

**Department of the Treasury, Departmental Offices
Consumer Financial Protection Bureau Implementation Team
Request for Emergency Processing and Approval
Qualitative Testing of Integrated Mortgage Loan Disclosure Forms**

EMERGENCY JUSTIFICATION

The Department of the Treasury (Treasury), on behalf of itself and the Consumer Financial Protection Bureau (CFPB), respectfully requests emergency processing and approval of the collection of information to be used for the qualitative testing of integrated mortgage loan disclosure forms. The collection is needed prior to the expiration of the time periods set out in 5 C.F.R. Part 1320.

The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law No. 111-203, Title X (the Dodd-Frank Act), requires CFPB to propose for public comment rules and model disclosures that combine certain disclosures required under the Truth in Lending Act and the Real Estate Settlement Procedures Act, into a single, integrated disclosure for mortgage loan transactions covered by those laws. (Dodd-Frank Act § 1032(f)). The Dodd-Frank Act mandates that a proposed rule be issued within one year after the designated transfer date, which is set for July 21, 2011. The target date is to issue the proposed rule as soon after the designated transfer date as possible.

Under Dodd-Frank Act §1032(b)(3), model forms must be validated through consumer testing. To effectively test the model form, the CFPB implementation team has determined that both qualitative and quantitative testing of the form will be necessary. It has further determined that the qualitative evaluation of the form, as part of the iterative design process, needs to be initiated in May 2011, to allow for five rounds of testing to be conducted in six cities, with sufficient time for analysis and revisions between each round. The CFPB implementation team will undertake a quantitative study to validate the form (an Information Collection Request (ICR) for that data collection will be submitted separately). The aggressive schedule is necessary to have a disclosure form in January 2012, so that the CFPB implementation team can draft proposed regulations, complete impact analyses and other applicable procedural requirements, and publish the proposed rule by July 21, 2012, as mandated in the Dodd-Frank Act. Furthermore, moving forward as quickly as possible to develop a disclosure that successfully communicates information to consumers about the terms of mortgage loans and enables consumers to understand and compare the loan products being offered is important to improving the market for mortgage loans.

Given the timing of the consumer testing and the statutory deadline to issue a proposed rule by July 21, 2012, the CFPB implementation team cannot reasonably comply with the normal clearance procedures under 5 C.F.R. Part 1320 with respect to this information collection.

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1. CIRCUMSTANCES NECESSITATING THE DATA COLLECTION

The Consumer Financial Protection Bureau (CFPB) is required by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law No. 111-203, Title X (the Dodd-Frank Act), to “publish a single, integrated disclosure for mortgage loan transactions” that satisfies requirements of the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA) by July 21, 2012 (Dodd-Frank Act, §§ 1032(f), 1098, 1100A). Under section 1032(b) (3), model forms must be validated through consumer testing. Furthermore, the two agencies that historically have had the authority to implement these two statutes have engaged in consumer testing of their respective disclosure forms, establishing an expectation that model disclosure forms will be evaluated through consumer testing before they are implemented to maximize the usefulness of the disclosure and support the implementation costs imposed on the disclosure providers.

The CFPB implementation team will collect data, including through interviews and the internet, to inform its design and development of the mandated integrated disclosure and its implementation. The data collection will include:

- Consent forms that will be used to obtain the consent of participants in the cognitive interviewing;
- Participant questionnaires to obtain demographic data about the participants;
- Interviews conducted according to established protocols for both consumers and lenders/brokers; and
- Tools that seek input from a larger community through the internet.

The core objective of the data collection is to help refine specific features of the content or design of the form to maximize communication effectiveness while minimizing compliance burden, specifically by:

- Evaluating one or more draft disclosure forms through iterative qualitative testing with consumers and lenders/brokers, including observation of consumers’ usage of the disclosure, their understanding of the contents, and the choices they make; and
- Collecting supplementary feedback through the internet from consumers, industry representatives, and other interested parties regarding the draft disclosure(s).

The qualitative testing is focused on the purposes of the integrated disclosure which are to:

- Improve consumer understanding by better disclosing risks and costs so consumers can choose the home loans that best meet their needs;
- Enable “shopping” by consumers in terms of comparing loan products and loan offers; and
- Facilitate compliance and ease implementation for industry.

The collection of additional data through the internet is being undertaken for several reasons. Although a public notice and comment process will be undertaken in conjunction with publication of a proposed regulation and model disclosure, it is helpful to identify strengths and weaknesses of draft designs as early as possible to provide more time for adjustment and fine-tuning. By sharing the disclosure with the public throughout the development process and providing them with an opportunity to provide input, the CFPB implementation team has the opportunity to develop a better disclosure, engage a broader, more diverse range of stakeholders, including consumers, in the process, and obtain a wider variety of perspectives than is possible with the formal qualitative testing program, which involves cognitive interviews with twelve consumers and two brokers/lenders for each iteration of the design. This methodology supports the Administration's core goals of transparency, which "promotes accountability by providing the public with information about what the Government is doing," and participation, which "allows members of the public to contribute ideas and expertise so that their government can make policies with the benefit of information that is widely dispersed in society."¹

Moreover, by including a mechanism that will allow for industry input, the CFPB implementation team will be able to identify and address implementation and usability concerns while the disclosure is still in the development phase, rather than waiting until the formal rulemaking stage. Often, agencies design a form and then share the final product with the public through a notice of proposed rulemaking, only to find out that the form creates unnecessary burden for businesses. Identifying such issues earlier in the development of disclosures provides for a more efficient process.

2. USE OF INFORMATION

The data collected will be used to inform the CFPB implementation team's design and development of the mandated integrated disclosure and its implementation. The information collected through the one-on-one cognitive interviews and the internet will inform the disclosure form's design and content, using an iterative process to improve the draft disclosure form to make it easier for consumers to use the document to identify the terms of the loan being offered to them and use that information to compare among different loan products. The final disclosure will be evaluated through a quantitative testing process for which a separate ICR will be submitted. The data (consisting of notes from the interviews and audio- and video-recordings) will be coded and analyzed by Kleimann Communication Group (the Contractor) to determine what elements of the form are effective and which need revision. The data will be shared with the CFPB implementation team staff working on the disclosure project to inform their decisions on revisions to the disclosure form. For each iteration of the design, cognitive interviewing will provide input from twelve individuals (seven in English and five in Spanish) and two industry representatives who will be interviewed for approximately 90 minutes each, for a total of 14 participants.

The information collected on CFPB's website will further inform development. The internet will be used to inform the process and encourage additional input from a larger group of people while imposing a much smaller individual collection burden. It will provide the public with both

¹ Open Government Directive. December 8, 2009.
<http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda_2010/m10-06.pdf>.

information on the development process and an opportunity to participate in that process. The CFPB implementation team is taking an unusual approach in its efforts to design the mandated integrated disclosure form. Rather than sharing the disclosure with stakeholders after completing the qualitative testing as other agencies typically do, the team is sharing the disclosure on a parallel track to such testing with diverse stakeholders, including individual consumers who visit the agency website as well as traditional participants in the regulatory process. The website tool will enable the CFPB implementation team to receive a large volume of general feedback in a structured way.

The website tool will allow members of the public to provide general feedback on the potential design elements of an integrated disclosure, indicating what they find effective and how they interpret information. The ultimate goals of this input process are to elicit from the public a sense of what kinds of disclosure designs are effective at conveying information, and from financial services providers a sense of potential advantages and implementation challenges. Input collected on the website is not meant to be, and will not be treated as, a sample that is statistically generalizable to the overall American population; instead, providing the public with open-ended opportunities to explain their impressions of the form is meant to provide individual insights, perspectives, and lines of inquiry that might otherwise not have been recognized. internet input will pose specific questions designed to elicit relevant public feedback, but will not represent or act like a survey.

The CFPB implementation team believes the ability of social media to reach citizens from a wide array of disciplines is of particular value here. Sample draft disclosure form(s) will be shared with industry representatives, consumer advocates, consumers, and academics, among others. The information that is received, whether rankings of elements or designs or responses to a few open questions, will be aggregated and analyzed by the CFPB implementation team and shared with the Contractor. The information, consisting of comments and identification of elements of the form as helpful or unhelpful, will be used to supplement the findings from the qualitative testing.

3. USE OF INFORMATION TECHNOLOGY

The cognitive interviews will be recorded when the participant has agreed to such a collection. However, the interviewing will be conducted face-to-face, without computer assistance.

The collection of information through the internet will rely completely on information technology and is expected to have a very low burden, not to exceed 5 minutes per respondent per round. Participation will be entirely voluntary, and any member of the public may elect to discontinue providing feedback at any time.

4. EFFORTS TO IDENTIFY DUPLICATION

Because this disclosure is being developed, no data exist on its effectiveness. In both creating the disclosure and considering the qualitative evaluation, CFPB implementation team staff and the Contractor have reviewed carefully the prior research done on the TILA and RESPA disclosures by staff and contractors of the Federal Reserve Board and Department of Housing

and Urban Development. The intent is to learn from the experiences of the other agencies to create a more effective disclosure as well as to improve the qualitative testing. The CFPB implementation team staff has held several meetings with staff at both agencies to discuss the testing, the disclosure, and policy considerations.

5. IMPACT ON SMALL ENTITIES

The data collection is not anticipated to burden small entities significantly. A total of twelve individuals who are loan officers at financial institutions or who are mortgage loan brokers will be recruited to participate in the rounds of cognitive testing. Small lenders and settlement service providers may choose to respond through the internet when the disclosures are shared with the public, but their voluntary decision to participate in this forum should involve an extremely low burden.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION AND OBSTACLES TO BURDEN REDUCTION

If this information is not collected, it will not be possible to evaluate the effectiveness of the disclosure form until the quantitative testing and/or public comment phases.

In the cognitive interviewing process, each individual will participate only once, so frequency of data collection is not applicable. For those who choose to participate through the internet, the CFPB implementation team will not prohibit an individual or entity from responding throughout the anticipated outreach events, which will have different activities based on the phase of development of the disclosure design and content.

7. CIRCUMSTANCES REQUIRING SPECIAL INFORMATION COLLECTION

Not applicable

8. SOLICITATION OF COMMENTS ON INFORMATION COLLECTION

Because of the statutory requirement to issue a proposed regulation with the model disclosure form by July 21, 2012, the CFPB implementation team has requested an expedited review process. The qualitative evaluation of the form, as part of the iterative process of the design, needs to be initiated in May 2011, to allow five months for revisions and re-testing. The CFPB implementation team will undertake a quantitative study to validate the form (an ICR for that data collection will be submitted separately). The aggressive schedule is necessary to have a disclosure form in January 2012, so that the CFPB implementation team can draft proposed regulations, complete impact analyses and other applicable procedural requirements, and publish the proposed rule by July 21, 2012, as mandated in the Dodd-Frank Act.

The CFPB implementation team published a Federal Register notice seeking public comment on this information collection on April 5, 2011. The notice provided 30 days for public comment. The CFPB implementation team received six comments, two from an individual and four from trade associations.

The individual expressed a belief that disclosures are ineffective and efforts would better be spent on financial education. The CFPB implementation team recognizes the importance of financial education for consumers and is establishing an Office of Financial Education. The commenter noted the importance of obtaining consumer feedback on the design and language, reflecting on lessons learned from advertising. The CFPB implementation team appreciates the concerns raised about current disclosures and will use this testing process to create disclosures that are more useful to consumers.

The four trade associations were supportive of the efforts of the CFPB implementation team to create an integrated disclosure. Some of their comments focused on general policy and procedural issues beyond the scope of this information collection. For example, the Credit Union National Association (CUNA) suggested the draft form should be subject to additional outreach to small financial institutions before the CFPB publishes a proposed rule. The Mortgage Bankers Association (MBA) expressed its concerns with viewing the combined TILA/RESPA form as a “shopping disclosure.” The CFPB implementation team is designing a disclosure that will enable consumers to understand the terms of a loan as well as compare among loan products, in accordance with the purposes of the underlying statutes.

The Housing Policy Council of the Financial Services Roundtable (HPC) identified the need to address rules regarding when the disclosure must be re-issued. The American Financial Services Association (AFSA) raised questions about how the Bureau intends to address statutory requirements, such as disclosure of the APR and finance charge. These issues will be addressed by the CFPB implementation team as the regulatory process moves forward.

Other issues raised by commenters related to testing the disclosures, but are beyond the scope of this ICR. HPC urged pilot testing of the forms with a financial institution. HPC and the MBA identified the importance of conducting quantitative testing of the disclosures. As noted above, the CFPB implementation team is planning to conduct quantitative testing of the integrated disclosure; a separate ICR will be submitted for that testing.

All of the trade associations noted the expertise and insights that lenders and their compliance and operations teams can provide and urged that these resources be included in developing the disclosure to ease implementation and compliance burdens for lenders. For example, CUNA recommended that the CFPB implementation team conduct testing with a panel comprised entirely of credit union lending professionals. Similarly, HPC recommended that business and compliance specialists be engaged in the testing process. The CFPB implementation team has received input from trade associations as well as individual lenders throughout the process through roundtables, meetings, letters, and phone calls. The CFPB implementation team values the range of perspectives that industry can provide and looks forward to receiving additional input during the testing period as well as through the formal rulemaking process. The data collection using individual interviews focuses on consumers and their ability to use the disclosures to understand and compare loan products. The team will be reaching out to industry representatives throughout the process of designing the disclosure form and developing the related regulations as it considers usability and implementation issues in addition to consumer comprehension.

As noted above, the CFPB implementation team's decision to share the prototype disclosures at the same time it engages in consumer testing of the prototypes is a departure from other agencies' typical sequencing. The team is doing so in an effort to increase transparency and engage the public and stakeholders earlier in the development process. Industry representatives and other stakeholders will have ample opportunity to provide their perspectives on the design and share their concerns. Furthermore, the resulting disclosure form will be subject to public notice and written comment as part of the formal rulemaking process.

In addition to these more general comments, the trade associations raised several issues relating specifically to this information collection. HPC requested that the forms address both simple and complex products. The initial round of testing will involve disclosure of a 30-year fixed rate loan and an adjustable rate loan with a 2-year fixed rate period that then adjusts annually. Future rounds of testing will include a 30-year fixed loan which has a 5-year interest-only feature and an adjustable rate loan that results in negative amortization. Thus, the testing will involve more complex products.

Three of the commenters addressed the use of the internet to obtain input on the prototype disclosure forms. The MBA emphasized the need to ensure appropriate sampling if the internet tool will be used for quantitative testing. AFSA similarly raised concerns about the sample quality of the data collection through the internet. HPC suggested collecting additional demographic information from online participants. The CFPB implementation team is using the internet as a means of sharing the disclosure forms with the public and channeling the feedback that it receives. It is not conducting quantitative testing of the disclosure prototypes at this time. No information gathered via online feedback will be treated as statistically generalizable, or be viewed as a valid "sample" of a larger population. The purpose of the feedback is to provide qualitative input on the draft disclosure forms, which can then inform the implementation team's deliberations and inquiries for future rounds of qualitative testing. The information will supplement findings from the individual interviews that form the core of the testing.

AFSA raised the issue of how testing results that differ between English-language and Spanish-language participants will be reconciled. The CFPB implementation team is approaching development of the disclosure in a unique way. Traditionally, a disclosure is created and then, after the final rule has been published, the document may be translated into Spanish and other languages. With this disclosure, the team is exploring co-development of the disclosure in both English and Spanish to see if that process results in a form that better communicates important information to both English-language and Spanish-language consumers. The goal is to produce a single design with the same content that is most effective for both groups. For example, if a change in a design element improves Spanish comprehension without harming English comprehension, the team would make that adjustment to the form.

AFSA expressed concern at the small number of participants in this qualitative testing phase, noting the use of consumer focus groups. The CFPB implementation team is not conducting focus groups. It is using one-on-one interviews to determine consumers' ability to navigate and understand the disclosures and obtain the information they need to make informed decisions and comparisons of loan products. The use of a larger, statistically significant sample to validate the

form through a quantitative testing procedure later in the development process should address this concern.

9. PROVISION OF PAYMENTS TO RESPONDENTS

The participants in the cognitive interviews are being asked to commit a significant amount of time (90 minutes for the interview, plus travel time). Furthermore, they are being asked to undertake difficult tasks: using simple documents to compare loan products to determine if the forms provide appropriate information communicated effectively to enable consumers to understand the terms of each product and compare the terms and financial impacts of different products. Several participants are asked to commit 240 minutes (plus travel time) to be available as “floaters” who can fill in if a scheduled participant does not show to ensure that sufficient participants are available for the testing during the scheduled testing period. These commitments of time combined with the cognitive burden of tasks related to financial decisions support a need for providing sufficient incentive to participants.

The Contractor will pay each participant in the cognitive interview for his or her time. The Contractor has proposed providing incentives at the going rate for qualitative studies that use a 90 minute, one-on-one interview. At each site, they will pay English-language consumer participants \$75 for their time (7 x \$75=\$525). They will pay lender/broker participants \$100 for their time (2 x \$100=\$200). Additionally, the study design involves having 4 “floaters” to ensure the total number of participants. Floaters are paid \$125 a piece because they are required to commit to being there for up to 4 hours (4 x \$125=\$500), although they may spend less time if they are asked to fill in for a participant at the beginning of the time period or if they are released shortly after the final participant begins the interview. The total amount of incentives per site is estimated to be \$1225. With six sites, the total is \$7350. This amount has been included as a cost in the award to the Contractor.

Identical compensation will be paid for Spanish language participants. However, only five individuals would be interviewed at five sites, rather than six (because one of the sites, Birmingham, Alabama, has a small Hispanic population). The total amount of incentives for the Spanish language interviews would be \$3125 (consisting of \$625 per site at five sites: 5x\$75=\$375 plus 2x\$125=\$250). Again, this cost has been incorporated in the Contractor’s award.

The total paid in incentives would be approximately \$10,475. The CFPB implementation team has been assured by the Contractor that this amount is consistent with incentives typically provided for individuals who participate in a 90-minute, intensive, one-on-one interview. No payments will be made to respondents who provide input via the internet.

10. ASSURANCE OF CONFIDENTIALITY

The information gathered will be kept confidential to the extent required by law. All Personally Identifiable Information (PII) will be handled as required by the Privacy Act of 1974. The Contractor has agreed to comply with all requirements and restrictions in the contract about information release, non-disclosure of personal information, confidentiality, privacy, and security.

The Contractor's procedures for ensuring participant confidentiality are documented in its various testing protocols and procedures and are woven into its testing process. For each testing project that involves individual participants, they prepare specific confidentiality and participant consent forms.

The Contractor collects limited personal identifying information (PII), and only as provided for on the confidentiality and consent forms. The Contractor then assigns each participant a number by which he or she is referred to in reports and subsequent reporting. All PII is kept separately and without identifying participant numbers, which are used to identify the testing sessions and the data collected. The Contractor keeps consent forms locked and separate from other data to ensure that PII cannot, in any way, be linked to the data collected. The PII will not be provided to the CFPB implementation team.

The Contractor aggregates the data and reports the results without referencing or disclosing any identifying PII about the participants. Prior to the submission of deliverables, it reviews and redacts, where necessary, any personal data and results to protect the identities of the participants. At the completion of the project, the Contractor will transfer or destroy all confidential data according to the security procedures and requirements specified and approved by the CFPB implementation team.

Additionally, the Contractor requires all internal staff and any consultants employed (e.g., consultants who provide transcription services) to sign confidentiality forms before their participation in the project. The Contractor secures all confidential data in locked file cabinets and document archiving and storage in password-protected folders on secure servers. That information will only be accessible to those individuals employed by the Contractor who are approved to work on this project. The Contractor has shredders on site for destroying any confidential draft documents no longer needed and will archive only those copies required to be kept for record-keeping purposes. Its employees, subcontractors, and subcontract employees will not disclose any information it obtains or prepares in the course of performance of its contract to any third party without receiving written permission from the Contracting Officer. If disclosure of information is required by law or legal process, the Contractor is required to contact the Contracting Officer's Technical Representative and the Contracting Officer immediately to receive approval prior to release of any information.

Data collected by the CFPB implementation team through the internet will not contain personally identifiable information beyond what the CFPB implementation team is already authorized to collect via the internet (75 FR 82427-01). All submission of information is voluntary, and no person will be required to supply specific information pertaining to their identity as a condition of the CFPB implementation team's full consideration of their input.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

The most sensitive information collected in connection with the qualitative interviews is demographic data about the respondent, such as age range, race, income, education level and experiences with mortgage loans. This will be collected voluntarily and is necessary to ensure

the CFPB implementation team has a sufficient demographic mix to evaluate the usability of the disclosure forms. Because each participant is identified by a number rather than a name, none of this demographic or loan experience data will be tied to any specific individual.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

English language interviews

Total number of potential participants screened: 156 individuals

Estimated time to complete screening: 10 minutes

Estimated participant screening burden: 26 hours (156 x 10/60)

Estimated number of participants: 54 individuals

Time to conduct study: 90 minutes

Estimated travel time to and from site: 30 minutes

Estimated participant burden: 108 hours (54 x 120/60)

Estimated number of floaters: 24

Time committed to study: 180 minutes

Estimated travel time to and from site: 30 minutes

Estimated floater burden: 84 hours (24 x 210/60)

Total estimated participation burden: 192 hours

Total Burden English language interviews (screening and study participation) = 218 hours (26 + 192)

Spanish language interviews

Total number of potential participants screened: 74 individuals

Estimated time to complete screening: 10 minutes

Estimated participant screening burden: 12 hours (74 x 10/60)

Estimated number of participants: 25 individuals

Time to conduct study: 90 minutes

Estimated travel time to and from site: 30 minutes

Estimated participant burden: 50 hours (25 x 120/60)

Estimated number of floaters: 10

Time committed to study: 180 minutes

Estimated travel time to and from site: 30 minutes

Estimated floater burden: 35 hours (10 x 210/60)

Total estimated participation burden: 85 hours

Total Burden Spanish language interviews (screening and study participation) = 97 hours (12 + 85)

Internet Outreach

Estimated number of participants at each opportunity to provide input = 5000

Time to provide input = 5 minutes

Estimated participation burden: 417 hours (5000 x 5/60)

Opportunities for structured input = 3

Total estimated participation burden = 1251 hours (417 x 3)

Estimated Maximum Burden: 1566 hours (218 + 97 +1251)

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

There will be no annualized capital or start-up costs for the respondents to collect and submit this information.

14. ESTIMATED COST TO THE FEDERAL GOVERNMENT

There will be no annualized capital/start-up costs for the government to receive this information. The Federal government is paying the Contractor \$ 195,308 to conduct the qualitative evaluation of the disclosure form (in English), which sum includes facilities and incentives, but not travel. The qualitative testing for the Spanish language co-development process is an additional \$120,000. The Blanket Purchase Agreement, under which this data collection is being conducted, was awarded through a competitive bidding process.

The internet component of public input is not expected to cause the Federal Government to incur any costs beyond staff time and resources.

15. REASONS FOR CHANGE IN BURDEN

Not applicable. This is a new collection.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS, AND PUBLICATION

The CFPB implementation team anticipates publishing a final testing report explaining the methodology and discussing the results of the qualitative and quantitative testing. This report will provide only aggregated data. Data collection activities will occur every four weeks, beginning as soon as possible after receiving OMB approval. The estimated date of the first data collection is May 19.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

The OMB control number and expiration date will be displayed on the consent forms, Participant Questionnaires, Interview protocols and Internet tools.

18. EXCEPTIONS TO CERTIFICATION REQUIREMENT OF OMB FORM 83-I

There are no exceptions to the Certification Statement in item 19 of Form 83-I.