

**CONSUMER FINANCIAL PROTECTION BUREAU
INFORMATION COLLECTION REQUEST – SUPPORTING STATEMENT
ABILITY TO REPAY AND QUALIFIED MORTGAGE STANDARDS UNDER THE TRUTH IN
LENDING ACT (REGULATION Z) 12 CFR 1026
(OMB CONTROL NUMBER: 3170-XXXX)**

The Consumer Financial Protection Bureau (Bureau or CFPB) is dividing certain proposals to amend the Bureau’s Regulations X and Z into separate Information Collection Requests (ICRs) in the Office of Management and Budget (OMB) system (accessible at www.reginfo.gov) to ease the public’s ability to view and understand the individual proposals. Subsequent to the finalization of the rules, the CFPB anticipates that it will recombine the portions of Regulations X and Z that are broken out in the reginfo.gov system into the existing control numbers for Regulations X and Z. CFPB respondents should continue to use the 3170-0016 control number for Regulation X and the 3170-0015 control number for Regulation Z throughout this time.

TERMS OF CLEARANCE: None.

A. JUSTIFICATION

1. Circumstances Necessitating the Data Collection

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. Creditors are subject to disclosure and other requirements that apply to open-end credit (*e.g.*, revolving credit or credit lines) and closed-end credit (*e.g.*, installment financing). TILA imposes disclosure requirements on all types of creditors in connection with consumer credit, including mortgage companies, finance companies, retailers, and credit card issuers, to ensure that consumers are fully apprised of the terms of financing prior to consummation of the transaction and, in some instances, during the loan term. 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.

The Dodd-Frank Act amended TILA to mandate minimum standards for consideration of a consumer’s repayment ability for creditors originating certain closed-end, residential mortgages.¹ 15 U.S.C. 1639c. New TILA section 129C generally prohibits a creditor from making a residential mortgage loan unless the creditor makes a reasonable and good faith determination, based on verified and documented information, that the consumer has a reasonable ability to repay the loan according to its terms. To provide creditors more certainty about their potential liability under the ability-to-repay standards while protecting consumers from unaffordable loans, the Dodd-Frank Act creates a

¹ Consistent with the statute, the final rule applies the ability-to-repay requirements of TILA section 129C to any consumer credit transaction secured by a dwelling, except an open-end credit plan, timeshare plan, reverse mortgage, or temporary loan.

presumption of compliance with the ability-to-repay requirement when creditors make “qualified mortgages.” Qualified mortgages do not contain certain features that Congress deemed to create a risk to consumers’ ability to repay, and must be underwritten using standards set forth in the statute and rule that are designed to assure that consumers will have the ability to repay these loans. In its final rule, published in the **Federal Register** in January 2013, the CFPB amended Regulation Z to implement TILA’s ability-to-repay requirement and qualified mortgage provisions, as required by the Dodd-Frank Act. The final rule also implements Dodd-Frank Act provisions that generally prohibit prepayment penalties except for certain fixed-rate, qualified mortgages where the penalties satisfy certain restrictions and the creditor has offered the consumer an alternative loan without such penalties.

Through a concurrent proposed rule published in January 2013, the CFPB proposed to further amend Regulation Z. The proposed rule contains certain amendments to the final rule implementing the ability-to-repay requirements, including exemptions for certain nonprofit creditors and certain homeownership stabilization programs. It also adds an additional definition of a qualified mortgage for certain loans made and held in portfolio by small creditors that have total assets less than \$2 billion at the end of the previous calendar year; and, together with all affiliates, originated 500 or fewer first-lien covered transactions during the previous calendar year.

The CFPB enforces TILA as to insured depository institutions with more than \$10 billion in total assets, their depository institution affiliates, and certain non-depository entities. As set forth more fully below, the CFPB believes the following aspects of the final rule and the proposed rule are information collection requirements under the Paperwork Reduction Act (PRA).²

Recordkeeping

Under 12 CFR 1026.25(c)(3), the CFPB is lengthening the time creditors must retain records that evidence compliance with the ability-to-repay requirements, qualified mortgage provisions, and prepayment penalty restrictions. Currently, Regulation Z requires creditors to retain evidence of compliance for two years after disclosures must be made or action must be taken. The final rule amends Regulation Z to require creditors in covered transactions to retain evidence of compliance with the ability-to-repay requirements, qualified mortgage provisions, and prepayment penalty restrictions for three years after consummation for consistency with the statute of limitations on claims under TILA section 129C. The final rule clarifies that creditors need retain only enough information to reconstruct the required records. In addition, the final rule clarifies that creditors need not maintain actual paper copies of the documentation used to underwrite a transaction. *See* comments 25(a)-2 and 25(c)(3)-1. Accordingly, the required records will be kept in electronic form for most covered persons. The CFPB believes that this requirement will ensure that records are readily available for examination, which is necessary to both prevent circumvention of and facilitate compliance with TILA, and may also facilitate compliance with TILA by easing the burden of examinations. The information is not reported to the CFPB, but may be requested as part of an investigation or examination.

² Under the final rule, these information collection requirements apply to closed-end transactions secured by a dwelling, other than an open-end credit plan, timeshare plan, reverse mortgage, or temporary loan.

Ability-to-Repay Verification and Documentation

As discussed above, under new TILA section 129C, a creditor is prohibited from making a closed-end, residential mortgage loan unless the creditor makes a reasonable and good faith determination, based on verified and documented information, that the consumer will have a reasonable ability to repay the loan, including any mortgage-related obligations (such as property taxes). Section 1026.43(c)(2) of the final rule contains eight specific criteria that a creditor must consider in assessing a consumer's repayment ability. Section 1026.43(c)(3) of the final rule requires creditors originating closed-end, residential mortgage loans to verify the information that the creditor relies on in determining a consumer's repayment ability under § 1026.43(c)(2) using reasonably reliable third-party records. Section 1026.43(c)(4) of the final rule provides special rules for verification of a consumer's income or assets, and provides examples of records that can be used to verify the consumer's income or assets (for example, tax-return and payroll transcripts). The creditor must calculate the monthly mortgage payment based on the greater of the fully indexed rate or any introductory rate, assuming monthly, fully amortizing payments that are substantially equal. The final rule provides special payment calculation rules for loans with balloon payments, interest-only loans, and negative amortization loans. The final rule provides special rules for complying with the ability-to-repay requirements for a creditor refinancing a "non-standard mortgage" into a "standard mortgage."

Different verification requirements apply to qualified mortgages. Creditors that originate qualified mortgages under § 1026.43(e)(2) must verify the consumer's income or assets, debt obligations, and that the ratio of the consumer's total monthly debt to total monthly income does not exceed 43 percent. Under § 1026.43(f), a creditor making a qualified mortgage must verify a consumer's income or assets, debt obligations, and the consumer's monthly debt-to-income ratio or residual income. The final rule does not contain specific verification requirements for creditors originating qualified mortgages under § 1026.43(e)(4); however, such loans must comply with eligibility requirements (including underwriting requirements) of the government sponsored enterprise (GSE) or the Federal agency program applicable to the loan.

The proposed rule, if adopted, would remove these ability-to-repay requirements for the entities covered by the relevant portions of the proposed rule. The proposed rule would also establish a fourth qualified mortgage definition for small portfolio creditors that meet applicable requirements.

2. Use of the Information

Federal and State enforcement agencies and private litigants use records retained under the requirement of Regulation Z to ascertain whether accurate and complete disclosures of the cost of credit have been provided to consumers prior to consummation of the credit obligation and, in some instances, during the loan term. The information is also used to determine whether other actions required under TILA have been met. With respect to this rule, these parties would use records retained primarily to ascertain whether the ability-to-repay requirements or qualified mortgage definition, as applicable, have been met. Records would also verify compliance with requirements applicable to prepayment penalties. The information retained provides the primary evidence of TILA violations in enforcement actions brought by Federal agencies. Without the Regulation Z recordkeeping requirement, the agencies' ability to enforce TILA would be significantly impaired.

As noted above, in general consumers rely on the disclosures required by TILA and Regulation Z to shop among options and to facilitate informed credit decision making. Without this information, consumers would be hindered in their ability to assess the true costs and terms of financing offered. With respect to the rule, consumers are more likely to receive mortgages that they can afford to repay as a result of compliance. Additionally, enforcement agencies and private litigants need the information in these disclosures to enforce TILA and Regulation Z. *See* 15 U.S.C. 1607, 1640.

3. Use of Information Technology

Regulation Z contains rules to establish uniform standards for using electronic communication to deliver disclosures required under Regulation Z, within the context of the Electronic Signatures in Global and National Commerce Act (ESIGN), 15 U.S.C. 7001 *et seq.* 12 CFR 1026.5(a)(1)(iii), 1026.17(a)(1). These rules enable businesses to utilize electronic disclosures and compliance, consistent with the requirements of ESIGN. Use of such electronic communications is also consistent with the Government Paperwork Elimination Act (GPEA), title XVII of Pub. L. 105-277, codified at 44 U.S.C. 3504, note. ESIGN and GPEA serve to reduce businesses' compliance burden related to Federal requirements, including Regulation Z, by enabling businesses to use more efficient electronic media for disclosures and compliance.

Regulation Z also 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. Furthermore, creditors need not maintain actual paper copies of the documentation used to underwrite a transaction. Comments 25(a)-2 and 25(c)(3)-1.

As noted above, the CFPB is amending Regulation Z to require creditors to retain evidence of compliance with the ability-to-repay, qualified mortgage provisions, and prepayment penalty restrictions for three years after loan consummation.

4. Efforts to Identify Duplication

The recordkeeping requirement of Regulation Z preserves the information used by the creditor and underlying calculations of the terms of consumer credit and other required actions. The creditor is the only source of this information. No other Federal law mandates these required actions. Some States regulate all mortgage loans under ability-to-repay laws that resemble the final rule, and many States regulate only high cost or higher-priced mortgages under ability-to-repay laws. The final rule would not preempt such State laws except to the extent they are inconsistent with the final rule.

5. Efforts to Minimize Burdens on Small Entities

TILA and Regulation Z recordkeeping and verification and documentation requirements are imposed on all creditors. The recordkeeping requirement is mandated by Regulation Z, and the Bureau is amending Regulation Z to require creditors to retain evidence of compliance with the ability-to-repay, qualified mortgage provisions, and prepayment penalty restrictions in § 1026.43 for three years after

consummation for consistency with the statute of limitations on claims under TILA section 129C. The verification and documentation requirements are mandated under the Dodd-Frank Act and TILA.

Most lenders 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 and disclosure costs. (See #3 above.) Comments 25(a)-2 and 25(c)(3)-1 clarify that creditors need not maintain actual paper copies of the documentation used to underwrite a transaction. For most covered persons, the required records will be kept in electronic form. In addition, unless otherwise required, such as by § 1026.43, creditors need retain only enough information to reconstruct the required records. This additional flexibility may increase efficiency in the origination and supervision processes, reducing industry costs in the long term, and reducing costs to consumers.

Moreover, as noted previously, the CFPB's final ability-to-repay rule permits creditors to develop and apply their own underwriting standards (and to make changes to those standards over time in response to empirical information and changing economic and other conditions) as long as those standards lead to ability-to-repay determinations that are reasonable and in good faith and otherwise comply with the rule. In addition, the CFPB's final ability-to-repay rule permits creditors to use their own definitions and other technical underwriting criteria and notes that underwriting guidelines issued by governmental entities such as the FHA are a source to which creditors may refer for guidance on definitions and technical underwriting criteria. The CFPB believes that a variety of underwriting standards can yield reasonable, good faith ability-to-repay determinations. The CFPB believes this flexibility is necessary given the wide range of creditors, consumers, and mortgage products to which this rule applies. The CFPB also believes this increased flexibility will reduce the burden on small creditors by allowing them to determine the practices that fit best with their business model.

The final rule also provides creditors with the option of offering only qualified mortgages, which will enjoy either a presumption of compliance with respect to the repayment ability requirement (for higher-priced covered transactions) or a safe harbor from the repayment ability requirement, thus reducing litigation risks and costs for small creditors.

The proposed rule would remove the burden from many creditors, most of which are likely small entities.

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

Currently, Regulation Z requires creditors to retain evidence of compliance for two years after disclosures must be made or action must be taken. The current record retention period of two years under Regulation Z supports private actions and regulatory enforcement and supervision activities. If the retention period were shortened, consumers who sue under TILA, and the administrative agencies, might find that creditor records needed to prove violations of TILA no longer exist.

The CFPB is amending Regulation Z to require creditors to retain evidence of compliance with the ability-to-repay requirements, qualified mortgage provisions, and prepayment penalty restrictions for three years after consummation for consistency with the statute of limitations on claims under TILA

section 129C.

Without these requirements, consumers' right to sue under TILA would be undermined, and supervision/enforcement agencies could not effectively fulfill their mandate to supervise for compliance with and enforce TILA.

7. Circumstances Requiring Special Information Collection

There are no circumstances requiring special information collections.

8. Consultation Outside the Agency

In May 2011, the Board published a notice of proposed rulemaking in the **Federal Register** for public comment. The comment period with respect to the PRA analysis ended on July 21, 2011. General rulemaking authority for TILA transferred to the Bureau on July 21, 2011. Accordingly, the proposed rulemaking became a proposal of the Bureau and was finalized by the Bureau. The Bureau did not receive comments about the paperwork burden associated with the proposal. Prior to issuing the final rule, the CFPB consulted with other Federal agencies consistent with section 1022 of the Dodd-Frank Act. The Bureau also consulted with other stakeholders, including roundtables with industry representatives and consumer advocacy groups.

9. Payments or Gifts to Respondents

Not applicable.

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

The required recordkeeping and verification and documentation also contain private financial information about persons who use consumer credit that is protected by the Right to Financial Privacy Act, 12 U.S.C. 3401 *et seq.* Such records may also constitute confidential customer lists. Any of these records provided to the CFPB would be covered by the protections of the CFPB's rules on Disclosure of Records and Information, 12 CFR 1070, and by the exemptions of the Freedom of Information Act, 5 U.S.C. 552(b), as applicable.

12. Estimated Burden of Information Collection

1. Ability-to-Repay Verification and Documentation Requirements

Section 1026.43(c)(2) of the final rule contains eight specific criteria that a creditor must consider in assessing a consumer's repayment ability. Section 1026.43(c)(3) of the final rule requires creditors originating residential mortgage loans to verify the information that the creditor relies on in determining a consumer's repayment ability under § 1026.43(c)(2) using reasonably reliable third-party records. Section 1026.43(c)(4) of the final rule provides special rules for verification of a consumer's income or assets, and provides examples of records that can be used to verify the consumer's income or assets (for example, tax-return and payroll transcripts).

Different verification requirements apply to qualified mortgages. Creditors that originate qualified mortgages under § 1026.43(e)(2) must verify the consumer's income or assets, debt obligations, and that the ratio of the consumer's total monthly debt to total monthly income does not exceed 43 percent. Under § 1026.43(f), a creditor making a qualified mortgage must verify a consumer's income or assets, debt obligations, and the consumer's monthly debt-to-income ratio or residual income. The final rule does not contain specific verification requirements for creditors originating qualified mortgages under § 1026.43(e)(4); however, such loans must comply with eligibility requirements (including underwriting requirements) of the GSEs or the Federal agency program applicable to the loan.

The Bureau estimates one-time and ongoing costs to respondents of complying with the requirements in § 1026.43 as follows.

One-time costs. The Bureau estimates that covered persons will incur one-time costs associated with reviewing the final rule and the proposed rule. Specifically, the Bureau estimates that, for each covered person, one attorney and one compliance officer will each take 21 minutes (42 minutes in total) to read and review the sections of the **Federal Register** that describe the verification and documentation requirements, based on the length of the sections.

The Bureau estimates the one-time costs to the 135 depository institutions (including their depository affiliates) that are mortgage originator respondents of the Bureau under Regulation Z would be \$7,700, or 94 hours. For the estimated 2,787 non-depository institutions and 77 privately insured credit unions that are subject to the Bureau's administrative enforcement authority, the Bureau is taking half the burden for purposes of this PRA analysis. Accordingly, the Bureau estimates the total one-time costs across all relevant providers of reviewing the relevant sections of the **Federal Register** to be about 1,000 hours and \$81,000 based on labor rate statistics for the required personnel.

Ongoing costs. The Bureau does not believe that the verification and documentation requirements of the final rule will result in additional ongoing costs for most covered persons. The Bureau understands that creditors generally have in place underwriting policies, procedures, and internal controls that require verification of the consumer's reasonably expected income or assets, employment status, debt obligations and simultaneous loans, credit history, and debt-to-income ratio or residual income. Notably, in response to the 2011 ATR Proposal, commenters stated that most creditors today are already complying with the full ability-to-repay underwriting standards. For these institutions, there would be no additional burden as a result of the verification requirements in the final rule, since those institutions collect the required information in the normal course of business.

2. *Record Retention Requirement*

The final rule imposes new record retention requirements on covered persons. As discussed above in part V, the final rule requires creditors to retain evidence of compliance with § 1026.43 (containing the ability-to-repay requirements, qualified mortgage provisions, and prepayment penalty restrictions) for three years after consummation.

The Bureau estimates one-time and ongoing costs to respondents of complying with the record retention requirement in § 1026.25 as follows.

One-time costs. The Bureau estimates that covered persons will incur one-time costs associated with reviewing the final rule and the proposed rule. Specifically, the Bureau estimates that, for each covered person, one attorney and one compliance officer will each take 9 minutes (18 minutes in total) to read and review the sections of the final rule that describe the record retention requirements, based on the length of the sections.

The Bureau estimates the one-time costs to the 135 depository institutions (including their depository affiliates) that are mortgage originator respondents of the Bureau under Regulation Z would be \$3,300, or 40 hours. For the estimated 2,787 non-depository institutions and 77 privately insured credit unions that are subject to the Bureau's administrative enforcement authority, the Bureau is taking half the burden for purposes of this PRA analysis. Accordingly, the Bureau estimates the total one-time costs across all relevant providers of reviewing the relevant sections of the **Federal Register** to be about 430 hours or roughly \$35,000.

Ongoing costs. The Bureau believes that any burden associated with the final rule's record retention requirement will be minimal or *de minimis*. Under current rules, creditors must retain evidence of compliance with Regulation Z for two years after consummation; the final rule extends that period to three years after consummation for evidence of compliance with the ability-to-repay requirements, qualified mortgage provisions, and the prepayment penalty limitations in this final rule. The final rule clarifies that creditors need retain only enough information to reconstruct the required records. The final rule also clarifies that creditors need not maintain actual paper copies of the documentation used to underwrite a transaction. *See* comments 25(a)-2 and 25(c)(3)-1. For most covered persons, the required records will be kept in electronic form.

13. Estimated Total Annual Cost Burden to Respondents or Recordkeepers

Covered persons will incur costs associated with complying with the verification and documentation requirements and with the requirement to retain evidence of compliance with this rule for three years after a loan is consummated. To the extent creditors do not verify and document some or all of the information required by the final rule in the normal course of business, the CFPB believes that the additional cost of the final rule would be minimal. Similarly, the Bureau believes that any burden associated with the final rule's record retention requirement will be minimal or *de minimis*.

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 noted above, the Dodd-Frank Act created new TILA section 129C, which establishes minimum standards for consideration of a consumer's repayment ability for creditors originating certain closed-end, residential mortgages. 15 U.S.C. 1639c. Under the ability-to-repay requirements, a creditor

is prohibited from making a covered mortgage loan unless the creditor makes a reasonable and good faith determination, at or before consummation, based on verified and documented information, that the consumer will have a reasonable ability to repay the loan, according to its terms, including any mortgage-related obligations (such as property taxes and mortgage insurance). To provide creditors more certainty about their potential liability under the ability-to-repay standards while protecting consumers from unaffordable loans, the Dodd-Frank Act creates a presumption of compliance with the ability-to-repay requirement when creditors make “qualified mortgages.” Accordingly, the CFPB’s final rule applies the ability-to-repay requirements of TILA section 129C to any consumer credit transaction secured by a dwelling, except an open-end credit plan, timeshare plan, reverse mortgage, or temporary loan. The CFPB is also implementing in Regulation Z the Dodd-Frank Act limits on prepayment penalties and is prohibiting evasion of the ability-to-repay requirements by structuring an extension of credit that does not meet the definition of open-end credit as an open-end plan.

In addition, as previously discussed, the CFPB is adopting record retention requirements related to the ability-to-repay requirements, qualified mortgage provisions, and prepayment penalty restrictions. Currently, Regulation Z requires creditors to retain evidence of compliance for two years after disclosures must be made or action must be taken. The CFPB is amending Regulation Z to require creditors to retain evidence of compliance with the ability-to-repay requirements, qualified mortgage provisions, and prepayment penalty restrictions in § 1026.43 for three years after consummation for consistency with statute of limitations on claims under TILA section 129C. The CFPB believes that this record retention requirement will ensure that records are readily available for examination, which is necessary to both prevent circumvention of and facilitate compliance with TILA, and may also facilitate compliance with TILA by easing the burden of examinations and ensuring that all entities subject to TILA keep records showing evidence of compliance with the ability-to-repay and prepayment penalty provisions for a set period of time.

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 final and proposed rules, which may differ from the methodologies employed by other agencies.

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 verification and documentation requirements and a recordkeeping requirement. There is no publication of the information.

17. Display of Expiration Date

We believe that displaying the OMB expiration date is inappropriate because it could cause confusion by leading consumers to believe that the regulation sunsets as of the expiration date. Consumers are not likely to be aware that the CFPB intends to request renewal of OMB approval and obtain a new expiration date before the old one expires.

18. Exceptions to the Certification Requirement

None.

Note: The following paragraph applies to all of the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.