

SUPPORTING STATEMENT

BUREAU OF CONSUMER FINANCIAL PROTECTION RESEARCH IN DEVELOPMENT OF DISCLOSURE FORMS GENERIC CLEARANCE

Abstract

This is a request for generic clearance by the Bureau of Consumer Financial Protection to conduct research related to integrated mortgage loan disclosures. The research will result in recommendations for development of and revisions to disclosure forms and related materials provided to consumers in connection with obtaining mortgage loans. The research activities will be conducted primarily by external contractors employing cognitive psychological testing methods. This approach has been demonstrated to be feasible and valuable by other agencies in developing disclosures and other forms. The planned research activities will be conducted during FY 2012 through FY 2014 with the goal of creating effective disclosures and related materials for consumers.

A. JUSTIFICATION

A1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

This is a request for a three year generic clearance to collect information to be used for the development, evaluation, and implementation of integrated mortgage loan disclosure forms and related materials.

The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law No. 111-203, Title X (the “Dodd-Frank Act”), requires the Bureau of Consumer Financial Protection (“CFPB” or “Bureau”) to publish model disclosures that combine certain disclosures required under the Truth in Lending Act (“TILA”) and the Real Estate Settlement Procedures Act (“RESPA”), into a single, integrated disclosure for mortgage loan transactions covered by those laws. Dodd-Frank Act §§ 1032, 1098, and 1100A.

The statutory authorization under which the Bureau will conduct its data collection efforts is provided under the Dodd-Frank Act. As a general matter, Section 1021(b)(1) of the Dodd-Frank Act authorizes the Bureau to exercise its authorities under Federal consumer financial law for the purposes of ensuring that, with respect to consumer financial products and services, consumers are provided with timely and understandable information to make responsible decisions about financial transactions.

More specifically, Section 1032(f) of the Dodd-Frank Act requires the Bureau to propose for public comment no later than July 21, 2012 rules and model disclosures that combine the disclosures required under TILA and sections 4 and 5 of RESPA into a single, integrated disclosure for mortgage loan transactions covered by those laws. Section 1032(c) further requires that, in prescribing rules under that section, the Bureau shall

consider available evidence about consumer awareness, understanding of, and responses to the disclosures. Finally, Section 1032(b) generally requires that model forms prescribed by the Bureau be validated through consumer testing.

This generic clearance request will be used for the creation of the integrated RESPA/TILA disclosure for mortgage loan transactions as required by the Dodd-Frank Act, and related materials, such as educational information posted on the Bureau's website. Any testing conducted under this generic clearance through cognitive labs, focus group testing, or using social media will only pertain to creation and evaluation of the integrated mortgage disclosure and related materials. The Bureau initiated qualitative testing of the integrated mortgage loan disclosure forms in May 2011 under an Emergency Clearance, to allow for qualitative testing of the initial integrated disclosure with sufficient time for analysis and revisions between each round. The CFPB has conducted four rounds of qualitative testing thus far and will continue qualitative testing of the integrated mortgage loan disclosure forms as necessary under this Generic Clearance. The CFPB will conduct additional qualitative testing to develop and evaluate the integrated disclosure to be provided in connection with the consummation of the mortgage loan transaction. The CFPB will work with external contractors on research and forms development activities.

In addition, the Bureau may perform qualitative testing of other model disclosures or materials related to the integrated mortgage loan disclosures, such as instructions for loan originators, tools to assist consumers in understanding the disclosures and loan products and features, other mortgage loan-related disclosures, and lender usability.

Additionally, the CFPB anticipates engaging the public to obtain feedback about the draft integrated mortgage loan disclosures and related materials before formal notice and comment of proposed rules. The collection of data from the public before notice and comment, such as through the Know Before You Owe site on the CFPB website, allows the Bureau to obtain a wide variety of perspectives to supplement the qualitative testing. 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 This approach, which was used by the Bureau in its development of the integrated mortgage loan disclosure, has been praised by both consumer groups and industry.²

¹Open Government Directive. December 8, 2009.

<http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda_2010/m10-06.pdf>.

² A legislative director at the Consumer Federation of America stated, "this is a model for what the consumer bureau can become, in terms of reaching out to the public and getting input not just from the usual suspects." Davidson, Kate. "New CFPB Mortgage Disclosures Win Praise for Content and Process." *American Banker* May 19, 2011: http://www.americanbanker.com/issues/176_96/cfpb-offers-two-new-mortgage-disclosure-forms-1037690-1.html?zkPrintable=1&nopagination=1. The Consumer Program Director at the U.S. Public Interest Research Group stated that this process "shows the CFPB wants to make regulation work better, because they're rolling these out early, they're showing them to bankers and consumers...It's not more government, it's better government." *Id.* The Mortgage Bankers Association stated, "we look forward to participating in the review and revision process alongside

The use of a generic clearance will allow the CFPB to obtain useful data in a timely manner. The design and testing of mortgage loan disclosures require numerous iterations of disclosure forms and rounds of qualitative testing of those iterations. This process is time and resource intensive, requiring a thorough analysis of the data collected from each round, revision of the disclosures based on those data, and a revision of the specific questions that will be asked at qualitative testing to match the disclosures. A generic clearance for this process will allow the Bureau to focus its efforts on disclosure design and evaluation, so that the Bureau may conduct them in an as efficient and timely manner as possible.

An internal review of all proposed data collections will be performed to ensure the following:

- Consistency with CFPB mission and strategic objectives;
- Technical adequacy in issues, such as frame, participant and sample selection, recording and analysis;
- Minimized burden on the participants;
- Privacy of participants and internet respondents information to the extent permitted by law, including section 1022(c)(8) of the Dodd-Frank Wall Street Reform and Consumer Protection Act and other applicable laws;
- Consistency with this generic clearance;
- Consistency with applicable law and regulation; and
- All data collections are truly voluntary.

A2. USE OF DATA

The data collected will be used to inform the CFPB's design and development process and evaluation of the mandated integrated mortgage loan disclosure forms and other model disclosure forms and related materials. The research may use focus group sessions, think-aloud interviews, and usability studies. Data collection tools will include: consent forms; brief participant questionnaires; brief, focused protocols for individual interviews and focus groups; and tools that seek input from a larger community through the internet.

The information collected during qualitative testing of the disclosure designs will inform the disclosure form's design and content, using an iterative process to improve the draft disclosure forms. The data (consisting of notes and audio- and video-recordings from the focus groups or interviews) will be coded and analyzed by the external contractor to determine what elements of the form are effective and which need revision. The data will be shared with the CFPB staff working on the disclosure project to inform their decisions on revisions to the disclosure form. The iterative development process will improve the disclosure forms — in terms of accessibility, content, and/or opportunity to demonstrate understanding.

consumers."Mortgage Bankers Association, *MBA Statement on Prototype Mortgage Disclosures*, May 18, 2011: <http://www.mortgagebankers.org/NewsandMedia/PressCenter/76672.htm>.

CFPB staff and its contractors will design, conduct, and interpret field research that contributes new knowledge of cognitive aspects of human behavior in relationship to forms. Methods include such techniques as probe questioning, group discussion, and intensive interviewing. Depending on research goals, these methods may be used separately or in combination with one another.

This research is formative and will clearly be portrayed as such in any presentation of the results. The results of this research will be shared with others by way of reports and/or publications and presentations to professional societies. The research is expected to result in improved disclosures and related materials.

The information collected on CFPB's website will further inform CFPB's activities in creating and revising the disclosure forms and related materials. For example, the CFPB may develop information to educate consumers on certain aspects of the integrated mortgage loan disclosures or tools to help consumers better understand the trade-offs among loan features. The internet provides an opportunity to encourage input from a larger group of people while imposing a much smaller individual collection burden. It will provide the public with both information on the development process and an opportunity to participate in that process. The website tool will enable the CFPB to receive a large volume of general feedback in a structured way.

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 believes the ability of social media to reach citizens from a wide array of disciplines is of particular value here. Information can be shared with and collected from 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 and shared with the Contractor. The information will be used to supplement findings from the qualitative testing. CFPB understands that the information obtained through social media represents only the opinions of those who participated and provides value not as a statistically generalizable sample beyond the participants, but as an insight into individual thoughts and insights into the forms.

The Bureau anticipates certain projects to be submitted for approval under this generic clearance at this time. Generally, as described herein, all of the research projects relate to the development of and revisions to mortgage loan disclosure forms and related materials. The research activities will be conducted primarily by external contractors employing cognitive psychological testing methods. This approach has been

demonstrated to be feasible and valuable by other agencies in developing disclosures and other forms.

The list of projects anticipated is as follows:

1. Qualitative testing and “Know Before You Owe” Internet tool to obtain qualitative data on prototype integrated mortgage loan disclosure forms (Nov. 8 – Nov. 11, 2011) (8 consumers and 2 industry participants)
2. Qualitative testing and “Know Before You Owe” Internet tool to obtain qualitative data on prototype integrated mortgage loan disclosure forms (Dec. 14 – Dec. 16, 2011) (8-12 consumers and 2-4 industry participants)
3. Qualitative testing and “Know Before You Owe” Internet tool to obtain qualitative data on prototype integrated mortgage loan disclosure forms (Jan. 17 – Jan. 19, 2012) (12 consumers and 4 industry participants)
4. Qualitative testing and “Know Before You Owe” Internet tool to obtain qualitative data on prototype integrated mortgage loan disclosure forms (Feb. 21 – Feb. 23, 2012) (12 consumers and 4 industry participants)
5. Multiple rounds of qualitative testing and “Know Before You Owe” Internet tool to obtain qualitative data on revisions to proposed integrated mortgage loan disclosure forms after public notice and comment of proposed rule on or before July 21, 2012. (anticipated fourth quarter of 2012, exact dates and number of participants to be determined)
6. Qualitative testing of educational Internet pages and tools designed to complement the integrated mortgage loan disclosure. (anticipated 2013, exact dates and number of participants to be determined)

A3. USE OF INFORMATION TECHNOLOGY TO REDUCE BURDEN

The majority of the data collection involves interviews, focus groups, or other face-to-face interactive methods, which will be conducted without computer assistance. There is no planned use of electronic capture software systems for qualitative testing. Should that change and electronic capture software systems be planned for future use, details regarding such software would be provided in future mini-supporting statements.

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.

A4. EFFORTS TO IDENTIFY DUPLICATION

This research does not duplicate any outside-of-government research effort, as its purpose is not to replicate survey research studies. External contractors as well as CFPB staff working on the project are cognizant of current research being done in the field of disclosure design and development. In both creating the disclosure materials and considering the qualitative evaluation, CFPB staff and the Contractor have reviewed

carefully the prior research done on the TILA and RESPA disclosures by staff and contractors of the Board of Governors of the Federal Reserve System 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 Bureau will continue to monitor research on disclosures and related work of researchers and other Federal regulatory agencies to ensure that the Bureau's research techniques reflect current knowledge and best practices.

A5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

The data collection is not anticipated to burden small entities significantly. The qualitative research is expected to include industry members as participants to access their perspective and knowledge in using the disclosure forms and communicating the information to consumers. For example, loan officers at financial institutions or mortgage loan brokers may be recruited to participate in the cognitive testing. This is particularly likely in connection with the development of instructions for the disclosure forms. Lender usability testing may be conducted to learn how the disclosures work when integrated into lenders' existing protocols and practices. All efforts will be made to minimize the burden on small business or other small entities in the event that data will be needed pertaining to these entities. Pre-testing of any survey instruments will be performed to ensure proper procedures in an effort to minimize burden.

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. On the contrary, the internet tool will allow small lenders and settlement service providers to provide feedback to the Bureau easily, without the burden of sending a formal letter via mail or courier, or taking the time to make a telephone call or send electronic mail to the appropriate personnel at the Bureau.

A6. 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 forms and related materials.

In the cognitive testing 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 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, or via other means, such as letter or email.

A7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.6

No special circumstances require the collection to be conducted in a manner inconsistent with the guidelines in 5 CFR 1320.6.

A8(a). CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

The Bureau has contracted with external contractors with expertise in disclosure design, communication, and research. The Bureau will use this expertise in its development of the integrated mortgage loan disclosures and related materials and the administration and analysis of the qualitative testing.

A8(b). SOLICITATION OF COMMENTS ON INFORMATION COLLECTION

Comments on this request for a generic clearance to conduct research were solicited in the Federal Register on September 26, 2011. 76 Fed. Reg. 59379 (Sept. 26, 2011). One comment letter was received from the Mortgage Bankers Association (MBA) on October 26, 2011. This letter did not comment on the burden of the research, but instead, offered suggestions for the research that the Bureau plans to conduct under this clearance.

These suggestions are addressed below:

- (1) Lenders should be involved in the testing process.

The MBA noted that the CFPB “has indicated in the past that it will involve lenders” in its qualitative testing and stated that it is concerned that this notice does not specify that lenders or lender personnel will be involved in the testing process. The MBA is correct that the Bureau’s qualitative testing under its Emergency Clearance included lenders as well as mortgage brokers. The Bureau’s September 26, 2011 Federal Register notice states that the Bureau may conduct qualitative testing of “industry usability,” and the Bureau plans to continue conducting qualitative testing with industry personnel under this generic clearance, including lenders.

In addition, as noted herein and in the Federal Register notice, the Bureau may collect qualitative data through a variety of methods, including the Internet. In the past, the Bureau has provided industry personnel the opportunity to provide feedback on prototype disclosures through its website, and the Bureau plans to continue doing so to the extent practicable.

- (2) The testing process should be further explained.

The MBA noted that the Bureau’s Federal Register notice requested a generic clearance to conduct research and that it describes the means by which testing is to be conducted in general terms. However, the MBA urged the CFPB to provide more explicit information on specific areas of inquiry, specifically with respect to the questions the Bureau will ask.

This lack of specificity is inherent to a generic clearance. The purpose of the Bureau’s request is to obtain a clearance to conduct research, including qualitative testing, while maintaining the ability to revise the specific research questions to address areas of concern that come to light during the Bureau’s testing. For example, if a certain area of a prototype disclosure was found to be confusing to consumers or difficult for industry to explain to consumers during one round of qualitative testing, the next round of qualitative testing may add specific questions about this area of the disclosure. Such revisions are essential to the “iterative process to improve the draft form” that was described in the Federal Register notice.

(3) Testing should focus on borrower understanding.

The MBA stated that “the CFPB states that the intent of the disclosures is to aid consumer understanding of loan terms and the costs of the loan transaction, in addition to comparing different loan products.” MBA stated that it believes that borrower understanding of the terms, costs, and the characteristics of the transaction should be a key area of concern. The MBA stated that research shows borrowers generally are not shopping among lenders when the integrated disclosure is provided.

There are two overarching purposes of the integrated disclosure: to (1) facilitate compliance with the disclosures of RESPA and TILA, and (2) aid the borrower in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures. Accordingly, the Bureau’s key areas of focus for the integrated disclosure are consumer understanding of the transaction and industry usability. In addition, the Bureau believes that enabling consumers to compare loan terms available from one lender or multiple lenders is an important aspect of understanding the loan transaction. Significantly, TILA states that its purpose is to “assure a meaningful disclosure of credit terms *so that the consumer will be able to compare more readily the various credit terms available to him* and avoid the uninformed use of credit.” 15 U.S.C. § 1601(a) (emphasis added). However, one cannot compare available credit terms from one lender or multiple lenders without understanding those terms, and thus, borrower understanding is a key area of concern for the Bureau.

For the aforementioned reasons, no revisions to the research under the generic clearance are planned at this time.

A9. EXPLANATION OF DECISION TO PROVIDE PAYMENT OR GIFT TO RESPONDENTS

The research projects are not related to producing statistical estimates. In certain circumstances, a project’s objectives can be accomplished at lower costs and with greatly reduced respondent burden by the use of small, purposive samples. For some research projects, the research team will travel to, and test in, different regions in the country, to obtain the participation of residents in those locations. Because respondents are asked to leave their homes and travel to the testing site, they will be reimbursed a designated

amount of money for their time at the site and for transportation. The amount of remuneration will depend on the activity in which the participant is engaged. For example, individual interviews involve a significant time commitment (90 minutes for the interview, plus travel time). Furthermore, they are being asked to undertake difficult tasks, such as 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.

In the initial information collection under this generic clearance, a few participants will be 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. In the next three collections under this clearance, the Contractor will ensure that sufficient participants are available by inviting additional participants rather than scheduling floaters. After three collections without floaters, the CFPB must demonstrate to OMB that the use of floaters is more advantageous than “overinvitation” in order to use floaters in subsequent collections.

These commitments of time combined with the cognitive burden of tasks related to financial decisions require that sufficient incentive be provided 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 consumer participants \$75 for their time. This is justified because of the complex nature and length of the interviews. They will pay industry participants \$100 for their time. This amount is justified because they are specialized participants, who we are asking for their specific technical expertise. It is standard practice to pay higher amounts when requesting technical expertise. Testing sites have informed our researchers that they would experience difficulty recruiting such specialized expertise for a lower incentive. In addition, we are asking them to take time away from their jobs. For these reasons, it is appropriate to compensate industry participants at a higher level.

Additionally, as described above, “floaters” will be used in the initial collection 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, 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.

No payments will be made to respondents who provide input via the Internet.

A10. ASSURANCE OF PRIVACY OF RESPONSES

The CFPB imposed appropriate requirements of privacy in its contract with the Contractor, to the extent permitted by applicable laws (as described above). The Contractor has agreed to comply with all requirements and restrictions in the contract about information release, non-disclosure of personal information, privacy, and security.

The Contractor's procedures for ensuring participant privacy 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 privacy and participant consent forms.

The Contractor collects limited personal identifying information (PII), and only as provided for on the privacy 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.

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 private data according to the security procedures and requirements specified and approved by the CFPB.

Additionally, the Contractor requires all internal staff and any consultants employed (e.g., consultants who provide transcription services) to sign privacy forms before their participation in the project. The Contractor secures all private 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 private 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 through the internet will not contain personally identifiable information beyond what the CFPB 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's full consideration of their input.

A11. JUSTIFICATION OF SENSITIVE QUESTIONS

The most sensitive information expected to be collected in connection with the qualitative research activities 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 has a sufficient demographic mix for its purposive sample. 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.

A12. ESTIMATED BURDEN OF INFORMATION COLLECTION

Process	Number of respondents	Average burden per response (minutes)	Total burden hours
Focus Group Respondents	500	90	750
Cognitive Think-Aloud Respondents	200	90	300
Usability Study Respondents	200	90	300
Screening	3,000	10	500
Travel Time to Site	900	30	450
IT Respondents	100,000	5	8,333
Total	----	-----	10,630 hours

Each study will, of course, differ from the others based on the research questions. The estimates are based on the average length of time it takes to complete this type of research based on CFPB's prior project and similar research conducted by other regulators in developing disclosures.

A13. 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.

A14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

There will be no annualized capital/start-up costs for the government to receive this information. This testing is funded with non-appropriated funds. It is anticipated that costs of \$175,000 per year will be incurred for facility rental, recruitment, incentives, and transcription services.

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.

A15. REASONS FOR CHANGE IN BURDEN

Not applicable.

A16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

The CFPB anticipates publishing a final testing report explaining the methodology and discussing the results of the qualitative testing. This report will provide only aggregated data.

A17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

The OMB control number and expiration date will be displayed on the data collection instruments, such as consent forms, participant questionnaires, interview protocols and Internet tools.

A18. EXCEPTIONS TO THE CERTIFICATION STATEMENT ON OMB FORM 83-I

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