Supporting Statement
New Collection

A. Justification

1. Circumstances and Need

This statement supports a request for OMB approval of collections of information contained in a joint Notice of Proposed Rulemaking by the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the National Credit Union Administration (Agencies) proposing amendments to their rules in order to implement the Secure and Fair Enforcement for Mortgage Licensing Act (the S.A.F.E. Act) which was enacted as Title V of the Housing and Economic Recovery Act of 2008, Pub. L. No.110-289. The S.A.F.E. Act requires an employee of a bank, savings association, or credit union and their subsidiaries regulated by one of the Agencies or an employee of an institution regulated by the Farm Credit Administration (collectively, Agency-regulated institutions), who engages in the business of a residential mortgage loan originator (MLO) to register with the Registry and obtain a unique identifier. This proposal implements these requirements. It also provides that these Agency-regulated institutions must require their employees, who act as MLO's to comply with this Act's requirements to register and obtain a unique identifier, and must adopt and follow written policies and procedures to assure compliance with these requirements. The FDIC proposed regulation implementing the SAFE Act will be added to 12 CFR Part 365.

2. Description of the Information Collection and Its Use

The information collected will improve the flow of information to and between regulators; provide accountability and tracking of MLO's originators, enhance consumer protections, reduce fraud in the residential mortgage loan origination process and provide consumers with easily accessible information at no charge regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, MLO's.

3. Use of Technology to Reduce Burden

Federal registration and state licensing and registration must be completed through the Nationwide Mortgage Licensing System and Registry; a web-based system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage regulators jointly through the State Regulatory Registry LLC. The electronic form is stored in a secured, centralized repository.

4. Efforts to Identify Duplication

Substantially all of the information collected is not otherwise available.

5. Minimizing the Burden on Small Entities

As discussed in connection with the Regulatory Flexibility Act (RFA), approximately 3,274 FDIC-supervised banks are small entities (defined for purposes of the RFA to include banks with less than $175 million in assets). However, the proposed rule would not apply to approximately 2,430 of those small entities because they originate 25 or fewer residential mortgage loans annually and therefore would qualify for the de minimis exception. Only approximately 844 small entities supervised by the FDIC – about 26% of FDIC-supervised small entities – would be subject to the requirements of the proposed rule.

6. Consequence of Less Frequent Collections

Compliance with the S.A.F.E. Act requires timely registration, annual registration renewals and maintaining the accuracy of information supplied.

7. Special Circumstances

None

8. Consultation with Persons Outside the FDIC

In addition to meetings and telephone conferences with staff from the other agencies participating in this rulemaking, there have been calls with industry groups regarding the status and implementation of the rulemaking and with staff of the Department of Housing and Urban Development.

9. Payment to Respondents

None.

10. Confidentiality

Information deemed confidential is exempt from public disclosure under the Freedom of Information Act (5 U.S.C. 552).

11. Information of a Sensitive Nature

None.

12. Burden Estimate

Summary: As shown below, the total annual burden of **2,065,452.5** hours comprises recordkeeping, disclosure and reporting burden for two categories of respondents: (a) FDIC regulated financial institutions and their subsidiaries of which there are 5371, and (b) employees of FDIC regulated Financial Institutions who are residential mortgage loan originators (MLO) of which there are expected to be 49,719. The burden estimate takes into account the relative size of FDIC regulated institutions, that many do not originate mortgages and that of those that do, many concentrate on commercial lending.

MLO Reporting Requirements. Unless the de minimis exception or a different implementation period applies, §365.103(a) would require an employee of a bank who engages in the business of a residential mortgage loan originator to register with the Registry, maintain such registration, and obtain an unique identifier. Under §365.103 (b), a bank must require each such registration to be renewed annually and updated within 30 days of the occurrence of specified events. Section 365.103 (d) describes the categories of information that an employee, or the employing bank in the employee's behalf, must submit to the Registry, along with the employee's attestation as to the correctness of the information supplied, and his/her authorization to obtain further information. The FDIC estimates that to comply with the MLO reporting requirements the 49,719 MLO respondents will take on average 2.50 hours annually for initial registration, for a total estimated burden hours for MLO *initial* reporting of 124,297.5 hours. In addition, FDIC estimates that 24,860 MLO employees will be required to *update* annually which will take on average .25 hours for a total estimated burden for registration update of 6,215 hours. The grand total estimate of MLO burden hours for reporting is 130,512.5 hours.

MLO Disclosure Requirement. Section 365.105 (b) requires the MLO to provide the unique identifier to a consumer upon request. The FDIC estimates that to comply with the MLO disclosure requirements, the 49,719 MLO respondents will take on average one hour annually for a total estimated burden hours for MLO disclosure of 49,719 hours.

Financial Institution Reporting Requirements. Section 365.103(e) specifies institution and employee information that a bank must submit to the Registry in connection with the initial registration of one or more MLO's, and thereafter to update. The FDIC estimates that to comply with the bank disclosure requirements, the 5371 bank respondents will take on average one hour annually for a total estimated burden hours for MLO disclosure of 5371 hours.

Financial Institution Disclosure Requirements. Section 365.105 (a) would require the bank to make the unique identifier of MLO employees available to consumers in a manner and method practicable to the institution. The FDIC estimates that to comply with the bank disclosure requirements, the 5371 bank respondents will take on average 50 hour during the first year to set up its systems for a total estimated burden hours for bank disclosure of 268,550 hours. The FDIC anticipates that the burden hours during ensuing years will be informed by actual experience, but are anticipated to be substantially reduced.

<u>Financial Institution Recordkeeping Requirements.</u>

Section 365.103(d)(xii) would require the collection of MLO employee fingerprints. The FDIC estimates that to comply with this bank recordkeeping requirement, the 5371 bank respondents will take on average 40 hour during the first year to set up applicable systems, for a total estimated burden hours of 214,840 hours.

Section 365.104 would require that a bank employing MLO's to:

- Adopt and follow written policies and procedures, at a minimum addressing certain specified areas, but otherwise appropriate to the nature, size and complexity of their mortgage lending activities. The FDIC estimates that to comply with this bank recordkeeping requirement, the 5371 bank respondents will take on average 100 hours during the first year, for a total estimated burden hours of 537,100 hours.

- Establish reasonable procedures and tracking systems for monitoring registration compliance. The FDIC estimates that to comply with this bank recordkeeping requirement, the 5371 bank respondents will take on average 120 hours during the first year, for a total estimated burden hours of 644,520 hours.

- Establish a process for, and maintain records related to, employee criminal history background reports and actions taken with respect thereto. The FDIC estimates that to comply with this bank recordkeeping requirement, the 5371 bank respondents will take on average 40 hour during the first year to set up applicable systems, for a total estimated burden hours of 644,520 hours of 214,840 hours.

The grand total of the foregoing estimated annual burden hours for bank recordkeeping requirements during the first year is <u>1,611,300</u> hours.

The FDIC anticipates that the burden hours during ensuing years for bank recordkeeping requirements will be informed by actual experience, but are expected to be substantially reduced.

<u>The FDIC estimates the cost burden to respondent banks as follows</u>:

<u>Bank-Implement Policies and Procedures, Maintain Criminal Report Records and Tracking Systems for Compliance</u>

Support Staff	40% x (1,885,221) = 754,088@ $25 =	$18,852,200
Professional Staff	50% x (1,885,221) = 942,610@$55 =	$51,843,550
Senior Management	5% x (1,885,221) = 94,261@$100 =	9,426,100
Legal Counsel	5% x (1,885,221) = 94,261@$144 =	<u>13,573,584</u>
		93,695,434

Mortgage Loan Originator- Registration/Update

180,231@$20=	3,604,630
Total:	$97,300,064*

13. Capital, Start-Up and Maintenance Costs

None

14. Estimated Annual Cost to the Federal Government

None

15. Reason for Change in Burden

The entire change in burden hours, an increase from zero to 2,065.452.5 is a program change due to the creation of a new collection.

16. Publication

The public will have access to information in the Registry about a MLO's employment history and publicly adjudicated enforcement actions.

17. Display of Expiration Dates

Not applicable.

18. Exceptions to Certification

None.

B. Statistical Methods

Not applicable.

**Hourly rates for occupational groups are averages using data from the BLS Occupational Classification System, and the average consumer cost of $20 is estimated from the BLS Economic News Release (Table B-3. Average hourly and weekly earnings of production and non-supervisory workers (1) on private non-farm payrolls by industry sector and selected industry detail).*