CONSUMER FINANCIAL PROTECTION BUREAU
REQUEST FOR EMERGENCY PROCESSING AND APPROVAL
FAIR CREDIT REPORTING ACT (REGULATION V) 12 CFR 1022

EMERGENCY JUSTIFICATION

The Bureau of Consumer Financial Protection (CFPB) respectfully requests emergency processing and approval of the collection of information discussed below because the use of normal clearance procedures is reasonably likely to prevent and disrupt an existing collection of information.

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), rulemaking authority for the Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681 *et seq*., transferred from the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), and the Federal Trade Commission (FTC), to the CFPB on July 21, 2011. In addition to the transfer of rulemaking authority under the Dodd-Frank Act, the CFPB received certain enforcement authorities with respect to the FCRA. The CFPB is in the process of publishing for public comment an interim final rule establishing a new regulation in 12 CFR Part 1022 (Regulation V). This interim final rule substantially replicates the FCRA rules of the transferor agencies, and will not impose any new substantive obligations on regulated entities or any new information collection requirements.

As the CFPB now has enforcement authority over certain populations that have been under the jurisdiction of other agencies, the CFPB is requesting approval of a new OMB control number for its collection activities under Regulation V. To prevent disruptions of approved information collections, the CFPB is requesting emergency processing and approval of the following information collection request. Upon receipt of emergency approval from the Office of Management and Budget, the CFPB will begin a standard approval process for this collection and will seek public input at that time.

CONSUMER FINANCIAL PROTECTION BUREAU
INFORMATION COLLECTION REQUEST – SUPPORTING STATEMENT
FAIR CREDIT REPORTING ACT (REGULATION V) 12 CFR 1022
(OMB CONTROL NUMBER: 3170-XXXX)

A. JUSTIFICATION

1. Circumstances Necessitating the Data Collection

On July 21, 2010, President Barack Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-203, 124 Stat. 1376 (2010) (Dodd-Frank Act). In addition to a comprehensive package of financial regulatory reform measures, the Dodd-Frank Act transferred rulemaking authority for most provisions of the Fair Credit Reporting Act to the Bureau of Consumer Financial Protection (CFPB), effective July 21, 2011.[1]

Section 1088 of the Dodd-Frank Act, read in combination of Section 1061, amends the Fair Credit Reporting Act of 1970 (FCRA), 15 U.S.C. 1681 *et seq.*, to vest the CFPB with rulemaking authority over most provisions of the FCRA, excepting providing rulemaking authority over certain motor vehicle dealers engaged primarily in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both. The Dodd-Frank Act also provided the CFPB with enforcement authority over certain institutions that have been under the jurisdiction of other agencies.

Section 1088 of the Dodd-Frank Act states that the CFPB "shall prescribe such regulations as are necessary to carry out the purposes of this title, except with respect to sections 615(e) and 628 [of the FCRA]," and therefore the CFPB is issuing for public comment an interim final rule establishing a new Regulation V. The new Regulation V assembles applicable regulations, commentary, and model notices formerly promulgated by the transferor agencies, with minor revisions to reflect accurate references and contact information.

Accordingly, the CFPB requests approval from the Office of Management and Budget (OMB) to collect information described within Regulation V from certain populations over which the CFPB now has enforcement authority.

2. Use of the Information

The consumer disclosures included in Regulation V are designed alert consumers that a financial institution furnished negative information about them to a consumer reporting agency, that they have a right to opt out of receiving marketing materials and credit or insurance offers, that their credit report was used in setting the material terms of credit that may be less favorable than the terms offered to consumers with better credit histories, that they maintain certain rights with respect to a theft of their identity that they

[1] *See* Sections 1061 and 1088 of the Dodd-Frank Act.

reported to a consumer reporting agency, that they maintain rights with respect to knowing what is in their consumer reporting agency file, that they can request a free credit report, and that they can report a theft of their identity to the CFPB. Consumers then can use the information provided to consider how and when to check and use their credit reports. These disclosures are substantially the same as those previously provided by model forms promulgated by the Board, the FDIC, the NCUA, the OCC, the OTS and the FTC.

3. Use of Information Technology

Consistent with the aims of the Government Paperwork Elimination Act, Pub. L. 105-277, Title XVII, 112 Stat. 2681-749, 44 U.S.C. § 3504 note, the forms allow creditors to use applicable technologies to reduce compliance costs. Financial institutions may use any existing technology relevant to producing the notice, obtaining the consumer opt out determination, and maintaining records of the notice and opt out determination.

4. Efforts to Identify Duplication

There is no duplication. The information is not available from any other source.

5. Efforts to Minimize Burdens on Small Entities

Regulation V includes model notices that businesses may use to comply with regulatory requirements, and which are very similar or identical to previous model notices circulated by the Board, the FDIC, the NCUA, the OCC, the OTS, and the FTC. By minimizing the proposed alterations to model forms, the CFPB has sought to help businesses of all sizes reduce the burden or inconvenience of complying with the amendments to the regulations.

6. Consequences of Less Frequent Collection and Obstacles to Burden Reduction

The CFPB's new regulation V does not affect the previous requirements of FCRA, which included requiring covered persons, as applicable, to alert consumers that a financial institution furnished negative information about them to a consumer reporting agency, that they have a right to opt out of receiving marketing materials and credit or insurance offers, that their consumer report was used in setting the material terms of credit that may be less favorable than the terms offered to consumers with better credit histories, that they maintain certain rights with respect to a theft of their identity that they reported to a consumer reporting agency, that they maintain rights with respect to knowing what is in their consumer reporting agency file, that they can request a free credit report, and that they can report a theft of their identity to the CFPB. Since creditors are already required to provide the relevant notices, the burden of updating notices to include references to the CFPB where applicable is minimal. The burden of complying is further diminished by the provision of model notices that creditors may continue to use.

7. Circumstances Requiring Special Information Collection

The collections of information in Regulation V are consistent with the applicable guidelines contained in 5 CFR 1320.5(d)(2).

8. Consultation Outside the Agency

This Supporting Statement is based on the FTC's most recent Supporting Statement for OMB Control Number 3084-0145 (Supporting Statement for Information Collection Provisions of Regulation V (Fair Credit Reporting Act)). The CFPB has consulted with the FTC with respect to burden allocations. As this is a request for emergency processing and approval of the transfer of certain burdens from existing information collections to the CFPB, the CFPB has not sought public comment on this information collection request. Upon receipt of OMB's emergency approval, the CFPB will begin the standard approval process and will seek public input and input from other agencies at that time.

9. Payments or Gifts to Respondents

Not applicable.

10. & 11. Assurances of Confidentiality/Justification for Sensitive Questions

No assurance of confidentiality is necessary because the information collections do not require creditors to register or file any documents with the CFPB. No sensitive questions are posed in the information collection.

12. Estimated Burden of Information Collection

Hours: 4,737,000

CFPB's estimate of the burden for ongoing recordkeeping and disclosure requirements under Regulation V is based on the assumption that the total ongoing burden for this regulation, across all agencies, remains the same as it was before the regulation was restated by the CFPB. Prior to the passage of the Dodd-Frank Act, the ongoing recordkeeping and disclosure burdens for Regulation V allocated to the prudential regulators and the FTC were approximately 19,017,000 hours.[2] In light of the changes made by the Dodd-Frank Act, roughly 4,157,000 hours of that burden is

[2] For purposes of the current request for emergency review and approval, the CFPB has relied on the estimates previously developed by the Board, OCC, OTS, FDIC, NCUA, and FTC concerning the number of entities subject to Regulation V and the hours of paperwork burden under the statute (For a detailed breakdown of the burden estimates of the prudential regulators and the FTC, please reference the other agencies' supporting statements for Regulation V which can be found at www.reginfo.gov). CFPB's enforcement authority is not necessarily limited to the entities covered by these agencies' estimates. In some instances, information regarding actual burden hours or dollar costs, or breakdowns of these hours or costs was not available from the other agencies. In these cases, CFPB has estimated the relevant figures based on data provided by the OCC and in some cases by the Board. The CFPB will conduct a more detailed review of burden allocations and provide more detailed estimates in its follow-up application to OMB for a standard approval of this information collection.

being reallocated to the CFPB. Specifically, CPPB is being allocated burden for 180 depository institutions (comprising depository institutions with total assets of more than $10 billion and their depository affiliates) which is the approximate number of such depository entities that the CFPB now has primary enforcement authority for with respect to Regulation V.[3] The CFPB is also being allocated half of the Federal Trade Commission (FTC) burden amount after subtracting the burden which the FTC has attributed to itself for motor vehicle dealers.[4]

In addition to the ongoing burden, the recodified Regulation V will impose a one-time burden on creditors that need to update some or all of eleven separate forms with references to the CFPB, among other changes. For the purposes of calculating the burden hours allocated to the CFPB in light of the CFPB's enforcement authority, the CFPB estimates that the approximate total burden to make these one-time changes is 580,000 hours. This estimate assumes that there will be a fair amount of increased efficiency with updating so many forms in a similar manner, and so it should take 2 hours per form, per firm, to make the necessary, yet simple, form changes; the precise number of form changes varies with the type of affected firm. Since the CFPB and the FTC are roughly splitting the burden associated with firms under the enforcement authority of both agencies, the CFPB is only being allocated one of the two hours estimated for each of the non-depository creditors. This burden may be overstated to the extent that multiple firms use the same software vendors, who are able to spread any required burden over all of their affected clients. These estimates may also be overstated because the Bureau is giving creditors one year to effect the changes, thus allowing creditors to include the changes in routine, scheduled systems updates during the next year.

<u>Associated Labor Costs:</u> $ 110,258,000

The CFPB calculated labor costs by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used are those associated with the burden hours assumed from the other regulatory agencies, which differ by agency.

The CFPB estimates that the ongoing recordkeeping and disclosure costs allocated to the CFPB under Regulation V are $92,176,000. This estimate was calculated by summing the CFPB's share of costs from the supporting statements of the other agencies, following each agency's own cost analysis. For a detailed breakdown of the cost analysis, please reference the other agencies' supporting statements for Regulation V.

For the purposes of calculating the costs allocated to the CFPB in light of the CFPB's enforcement authority, for the one-time revisions to the forms described above, the CFPB estimates that the total one-time cost for these changes is $18,082,000. These

[3] These include 27 from the Board, 70 from the OCC, 24 from the OTS, 3 from the NCUA, and 56 from the FDIC.

[4] The Dodd-Frank Act exempts certain motor vehicle dealers from CFPB's enforcement authority. However, due to the difficulty of making a reliable estimate of those dealers, the FTC has attributed to itself the PRA burden for all motor vehicle dealers. This attribution does not change actual enforcement authority.

estimates may be overstated to the extent that multiple firms use the same software vendors, who are able to spread any required burden over all of their affected clients. These estimates may also be overstated because the CFPB is giving creditors one year to effect the changes, thus allowing creditors to include the changes in routine, scheduled systems updates during the next year.

13. Estimated Total Annual Cost Burden to Respondents or Recordkeepers

The CFPB estimates that the total capital and non-labor costs associated with the assumed burden hours are $4,195,000. This estimate comes from the FTC's calculations of $8,390,000 for total capital and non-labor costs, of which the CFPB assumes half. For a complete discussion of the capital and non-labor cost analysis, please reference the FTC's supporting statements for Regulation V.

14. Estimated Cost to the Federal Government

As the CFPB does not collect any information, the cost to the CFPB is negligible.

15. Program Changes or Adjustments

As detailed in section 12, there is a one-time increase in the burden associated with Regulation V of 580,000 hours, with an associated cost of $18,082,000.

16. Plans for Tabulation, Statistical Analysis, and Publication

Not applicable.

17. Display of Expiration Date

Not applicable.

18. Exceptions to the Certification Requirement

None.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.