The effective dates of the TILA amendments depend on various factors, such as, whether the statute directs the CFPB to issue regulations. Where the statute is silent on an effective date and Congress did not explicitly require regulations, the amendment takes effect on the date of enactment. The presumed date of enactment for federal statutes is the date when the statute is signed into law by the president. The president signed S. 2155 into law on May 24, 2018. Any provisions that do not direct an agency to issue regulations and do not contain language specifying a different date of enactment, such as sections 101, 102 and 107, became applicable on that date.

When a provision is silent on an effective date but directs an agency to issue regulations, a question arises regarding whether the effective date is still the date of enactment or is determined by the agency. When an agency has been directed to issue regulations for a provision that does not contain a specific effective date, the effective date of the regulations will depend on the context of the statute. Sections 108 and 307 are typical statutory directives to adopt a particular rule. Under these directives, if Congress does not give an effective date then the effective date is determined by the agency. Even with this delegation from Congress, the Consumer Financial Protection Bureau (CFPB) must still issue regulations that are consistent with the Administrative Procedure Act. This includes an effective date that is typically either thirty or sixty days after the rule has been published in the Federal Register.

Section 109 directs the CFPB under a “Sense of Congress.” Directives given under a “Sense of Congress” are generally considered “merely precatory.” The CFPB can determine whether or not it should issue the guidance requested in section 109(b). Because it is unclear when and whether the CFPB will issue guidance, other provisions within section 109 likely are effective on the date of enactment, May 24, 2018, rather than the date of any guidance issued.

An additional question arises regarding whether the applicable effective date applies to contracts signed on or after that date or to applications received on or after the effective date. The effective date, May 24, 2018, likely applies to applications submitted on or after this date, an approach that avoids issues of retroactivity. If a party seeks to apply it to applications that were pending on May 24, 2018, the party may encounter issues of retroactivity even if the application resulted in a contract after S. 2155’s effective date.

Footnotes

137 See Johnson v. United States, 529 U.S. 694, 702, 120 S. Ct. 1795, 146 L. Ed. 2d 727 (2000). See also United States v. Lyndell, 124 F.3d 1170, 1172 (9th Cir. 1997).


139 See Sweet v. Sheahan, 235 F.3d 80, 87 (2d Cir. 2000) (finding that a statutory directive to HUD to issue a landlord-tenant regulation would not affect substantive rights until the agency promulgated final rules).

140 See James T. O’Reilly, Administrative Rulemaking § 12:4 (2018 ed.).

141 Id.

142 See, e.g., Yang v. California Dep’t of Soc. Services, 183 F.3d 953 (9th Cir. 1999).

143 See Landgraf v. USI Film Prods., 511 U.S. 244, 277, 114 S. Ct. 1483, 128 L. Ed. 2d 229 (1994) (setting a standard for the permissible retroactive application of statutes).

Courts generally defer to agency’s decisions to apply new statutes to pending applications, but courts have also been hesitant to apply consumer protection statutes retroactively. It is also unclear whether judicial approaches to retroactivity would change when the party submitting the application is not the party to whom the regulation applies.