greater benefit to smaller entities with more limited resources.

The Bureau expects, however, that, if the proposed compliance date delay for the Mandatory Underwriting Provisions is finalized, most firms will simply delay incurring some or all of the costs of coming into compliance. This period of time could vary depending on the length of the delay eventually finalized, if any. A delay of 15 months, as

proposed, would effectively reduce the one-time benefits and costs by 1.25 years of their discount rate.³² While these firms would experience potentially quantifiable benefits, the Bureau cannot know what proportion of the firms would adopt any of the strategies described above, let alone the discounting values or strategies unique to each firm. For a 15-month delay, the discounting of the one-time benefits and costs would be likely to be less than 3 percent of the value of those benefits and costs.³³ As such, the Bureau believes the one-time benefits and costs of this proposal are minimal, relative to the other benefits and costs described above.

C. Potential Impact on Depository Creditors With \$10 Billion or Less in Total Assets

The Bureau believes that depository institutions and credit unions with less than \$10 billion in assets were minimally constrained by the 2017 Final Rule's Mandatory Underwriting Provisions. To the limited extent depository institutions and credit unions do make loans in this market, many of those loans are conditionally exempt from the 2017 Final Rule under § 1041.3(e) or (f) as alternative or accommodation loans. As such, this proposal would likewise have minimal impact on these institutions.

The Reconsideration NPRM notes that it is possible that a revocation of the 2017 Final Rule's Mandatory Underwriting Provisions would allow depository institutions and credit unions with less than \$10 billion in assets to develop products that would not be viable under the 2017 Final Rule (subject to applicable Federal and State laws and under the supervision of their prudential regulators). Given that development of these products has been underway, and takes a significant amount of time, and that this proposal's delay does not affect such products' longer-term viability, this proposal

would have minimal effect on these products and institutions.

D. Potential Impact on Consumers in Rural Areas

The Bureau does not believe that the proposed compliance date delay would reduce consumer access to consumer financial products and services, and it may increase consumer access by delaying the point at which covered firms implement changes to comply with the 2017 Final Rule's Mandatory Underwriting Provisions. Under the proposal, consumers in rural areas would have a greater increase in the availability of covered short-term and longer-term balloon-payment loans originated through storefronts relative to consumers living in non-rural areas. As described in more detail in the Reconsideration NPRM's section 1022(b)(2) analysis, the Bureau estimates that removing the restrictions in the 2017 Final Rule on making these loans would likely lead to a substantial increase in the markets for storefront payday lenders and storefront single-payment vehicle title loans. By delaying the August 19, 2019 compliance date for the Mandatory Underwriting Provisions, the Bureau similarly anticipates a substantial increase in those markets relative to the baseline for the duration of the delay.

VIII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act³⁴ as amended by the Small Business Regulatory Enforcement Fairness Act of 1996³⁵ (RFA) requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations.³⁶ The RFA defines a "small business" as a business that meets the size standard developed by the Small Business Administration (SBA) pursuant to the Small Business Act.³⁷

³² Over and above this inflationary discounting, it is also possible that the proposed delay would result in a decrease in the nominal technology costs associated with compliance, as technology costs are generally declining. However, given the relatively short horizon and relatively mature technology required for compliance (e.g., electronic storage, database management software, etc.), this decrease in nominal costs is expected to be minimal.

³³ The 3 percent value assumes a discounting of 2.40 percent (the Effective Federal Funds rate as of January 30, 2019) for 1.25 years. This implicitly assumes all firms would undertake the necessary actions immediately in the absence of this proposal, and would delay those actions for the full 15 months if the proposal were to be adopted. The true value will likely be substantially less than this, as many firms will not delay by the full duration, and/or have already undertaken the actions that will result in the benefits or costs.

³⁴ Public Law 96-354, 94 Stat. 1164 (1980).

³⁵ Public Law 104-21, section 241, 110 Stat. 847, 864-65 (1996).

³⁶ 5 U.S.C. 601 through 612. The term "small organization" means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes [an alternative definition under notice and comment]." 5 U.S.C. 601(4). The term "small governmental jurisdiction" means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes [an alternative definition after notice and comment]." 5 U.S.C. 601(5).

³⁷ 5 U.S.C. 601(3). The Bureau may establish an alternative definition after consulting with the SBA and providing an opportunity for public comment. *Id.*

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities.³⁸ The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small entity representatives prior to proposing a rule for which an IRFA is required.³⁹

As discussed above, the proposal would delay the August 19, 2019 compliance date for §§ 1041.4 through 1041.6, 1041.10, 1041.11, and 1041.12(b)(1)(i) through (iii) and (b)(2) and (3) of the 2017 Final Rule to November 19, 2020. The proposed delay in the compliance date would benefit small entities by providing additional flexibility with respect to the timing of the 2017 Final Rule's Mandatory Underwriting Provisions' implementation. In addition to generally providing increased flexibility, the delay in the compliance date would

permit small entities to delay the commencement of any ongoing costs that result from complying with the Mandatory Underwriting Provisions of the 2017 Final Rule. Because small entities would retain the option of coming into compliance with the Mandatory Underwriting Provisions on the original August 19, 2019 compliance date, the proposed delay of the compliance date would not increase costs incurred by small entities relative to the baseline established by the 2017 Final Rule. Based on these considerations, the proposed rule would not have a significant economic impact on any small entities.

Accordingly, the undersigned hereby certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Thus, neither an IRFA nor a small business review panel is required for this proposal. The Bureau requests comments on this analysis and any relevant data.

IX. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA),⁴⁰ Federal agencies are generally required to seek Office of

Management and Budget (OMB) approval for information collection requirements prior to implementation. Under the PRA, the Bureau may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to an information collection unless the information collection displays a valid control number assigned by OMB. The collections of information related to the 2017 Final Rule were previously submitted to OMB in accordance with the PRA and assigned OMB Control Number 3170-0065 for tracking purposes, however, this control number is not yet active as OMB has not approved these information collection requests.

The Bureau has determined that the proposed rule would not impose any new recordkeeping, reporting, or disclosure requirements on members of the public that would constitute collections of information requiring approval under the PRA.

Dated: February 6, 2019.

Kathleen L. Kraninger,
Director, Bureau of Consumer Financial Protection.

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³⁸ 5 U.S.C. 601 through 612.

³⁹ 5 U.S.C. 609.

⁴⁰ 44 U.S.C. 3501 *et seq.*