

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

SUPPORTING STATEMENT PART A

**INTERSTATE LAND SALES FULL DISCLOSURE ACT
(REGULATIONS J, K & L) 12 CFR 1010, 1011, 1012**

(OMB CONTROL NUMBER: 3170-0012)

OMB TERMS OF CLEARANCE:

Not applicable. The Office of Management and Budget (OMB) provided no Terms of Clearance when they approved this information collection in September 2015.

ABSTRACT:

The Interstate Land Sales Full Disclosure Act (ILSA) requires, in relevant part, that land developers register subdivisions of 100 or more non-exempt lots with the Bureau of Consumer Financial Protection (the Bureau) before selling or leasing the lots, and to provide each lot purchaser with a disclosure document designated as a property report, 15 U.S.C. 1703-1704. ILSA was enacted in response to a nation-wide proliferation of developers of unimproved subdivisions who made elaborate, and often fraudulent, claims about their land to unsuspecting lot purchasers. Information is submitted to the Bureau to assure compliance with ILSA and the implementing regulations. The Bureau also investigates developers who are not in compliance with the regulations.

JUSTIFICATION

1. Circumstances Necessitating the Data Collection

ILSA requires land developers to register with the Bureau subdivisions of 100 or more non-exempt lots and to provide each purchaser with a disclosure document designated as a property report, 15 U.S.C. 1703-1704. ILSA was enacted in response to a nation-wide proliferation of developers of unimproved subdivisions who made elaborate and often fraudulent, claims about their land to unsuspecting lot purchasers. Information is submitted to the Bureau to assure compliance with ILSA and the implementing regulations. The Bureau also investigates developers who are not in compliance with the regulations.

The following list provides the relevant section of each statute and regulation requiring a collection of information:

- Registration of Projects – 12 CFR 1010.100 - 1010.219 and 15 U.S.C. 1701
- MSA Exemption Certificate/Affirmation - 12 CFR 1010.13(a)(9) and 15 U.S.C. 1702
- Option to Cancel Notification - 12 CFR 1010.15(b)(5)(i) and 15 U.S.C. 1703
- Sample Registration Format/ Lot Information and Sample Receipt - 12 CFR 1010.15(b)(11) and 15 U.S.C. 1705
- Advisory Opinion Affirmation - 12 CFR 1010.17(b)(3) and 15 U.S.C. 1702
- Initial and Consolidated Fee Schedule - 12 CFR 1010.35(b) and 15 U.S.C. 1704
- Property Reports Receipts for Lots Sold in Registered Projects – 12 CFR 1010.118 and 15 U.S.C. 1707(a)
- Financial Statements (FS) – 12 CFR 1010.212(d) & 12 CFR 1010.112 and 15 U.S.C. 1705
- Unconditional Guarantee – 12 CFR 1010.212(g) and 15 U.S.C. 1705
- Annual Reports for Registered Projects (AR) – 12 CFR 1010.310 and 15 U.S.C. 1705
- Exemption Filing (including Multiple Site Exemption Projects) – 12 CFR 1010.15 & 1010.16 and 15 U.S.C. 1702(c)
- Lot Information Statement and Property Report Receipts for Multiple Site Exemption Projects – 12 CFR 1010.15 and 15 U.S.C. 1702(c)
- Annual Report for Exempted Projects – 12 CFR 1010.15(d) and 15 U.S.C. 1701
- Advertising Disclaimers (AD) – 12 CFR 1011.50(a) and 15 U.S.C. 1703, 1705
- Restrictive Covenants – 12 CFR 1010.109(f)(1)(iii) and 15 U.S.C. 1705
- Statement of Record – 12 CFR 1010.21(b)
- Voluntary Suspension Form – 12 CFR 1010.21(b)
- Disclosure Document Certification - 12 CFR 1010.504(a)(2) and 15 U.S.C. 1708
- Property Report Cover Page Language - 12 CFR 1010.558(a)(1) and 15 U.S.C. 1703
- Revocation Rights Notification - 12 CFR 1010.559(a)(1) and 15 U.S.C. 1703

As of March 2015, ILSA partially exempts sales and leases of condominium units.¹ Therefore, we restrict our burden estimates to collections related to land sales only.

2. Use of the Information

¹ This exemption for condominium units was codified through the so-called Condominium Act, H.R. 2600, signed into law in September 2014. The exemption, along with other exemptions, is listed in the statute at 15 U.S.C. 1702.

Respondents are developers (or attorneys or others who work for them). As respondents, developers must provide information to two parties: government (the Bureau) and prospective lot purchasers.

The developer must register a subdivision with the Bureau and receive an effective date for its registration documents before any lots from that subdivision can be sold or leased. The registration documents, also called Initial Statement of Record, include the proposed property report and additional information and documents that support the developer's disclosures in the property report. The initial registration also includes a copy of financial statements and a receipt of paid registration fees. If after the initial registration there are any material changes, developers must submit amendments to their registrations. In addition, if other lots are added to the existing subdivision, a developer must submit a consolidated filing.

The developer must also submit to the Bureau an annual financial statement and an annual report of activity on any initial or consolidated registration not under suspension. The annual report of activity is to be prepared in the format required by Section 1010.310 of Regulation J. However, a developer may voluntarily suspend the registration by submitting a Voluntary Suspension Form, which can be obtained through request of the Bureau.

Developers must give purchasers a copy of an up to date property report before the purchaser signs the sales contract. The developer is responsible for ensuring that the registration is accurate and does not omit information needed for a purchaser to make an informed decision. Developers are also required to make copies of financial statements readily available.

The Bureau conducts a facial review of the submissions. The developer may request an Advisory Opinion if a developer has questions about the applicability of one of the exemptions from registration. Additionally, developers must file requests in order to claim an exemption from registration under the multiple site or substantial compliance exemptions. Other exemptions are self-determining. The Bureau may require additional information from developers in response to investigations of complaints. For the purposes of communication with developers, the Bureau collects contact information.

3. Use of Information Technology

As previously reported in our non-material change request submission, since the last renewal of this collection in 2015 the Bureau has implemented a web portal that allows electronic submission of many required elements of this information collection thus reducing compliance burdens and costs.

4. Efforts to Identify Duplication

There is a State Certification Program that is an effort to eliminate duplication. Developers in States that have an equivalent and certified land sales program may file a certified copy of the State filing to meet Federal requirements. In addition, 22 States accept a Federal registration as meeting State disclosure and consumer protection requirements.

5. Efforts to Minimize Burdens on Small Entities

Subdivisions of fewer than 100 lots are exempt from registration requirements.

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

The frequency of the information collection is determined by statute and/or regulation. Less frequent collection of the information could increase the likelihood of a property report not having the current information and purchasers not having proper information on which to base their purchases.

7. Circumstances Requiring Special Information Collection

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

8. Consultation Outside the Agency

In accordance with 5 CFR §1320.8(d)(1), the Bureau published a *Federal Register* notice allowing the public 60 days to comment on this proposed extension (renewal) of this currently approved collection of information. No Comments were received. Further and in accordance with 5 CFR §1320.5(a)(1)(iv), the Bureau will also publish a notice in the *Federal Register* allowing the public 30 days to comment on the submission of this information collection request to the Office of Management and Budget.

9. Payments or Gifts to Respondents

No payments or gifts are provided to respondents.

10. Assurances of Confidentiality

Whenever the Bureau receives information obtained in association with ILSA, the Bureau shall treat the information in accordance with applicable Federal law, including but not limited to the Bureau's confidentiality rules, 12 CFR Part 1070, and the Federal laws and regulations that apply to Federal agencies for the protection of privacy, confidentiality, security and integrity.

In general, the information collected under ILSA and its implementing regulations is meant to be available to the public, and as such there are no assurances of confidentiality. To the extent that any potentially sensitive information is collected by the Bureau, such as the names, addresses, and financial statements of developers, this information is being used to help avoid fraud on the part of sales or leases and as such necessary for this charge.

The Bureau also evaluates the potential privacy risk and harm to individuals relative to the authorized purpose, and vets any research proposals on the data to ensure that they serve an authorized purpose. Disclosure by the federal government of information it collects pursuant to

ILSA and its implementing regulations under any studies using these data will be consistent with the Privacy Act and the E-Government Act. The requisite SORNs (System of Records Notice) and PIAs (Privacy Impact Assessment) will document the collection, use, disclosure, and retention of PII; the technical, administrative, and physical controls used to minimize privacy risks. The Bureau’s CFPB.012 – Interstate Land Sales Registration Files Interstate Land Sales Registration Files (ILS), 76 FR 77470 SORN, and the Interstate Land Sales Registration Files PIA, which is pending publication, cover the use of the data. The SORN and PIA will be updated, as appropriate.

11. Justification for Sensitive Questions

Developer financial statements are generally considered sensitive, especially for non-public companies. However, disclosure of this information allows consumers transparency into developers’ financial history so they will be able to ascertain the financial condition of the company they are transacting with.

12. Estimated Burden of Information Collection

Information Collection	Type of Collection	No. of Respondents	Frequency of Response	Annual Responses	Average Response Time	Annual Burden Hours
Initial Registration						
Cover letter	Reporting	11	1	11	0.25	2.75
Receipt of paid fees	Reporting	11	1	11	0.5	5.5
§§1010.208 through 1010.219	Reporting	11	1	11	63	693
Property Report	Reporting	11	1	11	40	440
<i>Sub-total:</i>		<i>11*</i>	<i>//////////</i>	<i>44</i>	<i>//////////</i>	<i>1,141</i>
Consolidated Statement of Record and Final Property Report						
Consolidation	Reporting	51	1	51	15	765
Receipt of paid fees	Reporting	51	1	51	0.5	25.5
Property Report	Reporting	51	1	51	1	51
§§1010.208 through 1010.219	Reporting	51	1	51	1	51
Amendment	Reporting	65	1	65	5	325
Final Version of Property Report	Reporting	67	1	67	2.5	167.5
<i>Sub-total:</i>		<i>67*</i>	<i>//////////</i>	<i>336</i>	<i>//////////</i>	<i>1,385</i>
Annual Submissions						

Information Collection	Type of Collection	No. of Respondents	Frequency of Response	Annual Responses	Average Response Time	Annual Burden Hours
Annual Report	Reporting	86	1	86	0.5	43
Receipt of paid fees	Reporting	60	1	60	0.25	15
Financial statements	Reporting	51	1	51	0.5	25.5
Voluntary Suspension Form	Reporting	1	1	1	1	1
<i>Sub-total:</i>		<i>86*</i>	<i>//////////</i>	<i>198</i>	<i>//////////</i>	<i>85</i>
Collections given to lot purchasers						
Property Report	3 rd Party Disclosure	77	30.7	2,365	0.3	709.5
Lot Information Statement	3 rd Party Disclosure	8	36.6	293	0.3	87.9
<i>Sub-total:</i>		<i>77*</i>	<i>//////////</i>	<i>2,658</i>	<i>//////////</i>	<i>797</i>
For land subdivisions in certified states (California, Arizona)						
Fact Sheet prepared for Initial Registration	3 rd Party Disclosure	1	1	1	1	1
Fact Sheet prepared for Consolidation	3 rd Party Disclosure	0	0	0	1	0
Fact Sheet prepared for Amendment	3 rd Party Disclosure	3	1	3	1	3
<i>Sub-total:</i>		<i>3*</i>	<i>//////////</i>	<i>4</i>	<i>//////////</i>	<i>4</i>
TOTALS:		197*	<i>//////////</i>	3,240	<i>//////////</i>	3,412

*Unduplicated potential respondents

At our last estimate, there were 197 land subdivisions that are potentially subject to ILSA information collection requirements. These 197 land subdivisions were maintained by 180 developers. Because the information collection requirements are specified per subdivision, not per developer, for the purposes of burden calculations, we use subdivision as a unit of analysis. As a result, the overall number of potential respondents is estimated to be 197.

The number of respondents varies by collection, because some collections must be submitted only under specified circumstances. For instance, only a subdivision for which the registration is not under suspension is obliged to submit the Annual Report (and we find that 134 out of the potential 197 did so).

The primary method of calculating the counts of collections – with an exception of collections given out to lot purchasers – is by utilizing the database of submissions maintained

by the Bureau. The advantages of this method are accuracy and consistency across periods of renewal. The average response times and appropriate hourly rates are obtained through interviews with industry experts.

In calculating burden hours, we make a distinction between subdivisions registered in states that participate in the state certification program – California and Arizona, -- and subdivisions in other states. Developers that sell lots in California and Arizona are already subject to state filing requirements that are substantially similar to those required by ILSA. The marginal burden of complying with ILSA for such developers consists of fact sheets that they must file along with Initial Registration, Consolidation or Amendment. The costs associated with those fact sheets are presented in the table above.

On Panel A, we present costs associated with information collections by developers in other states. The major component of the cost is the Property Report. We distinguish between the cost of creating the first copy of the Property Report, which is more substantial, and the cost of later submissions, which is smaller. The first copy of the Property Report is submitted together with other documents required by the Initial Registration. The subsequent copies of the Property Report received by the Bureau are either exact copies of the initial Property Report, or its modifications (such as required by Consolidation or Amendment).

A special mention must be made regarding Financial Statements. ILSA generally requires audited Financial Statements, produced by an independent licensed public accountant, which can increase the cost of their production. However, we understand that in most cases developers have to produce them in the normal course of business because banks may require them in the context of extending credit to a developer. Therefore, we assume that the marginal burden of complying with ILSA in this respect is zero. In lieu of audited Financial Statements, developers may sometimes submit unaudited ones. We understand that the production of unaudited Financial Statements is mostly triggered by the Bureau requirements—that they would not otherwise be produced in the normal course of business—and therefore we attribute the cost of their production to ILSA.

Information collections that are required in the statute but for which there were zero such filings during the period of study are not shown in the table.

13. Estimated Total Annual Cost Burden to Respondents or Record-keepers

Non-labor costs related to information collections under ILSA have two components: registration fees and costs associated with production and submission of documents. The table provides detail on both components. Consistent with our approach we count costs only associated with land subdivisions.

Description of costs	Unit Cost	Units	Total Cost
Fees paid for Initial Registration	\$800	6	\$4,800
Fees paid for Consolidation	\$800	32	\$25,600
Fees paid for Annual Report filing	\$800	53	\$42,400
Total cost burden			\$72,800

14. Estimated Cost to the Federal Government

ILSA oversight costs for the Bureau are approximately \$400,000 a year. This represents the estimated cost factor of two full-time employees; the annual cost has been partially offset by registration fees paid by the developers. Since the last renewal of this collection, the Bureau amended the regulations to allow for the electronic filing of all registration materials, thus reducing compliance burdens and associated costs. With this change, the Bureau was able to eliminate a \$600,000 a year contract with a third party vendor that provided records conversion services for the Bureau.

Therefore, the estimated gross annual cost to the Federal Government is \$400,000 in 2018 for two full time employees.

Annual cost to the Bureau, however, is partially offset by registration fees paid to the Bureau by developers. These fees totaled \$72,800 in the last fiscal year (paid by both land and condos developers).

15. Program Changes or Adjustments**Summary of Burden Changes:**

	Total Respondents	Annual Responses	Burden Hours	Cost Burden
Total Annual Burden Requested	197	3,240	3,412	\$72,800
Current OMB Inventory	197	6,772	5,752	\$82,524
Difference (+/-)	0	(3,532)	(2,340)	(\$9,724)
Program Change	0	0	0	0
Discretionary	0	0	0	0
New Statute	0	0	- 0	\$0
Violation	0	0	0	\$0
Adjustment	0	(3,532)	(2,340)	(\$9,724)

As previously reported in the Bureau's non-material change request submission, since the last renewal of this collection in 2015, the Bureau has implemented a web portal that allows electronic submission of many required elements of this information collection, thus reducing compliance burdens and costs. Based on experience with web portal use, the Bureau has noted further burden reduction than what was originally estimated when the portal first launched. Additionally, the Bureau has adjusted the estimated number of annual responses to more accurately reflect this estimate.

16. Plans for Tabulation, Statistical Analysis, and Publication

There are no plans to provide any publications based on the information collection of this regulation.

17. Display of Expiration Date

The OMB control number and expiration date associated with this Paperwork Reduction Act (PRA) submission will be displayed on the Federal government's electronic PRA docket at www.reginfo.gov, as well as on the relevant information collection instruments.

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.

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