

**CONSUMER FINANCIAL PROTECTION BUREAU
INFORMATION COLLECTION REQUEST – SUPPORTING STATEMENT
LOAN ORIGINATOR COMPENSATION
(OMB CONTROL NUMBER: 3170-0015)**

The Bureau of Consumer Financial Protection (CFPB) is providing a supplement to its previous supporting statement for Regulation Z. This supplement addresses the information collection requirements in Regulation Z that are affected by the CFPB’s proposed changes as described below.

TERMS OF CLEARANCE: None

A. JUSTIFICATION

1. Circumstances Necessitating the Data Collection

Overview

The Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.*, was enacted to foster comparison credit shopping and informed credit decision making by requiring accurate disclosure of the costs and terms of credit to consumers. Sections 1402 and 1403 of the Dodd-Frank Act added TILA section 129B, 15 U.S.C. 1639b, to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive, or abusive.

Regulation Z was previously implemented by the Board of Governors of the Federal Reserve System (Board) at 12 CFR 226. In light of the general transfer of the Board’s rulemaking authority for TILA to the CFPB, the CFPB adopted an interim final rule (Interim Final Rule) recodifying the Board’s Regulation Z at 12 CFR 1026. The CFPB enforces TILA as to certain creditors and advertisers. TILA also contains a private right of action for consumers.

New TILA section 129B includes several new requirements, some of which necessitate collections of information addressed in this Supporting Statement. Section 129B(b)(1)(A) requires loan originators to be qualified and licensed or registered to the extent required by State and Federal law, including the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (the SAFE Act).¹ TILA section 129B(c)(1) prohibits loan originator compensation that varies based on the terms of the loan. TILA section 129B(c)(2) provides that, if a consumer directly pays the loan originator, the loan originator may not also receive compensation from any other party in connection with that transaction, such as a creditor or brokerage firm. In addition, it generally prohibits consumers from being charged discount points, origination points, or fees where a loan originator is being compensated by a person other than the consumer, such as a

¹ 12 U.S.C. 5101-5116.

creditor or brokerage firm. However, it gives the CFPB authority to waive or create exemptions from these prohibitions where doing so is in the interest of consumers and in the public interest.

Through a proposed rule published in the *Federal Register* on September 7, 2012, the CFPB is proposing to amend Regulation Z to implement the statutory provisions described above, including creating certain exemptions from the statutory provisions as permitted under the statute. As set forth more fully below, the CFPB believes the following aspects of the proposed rule are information collection requirements under the Paperwork Reduction Act (PRA).

Recordkeeping

Under Regulation Z currently, § 1026.25 requires creditors to retain evidence of compliance with Regulation Z for a two-year period. The CFPB is proposing to add § 1026.25(c)(2) and (3) to establish record retention requirements for compliance with § 1026.36(d), which implements many of the statutory requirements discussed above. Proposed § 1026.25(c)(2) would: (1) extend the time period for retention by creditors of compensation-related records from two years to three years; (2) require loan originator organizations (*i.e.*, generally, mortgage broker companies) to maintain certain compensation-related records for three years; and (3) clarify the types of compensation-related records that are required to be maintained under the rule. In addition, under proposed § 1026.25(c)(3), creditors would be required to make and maintain records for three years to show that they made available to a consumer a comparable, alternative mortgage loan when required by the proposed rule and complied with the requirement that where discount points, origination points, or fees are charged, there be bona fide reduction in the interest rate compared to the interest rate for the comparable, alternative loan.

As noted above, the CFPB is proposing to extend creditors' record retention requirements under Regulation Z with respect to loan originator compensation records from two years to three years. The proposed change relates to the Dodd-Frank Act amendments of TILA that provide a cause of action against any mortgage originator for failure to comply with the requirements of TILA section 129B and any of its implementing regulations and extend the statute of limitations for a civil action alleging a violation of TILA section 129B to three years. 15 U.S.C. 1639b(d), 1640(e). The CFPB believes this proposal will ensure records associated with loan originator compensation are retained for a time period commensurate with the statute of limitations for causes of action under TILA and are readily available for examination, which is necessary to prevent circumvention of and to facilitate compliance with TILA. The CFPB also believes that it is necessary to extend the Regulation Z record retention requirements to loan originator organizations. Although creditors may retain some of the records needed to demonstrate compliance with TILA section 129B and its implementing regulations, in some circumstances, the records may be available solely from the loan originator organization. Thus, applying the current two-year record retention period to information specified in proposed § 1026.25(c), and only to creditors, could adversely affect the ability of consumers to sustain actions under TILA. The extension of the record retention requirement to three years and to cover loan originator organizations also would serve to reduce litigation risk and maintain consistency between

creditors and loan originator organizations.

Requirement to Obtain Criminal Background Checks, Credit Reports, and Other Information for Certain Individual Loan Originators

Under the proposed rule, to the extent loan originator organizations employ or retain the services of individual loan originators who are not required to be licensed under the SAFE Act and who are not so licensed, the loan originator organizations would be required to obtain a criminal background check and credit report for the individual loan originators. Loan originator organizations would also be required to obtain from the Nationwide Mortgage Licensing System and Registry (NMLSR) or the individual loan originators information about any findings against such individual loan originators by a government jurisdiction. In general, the loan originator organizations that would be subject to this requirement are depository institutions (including credit unions) and non-profit organizations whose individual loan originators are not subject to State licensing. The burden of obtaining this information may be different for a depository institution than it is for a non-profit organization because depository institutions already obtain criminal background checks for their individual loan originators to comply with Regulation G and have access to information about findings against such individual loan originators by a government jurisdiction through the NMLSR.

2. Use of the Information

Federal and State enforcement agencies and private litigants use records retained under the requirements of Regulation Z to ascertain whether the actions required under TILA and Regulation Z have been met. The information retained provides the primary evidence of legal violations in TILA enforcement actions brought by Federal agencies. Without the Regulation Z recordkeeping requirement, the agencies' ability to enforce TILA and Regulation Z would be significantly impaired. *See* 15 U.S.C. 1607, 1640. Moreover, as discussed in item 1 above, the CFPB believes it is appropriate to expand the time period for record retention to ensure records associated with loan originator compensation are retained for a time period commensurate with the statute of limitations for causes of action under TILA section 130, and the CFPB believes it is appropriate to subject loan originator organizations to the record retention requirements.

3. Use of Information Technology

Regulation Z permits creditors to retain records on microfilm or microfiche or any other method that reproduces records accurately, including computer programs. Creditors need only retain enough information to reconstruct the required disclosure or other records. Comment 25(a)-2. As discussed in Part IX of the proposed rule, the CFPB believes that for most, if not all firms, the required records are kept in electronic form currently.

4. Efforts to Identify Duplication

The proposed recordkeeping requirements of § 1026.25(c) preserve certain documents

related to the proposed rules on loan originator compensation and the payment of points and fees by a consumer. The creditor and the loan originator organization generally are the only sources of this information.² No other Federal law mandates these required actions.

5. Efforts to Minimize Burdens on Small Entities

TILA and Regulation Z recordkeeping requirements currently are imposed on all creditors, including small entities. As discussed in item 1 above, the CFPB is proposing additional recordkeeping requirements, which would extend the retention period for creditors to three years, subject loan originator organizations to similar recordkeeping requirements for three years, and require creditors to retain records concerning the proposed rule's restrictions on charging of points and fees for a period of three years. As discussed in item 12 below, for the proposed rule's extension of the record retention requirement for creditors from two years, as currently provided in Regulation Z, to three years, the CFPB assumes that there is no additional marginal cost because, for most if not all firms, the required records are kept in electronic form currently. Thus, all creditors should be able to use their existing recordkeeping systems to maintain the required documentation for loan originator compensation records for one additional year at a negligible cost of investing in new storage facilities. The CFPB acknowledges that loan originator organizations will incur costs from the new requirement to retain records related to compensation.

CFPB does not believe these requirements would unduly burden small entities, however. Most creditors and loan originator organizations today use some degree of computerization in their business, and Regulation Z permits businesses to rely on computer support, among other alternatives, to meet their recordkeeping requirements. This flexibility yields reduced recordkeeping costs. During the Small Business Review Panel process prior to the proposal,³ moreover, the small entity representatives (SERs) were asked about their current record retention practices and the potential impact of the proposed enhanced record retention requirements. Of the few SERs who gave feedback on the issue, one creditor SER stated that it maintained detailed records of compensation paid to all of its employees and that a regulator

² As explained in the section-by-section analysis to proposed § 1026.25(c)(2), the CFPB is not imposing record retention requirements on individual loan originators even though the individual loan originator may have a copy of the records to be retained in some cases and TILA, as amended by the Dodd-Frank Act, permits consumers to bring actions against individual loan originators. Under the proposed record retention requirements, loan originator organizations and creditors must retain certain records regarding all of their individual loan originator employees, so the CFPB believes that applying the same record retention requirements to the individual loan originator employees themselves would be duplicative. In addition, such a requirement may not be feasible in all cases, because individual loan originators may not have access to the types of records required to be retained under § 1026.25, particularly after they cease to be employed by the creditor or loan originator organization.

³ The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the CFPB to convene a Small Business Review Panel before proposing a rule that may have a substantial economic impact on a significant number of small entities. *See* Pub. L. 104-121, tit. II, 110 Stat. 847, 857 (1996) (as amended by Pub. L. 110-28, section 8302 (2007)).

already reviews its compensation plans regularly, and another creditor SER reported that it did not believe the proposed record retention requirements would require it to change its current practices.

With regard to the proposed loan originator screening requirements, the CFPB does not believe these proposed requirements will unduly burden small entities. The CFPB believes that many of the affected entities already have adopted these types of screening requirements, either to satisfy safety-and-soundness requirements or as a matter of good business practice. For any entity that adopts screening requirements in the first instance, the CFPB estimates the costs to include the cost of a criminal background check and the time involved in checking employment and character references of an applicant, but for small entity depository institutions, the CFPB estimates that many of these requirements will have negligible burdens (see item 12 below).⁴

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

The current record retention period of two years under Regulation Z supports private actions and regulatory enforcement actions. As discussed in item 1 above, the proposed three-year retention period for creditors and loan originator organizations is commensurate with the statute of limitations for causes of action against loan originators under TILA, as revised by the Dodd-Frank Act. Thus, without these requirements, consumers' right to sue under TILA would be undermined, and enforcement agencies could not fulfill their mandate to enforce TILA.

The proposed screening requirements implement the Dodd-Frank Act section 1402 provisions regarding the qualification of loan originators. As the CFPB explained in part VII of the proposed rule (the Dodd-Frank Act section 1022(b)(2) analysis), a consumer's knowledge that all loan originators possess a minimal level of such expertise would be of significant assistance to the accuracy of the consumer's evaluation of the loan originator's expertise and to the consumer's confidence in the loan originator. The consequence of less frequent collection, thus, would be a failure to so enhance the accuracy of the consumer's evaluation of the expertise of the loan originator, and thus the consumer's confidence in the loan originator.

7. Circumstances Requiring Special Information Collection

There are no special circumstances. The collection of information is conducted in a manner consistent with the guidelines in 5 CFR 1320.6

8. Consultation Outside the Agency

On September 7, 2012, the CFPB published a notice of proposed rulemaking in the

⁴ The response in item 12 below describes how depository institutions already obtain criminal background checks for each of their individual loan originators through the NMLSR for purposes of complying with Regulation G and obtain and have access to information about government jurisdiction findings against their individual loan originators through the NMLSR.

Federal Register for public comment. The comment period with respect to the PRA analysis will end on November 6, 2012. Prior to issuing the proposed rule, the CFPB consulted with other Federal agencies consistent with section 1022 of the Dodd-Frank Act and consulted with affected small entities through a Small Business Review Panel convened under SBREFA. The CFPB also consulted with other stakeholders, including roundtables with industry representatives and consumer advocacy groups.

9. Payments or Gifts to Respondents

Not applicable.

10. Assurances of Confidentiality

There are no assurances of confidentiality provided to respondents.

11. Justification for Sensitive Questions

There is no information of a sensitive nature being requested.

12. Estimated Burden of Information Collection

Overview

Under the proposed rule, the CFPB would account for the paperwork burden associated with Regulation Z for the following respondents pursuant to its administrative enforcement authority: insured depository institutions with more than \$10 billion in total assets, their depository institution affiliates, and certain non-depository institutions. The CFPB and the Federal Trade Commission (FTC) generally both have enforcement authority over non-depository institutions for Regulation Z. Accordingly, the CFPB has allocated to itself half of its estimated burden to non-depository institutions. Other Federal agencies, including the FTC, are responsible for estimating and reporting to OMB the paperwork burden for the institutions for which they have administrative enforcement authority. They may, but are not required, to use the CFPB's burden estimation methodology.

Using the CFPB's burden estimation methodology, the total estimated burden for the approximately 22,400 institutions subject to the proposed rule, including CFPB respondents,⁵ would be approximately 64,700 hours annually and 169,600 one-time hours. For the CFPB 10,894 respondents subject to the proposed rule, the estimates for the ongoing burden hours are roughly 32,400 annually, and the total one-time burden hours are roughly 84,500.

⁵ For purposes of this PRA analysis, the CFPB's respondents include 128 depository institutions and their depository institution affiliates. The CFPB's respondents include an estimated 2,515 non-depository creditors, an assumed 200 not-for profit originators (which may overlap with the other non-depository creditors), and 8,051 loan originator organizations.

The aggregate estimates of total burdens presented in this Supporting Statement are based on estimated costs that are averages across respondents. The CFPB expects that the amount of time required to implement each of the proposed changes for a given institution may vary based on the size, complexity, and practices of the respondent.

Recordkeeping

For the proposed rule's extension of the record retention requirement for creditors from two years, as currently provided in Regulation Z, to three years, the CFPB assumes that there is no additional marginal cost. For most, if not all firms, the required records are in electronic form currently. The CFPB believes that, as a consequence, all creditors should be able to use their existing recordkeeping systems to maintain the required documentation for loan originator compensation records for one additional year at a negligible cost of investing in new storage facilities.

Loan originator organizations, but not creditors, will incur costs from the new requirement to retain records related to compensation. For the requirement that organizations retain records related to compensation on loan transactions, these firms will need to build the requisite record retention capacities. At some firms this may require the integration of information technology systems; for others simple reports can be generated from existing core systems.

For the 8,051 CFPB respondents that are non-depository loan originator organizations but not creditors, the one-time burden is estimated to be roughly 162,800 hours to review the regulation and establish the requisite systems to retain compensation information. The CFPB estimates the requirement for these CFPB respondents to retain documentation of compensation arrangements requires 64,400 ongoing burden hours annually. The CFPB has allocated to itself one-half of this burden.

The proposal would require a creditor to retain records that it made available to a consumer, when required, a comparable, alternative loan that does not include discount points and origination points or fees, or that it made a good-faith determination that a consumer is unlikely to qualify for it. The CFPB believes that there is no additional cost or burden associated with this requirement because it believes that most, if not all, creditors already keep records of quotes of loan terms that they make to individual consumers as a matter of usual and customary practice. The CFPB has stated in the proposed rule that it believes that, as a consequence, all creditors should be able to use their existing recordkeeping systems to maintain the required documentation. The CFPB is seeking public comment on how creditors currently keep track of quotes they have made to particular consumers and any additional costs from the requirement to track compliance with the requirements regarding the comparable, alternative loan.

Requirement to Obtain Criminal Background Checks, Credit Reports, and Other Information for Certain Individual Loan Originators

a. Credit Check

Under the proposed rule, both depository institutions and non-profit organizations will incur one-time costs related to obtaining credit reports for all existing loan originators and ongoing costs for all future loan originators that are hired or transferred into this function. For the estimated 2,843 CFPB respondents, which include depository institutions over \$10 billion, their depository affiliates, and one-half the estimated burdens for the non-profit non-depository organizations, this one time estimated burden would be 2,950 hours, and the estimated ongoing burden would be 150 hours.

b. Criminal Background Check

Depository institutions already obtain criminal background checks for each of their individual loan originators through the NMLSR for purposes of complying with Regulation G. A criminal background check provided by the NMLSR to the depository institution is sufficient to meet the requirement to obtain a criminal background check in this proposed rule. Accordingly, the CFPB believes they will not incur any additional burden.

Non-depository loan originator organizations that do not have access to information about criminal history in the NMLSR, including bona fide non-profit organizations, could satisfy the latter requirements by obtaining a national criminal background check.⁶ For the assumed 200 non-profit originators and their 1000 loan originators,⁷ the one-time burden is estimated to be roughly 265 hours. The ongoing cost to perform the check for new hires is estimated to be 15 hours annually. The CFPB has allocated to itself one-half of these burdens.

c. Information About Findings Against the Individual by Government Jurisdictions

Depository institutions already obtain and have access to information about government jurisdiction findings against their individual loan originators through the NMLSR. Such information is sufficient to meet the requirement to obtain a criminal background check in this proposed rule. Accordingly, the CFPB does not believe they will incur significant additional burden.

⁶ This check, more formally known as an individual's FBI Identification Record, uses the individual's fingerprint submission to collect information about prior arrests and, in some instances, federal employment, naturalization, or military service.

⁷ The CFPB has not been able to determine how many loan originator organizations qualify as bona fide non-profit organizations or how many of their individual loan originators are not subject to SAFE Act licensing. Accordingly, the CFPB has estimated these numbers.

The information for employees of non-profit organizations is generally not in the NMLSR. Accordingly, under the proposed rule a non-profit organization would have to obtain this information using individual loan originator statements concerning any prior administrative, civil, or criminal findings. For the assumed 1,000 loan originators who are employees of bona-fide non-profit organizations, the CFPB estimates that no more than 10 percent have any such findings by a governmental jurisdiction to describe. The one-time burden is estimated to be 20 hours, and the annual burden to obtain the information from new hires is estimated to be one hour.

13. Estimated Total Annual Cost Burden to Respondents or Recordkeepers

In addition to the hourly burdens above, non-depository loan originator organizations that do not currently obtain national criminal background checks about their individual loan originators and that will be required to do so under the proposed rule are estimated to incur a cost of roughly \$50 for each background check. Several commercial services offer an inclusive fee for fingerprinting, transmission, and FBI processing.⁸ Moreover, for those entities required to order credit reports, the CFPB estimates a cost of \$5 per report because it likely that each of these institutions has contracts with the relevant providers and will get wholesale pricing. For the CFPB's respondents, the total one-time non-hourly burden costs are estimated to be approximately \$200,000 and the ongoing non-hourly burden costs are estimated to be \$10,000.

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 previously discussed, the CFPB is proposing record retention requirements related to the proposed loan originator compensation rules and the restrictions on the charging of points and fees. Generally, the CFPB is proposing to require creditors to retain evidence of compliance with the loan originator compensation provisions of Regulation Z for three years after consummation of the transaction.

The CFPB previously estimated the ongoing burden for Regulation Z based on the assumption that the total ongoing burden for the regulation, across all agencies, remained the same as it was before the regulation was restated by the CFPB. The CFPB used its own methodology to estimate the one-time and ongoing burden for the information collections that are affected by the loan originator compensation proposal, which may differ from the methodologies employed by other agencies.

⁸ Several commercial services offer an inclusive fee, ranging between \$48.00 and \$50.00, for fingerprinting, transmission, and FBI processing. Based on a sample of three FBI-approved services: Accurate Biometrics, available at: <http://www.accuratebiometrics.com/index.asp>; Daon Trusted Identity Servs., available at: <http://daon.com/prints>; and Fieldprint, available at: http://www.fieldprintfbi.com/FBISubPage_FullWidth.aspx?ChannelID=272.

The CFPB makes no changes to the other information collections since the last OMB approval.

16. Plans for Tabulation, Statistical Analysis, and Publication

The information collections are recordkeeping requirements. There is no publication of the information.

17. Display of Expiration Date

The CFPB believes that displaying the OMB expiration date is not appropriate because it is not proposing a required form or asking creditors or loan originator organizations to create a new form which contains a place for the OMB expiration date. Moreover, the CFPB believes that displaying the OMB expiration date is inappropriate because it is unclear where the expiration date would be displayed (*e.g.*, on the records the creditors and loan originator organizations are retaining for compliance, on the forms submitted to credit reporting agencies and companies that perform criminal background checks). Assuming it would be displayed on those documents, it could cause confusion to the readers of the documents to believe that the regulation sunsets as of the expiration date.

18. Exceptions to the Certification Requirement

None.