BUREAU OF CONSUMER FINANCIAL PROTECTION
PAPERWORK REDUCTION ACT SUBMISSION
INFORMATION COLLECTION REQUEST

SUPPORTING STATEMENT PART A

ARBITRATION AGREEMENTS
DISCLOSURE AND REPORTING REQUIREMENTS
(OMB CONTROL NUMBER: 3170-0064)

OMB TERMS OF CLEARANCE:

In a Notice dated July 26, 2016, the Office of Management and Budget (OMB) filed a comment on this information collection request that, in part, said, "The agency shall examine public comment in response to the NPRM and will describe in the supporting statement of its next collection any public comments received regarding the collection as well as why (or why it did not) incorporated the commenter's recommendation. The next submission to OMB must include the draft final rule."

Since OMB imposed the terms of clearance, the Bureau of Consumer Financial Protection ("the Bureau") reviewed and considered public comments regarding the collection, and sets forth below reasons why the Bureau incorporated the commenters' recommendations (or why it did not). Further, the Bureau appends the final rule in this submission to OMB, in accordance with the terms of clearance.

ABSTRACT:

Pursuant to section 1028(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203) ("Dodd-Frank"), the Bureau of Consumer Financial Protection ("the Bureau") is establishing 12 CFR part 1040 ("the rule"), which contains regulations governing the use of agreements providing for arbitration of future disputes ("arbitration agreements") by persons providing or offering covered consumer financial products or services who are not eligible for an exemption in the rule ("providers"). The rule prohibits providers from relying upon an arbitration agreement entered into after the rule's compliance date in a class action that concerns a covered consumer financial product or service. Relatedly, the rule includes two types of information collections: (1) a mandatory contractual provision using language specified by the Bureau (and with an alternative to send consumer notices in certain specified circumstances); and (2) submission of certain arbitral and arbitration-related court records to the Bureau. These information collections are described below.

JUSTIFICATION

1. Circumstances Necessitating the Data Collection

The rights of consumers and providers in the event of a dispute over a consumer financial product or service are generally set forth in a written contract. Many contracts for consumer financial products and services contain agreements that permit either party to use the agreement to require that a dispute proceed in arbitration instead of in court (referred to herein as "arbitration agreements"). Most of these arbitration agreements forbid, or effectively otherwise do not permit, consumers to participate in class actions. Dodd-Frank section 1028(b) authorizes the Bureau to prohibit or impose conditions or limitations on the use of an arbitration agreement between a covered person and a consumer for a consumer financial product or service if the Bureau finds that such a prohibition or imposition of conditions or limitations is in the public interest and for the protection of consumers. Section 1028(b) also requires that the findings in such rule be consistent with a study of arbitration agreements performed by the Bureau pursuant to Dodd-Frank section 1028(a).[1]

For the reasons set forth more fully in the final rule attached hereto, the Bureau finds that precluding providers from blocking consumers from filing or participating in class actions through the use of arbitration agreements will substantially strengthen the incentives for companies to avoid potentially illegal activities, thereby reducing the likelihood that consumers will be subject to such practices in the first instance. To the extent that companies nonetheless engage in unlawful conduct, allowing them to file and participate in class actions will better enable consumers to enforce their rights under federal and state consumer protection laws and the common law and obtain redress when their rights are violated. The Bureau finds that both of these outcomes, as well as others discussed in the rule, are in the public interest and for the protection of consumers under Dodd-Frank section 1028(b).

The Bureau believes that two provisions of the rule constitute information collections under the Paperwork Reduction Act ("PRA").

The first information collection requirement relates to disclosure requirements. The final rule will require providers that enter into arbitration agreements with consumers to ensure that these arbitration agreements contain a specified provision, with two limited exceptions, as described below.[2] The specified provision states effectively that no person can use the arbitration agreement to stop the consumer from being part of a class action case in court.[3] The rule will require providers to use the specific provision unless an exception applies. The rule will also permit providers to use an alternative provision in connection with arbitration agreements in

[1] The Bureau published the Study on March 10, 2015. *See* http://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf.
[2] *See* 12 CFR 1040.4(a)(2).
[3] *See* 12 CFR 1040.4(a)(2)(i).

contracts for multiple products or services, some of which are not covered by the final rule.[4] The rule will further permit providers to include optional adjustments to these provisions, where applicable.[5] This information collection is described herein as the "Contract Provision Requirement."

The final rule contains two exceptions to the Contract Provision Requirement. One is available in the circumstances described in § 1040.4(a)(2)(iii) ("Alternative for Providers Entering into a Preexisting Arbitration Agreement"). The other is available to providers of general purpose reloadable ("GPR") prepaid cards in the circumstances described in § 1040.5(b) ("GPR Prepaid Card Notification Alternative").

Under the first exception, when an arbitration agreement existed previously between other parties and does not already contain the provision required by § 1040.4(a)(2)(i) (or the alternative provision permitted by § 1040.4(a)(2)(ii)), a provider that enters into the agreement after the compliance date must either ensure that the agreement is amended to contain the required provision or send any consumer to whom the agreement applies a written notice containing specified language. The provider is required to either ensure the agreement is amended or provide the written notice within 60 days of entering into the agreement. Under the second exception, the requirement to ensure that an arbitration agreement entered into after the compliance date contains the provision required by § 1040.4(a)(2)(i) (or the alternative provision permitted by § 1040.4(a)(2)(ii)) will not apply to an arbitration agreement for a GPR prepaid card if certain conditions are satisfied with respect to when the card was packaged and purchased in relation to the compliance date. For a GPR prepaid card provider that has the ability to contact the consumer in writing, the provider must also, within 30 days of obtaining the consumer's contact information, notify the consumer in writing that the arbitration agreement complies with the requirements of § 1040.4(a)(2) by providing an amended arbitration agreement to the consumer.

The second information collection requirement relates to reporting requirements. The provision will require providers to submit specified arbitral and court records to the Bureau relating to any arbitration agreement entered into after the compliance date.[6] This information collection is described herein as the "Records Submission Requirement."

The rule will require the submission of three general categories of documents to the Bureau. First, the rule will require providers to submit certain records in connection with any claim filed in arbitration by or against the provider concerning a covered consumer financial product or service. In particular, providers will be required to submit the following five types of documents in connection with any claim filed in arbitration: (A) the initial claim and any counterclaim, (B) the answer to any initial claim and/or counterclaim, if any; (C) the arbitration agreement filed

[4] *See* 12 CFR 1040.4(a)(2)(ii).
[5] *See* 12 CFR 1040.4(a)(2)(iv)-(vii).
[6] *See* 12 CFR 1040.4(b).

with the arbitrator or arbitration administrator; (D) the judgment or award, if any, issued by the arbitrator or arbitration administrator; and (E) if an arbitrator or arbitration administrator refuses to administer or dismisses a claim due to the provider's failure to pay required filing or administrative fees, any communication the provider receives from the arbitrator or an arbitration administrator related to such a refusal.[7] Second, the rule will require providers to submit any communications the provider receives from an arbitrator or arbitration administrator related to a determination that an arbitration agreement covered by the final rule does not comply with the administrator's fairness principles, rules, or similar requirements.[8] Third, the rule will require providers to submit any submission to a court that relies upon an arbitration agreement in support of the provider's attempt to seek dismissal, deferral, or stay of a case.[9]

The rule will require providers to submit any record described above to the Bureau within 60 days of filing by the provider or, in the case of records filed by other persons (such as arbitrators, arbitration administrators, or consumers), receipt by the provider.[10] The final rule further requires that a provider must redact any of nine specific types of information, to the extent such information appears in any of these documents, before submitting them to the Bureau.[11] The rule also requires the Bureau to further redact these records, if necessary, and then publish them on the Bureau's website.[12]

2. Use of the Information

As discussed above, under the Contract Provision Requirement, arbitration agreements between providers and consumers will be required to include the Bureau's mandated language. Because these are generally form contracts prepared by the provider, providers entering into these arbitration agreements with consumers will be required to ensure the agreement contains the mandated provision (or, in certain circumstances described above, send notices to consumers in the absence of the arbitration agreement containing such a provision). As reflected in the Bureau's Section 1022(b)(2) Analysis as set out in the final rule, the Bureau does not believe this will be an especially burdensome requirement.[13] For most providers, this will entail a one-time

[7] *See* 12 CFR 1040.4(b)(1)(i).
[8] *See* 12 CFR 1040.4(b)(1)(ii).
[9] *See* 12 CFR 1040.4(b)(1)(iii).
[10] *See* 12 CFR 1040.4(b)(2).
[11] *See* 12 CFR 1040.4(b)(3). The types of information that provides will be required to redact include: (i) names of individuals, except for the name of the provider or the arbitrator where either is an individual; (ii) addresses of individuals, excluding city, state, and zip code; (iii) email addresses of individuals; (iv) telephone numbers of individuals; (v) photographs of individuals; (vi) account numbers; (vii) Social Security and tax identification numbers; (viii) driver's license and other government identification numbers; and (ix) passport numbers.
[12] *See* 12 CFR 1040.4(b)(4)-(6).
[13] The burden may be higher for companies that acquire credit accounts from merchants not covered by the Bureau's rule. Unless such merchants voluntarily make one-time changes to all such credit agreements, the acquirers would instead be required to ensure the agreements are amended (or provide consumer notices) on a rolling basis as the credit accounts are acquired. For example, buyers of medical debt could incur additional costs due to additional due diligence they undertake to determine which acquired debts arise from consumer credit transactions (that are subject

change to the provider's standard-form agreement. By requiring specific mandated language, rather than a general requirement that contract language must meet, the Bureau believes the final rule will reduce uncertainty regarding what type of contract provisions are permissible and therefore reduce the burden of analyzing what is required. The Bureau expects that this provision will be used by a number of different parties. The Bureau expects consumers, providers, their counsel, courts, and the Bureau itself all will reference this provision from time to time. The Bureau expects that the use of consistent language in the provision will reduce uncertainty for all parties concerned about providers' legal obligations.

The Records Submission Requirement will require providers to submit specified arbitration-related documents and arbitration-related court records to the Bureau. As outlined above, the rule specifically describes each type of record that must be submitted, and the Bureau believes each type of record is a standard type that providers will be able to readily identify. The Bureau does not believe identifying, redacting as necessary, and mailing or e-mailing these records to the Bureau within 60 days of filing or receipt from another person, as the Bureau will require, will entail significant burden on any individual provider. It also is possible that arbitration administrators will develop a mechanism to assist providers in complying with the Records Submission Requirement. Further, as described in the final rule, arbitrations pertaining to consumer financial products and services are relatively infrequent. In the Study, the Bureau documented an average of 616 cases per year for six product markets combined in the predominant forum. In individual cases filed over a three year period in federal courts across five markets (including a sample of 14% of the credit card cases), the Bureau found only 12 motions to compel arbitration. Yet the Bureau estimates that the rule will apply to approximately 50,000 providers. As a result, at present, the likelihood is low that a given provider will have to provide any information to the Bureau under § 1040.4(b) in a given year.

The Bureau intends to use these records to help the Bureau monitor the conduct of arbitrations and the content of arbitration agreements as well as their use to block cases filed in court. For example, the collection of arbitration claims will provide transparency regarding the number of arbitrations and the types of claims consumers and providers are bringing to arbitration, and the collection of awards will provide insights into the types of claims that reach the point of adjudication and the way in which arbitrators resolve these claims. The Bureau will use this information to determine whether further action is needed to ensure consumers are being protected. In addition to helping the Bureau monitor the conduct of arbitration and the content and use of arbitration agreements, the records submitted by providers will help the Bureau monitor consumer financial markets for the benefit of consumers. For example, the collection of claims and awards will provide the Bureau with additional information about the types of issues that consumers and providers face that are not or cannot be resolved informally, including those

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to the final rule), or alternatively by the additional exposure created from sending consumer notices on debts that did not arise from credit transactions (*i.e.*, potential over-compliance). The Bureau does not believe that the cost of sending such a notice will be burdensome to the buyers of medical debt, because these amendments or notices could be consolidated with other legally-mandated notices.

issues that appear to give rise to repeat claims. The collection of motions to compel arbitration will allow the Bureau to monitor the use of arbitration agreements to block individual cases that consumers file in court, and will also allow the Bureau to determine how often that actually leads to a case being filed in arbitration.

In addition, the publication requirement will permit the use of records by persons outside the Bureau, including providers, attorneys representing consumers and providers, consumer advocacy groups, academic researchers, and other regulators. For example, all of these types of individuals and groups may use the records to monitor the conduct of arbitrations and providers' practices in consumer financial markets.

3. Use of Information Technology

To the extent that providers enter into arbitration agreements in electronic form with consumers, the rule permits the mandatory contract language to be included in the electronic contract record and does not require a separate paper record to be created or provided to the consumer.

The commentary to the final rule states that providers that elect to deliver the notice permitted by the Alternative for Providers Entering into a Preexisting Arbitration Agreement may provide the notice in any way the provider communicates with the consumer, including electronically. Regarding the GPR Prepaid Card Notification Alternative, the preamble to the final rule states that providers that have the ability to contact the consumer in writing could satisfy the requirement by, among other things, communicating the new terms on the provider's website or sending a compliant agreement to the consumer when the consumer contacted the provider to register the account. With respect to the latter, the Bureau believes that, in general, providers will be able to use electronic communication where permitted by applicable law such as the E-SIGN Act.

With respect to the Records Submission Requirement, the Bureau will develop, implement, and publicize an electronic submission system for these materials before the compliance date.[14] Through such a system, the Bureau intends to permit providers to email these records to a Bureau email address or to upload them to a Bureau website. The Bureau anticipates that this system will be operational before the compliance date.

4. Efforts to Identify Duplication

The Bureau does not believe that any of the information collections will be duplicative. While the Bureau currently collects credit card agreements and will begin collecting prepaid account agreements in October 2018 – and while these agreements may contain arbitration agreements –

[14] Providers will be required to submit records to the Bureau for disputes arising under arbitration agreements entered into after the compliance date. Pursuant to 12 CFR 1040.4(b)(6), the Bureau will begin to publish records collected from providers no later than July 1, 2019.

these agreements cannot be used or modified for the purposes described in Item 2 above, because, to accomplish these purposes, the Bureau needs to identify the specific agreement that the provider is relying on in the arbitration at issue. Some providers have multiple agreements for different cards, for example.

The Bureau is aware of only one similar federal rule, which requires SEC-regulated broker dealers to include specified language in their arbitration agreements that prevents application of the arbitration agreements to class actions[15] and also requires that arbitral awards be made public. However, there will be no duplication with this rule because § 1040.3(b)(1) contains an exemption for persons regulated by the SEC.

In addition, some CFTC-regulated persons are subject to a disclosure requirement for arbitration agreements. There is no duplication, however, because § 1040.3(b)(1) contains an exemption for persons regulated by the CFTC.

More broadly, the Bureau does not foresee significant duplication of its own activities. The Bureau's existing programs do not generate access to the types of ongoing, systematic, and timely data that the Records Submission Requirement will create. For example, the Bureau supervises certain larger participants in certain markets, and may in the course of its supervision activities review certain arbitral records relating to consumer disputes, but such a review is not systematically performed at all supervised entities. Furthermore, most of the entities affected by the rule are not supervised by the Bureau.[16] The Bureau also only conducts supervision examinations on a periodic and risk-based basis. Therefore, even for entities it does supervise, the arbitral records that must be submitted will not be seen by the Bureau until some time (often well more than 60 days) after submission to the Bureau.

5. Efforts to Minimize Burdens on Small Entities

In its final regulatory flexibility analysis (FRFA) in the final rule, the Bureau estimates that the rule will affect approximately 50,000 small entities that provide products or services covered by the rule.

Several aspects of the Bureau's rule are designed to minimize burden on providers, including small entities. Examples include the Contract Provision Requirement, which eliminates the need for small entities to develop contractual language to satisfy the Bureau's rule; the Alternative for Providers Entering into a Preexisting Arbitration Agreement, which allows providers entering

[15] FINRA, Rule12204(d), Class Action Claims (2008).

[16] The Bureau has supervisory authority over banks, thrifts, and credit unions with assets over $10 billion, as well as their affiliates. In addition, the Bureau has supervisory authority over nonbank mortgage originators and servicers, payday lenders, and private student lenders of all sizes, as well as larger participants of other consumer financial markets as defined by Bureau rules. To date, this includes larger participants in the following markets: consumer reporting, consumer debt collection, student loan servicing, international money transfer, and automobile financing.

into preexisting arbitration agreements the option of providing written notice in place of amending the underlying contract; § 1040.4(a)(2)(vii), which states that a provider may provide any provision or notice required by the Contract Provision Requirement in a language other than English if the pre-dispute arbitration agreement also is written in that other language; and the GPR Prepaid Card Notification Alternative, which gives providers an alternative to pulling and replacing non-compliant packages from retail store shelves. The Bureau also believes that many small entities use standard-form agreements, and form providers may provide updated forms that include the Bureau's specified contract provisions.

Several aspects of the Record Submission Requirement are also designed to minimize burden on providers. As noted above, the Bureau has identified specific types of information that providers will be obligated to redact, in order to make the redaction process easier for providers, and plans to provide for electronic submission of records to the Bureau.

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

If the Contract Provision Requirement (and the associated alternatives described above) were not implemented, the Bureau believes that a significant number of arbitration agreements entered into in the future could include language that on their face may be misleading to consumers, providers, courts, or others. In particular, these arbitration agreements, by virtue of not specifying which cases they do and do not apply to, could create the misimpression that they apply to class litigation, when the rule otherwise does not permit such application of the agreements. Without the mandated provision, the Bureau also believes some providers may face uncertainty as to how to describe the relationship between the arbitration agreement and the rule. Such uncertainty could lead providers to incur costs related to the drafting of language or perhaps choose to drop arbitration agreements altogether.

With respect to the Records Submission Requirement, the Bureau will require the submission of materials that will enable the Bureau to determine the nature of disputes being pursued outside of the court system, its outcome (in the case of an award); whether problems with the arbitration agreement itself or the payment of fees under that agreement interfered with the ability of the parties to pursue the arbitration; and whether arbitration agreements are being used to stay or dismiss claims in court that are not later brought in arbitration. Without these materials, the Bureau would not be in a position to attempt to identify, for example, the types of cases that are being pursued in arbitration, whether there are patterns across cases that may indicate unfairness in the way the arbitral forum is being used or functioning, or whether there are significant obstacles to the ability of consumers to pursue these cases in court or arbitration. The Bureau believes that the publication of these materials is important to inform the public on the foregoing issues.

In terms of requiring redaction by providers of certain examples of consumer information in any materials submitted under these requirements, the Bureau believes this requirement facilitates compliance with section 1022(c)(4)(C) of the Dodd-Frank Act. That statutory provision states

that the Bureau may not use its market monitoring authority to obtain records from providers "for purposes of gathering or analyzing the personally identifiable financial information of consumers." The Bureau believes it has identified the specific categories of such information that are likely to exist in the records submitted pursuant to the rule. The redaction requirement is therefore focused on only these specific categories of information, and is not tied more generally to any other types of information that may be considered "personally identifiable financial information" in a generic sense. The Bureau believes this approach will reduce burden on providers while meeting the requirements of section 1022(c)(4)(C).

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

In accordance with 5 CFR 1320.11, the Bureau published a notice of proposed rulemaking in the *Federal Register* inviting the public to comment on the information collection requirements contained in the proposed rule.[17] The Bureau received over 113,000 comments. Comments received in response to the NPRM, including as they relate to the Bureau's PRA burden estimates and related assumptions, are addressed fully in final rule's Supplementary Information and are also summarized below.

In response to the NPRM on this rule, the Bureau received no comments explicitly addressing the PRA notice, although some industry commenters made general comments regarding the expected burden of the proposed rule, including burdens accounted for in the PRA, which the Bureau addresses below. In general, the Bureau believes that the burden estimates contained in the proposal were sufficiently conservative, such that even if all of the assertions of the commenters were entirely supported by data, they would still point to a burden less than or equal to the Bureau's estimates.

With respect to the Contract Provision Requirement, although not directly addressing the proposed PRA analysis, some industry commenters asserted that their burden would be significant, as they utilize multiple separate agreements, all of which would need to be updated to comply with the rule. The Bureau acknowledges that this may be the case for some particular firms, but believes its estimate from the proposal is still conservative as an average figure, given the large number of small firms that the Bureau believes utilize third-party contract form providers, and who will have negligible costs.

With respect to the Records Submission Requirement, an industry trade association commenter stated that these redactions will require "significant manual effort," but did not state that the

[17] 81 FR 32830 (May 24, 2016).

estimated burden should be increased. The Bureau believes that the average hours per response (2.5) and the hourly rate ($200), as reflected in the Estimated Burden of Information Collection table below, capture the burdens associated with the manual efforts described by the commenter.

One industry commenter asserted that up to six separate filings would be required to comply with the Records Submission Requirement. Although theoretically possible, since providers have 60 days to submit documents under the final rule, and since many of the documents will all be produced within that time span, there generally will not be a need for a separate submission for each document. Moreover, some costs accounted for by the Bureau, such as redaction of identifying information, are required for each document regardless of whether they are submitted together or separately. In addition, the burden of making the submission itself is quite minimal. The Bureau expects that most providers will submit the required materials electronically, *e.g.*, either through email or by uploading them to the Bureau's website.

One industry commenter asserted there would be additional costs from creating a new "department" to handle the submission of arbitration claims. The Bureau does not believe this is likely to be true in most, or even any cases. The Bureau does not believe that providers currently engage in enough individual arbitration cases per year to justify even one full time employee, much less an entire department and the related fixed costs to comply with this requirement. Indeed, the Bureau's combined estimate of the time burden of complying with the reporting requirement for all providers in all markets is only somewhat more than a few full-time employees. The Bureau does expect that providers will update their compliance policies to reflect the requirement to submit arbitral records, but the Bureau believes that this will generally be done concurrent with the required revisions to their arbitration agreements. Specifically, the Bureau believes that an average burden of 2.5 hours per respondent is, if anything, greater than the total one-time burden of the rule. Indeed, the Bureau believes that the time needed for such an update will be minimal, and limited to simply identifying the existence of the Record Submission Requirement, whose requirements may be consulted if and when the provider generates or receives a record that is subject to them.

Comments received on the proposed rule can be found at https://www.regulations.gov/docketBrowser?rpp=25&so=DESC&sb=commentDueDate&po=0&dct=PS&D=CFPB-2016-0020.

In addition, in October 2015, the Bureau convened a Small Business Review Panel (Panel) with the Chief Counsel for Advocacy of the Small Business Administration (SBA) and the Administrator of the Office of Information and Regulatory Affairs with the Office of Management and Budget (OMB).[18] As part of this process, the Bureau prepared an outline of

[18] The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), as amended by section 1100G(a) of the Dodd-Frank Act, requires the Bureau 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. Public Law 104-121, tit. II, 110 Stat. 847, 857 (1996) (as amended by Public Law 110-28, section 8302 (2007)).

proposals under consideration and alternatives considered (Outline), which the Bureau posted on its website for review by the small financial institutions participating in the panel process as well as by the general public.[19] Working with stakeholders and the agencies, the Bureau identified 18 Small Entity Representatives (SERs) to provide input to the Panel on the proposals under consideration. With respect to some markets, the relevant trade groups reported significant difficulty in identifying any small financial services companies that would be impacted by the approach described in the Bureau's Outline. During the Panel, small entities voiced minimal concerns with the information collection components of the proposal. The Bureau also held a tribal consultation on the proposed rule on August 17, 2016 and an interagency consultation on June 6, 2017.

9. Payments or Gifts to Respondents

Not applicable. No payments or gifts to respondents will be provided.

10. Assurances of Confidentiality

Not applicable. No assurances of confidentiality will be provided to covered entities responding to the information collection requirements contained in the rule. However, a small minority of arbitration agreements, primarily in the checking account market, include provisions requiring that the proceedings remain confidential.

11. Justification for Sensitive Questions

Not applicable. The information collection does not contain any questions of a sensitive nature.

[19] Consumer Fin. Prot. Bureau, Press Release, *CFPB Considers Proposal to Ban Arbitration Clauses that Allow Companies to Avoid Accountability to Their Customers* (Oct. 7, 2015), *available at* http://www.consumerfinance.gov/newsroom/cfpb-considers-proposal-to-ban-arbitration-clauses-that-allow-companies-to-avoid-accountability-to-their-customers/. The Bureau also gathered feedback on the Outline from other stakeholders and members of the public, and from the Bureau's Consumer Advisory Board (CAB). *See* http://www.consumerfinance.gov/advisory-groups/advisory-groups-meeting-details/ (video of the Bureau's October 2015 presentation to the CAB).

12. Estimated Burden of Information Collection

Exhibit 1: Burden Hour Summary

Information Collection Requirement	No. of Respondents	Type of IC	Frequency	Annual Responses	Average Response Time	Annual Burden Hours	Hourly Rate[20]	Hourly Costs
One time burden for changing existing pre-dispute arbitration agreements [§ 1040.4(a)(2)]	48,000	3rd Party Disclosure	One time	48,000	2	96,000	$200	$19,200,000
Records Submission Requirement [§ 1040.4(b)]	Up to 1,000	Reporting	On occasion	Up to 1,000	2.5	2,500	$200	$500,000
Totals:	48,000[21]			49,000		98,500		$19,700,000

A. Contract Provision Requirement

As discussed above, the Bureau believes that this final rule imposes two new information collection requirements on covered entities or members of the public that will constitute collections of information requiring OMB approval under the PRA. As the Bureau describes in the final rule in the impact analysis required by Dodd-Frank section 1022(b)(2) and in its FRFA, the providers affected are providers that currently use arbitration agreements.

The Contract Provision Requirement will require providers that enter into arbitration agreements with consumers after the compliance date to ensure these arbitration agreements contain a provision specified in § 1040.4(a)(2). Under the Contract Provision Requirement, providers will incur administrative expenses to make the one-time change to the arbitration agreement itself. The Bureau anticipates that providers will incur and manage these costs in one of three ways. First, providers that rely exclusively on third-party contract form providers, with which they already have a relationship, will obtain compliant agreements from the third-party provider. Second, providers that perform a periodic (*e.g.*, annual) review of the contracts they use with consumers will, as part of that review, either revise their arbitration agreements or delete them. For these two types of providers, the Bureau believes that the cost of making the required change to their contracts will be negligible, insofar as providers in the first category need only download a compliant agreement from the form provider's website and providers in the second category already engage in a regular review (as long as this review occurs before the rule becomes

[20] Bureau of Labor Statistics, April 2016, Occupational Employment and Wage Estimates, http://www.bls.gov/oes/current/oessrci.htm. The hourly rate is a weighted average composed of the average wages for a specific sector and corresponding occupation.

[21] The total is 48,000 because the respondents for the Record Submission Requirement are also respondents for the Contract Provision Requirement.

effective). Third, there are likely to be some providers that use contracts that are highly customized to their own needs and that might not engage in periodic reviews. These contracts will require a more comprehensive review in order to either change or remove the arbitration agreement. The Bureau believes that smaller providers are likely to fall into the first category. The Bureau believes that the largest providers are likely to fall into either the second or the third category.

On average across all three categories, the Bureau believes that the average provider's expense for the administrative change related to the Contract Provision Requirement to be about $400 per provider. This consists of approximately one hour of time from a staff attorney or compliance person, at an hourly rate of $200, and an hour of supporting staff time, at an hourly rate of $200.

Accordingly, given the Bureau's estimate that about 48,000 providers use arbitration agreements,[22] the Bureau estimates that the overall paperwork burden from changing the contract is about 96,000 hours across the applicable NAICS codes, and the Bureau estimates that the Contract Provision Requirement will result in a one-time cost of about $19.2 million. The breakdown of these 48,000 providers by NAICS code is according to the tables presented in the Section 1022(b)(2) and FRFA analyses in the final rule. No burden is taken for the ongoing providing of the required contractual provision since (1) providing arbitration agreements is already part of providers' standard business practice and (2) the final rule prescribes the specific language that must be used in the required contractual provision, and, according to the implementing regulations of the PRA, the public disclosure of information originally supplied by the Federal government is exempt from the PRA definition of a "collection of information."[23]

The Contract Provision Requirement will also require certain providers – such as providers that acquire consumer credit accounts from entities not subject to the Bureau's rule – to ensure, when they enter into an arbitration agreement, that the agreement is amended to contain a required provision or that they send the consumer a notice stating that the provider would not invoke the pre-dispute arbitration agreement in a class action. The Bureau believes that this cost is minimal since these providers often send out other notices upon buying such consumer credit, and the Bureau's required notice could just be included with those already-required communications. Further, the regulation supplies the exact language required for such notices, eliminating the burden of drafting language for the notices.

B. Records Submission Requirement

[22] This figure is lower than the figure cited above – that the final rule creates class action exposure for about 53,000 providers – primarily because approximately 4,500 debt collectors are subject to the rule but would not incur this cost because they do not act as the original provider of consumer financial products and services, and thus are unlikely to have contracts directly with the consumers with whom they interact. This figure also does not include sellers of consumer credit accounts that are exempt from the rule, such as certain merchants and auto dealers. To the extent buyers require those sellers use contract provisions specified in the rule, that is not required by the rule, and therefore those persons are not counted as respondents and no PRA burden is assumed for that.

[23] See 5 CFR 1320.3(b)(2) & 1320.3(c)(2), respectively.

The Records Submission Requirement will require providers to submit specified records to the Bureau relating to any arbitration agreement entered into after the compliance date, in connection with individual arbitrations concerning a covered consumer financial product or service. Given the low prevalence of individual arbitration (the Study found an average of 616 arbitrations per year in the predominant forum across six consumer financial markets) and motions to compel arbitration (as discussed above, only a handful per year were identified in the data analyzed in the Study for federal court actions), and the low burden per occurrence (sending redacted copies of already-existing documents), the Bureau believes that this burden is minimal. The Bureau further believes that some arbitration administrators might offer this service to providers.

The Bureau's Section 1022(b)(2) and RFA analyses, as set out in the final rule, do not quantify the impact of the Records Submission Requirement. However, for purposes of the PRA analysis, the Bureau assumes that this requirement will result in up to 1,000 responses per year.[24] The Bureau believes it is unlikely that this requirement will impose a cost of more than $100 per arbitration – a conservative estimate for the time required to copy or scan the documents, locate the address for where to send them, and any postage costs. (The Bureau expects that most providers will submit the required materials electronically, *e.g.*, either through email or by uploading them to the Bureau's website.) To the extent covered persons are required to redact specific identifiers, as described above, this cost might increase, conservatively, by a few hundred dollars on average due to the time to train the staff on the specific identifiers and the time to redact the documents, for each arbitration, although the Bureau purposely simplified this requirement to make it easier to apply. Thus, the Bureau conservatively estimates a cost of about $500 per arbitration with an average response time of 2.5 hours, resulting in a total ongoing burden cost of about $500,000 across all providers.

13. Estimated Total Annual Cost Burden to Respondents or Recordkeepers

The Bureau does not estimate any capital/start-up or operating and maintenance costs associated with the rule. The Bureau believes that the attorneys or compliance staff who will perform the required tasks will overwhelmingly be individuals otherwise employed by the provider. With respect to the Contract Provision Requirement, the Bureau believes that, to the extent covered entities use contracts from form providers, the addition of the required provision might be done by the form providers themselves, requiring a simple check by the provider's compliance staff to ensure that the provision has been added. With respect to the Records Submission Requirement,

[24] The Bureau assumed 500 occurrences per year in the proposal. The Bureau increases its assumption in order to be conservative and to account for 1) arbitrations that may currently occur in other arbitration forums besides AAA and in markets other than those included in the Study, 2) submissions related to motions to compel arbitration, which were not required in the proposal, 3) providers' answers to arbitration claims, which were not required in the proposal, and 4) in some disputes, there may be more than one filing, to the extent documents subject to the reporting requirement are received more than a few weeks apart. The Bureau notes that in some cases, the answers may not require a separate filing, depending on whether these occur within 60 days of the initial filing in arbitration.

the Bureau does not anticipate that most providers will incur materials or mailing costs, as the Bureau expects that most providers will submit the required materials electronically.

14. Estimated Cost to the Federal Government

The Bureau estimates that any costs to the Bureau associated with the rule will be *de minimis* in the context of the Bureau's overall budget. The Contract Provision Requirement imposes no obligations on the Bureau. With respect to the Records Submission Requirement, the Bureau will, to the extent possible, to utilize existing personnel and technology in order to make any costs related to submission and publication *de minimis*.

15. Program Changes or Adjustments

When approved, this will be a new information collection request; therefore, all the burden (see Item 12) is considered a program change.

16. Plans for Tabulation, Statistical Analysis, and Publication

Not applicable. The Bureau currently has no plans to use the information for statistical analysis.

17. Display of Expiration Date

Pursuant to 44 U.S.C. 3507, the Bureau will publish a separate notice in the *Federal Register* announcing the submission of these information collection requirements to OMB as well as OMB's action on this these submissions, including the OMB control number and expiration date.

The OMB number will be displayed in the ~~the~~ codified version of the Code of Federal Regulations. Further, the OMB control number and expiration date will be displayed on the Federal government's electronic PRA docket at www.reginfo.gov.

18. Exceptions to the Certification Requirement

The Bureau certifies that this collection of information is consistent with the requirements of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3) and is not seeking an exemption to these certification requirements.

SUPPORTING STATEMENT PART B - COLLECTIONS OF INFORMATION USING STATISTICAL METHODS

Not applicable. This information collection request does not request the use of any statistical methods.