

**CONSUMER FINANCIAL PROTECTION BUREAU  
INFORMATION COLLECTION REQUEST – SUPPORTING STATEMENT  
LOAN ORIGINATOR COMPENSATION  
(OMB CONTROL NUMBER: 3170-0031)**

The Consumer Financial Protection Bureau (Bureau) 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](http://www.reginfo.gov)) to ease the public’s ability to view and understand the individual proposals. Subsequent to the finalization of the rules, 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 3170-0015 control number for Regulation Z and 3170-0016 control number for Regulation X throughout this time.

**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 to 1405 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 part 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 recodifying the Board’s Regulation Z at 12 CFR part 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).<sup>1</sup> TILA section 129B(c)(1) prohibits loan originator compensation that varies

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<sup>1</sup> 12 U.S.C. 5101-5116.

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 creditor or brokerage firm. However, it gives the CFPB authority to waive or create exemptions from the prohibition on charging consumers discount points, origination points, or fees where doing so is in the interest of consumers and in the public interest.

Through a final rule published in the Federal Register on February 15, 2013, the CFPB is amending Regulation Z to implement the statutory provisions described above and to create 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 final 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 adding § 1026.25(c)(2) to establish record retention requirements for compliance with § 1026.36(d), which implements many of the statutory requirements discussed above. Section § 1026.25(c)(2): (1) extends the time period for retention by creditors of compensation-related records from two years to three years; (2) requires loan originator organizations (*i.e.*, generally, mortgage broker companies) to maintain certain compensation-related records for three years; and (3) clarifies the types of compensation-related records that are required to be maintained under the rule.

As noted above, the CFPB is extending creditors' record retention requirements under Regulation Z with respect to loan originator compensation records from two years to three years. The 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 change 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 § 1026.25(c), and only to creditors, would 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 serves to 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 final 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 are required to obtain a criminal background check and credit report for the individual loan originators. Loan originator organizations are also 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 are 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 requirements 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 by any method that reproduces records accurately, including computer programs. Unless otherwise required, creditors need only retain enough information to reconstruct the required disclosures or other records. Comment 25(a)-2. As discussed in Part IX of the final 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 recordkeeping requirements of § 1026.25(c) are requirements to preserve certain

documents related to the rules on loan originator compensation. The creditor and the loan originator organization generally are the only sources of this information.<sup>2</sup> 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 imposing additional recordkeeping requirements, which would extend the retention period for creditors to three years and subject loan originator organizations to similar recordkeeping requirements for three years. As discussed in item 12 below, for the final 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,<sup>3</sup> moreover, the small entity representatives (SERs) were asked about their current record retention practices and the potential impact of the proposal under consideration to enhanced record retention requirements. Of the few SERs that 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 already reviews its compensation plans regularly, and another creditor SER reported that it did not believe the record retention requirements would require it to change its current practices.

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<sup>2</sup> As explained in the section-by-section analysis to § 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 record retention requirements, loan originator organizations and creditors must retain certain records regarding all of their individual loan originators, so the CFPB believes that applying the same record retention requirements to the individual loan originators 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 work for the creditor or loan originator organization.

<sup>3</sup> 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)).

With regard to the loan originator screening requirements, the CFPB does not believe these requirements will unduly burden small entities. The CFPB believes that virtually all 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).<sup>4</sup>

## **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 final rule's 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 screening requirements implement the Dodd-Frank Act section 1402 provisions regarding the qualification of loan originators. The primary benefits to consumers of the qualification provisions of the final rule are the stricter screening of individual loan originators, on an ongoing basis after implementation of the final rule and with regard to some loan officers currently employed who have not previously been screened, with backgrounds suggesting they could pose risks to consumers and will raise the level of loan originator expertise regarding the origination process. As the CFPB explained in Part VII of the final rule, (the Dodd-Frank Act section 1022(b)(2) analysis), both of these effects will likely decrease the harm that could be borne, unknowingly at the time of origination, by any individual consumer. 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 the protection afforded to the consumer against the possibility of such harm.

## **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 1320.5(d)(2)

## **8. Consultation Outside the Agency**

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<sup>4</sup> 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.

On September 7, 2012, the CFPB published a notice of proposed rulemaking in the *Federal Register* for public comment. The comment period with respect to the PRA analysis ended on November 6, 2012. The Bureau did not receive any comments pertaining to the Paperwork Reduction analysis of these recordkeeping requirements. Prior to issuing both the proposed rule and final 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**

*Related ICRs*

ICRs that have been submitted by other Federal agencies under Regulation Z and that may relate to this ICR include the following:

Federal Reserve System: Reporting, Recordkeeping and Disclosure Requirements in Connection with Regulation Z (Truth in Lending) and Section 227.28 of Regulation AA (Unfair or Deceptive Acts or Practices (UDAP)), control number 7100-0199;

Federal Deposit Insurance Corporation: Recordkeeping and Disclosure Requirements in Connection with Regulation Z (Truth in Lending), control number 3064-0082;

Office of the Comptroller of the Currency: Record and Disclosure Requirements – FRB Regulations B, C, E, M, Z, CC, and DD, control number 1557-0176; and

Federal Trade Commission: Regulation Z (Truth in Lending), control number 3084-0088.

*Overview*

Under the final rule, the CFPB accounts 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 the estimated burden for 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 22,800 institutions subject to the final rule, including CFPB respondents,<sup>5</sup> would be approximately 64,600 hours annually and 164,700 one-time hours. For the CFPB respondents subject to the final rule, the estimates for the ongoing burden hours are approximately 32,000 annually, and the total one-time burden hours are roughly 82,000.

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 changes for a given institution may vary based on the size, complexity, and practices of the respondent.

### *Recordkeeping*

For the final 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.

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<sup>5</sup> For purposes of this PRA analysis, the CFPB's respondents under Regulation Z are 135 depository institutions that originate closed-end mortgages; 77 privately insured credit unions that originate closed-end mortgages; an estimated 2,787 non-depository institutions that originate closed-end mortgages and that are subject to the CFPB's administrative enforcement authority, an assumed 230 not-for profit originators (which may overlap with the other non-depository creditors); and 8,051 loan originator organizations. Unless otherwise specified, all references to burden hours and costs for the CFPB respondents for the collection under Regulation Z are based on a calculation that includes one-half of the burden for all respondents except the depository institutions.

For the approximately 8,000 CFPB respondents that are non-depository loan originator organizations but not creditors, the one-time burden is estimated to be roughly 163,400 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, or approximately 8 hours per organization, annually. The CFPB has allocated to itself one-half of this burden.

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

*a. Credit Check*

Under the final rule, both depository institutions and non-profit organizations will incur ongoing costs related to obtaining credit reports for loan originators that are hired or transferred into this function on or after January 10, 2014. For the approximately 370 CFPB respondents, which include depository institutions over \$10 billion, their depository affiliates, and non-profit non-depository organizations, this one time estimated burden would be 25 hours, and the estimated ongoing burden would be 90 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 the final 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, can satisfy the latter requirements by obtaining a national criminal background check.<sup>6</sup> For the assumed 230 non-profit originators the one-time burden is estimated to be roughly 20 hours.<sup>7</sup> The ongoing cost to perform the check for new hires is estimated to be 10 hours annually. The CFPB has allocated to itself one-half of these burdens.

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<sup>6</sup> 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.

<sup>7</sup> 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.



### *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 the final rule. Accordingly, the CFPB does not believe they will incur significant additional burdens.

The information for employees of non-profit organizations is generally not in the NMLSR. Accordingly, under the final rule a non-profit organization would have to obtain this information, for each loan originator it employs for whom it is not already known, 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 and about whom prior administrative, civil, and criminal findings are not already known, 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 two hours.

### **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 final 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.<sup>8</sup> Moreover, for those entities required to order credit reports, including depositories and bona fide non-profit loan originator organizations, the CFPB estimates a cost of \$5 per credit report because it is likely that relevant providers discount the price per report which they charge these institutions. For the CFPB's respondents, the total one-time non-hourly burden costs are estimated to be \$230,000 and the ongoing non-hourly burden costs are estimated to be approximately \$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**

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<sup>8</sup> 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](http://www.fieldprintfbi.com/FBISubPage_FullWidth.aspx?ChannelID=272).

The CFPB is requiring creditors and loan originator organizations 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 final rule, 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 recordkeeping requirements. There is no publication of the information.

#### **17. Display of Expiration Date**

After the Office of Management and Budget (OMB) concludes its review of the information collection request (ICR) submitted thereto in accordance with 5 CFR 1320.11(f), the CFPB will publish a notice in the Federal Register announcing OMB's action on this ICR and, as applicable, will display the OMB-assigned control number and expiration date expiration date therein.

#### **18. Exceptions to the Certification Requirement**

None.